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**Summary record of the 672nd meeting**

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American Juridical Committee; he asked whether it was not customary to refer in the Commission's reports to papers submitted by observers.

79. Mr. LIANG, Secretary to the Commission, said that the question, which was a constitutional one, had never arisen before. When he had acted as observer for the Commission to various inter-governmental bodies, his papers had been unofficial.

80. Mr. BRIGGS suggested that decision (2) in section II should read: "Its debates will be confined to the general aspects of state responsibility".

81. Mr. AGO said he could accept that wording.

82. Mr. TUNKIN said he had some doubts concerning that formulation. The Commission had instructed the Sub-Committees to limit their proposals to the questions of scope and approach. It would consequently be inadvisable to give the impression that a substantive discussion would take place in the Sub-Committee.

83. Mr. AGO pointed out that the Sub-Committee had agreed that its approach to the subject should relate to the general aspects of state responsibility.

84. Mr. TUNKIN said he would not press his point.

85. Mr. LACHS, Rapporteur, observed that the Sub-Committee on State Responsibility was said to have met in "private session", while the Sub-Committee on the Succession of States and Governments was said to have held "two closed meetings". The same terminology should be used in both cases, and he suggested that the words "private meeting" could be used.

86. Mr. ROSENNE thought that reference should be made to the fact that the Secretariat had been requested to prepare a paper on certain aspects of the law of treaties as discussed in the General Assembly.

87. He also thought that, from a constitutional point of view, since certain working papers were mentioned in the Commission's report, they should be circulated to all members of the Commission, and not only to members of the Sub-Committees.

88. Mr. TUNKIN said that, in his view, the working papers should not be circulated to all members of the Commission since they contained informal suggestions only, and other members of the Sub-Committees who would prepare similar papers might be inhibited by the thought that their papers would be circulated to all members.

89. He drew attention to the fact that, according to sections II and III as drafted, the papers on the succession of states and governments were to be submitted by 31 October 1962, while the time-limit for papers on state responsibility was 1 December 1962. He suggested that the date should be 1 December 1962 in both cases.

90. The CHAIRMAN said that the suggestions made by members would be taken into account in the final text of the report.

*Chapter IV as thus amended was adopted.*

The meeting rose at 5.45 p.m.

## 672nd MEETING

*Friday, 29 June 1962, at 9.30 a.m.*

*Chairman: Mr. Radhabinod PAL*

**Law of treaties (A/CN.4/144 and Add.1)** (item 1 of the agenda) (*resumed from the 670th meeting and concluded*)

1. The CHAIRMAN invited the Commission to conclude its discussion of item 1 of the agenda, the law of treaties. No decision had yet been taken on article 7 *ter*.

ARTICLE 7 *ter*. — THE PROCEDURE FOR PARTICIPATING IN A TREATY (*resumed from the 660th meeting*)

2. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, in the light of the structure which the Commission had decided to give to article 7 and 7 *bis*, article 7 *ter* might now be omitted.

*It was so agreed.*

ARTICLE 18 *bis*. — THE EFFECT OF RESERVATIONS

3. Mr. BRIGGS asked that in the report a footnote on the following lines should be inserted in connexion with article 18 *bis*:

"For the reasons given in the summary records of the 637th, 651st, 652nd, 656th and 667th meetings, Mr. Briggs could not accept the provisions of article 18 *bis*."

*It was so agreed.*

ARTICLE 20. — ENTRY INTO FORCE OF TREATIES

4. Sir Humphrey WALDOCK, Special Rapporteur, said that although article 20 had been adopted at the 668th meeting, the words "if the instruments have been exchanged or deposited by that date" should still be added at the end of paragraph 2 (*a*). A passage explaining that phrase had actually been included in the commentary to the article.

*It was so agreed.*

5. Sir Humphrey WALDOCK, Special Rapporteur, asked the Commission's authority to make any minor editorial changes that might be necessary as regards the titles of the chapters and, particularly, the place of article 19 *bis* (The rights and obligations of states prior to the entry into force of the treaty) which he thought should be inserted before the articles concerning reservations.

*It was so agreed.*

**Draft report of the Commission on the work of its fourteenth session** (*resumed from the previous meeting*)

CHAPTER II. — LAW OF TREATIES (A/CN.4/L.101/Add. 1) (*resumed from the 670th meeting*)

6. The CHAIRMAN invited the Commission to resume its consideration of the commentaries to the draft articles.

COMMENTARIES TO ARTICLES 7. — PARTICIPATION IN A TREATY, and 7 *bis*. — THE OPENING OF A TREATY TO THE PARTICIPATION OF ADDITIONAL STATES

*Paragraph (1)*

*Paragraph (1) was adopted without comment.*

*Paragraph (2)*

7. Mr. TUNKIN proposed that, in the first sentence, the words "having regard to the emergence of many new states" should be deleted. The problem of participation in general multilateral treaties was of importance in connexion with other matters as well.

8. He also proposed that, in the third sentence, the concluding words, "independently of the will of the states which actually drew up the treaty", should be deleted.

*It was so agreed.*

*Paragraph (2) as thus amended was adopted.*

*Paragraph (3)*

9. Mr. TUNKIN proposed that the opening words, "The Commission did not feel justified . . .", should be replaced by the words "The majority of the Commission did not feel justified".

10. Mr. YASSEEN said that, if the commentary was to mention a majority view, it should also mention a minority view that the principle that general multilateral treaties should be open was a *jus cogens* rule of international law.

11. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the opening words of paragraph (3) should read "Other members of the Commission did not feel . . .". The opinion of those members would then be contrasted with that of the members referred to in the third and subsequent sentences of paragraph (2).

*Paragraph (3) as thus amended was adopted.*

*Paragraph (4)*

12. Mr. CASTRÉN suggested that, in the third sentence, the words "and, in effect, only excludes controversial cases" should be omitted.

13. Sir Humphrey WALDOCK, Special Rapporteur, explained that the sentence in question reflected the views of Mr. Gros and certain other members of the Commission and should therefore be retained in a form satisfactory to them. At the beginning of the sentence, however, the words "they considered" should be inserted, so that it would then read "This form, they considered . . .".

*Paragraph (4) as thus amended was adopted.*

*Paragraph (5)*

*Paragraph (5) was adopted without comment.*

*Paragraph (6)*

14. Mr. GROS observed that the expression "the Commission" was used in connexion with views which were held by only a majority of its members; however, in a conciliatory spirit, he would not press for any amendment.

*Paragraph (6) was adopted.*

*Paragraphs (7), (8) and (9)*

*Paragraphs (7), (8) and (9) were adopted without comment.*

*Paragraph (10)*

15. Mr. CASTRÉN proposed that, in the penultimate sentence, the words "indeed it is believed" should be amended to read: "indeed, it is known".

16. Sir Humphrey WALDOCK, Special Rapporteur, said that at the end of the paragraph he had inadvertently omitted any reference to non-members of the United Nations, though he had mentioned them in his original report. He asked if he could be permitted to include a phrase to the effect that it would be possible to find some means of associating any non-members with such a resolution.

*It was so agreed.*

*Paragraph (10) as thus amended was adopted.*

COMMENTARY TO ARTICLES 17, FORMULATION OF RESERVATIONS, 18, ACCEPTANCE OF AND OBJECTION TO RESERVATIONS, and 18 *bis*, THE EFFECT OF RESERVATIONS

*Paragraph (1)*

17. Mr. LACHS proposed that the fourth sentence, which read "Accordingly, it has not been thought necessary to frame rules concerning reservations to bilateral treaties", should be deleted. The theoretical question whether the notion of reservations applied to bilateral treaties was a controversial one.

*It was so agreed.*

18. Mr. ROSENNE proposed that, in the last sentence, the words "the other" before the word "objects" should be amended to "another".

*It was so agreed.*

*Paragraph (1) as thus amended was adopted.*

*Paragraph (2)*

19. Mr. ROSENNE suggested that the full title, the Convention on the Prevention and Punishment of the Crime of Genocide, should be given both in paragraph (2) and throughout the report.

20. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the full title was rather cumbersome; in any case it was given in the footnote. Perhaps Mr. Rosenne would be satisfied if, in the passage under discussion, and elsewhere in the report where appropriate, the full title were given when the Genocide Convention was mentioned for the first time and the shorter title "Genocide Convention" used thereafter.

*It was so agreed.*

*Paragraph (2) as thus amended was adopted.*

*Paragraph (3)*

21. Mr. TUNKIN said that the "traditional" doctrine referred to in paragraph (3) had never been generally accepted; in fact, even the states which had advocated it in the past had departed from it in practice. An example was the very substantial reservations by the United Kingdom to the Briand-Kellogg Pact of 1928,<sup>1</sup> reservations to which the Soviet Union had objected without result.

22. He suggested that the expression "traditional doctrine" should be replaced by the words "League of Nations practice".

23. Mr. GROS suggested, in order to meet at least partly Mr. Tunkin's point, that the word "traditional"

<sup>1</sup> *British White Papers, Cmd. 3109, p. 25 and Cmd. 3153, p. 10.* See also 653rd meeting, para. 21.

in the first line should be deleted and that in the fourth line, the passage incorporating the term "traditional" should be placed within quotation marks, to show that the term was taken from the Court's advisory opinion.

*It was so agreed.*

24. Mr. ROSENNE said that the quotation from the Court's reply to the questions put to it by the General Assembly should be preceded by the full text of the introductory phrase used by the Court in the operative clause of the advisory opinion, to the effect that its opinion had been given in relation to the Convention on the Prevention and Punishment of the Crime of Genocide. That would also correspond accurately with the question put to the Court.

25. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Rosenne's point was already met by the sentence immediately following the quotations: "In giving these replies to the General Assembly's questions the Court emphasized that they were strictly limited to the Genocide Convention".

26. Mr. BRIGGS pointed out that the Court had relied heavily on the distinction between a treaty in which there was a web of mutual rights and obligations, and a treaty like the Genocide Convention in which all states parties joined for a common purpose; in the case of the latter type of treaty, reservations did not affect that common purpose. Perhaps that idea could be mentioned in the commentary.

27. Sir Humphrey WALDOCK, Special Rapporteur, said that the idea was already expressed in paragraph (4) (c). He would, however, re-examine the Court's opinion in order to bring the summary closer to the original text, if necessary.

*Paragraph (3) as thus amended was adopted.*

#### *Paragraph (4)*

28. Mr. TUNKIN observed that paragraph (4) was intended to interpret the Court's opinion in relation to the decision taken by the Commission; it could, however, give rise to controversy.

29. For example, the statement in sub-paragraph (b), according to which the traditional concept that no reservation was valid unless it had been accepted by all the contracting parties was "of undisputed value", might give the impression that the unanimity rule concerning the admissibility of reservations to a treaty was still in force as a rule of modern international law, or at least that it had been in force at the time of the Court's opinion; it might also give the impression that the Commission intended to set out exceptions to the unanimity rule. In fact, the unanimity rule had never existed as a rule of international law; it had merely constituted a practice of the League of Nations.

30. Sub-paragraph (d) conflicted with the decisions adopted by the Commission in regard to article 18 *bis* and should be deleted.

31. He did not think it advisable to offer, in that fashion, a particular interpretation of the Court's opinion, of which other interpretations were possible,

and urged that at least the more controversial parts of the paragraph should be dropped.

32. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the statement by the Court summarized in sub-paragraph (b) was qualified by the statement summarized in sub-paragraph (e), to the effect that the principle of the integrity of the convention "does not appear to have been transformed into a rule of law".

33. He thought that the paragraph should be retained intact, so as not to give the impression that the Commission was ignoring the Court's advisory opinion.

34. Mr. CADIEUX advocated the retention of paragraph (4), which was a fair summary of the advisory opinion of the International Court of Justice.

35. Mr. BRIGGS also supported the retention of the paragraph; the interpretation given by the special rapporteur was an accurate and balanced presentation of the Court's opinion.

36. Mr. GROS said that it would be difficult to deny, in the case of an advisory opinion which had been so widely commented upon, that the summary in paragraph (4) was fair and accurate.

37. At the end of each of the five sub-paragraphs (a) to (e), the reference should be given in brackets to the appropriate page of the Reports of the International Court of Justice; that would show that the special rapporteur had given a fair interpretation of the Court's opinion. It could, of course, be added that certain writers did not agree with the Court's ruling, but any reference to that fact would cause some surprise, particularly in the International Court of Justice. In any case, it was not necessary to include any such reference, since the Commission itself went much further than the Court by advocating greater flexibility in the rules governing reservations.

38. Mr. de LUNA suggested that, since sub-paragraph (e) qualified the statement contained in sub-paragraph (b), it might be appropriate to place it after that sub-paragraph.

39. Mr. TUNKIN said that, if the majority of the Commission were prepared to accept paragraph (4), he would not press for its amendment, provided his views were noted in the summary record of the meeting.

*Paragraph (4) was adopted.*

#### *Paragraph (5)*

40. Sir Humphrey WALDOCK, Special Rapporteur, suggested the deletion from the penultimate sentence of the word "traditional" before "doctrine".

*Paragraph (5) as thus amended was adopted.*

#### *Paragraph (6)*

41. Mr. ROSENNE suggested that at the end of the second sentence the word "could" should be replaced by "should".

42. He further suggested that, in the first sentence of the second part of the paragraph, the words "still applies" should be replaced by "still applied".

*It was so agreed.*

*Paragraph (6) as thus amended was adopted.*

*Paragraph (7)*

43. Mr. YASSEEN suggested that, in the third sentence, the word "more", before the words "flexible system", should be omitted.

*It was so agreed.*

44. Mr. de LUNA said he doubted whether it was true to say, as was done in the last sentence, that opinion being divided in the United Nations, "no general conclusion could be arrived at concerning the legal principles applicable to reservations"; the majority of member states had expressed themselves against the principle of the integrity of treaties. He proposed that the passage beginning "no general conclusion" should be deleted.

*It was so agreed.*

45. Sir Humphrey WALDOCK, Special Rapporteur, said that while he did not object to the proposed deletion, he must point out that no resolution had been adopted by the Assembly on the legal principles involved, so that it was difficult to say what majority there was against the principle of the integrity of treaties. Some groups of states held intermediate positions.

*Paragraph (7) as thus amended was adopted.*

*Paragraph (8)*

46. Mr. TUNKIN said the expression "it seems likely that" in the last sentence, weakened the reference to the United Nations practice of considering a reserving state to be a party to the convention. The statement was already limited by the words "in practice".

47. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the words "it seems likely that under the present system" should be deleted.

*It was so agreed.*

*Paragraph (8) as thus amended was adopted.*

*Paragraph (9)*

48. Mr. LACHS said the main issue with regard to the reservation to the constituent instrument of the Inter-Governmental Maritime Consultative Organization had been not its conformity with the old rule, but its retroactive application, which had shown that the artificial line of demarcation previously adopted by the General Assembly was impracticable.

49. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that, in fact, the General Assembly had reaffirmed its previous directive to the Secretary-General concerning his depositary functions.

50. Mr. LACHS said he would not press his point.

*Paragraph (9) was adopted.*

*Paragraph (10)*

51. Mr. ROSENNE suggested that the words "and of objections to those reservations" should be added at the end of the third sentence so as to reflect the Commission's debate on that point.

52. He also suggested that the last part of the fourth sentence should read "...and especially where there is no tribunal or other organ invested with standing competence to interpret the treaty".

*It was so agreed.*

*Paragraph (10) as thus amended was adopted.*

*Paragraph (11)*

53. Mr. CADIEUX asked that the drafting of the third sentence, which was hardly intelligible, should be improved.

54. Mr. de LUNA said that in his opinion the reference in the second sentence to a reservation incompatible with the objects of a treaty was a reference to a subjective judgment.

55. Sir Humphrey WALDOCK, Special Rapporteur, said he would try to improve the drafting of the third sentence.

56. In reply to Mr. de Luna, he said that the second sentence did not represent the Commission's views, but referred to a hypothesis on which the argument of a minority had been based.

*Paragraph (11) was adopted.*

*Paragraph (12)*

57. Mr. CASTRÉN suggested that, in the first sentence, the adjective "general", qualifying "multilateral treaties", should be deleted, since the Commission had finally decided that its draft would deal with all multilateral treaties.

58. Sir Humphrey WALDOCK, Special Rapporteur, said he preferred that the adjective should be retained, since it helped to show how the Commission had reached its conclusion on the system it had adopted. The term general multilateral treaties had been used until quite a late stage in the debates, so that the reference in paragraph (12) was necessary for a faithful record of the discussions.

59. Mr. CASTRÉN said he agreed with the special rapporteur. He suggested, however, that the inverted commas round the word "integrity" in the penultimate sentence should be deleted.

*It was so agreed.*

60. Mr. TUNKIN suggested that the eighth sentence, which quoted what the Commission had said in 1951, should be deleted, as it was out of place in the paragraph.

61. Sir Humphrey WALDOCK, Special Rapporteur, said that the inclusion of the sentence was really a matter of presentation. The argument against the flexible system of reservations had been used by a number of publicists, including Sir Gerald Fitzmaurice; it would be seen, however, that that argument was subsequently refuted in the commentary.

62. Mr. CADIEUX said he could see arguments for both the deletion and the retention of the sentence and had no strong feelings on the matter, which was, as the special rapporteur had said, really one of presentation.

63. Mr. AMADO said that the sentence should be retained, since it formed part of the special rapporteur's argument in favour of reservations as a means of promoting a greater measure of universality in the application of the treaty. The danger lay in cases where a group of states might break the unity of a treaty by their reservations.

64. From the historical point of view, moreover, it was useful to include the quotation from the Commission's 1951 report, which reflected the general surprise of jurists at the advisory opinion of the International Court of Justice on reservations to the Genocide Convention. In 1951, there had been extremely strong emotional feelings on the subject of the crime of genocide, and the Court's decision had caused indignation in certain circles; since then, however, the deep and mature wisdom of the Court in delivering an advisory opinion which promoted the universality of treaties had become more widely recognized.

65. Mr. TUNKIN said he would not press his point.

*Paragraph (12) as thus amended was adopted.*

*Paragraph (13)*

*Paragraph (13) was adopted without comment.*

*Paragraph (14)*

66. Mr. TUNKIN said there was a discrepancy between the reference to "general multilateral treaties" in the first sentence, and the text of article 18 *bis*. Now that the article referred to multilateral treaties and treaties concluded by a restricted group of states, the word "general" in the first sentence of the commentary might be deleted.

67. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the history of the decision on the matter was given in the last two sentences of the paragraphs.

*Paragraph (14) was adopted.*

*Paragraph (15)*

*Paragraph (15) was adopted without comment.*

*Paragraph (16)*

68. Mr. ROSENNE asked whether the word "not" in the sixth sentence should not read "now".

69. Sir Humphrey WALDOCK, Special Rapporteur, said that the sentence was correct as it stood; a statement of reservation made during the negotiation and recorded in the *procès-verbaux* had not been included in the list of ways of formulating reservations. The Commission's decision that reservations should be formulated in clear and specific terms represented an improvement over the existing practice. Perhaps a slight rewording of the sixth sentence would make the position clearer.

70. Mr. LACHS said he doubted whether there was any need to include the penultimate sentence, which read: "There is some authority for the opposite view", since the Commission had taken a decision on the manner in which reservations should be formulated.

71. Sir Humphrey WALDOCK, Special Rapporteur, said that in drafting the sentence he had in mind the method followed in the Harvard Research draft. If, however, there was no necessity to refer to the opposite view, then the last sentence should also be deleted.

*It was so agreed.*

*Paragraph (16) as thus amended was adopted.*

*Paragraphs (17) to (19)*

*Paragraphs (17) to (19) were adopted without comment.*

*Paragraph (20)*

72. Mr. ROSENNE suggested that the phrase "in the absence of compulsory jurisdiction", in the fourth sentence, should be brought into line with the broader wording which the Commission had accepted for the fourth sentence of paragraph (10).

*It was so agreed.*

*Paragraph (20) as thus amended was adopted.*

*Paragraph (21)*

73. Mr. CASTRÉN said that the last clause in the second sentence did not accurately reflect the provision of paragraph 2(b) of article 18 *bis*, since the word "insist" did not imply the automatic effect of the objection; it should be amended to read "... unless the objecting state should express a contrary intention".

*It was so agreed.*

74. Mr. LACHS said he thought the words "less illogical" hardly appropriate in the last sentence.

75. Sir Humphrey WALDOCK, Special Rapporteur, said he would redraft the sentence.

*Paragraph (21) as thus amended was adopted.*

*Paragraph (22)*

76. Mr. ROSENNE suggested that the words "the commentary on" should be inserted before the words "these three articles" in the first sentence.

*It was so agreed.*

*Paragraph (22) as thus amended was adopted.*

*Paragraph (23)*

77. Mr. ROSENNE suggested that the words "commentary on these" should be inserted before the words "three articles" in the first sentence.

78. Mr. BARTOŠ observed that a number of the objections raised to the IMCO Convention had not been true reservations but declarations of the views of the states on the future policy of the organization, made at the time of accession or ratification, in the hope that articles 1 and 2 of the Convention would not be applied to the letter. Such declarations had been made by a number of countries, including Norway, Sweden and Yugoslavia, and that form of objection had been accepted in the interests of the universality of the Convention.

79. It therefore seemed dangerous to refer, in the second sentence, to India's "reservation" to the IMCO Convention, since the declarations, which had had the same intention as India's so-called reservation, had been accepted. In view of the character of the declarations made in connexion with that Convention and of the solution which had been reached, rather on a basis of expediency than of principle, it was better to use very moderate language when dealing with the subject in the commentary.

80. Sir Humphrey WALDOCK, Special Rapporteur, said that the so-called Indian reservation had been challenged by France and the Federal Republic of Germany. However, Mr. Bartoš's point might be met by amending the wording to "an alleged 'reservation'".

81. Mr. BARTOŠ pointed out that, after the Indian "reservation" had been challenged, other countries which had also intended to formulate reservations had made declarations instead.

82. He agreed, however, with the special rapporteur's proposed amendment.

*It was so agreed.*

83. Mr. EL-ERIAN asked that a footnote should be appended to the second sentence indicating where the Secretary-General's report was to be found.

84. Mr. LIANG, Secretary to the Commission, asked whether the word "integrity" in the last line should not be followed by the word "rule".

85. Sir Humphrey WALDOCK, Special Rapporteur, replied that he thought "integrity of the instrument" would be better.

*It was so agreed.*

*Paragraph (23) as thus amended was adopted.*

COMMENTARY ON ARTICLE 18 *ter*: THE LEGAL EFFECT OF RESERVATIONS

*The commentary on article 18 ter was adopted without comment.*

COMMENTARY ON ARTICLE 19

86. Mr. de LUNA said the commentary should mention the fact that the Commission was aware of some authority against the principle, recognized in the article, of the admissibility of unilateral withdrawal of reservations. It should be stated that the Commission had taken the existence of that authority into account, but had considered that the advantages of the integrity of the treaty outweighed the disadvantages of unilateral withdrawal of reservations.

87. Sir Humphrey WALDOCK, Special Rapporteur, said he would add a passage along the lines suggested by Mr. de Luna.

*It was so agreed.*

88. Mr. LACHS said the words "derogation from the treaty" in the second sentence seemed rather too strong.

89. Sir Humphrey WALDOCK, Special Rapporteur, suggested that "modification of the treaty" might be more suitable.

*It was so agreed.*

*The commentary on article 19 as thus amended was adopted.*

COMMENTARY ON ARTICLE 4 *bis*: NEGOTIATION AND DRAWING UP OF A TREATY

90. Mr. BARTOŠ said the word "hesitated", in the first sentence, was inappropriate; it would be better to say that opinion in the Commission was divided on the subject. Far from being hesitant, the views expressed had been very decided but sharply divided.

91. Mr. AGO suggested that the commentary should open with some such wording as "Although recognizing that the contents of the article were more descriptive than normative, the Commission decided to retain the article...".

*It was so agreed.*

*The commentary on article 4 bis as thus amended was adopted.*

92. Sir Humphrey WALDOCK, Special Rapporteur, said he thought that the substance of the article should be retained but that it might be amalgamated with article 5. He would make a proposal accordingly at the next session.

COMMENTARY ON ARTICLE 20: ENTRY INTO FORCE OF TREATIES

*The commentary on article 20 was adopted without comment.*

COMMENTARY ON ARTICLE 21: PROVISIONAL ENTRY INTO FORCE

*Paragraph (1)*

*Paragraph (1) was adopted without comment.*

*Paragraph (2)*

93. Mr. ROSENNE suggested that the words "or upon it becoming clear that the treaty is not going to be ratified or approved by the one or other party" should be added at the end of the first sentence. The word "but" at the beginning of the next sentence should be omitted.

*It was so agreed.*

*Paragraph (2) as thus amended was adopted.*

COMMENTARY ON ARTICLE 22: THE REGISTRATION AND PUBLICATION OF TREATIES

*Paragraph (1)*

*Paragraph (1) was adopted without comment.*

*Paragraph (2)*

94. Mr. ROSENNE observed that the words: "In the practice of the Secretariat" at the beginning of the third sentence should be replaced by "In the regulations for the registration of treaties".

*Paragraph (2) as thus amended was adopted.*

*Paragraph (3)*

95. Sir Humphrey WALDOCK, Special Rapporteur, said he had suggested that the General Assembly's regulations should be attached as an annex to the Commission's report because it was inconvenient to have to look for them in the original General Assembly resolutions.<sup>2</sup>

96. Mr. LIANG, Secretary to the Commission, said that while he agreed with the special rapporteur, he was obliged to draw attention to General Assembly resolution 1272 (XIII) on control and limitation of documentation. One of the rules laid down in that resolution was that the contents of existing documents should not be reproduced in other United Nations publications.

97. Sir Humphrey WALDOCK, Special Rapporteur, supported by Mr. CADIEUX, said that in that case the Commission should express a wish to have the regulations annexed to its report, for easier consultation.

*It was so agreed.*

*Paragraph (3) was adopted.*

<sup>2</sup> The full text of the regulations will be found in *United Nations Treaty Series*, Vol. 76, p. XXII.

98. The CHAIRMAN put the draft report as a whole to the vote.

*The draft report as a whole, as amended, was unanimously adopted subject to drafting changes.*

99. Mr. TUNKIN said that his affirmative vote for the adoption of the report should not be interpreted to mean that he had abandoned the reservations he had expressed concerning certain articles and passages in the commentary.

100. Mr. GROS said that that reservation held good for all members.

101. The CHAIRMAN said that acceptance of the report meant that members were agreed that it was a correct and faithful account of the proceedings. Objections registered by individual members to certain articles in the draft on the law of treaties naturally remained unaffected.

#### Closure of the session

102. The CHAIRMAN said that the discussions during the session had been marked by good will and mutual understanding which indicated a determination on the part of members to work together effectively. In an age when national and international life demanded an unprecedented degree of rational co-ordination, any common effort required not only intellectual interest but spiritual qualities, including humility and the willingness to consider and respect the views of others.

103. It had been with some apprehension that he had taken over the Chair from its previous occupant, Mr. Tunkin, who possessed special qualities for the task. Although conscious of his own inadequacy, he

had accepted the responsibility knowing that he could rely on the Commission's co-operation. If the session had yielded anything that could contribute to the development of international law, the credit should go to the resolution manifested by each one of the members to work towards what was practicable at the time. The Commission had been fortunate in its special rapporteur, Sir Humphrey Waldock, who possessed a remarkable gift for penetrating deeply into the subject and for expounding the essential issues, however complex, with clarity. He thanked each member of the Drafting Committee individually for his work in re-examining the draft articles prepared by the special rapporteur in the light of the Commission's discussions. He also thanked the rapporteur, Mr. Lachs, for his careful preparation of the Commission's draft report. He paid special tribute to Mr. Amado's extensive knowledge, experience and wisdom and to the incisive intellect of Mr. Verdross. Indeed, the deliberations had been marked by outstanding contributions from all members. It had been particularly encouraging to observe the quality of the new and younger members of the Commission. In conclusion he thanked the Secretary, who had exercised a beneficial influence on the conduct of the work, as well as his staff.

104. ALL MEMBERS OF THE COMMISSION PRESENT paid a tribute to the Chairman for the manner in which he had presided over the session; they also thanked the special rapporteur and the officers of the Commission.

105. The CHAIRMAN declared the Commission's fourteenth session closed.

The meeting rose at 12.15 p.m.

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