Document:-

A/CN.4/SR.713

Summary record of the 713th meeting

Topic:

Extended participation in general multilateral treaties concluded under the auspices of the League of Nations

Extract from the Yearbook of the International Law Commission:-

1963, vol. I

proposing was not based on the rule *de lege ferenda* which the Commission had included in article 9 of Part I of its draft on the law of treaties, concerning the two-thirds majority prescribed for broadening state participation. It was based both on the general spirit of the Charter and on the need to develop international law. One of the purposes of the United Nations was international co-operation. The treaties they were discussing were to some extent the means of achieving that purpose, and it would be in keeping with the spirit of the Charter to seek extended participation in them by States.

93. Mr. LACHS asked whether all the multilateral agreements listed in the working paper prepared by the Secretariat for the Sixth Committee (A/CN.4/L.498) were still formally in force, or whether some had been amended, superseded or covered by subsequent agreements.

94. Sir Humphrey WALDOCK, Special Rapporteur, said that in his opinion the Commission was not called upon to review the multilateral treaties concluded under the auspices of the League of Nations in order to establish those in which the participation of additional States might usefully be considered. Some would probably be found to be outmoded, but the Commission's task was surely limited to the technical aspects of the problem.

95. Mr. LIANG, Secretary to the Commission, in reply to Mr. Lachs, said that treaties concluded under the auspices of the League of Nations which, owing to the disappearance of organs of the League, could no longer be applied, had been excluded from the list in the Secretariat's working paper.

96. As far as the others treaties were concerned, since he had started acting as depositary, the Secretary-General had in some cases received no instrument and in others only denunciations. Some of the aggrements might have tacitly fallen into desuetude while others had been superseded by new treaty relations between the parties. Three of the conventions listed, namely, the Commission regarding the Measurement of Vessels Employed in Inland Navigation, the Agreement between Customs Authorities in order to Facilitate the Procedure in the Case of Undischarged or Lost Triptychs, and the Agreement Concerning the Preparation of a Transit Card for Emigrants, were regional in character and specifically designed to deal with European conditions, so it was doubtful whether they need be opened to the participation of new States in other parts of the world.

97. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that some regional treaties had been originally intended to be closed and contained no clause opening them to the participation of States outside the region.

The meeting rose at 1 p.m.

713th MEETING

Wednesday, 3 July 1963, at 10 a.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations (General Assembly resolution 1766 (XVII)) (A/CN.4/154, A/CN.4/159 and Add.1, A/CN.4/162)

[Item 2 of the agenda] (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of item 2 of the agenda.

2. Mr. PAL said he fully subscribed to the contents of the report (A/CN.4/162) by the Special Rapporteur on the law of treaties and to the way in which he had approached the question. The functions conferred on the Council of the League of Nations by the parties under the participation clauses in the twenty-one open treaties under consideration were not analogous to the functions of a depositary. Under section C of General Assembly resolution 24 (I), the General Assembly was itself to examine or would submit to the appropriate organ of the United Nations, " any request from the parties that the United Nations should assume the exercise of functions or powers entrusted to the League of Nations by treaties, international conventions, agreements and other instruments having a political character." He wondered, therefore, whether the Commission would have to examine the twenty-one treaties in order to establish which of them would fall within the scope of that decision by the General Assembly.

3. In his opinion, article 9, paragraph 1 (*b*), in Part I of the draft on the law of treaties adopted at the previous session [1] stated the existing law on the subject. If that were so, it would seem that the United Nations could assume the functions previously discharged by the Council of the League under the participation clauses. The Commission must therefore give serious consideration to the solution suggested by the Special Rapporteur in paragraph 32 of his report. With some modifications that report would presumably form the basis of the section of the Commission's own report to be devoted to the matter.

4. Mr. YASSEEN said that during the discussion of the Commission's report in the Sixth Committee, speaking as the representative of Iraq, he had expressed doubts concerning the advisability of referring the question back to the Commission. He had expressed the view that, if the object was to find a formula consistent with the progressive development of international law, it would be better to wait for the Commission to complete its draft convention on the law of treaties.

5. The question of opening a closed treaty had been touched on in the Commission's 1962 draft. However,

[1] *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9*, p. 11.

the issue was not how to make provision for a situation which might arise in the future, but how to remedy an existing situation.

6. If the question were approached from that point of view one possible solution would be to draft a clause giving retrospective effect to whatever provisions were adopted. But since no such rule had existed at the time when the States had concluded the treaties in question, it could not be the expression of their will.

7. If the Sixth Committee expected the Commission to tell it what solution was possible under existing international law — in other words, if it wanted an advisory opinion — then, as he had contended as a member of that Committee, it should have applied to the International Court of Justice. But if the intention was to solve the problem by means of an administrative arrangement, then the Sixth Committee, assisted by the Secretariat, could have done so.

8. At all events, since the question had been referred back to the Commission, it was faced with a specific situation — the case of some conventions concluded under the auspices of the League of Nations. That being so, the Commission should, as Mr. Lachs had pointed out at the previous meeting, first assess from the practical standpoint the extent of the question referred to it, on which the Sixth Committee had already spent a good deal of time; only thus could the Commission be sure that its efforts to settle the question were justified.

9. First, a list of the treaties still in force would have to be prepared. It would not, of course, include those which seemed to have been intended to be " closed ", but would consist of about twenty treaties of general interest containing a clause under which any State could accede if the Council of the League of Nations communicated a copy of the treaty to it. It was the dissolution of the Council that had changed those treaties into closed treaties.

10. According to the prevailing rules of international law, the solution would be to ask the States parties to the treaties, which had been closed or *quasi*-closed as a result of certain administrative difficulties, to agree unanimously that the treaties be opened to new States. True, the possibility of a " bilateral " procedure, that was to say, the establishment of a conventional link between some of the parties to a treaty and the States whose accession they agreed to, could not be ruled out. But that would not really be a complete solution.

11. In reality, the problem was simpler, and its most important aspect was that brought out in the last few lines of the Special Rapporteur's report, namely, the fact that it was mainly administrative. Since it was the disappearance of the Council of the League of Nations which had changed the treaties into closed treaties, the proper course would be to seek means of establishing an effective link between the organs of the League of Nations and those of the United Nations, and to consider whether one of the organs of the United Nations could assume the functions of the League Council. Some questions of succession between the League and the United Nations had already been settled in recent diplomatic history. The possibility of adopting a similar procedure in the case under consideration should be examined.

12. It did not seem advisable to seek partial solutions which might make it possible to establish bilateral links between some of the parties to the treaties and the States wishing to accede to them, but which might not be satisfactory.

13. Mr. TSURUOKA said that the first question to be settled was whether there was any genuine need for the Commission to solve the problem and whether the new States wished to accede to the multilateral treaties concluded under the auspices of the League of Nations. Japan, for example, which had participated, as a Member of the League, in the negotiation and drafting of those treaties, had ratified only four of them. It was open to question, therefore, whether the new States were truly interested in those treaties, which were already out of date; for the situation had changed since they had been concluded, especially with regard to the technical matters with which many of them were concerned.

14. Another point, which had already been raised by Mr. Yasseen, was the interpretation of the treaties, which so far was not within the Commission's terms of reference. Not merely one clause, but quite a number of articles, would have to be interpreted. Before the Commission could give the Sixth Committee an opinion, it would have to study the treaties thoroughly and ascertain which States were parties to them, and what their intentions were.

15. He was inclined to think that it would be best to recommend the Sixth Committee to ascertain the intentions of the new States and then to adopt an established procedure for treaty revision with the participation of all the States which had signed and ratified the treaties.

16. Mr. BRIGGS said that it was not for the Commission to pronounce on whether the question under discussion was urgent or which of the twenty-one treaties concerned were of general interest or which were obsolescent or obsolete. The Commission's task was very similar to that entrusted to it by General Assembly resolution 478 (V) when it had been asked to study the questions of reservations to multilateral conventions. It should direct itself to analysing the relative advantages of the possible methods of extending participation, rather than attempt to make a choice between them.

17. The Special Rapporteur had provided an admirable basis for the section on the matter that would have to be included in the Commission's own report, and for the purposes of that section the interesting suggestion in paragraph 32 should be elaborated further. Consideration should also be given to the method adopted in section I, paragraph 2, of General Assembly resolution 24 (I) of recording the assent of the parties to a procedure for adapting participation clauses so as to transfer certain functions from the League to the United Nations. As far as the organ designated to replace the Council of the League was concerned, he would prefer the General Assembly to the Security Council or the Economic and Social Council, but that was a matter for the Sixth Committee.

18. Mr. CADIEUX said that the Commission's instructions did not specify the particular legal points to be studied, nor did they recommend what special matters or problems should be considered. Manifestly, however, the Commission's main task must be to help the General Assembly to solve any legal problems which might arise in connexion with extended participation in general multilateral treaties concluded under the auspices of the League of Nations.

19. A number of points seemed well established, even if not wholly beyond dispute. First, it was recognized that the problem was important and that it had become particularly urgent as a result of the admission of many new States to the international community.

20. Secondly, the Commission's task was mainly general and abstract in nature rather than concrete and specific. It was known that the Secretary-General took the view that he could not accept signatures, ratifications or accessions to closed multilateral treaties concluded under the auspices of the League of Nations. His position in that matter was plainly set out in the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements (ST/LEG/7). In addition, as the Special Rapporteur had noted, the General Assembly had asked the Commission to consider the legal and technical aspects, but not to consider how far any particular treaty might or might not still retain its usefulness.

21. Thirdly, the problem under consideration did not seem to have any direct link with that of state succession. Indeed, it arose precisely because the former metropolitan State was not a party to treaties to which a new State might wish to accede. Yet it had some aspects that were connected with state succession. For example, it might be asked whether a new State could ratify a treaty signed, but not ratified, by the State it had succeeded — a question raised in paragraph 151 of the memorandum on Succession of States in relation to general multilateral treaties of which the Secretary-General is the Depositary (A/CN.4/150). Still, although that particular question had some connexion with the more general problem before the Commission, it was a specific question which the Commission was not required to settle at that stage of its work.

22. Another aspect of the problem perhaps raised greater difficulties. As some new States might, by virtue of the principles governing succession, be bound by treaties concluded under the auspices of the League of Nations, it might be extremely difficult to draw up a list of the States which were parties to those treaties at present. That, however, was probably more a question of fact than a problem of state succession. One of the objects of the inquiry was to determine which countries regarded themselves as having become parties to treaties concluded under the auspices of the League of Nations by virtue of the rules governing state succession. That difficulty was common to both the methods proposed, however — the protocol method and the procedure suggested in the three-power draft resolution (A/CN.4/162, para. 11).

23. The only possible solution would be a procedure enabling the Secretariat to draw up a list — perhaps by circulating a questionnaire — of the States at present parties to each of the twenty-one treaties regarded as still in force and which might still be " open ". As the Special Rapporteur had pointed out, the amending protocols adopted by the United Nations sought to minimize the difficulty by making the entry into force of the amendments dependent on acceptance by a specified number rather than by the majority of the parties. That method should probably supplement one or other of the two procedures mentioned, but it had a drawback which reduced the usefulness of both.

24. Those points provided a general framework for the study to be undertaken by the Commission, and in the short time at its disposal it should not enquire into secondary matters, such as the question of reservations or whether the treaties should be opened to all States, not merely to States Members of the United Nations or of specialized agencies — matters which were not essential to the solution of the main problem.

25. Three methods had been proposed for opening treaties concluded under the auspices of the League of Nations. While recognizing the force of the Special Rapporteur's objections, he still thought, on balance, that the protocol method was the best. The Special Rapporteur's proposal constituted a new way of approaching and dealing with the problem and had much to recommend it. He apparently contemplated a procedure in two stages: first, the parties to the treaties concluded under the auspices of the League would have to consent to the substitution, in the participation clauses, of Members of the United Nations for Members of the League of Nations; and secondly, they would have to consent to the substitution of a designated organ of the United Nations for the Council of the League. It might perhaps be possible to achieve that object direct, in a single operation, by transferring to a United Nations organ the power formerly vested in the League Council to authorize States not Members of the League to accede to a treaty, simply by communicating a copy of the treaty to them. A substitution of that kind appeared to be consistent with the intention of the Members of the League of Nations that the twenty-one treaties should be " open ".

26. The question then arose whether the United Nations had the capacity to substitute one of its own organs for the Council of the League. It might be held that it had that capacity by virtue of the resolutions adopted at the final session of the League Assembly, whereby the Members of the League undertook to assent to the steps to be taken by the General Assembly of the United Nations with regard to functions and powers belonging to the League under international agreements.[2] Resolution 24 (I) of the United Nations General Assembly, which was based on the League resolution, applied broadly to the particular problem before the Commission. In section B of that resolution, concerning instruments of a technical and non-political character, the General Assembly expressed its willingness " to take the necessary measures to ensure the continued exercise "

[2] *League of Nations Official Journal, Special Supplement No. 194*, Geneva, 1946, annex 27, p. 278.

of the functions and powers previously entrusted to the League. In section C of the same resolution the General Assembly had decided that it would itself examine " any request from the parties that the United Nations should assume the exercise of functions of powers entrusted to the League of Nations " by treaties or other instruments having a political character.

27. The procedure of entrusting the functions of the League Council to a United Nations organ would be simple and expeditious. It would avoid most of the disadvantages of the other two methods. If the Commission decided to recommend that procedure, it should refrain from making any suggestion concerning the United Nations organ to be substituted for the League Council. It should be left to the Sixth Committee, and finally to the General Assembly, to take what would be essentially a political decision, i.e., to designate the organ to operate within the legal framework proposed by the Commission.

28. The CHAIRMAN, speaking as a member of the Commission, said that the Commission was required to give legal, not political advice as to what legal device could be adopted to achieve wider participation in general multilateral treaties concluded under the auspices of the League of Nations. It had not been asked to give an opinion on the desirability of opening the League treaties to the participation of new States or on the importance of such a step. Since interest in the matter had probably been largely inspired by the suggestion put forward in paragraph 10 [3] of the commentary on article 9 in Part I of the Commission's draft on the law of treaties that the opening of a treaty to accession by additional States did not necessitate the negotiation of a fresh treaty and that more expeditious procedures should be considered, it would hardly be consistent to recommend the traditional protocol of amendment as the only possibility, though it was perhaps the safest solution.

29. Practice, however, showed that the protocol method could be cumbersome and was liable to create legal imbroglios because, for example, the dates of entry into force of the protocol and of the amended treaty differed. The Commission should point out in its report that the method was unobjectionable from the legal point of view, but could cause practical difficulties.

30. The method suggested in the three-power draft resolution, which was still before the Sixth Committee, had certainly been inspired by the Commission's commentary on article 9 in Part I of its draft: the Secretary-General would have to ascertain from the parties to the relevant conventions whether they objected to the conventions being opened to any State Member of the United Nations or members of the specialized agencies. Although that method too might give rise to practical difficulties, such as uncertainty about which States were actually parties when there had been a succession of States, it was also legally quite admissible.

31. The Special Rapporteur on the law of treaties was to be commended for having found time to prepare such an interesting and profound study, which gave proof of a bold legal imagination. The solution he had outlined, by means of the transfer of certain functions from the League of Nations to the United Nations, was legally admissible, though it might have come as a surprise to those who had been weighing up the pros and cons of protocols, as against a General Assembly resolution by which the express or tacit consent of the parties would be obtained.

32. The functions of a depositary conferred upon the League of Nations by the parties to treaties could, and had, been transferred to the United Nations by means of concurrent resolutions of the two bodies, without additional formal action by the parties, and there seemed no reason why the same procedure should not be applied to the function, previously performed by the League of Nations Council, of inviting further States to accede to a treaty by communicating a copy of the treaty to them. There was agreement among the original parties, inscribed in the treaties, that those treaties should be open to other States by a decision of a competent international organ, and the dissolution of the League was not sufficient to turn those open treaties into closed ones. The League of Nations Assembly had recommended governments " to facilitate in every way the assumption without interruption by the United Nations . . . of functions and powers which have been entrusted to the League of Nations under international agreements of a technical and non-political character . . ." [4] and the United Nations had agreed, by General Assembly resolution 24 (I), section B, " to take the necessary measures to ensure the continued exercise of these functions and powers . . ."

33. That view corresponded to the advisory opinion of the International Court of Justice on the *International Status of South-West Africa*, in which the Court had given an affirmative reply to the question whether " since the Council disappeared by the dissolution of the League . . . these supervisory functions are to be exercised by the new international organization created by the Charter.[5] In that case doubts had arisen because the functions had been neither expressly transferred to the United Nations nor expressly assumed by it. But the concurrent resolutions of the League and the United Nations constituted a much clearer transfer and acceptance of functions and powers than the 1946 League resolution on mandates, on which the Court had based its advisory opinion.

34. But although he subscribed to the arguments set out in the Special Rapporteur's report, he did believe that in replying to the question put to it by the General Assembly, the Commission ought to take a more neutral and cautious position, comment on the three alternative methods, and explain some of the practical difficulties which the first two might entail. It ought to say that the safest and least objectionable method was that of an amending protocol, and that the procedure proposed in the three-power resolution would not conflict with legal principles; finally, it should suggest the possibility

[3] *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9*, p. 12.

[4] *League of Nations, Official Journal, Special Supplement No. 194, loc. cit.*

[5] *I.C.J. Reports*, 1950, p. 136.

advanced by the Special Rapporteur of a United Nations organ assuming the functions formerly performed by the Council of the League.

35. Perhaps it would be wiser not to pursue the argument advanced by the Special Rapporteur in paragraph 30 of his report, about final clauses operating independently of constitutional processes; it was not essential to his main argument and was unlikely to commend itself to States.

36. Mr. LACHS said that the emergence of new States was having a great impact on various branches of international law and had revived interest in extending participation in multilateral treaties concluded under the auspices of the League of Nations. As the Special Rapporteur had pointed out in his illuminating report, the United Nations had already dealt with a number of treaties of particular interest to the international community by means of special procedure, and in almost all cases substantial amendments had been introduced to adapt the treaties to new conditions. Substantive and procedural matters had been settled at the same time. In some instances previous conventions had been entirely replaced by new instruments, such as the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery and the 1961 Single Convention on Narcotic Drugs.

37. The Commission's task was to give a legal opinion on how the remaining treaties concluded under the auspices of the League which were still in force, and participation in which was not closed, could be opened to additional States. The method outlined in the three-power draft resolution submitted to the Sixth Committee suffered from the weakness inherent in it as a recommendation possessing no binding force. Nor was it clear what the effect of giving such general authority to the Secretary-General would be. A number of other pertinent objections to that method had been raised in the Sixth Committee. The argument that it would be expeditious seemed hardly decisive in view of the fact that no great interest had been shown by States in acceding to the treaties in question since the transfer of certain functions of the League of Nations to the United Nations in 1946.

38. The procedure of a protocol of amendment, though free from certain kinds of legal uncertainty, also had its disadvantages and would need careful consideration. The views expressed by the legal counsel in the Sixth Committee as to the cases in which a protocol could be dispensed with had not clarified the issue.

39. The Special Rapporteur had discussed the legal status of final clauses which affected the operation of the treaty and which he suggested could possess legal force before the constitutional process of ratification had been completed. But it was obvious that once consent had been given, bringing the treaties into force, the final clauses would become an integral and inseparable part of the treaties.

40. The question of extended participation in multilateral treaties might have some bearing on issues of state succession in that it could bring into question, for example, the status of signatories which, as a consequence of territorial changes, no longer qualified as parties; but he would not go so far as to say that the opinion offered by the Commission would in any way prejudge any rules it might ultimately adopt concerning state succession.

41. However, the principal issue involved was that to which he had referred in the question he had asked at the previous meeting (para. 93). He believed that most of the treaties listed in section A of the Secretariat's working paper (A/C.6/L.498) had been overtaken by events and needed to be replaced by more-up-to-date instruments, which was one of the reasons why they had aroused relatively little interest on the part of new States. Some might already have been superseded; for example, the 1925 Convention regarding the Measurement of Vessels Employed in Inland Navigation had been replaced by a convention with the same title concluded at Bangkok in 1956; the 1931 Convention on the Taxation of Foreign Motor Vehicles had been replaced by the 1956 Convention on the Taxation of Road Vehicles for Private Use in International Traffic; and the 1923 Convention relating to the simplification of Customs Formalities had been replaced by the 1954 Convention concerning Customs Facilities for Touring.

42. Although it might be argued that the question before the Commission was of a technical and legal character, the substantive aspects must not be overlooked, and as a codifying body the Commission should point out the need for bringing old treaties up to date. Nothing much would be gained and the prestige of the Commission would not be enhanced if the only result of its advice was one or two new accessions to old treaties. In addition to recommending the proper legal procedure to be followed, the Commission ought to recommend that the appropriate organs of the United Nations consider which treaties concluded under the auspices of the League of Nations should be modernized or replaced by new instruments, and that steps be taken to that end.

43. Mr. VERDROSS said that although the Commission's normal function was to advance international law, since the General Assembly had asked it for an opinion it should confine itself to saying what could be done under the existing law. It was very doubtful whether one could speak of the " succession " of the United Nations to the League of Nations, although the International Court of Justice had considered the question three times in connexion with the *South-West Africa* case and had answered it in the affirmative. In his opinion the only legally sound procedure was that followed by the General Assembly in 1949, when it had restored the General Act of Geneva, of 26 September 1928, to its original efficacy; [6] the General Assembly could adopt a draft convention and submit it to States for ratification.

44. Another question, raised by Mr. Lachs, was whether the Commission could still recommend States to accede to conventions concluded under the auspices of the

[6] General Assembly resolution 268 (III), section A.

League of Nations in the form in which they had been drawn up at the time. While giving an opinion on the legal procedure to be followed, the Commission could certainly add a suggestion on the lines proposed by Mr. Lachs.

45. Mr. TUNKIN said that Mr. Lachs had put the problem in proper focus by urging that the Commission should not take too narrow a view. The Commission had been asked to make recommendations; it was not called upon to make a choice between the various possible solutions. It should therefore state the possibilities, so as to enable the General Assembly to take a decision.

46. With regard to the question of the real extent of the problem, raised by Mr. Lachs and Mr. Tsuruoka, the Commission could recommend that the Secretariat be requested to make a closer study of all the conventions in the list it had submitted to the Sixth Committee and in particular to ascertain which of them were really in force. If there was any doubt on that point, the Secretariat would, of course, say so. Such a study was an essential preliminary to any decision in the matter.

47. Once it had been determined which of the conventions were still in force, the next question to be considered, in each case, was whether they were suited to present conditions. That question was not only one of expediency; it also involved legal problems.

48. Some fifty new States had gained their independence since the adoption of the conventions. It was not sufficient to give those States the simple alternative of acceding or not acceding; it should also be considered whether the conventions needed revision to bring them up to date. Such revision would have to be carried out with the participation of the new States. The possibility of making a recommendation on that point should be brought to the attention of the General Assembly.

49. If it was established that a particular convention did not require revision, the question remained how it could be made open to accession by the new States. His own view, based on the principle of the equality of States, which was a *jus cogens* rule of international law, was that whenever a treaty dealt with problems of general interest it should be open to accession by all States. No group of States was entitled to debar other States from participation in such a treaty.

50. In the present case the problem of participation was not difficult to solve and the study prepared by the Special Rapporteur was particularly helpful. That study indicated that, of the twenty-six treaties involved, no fewer than twenty-one contained a clause to the effect that the treaty would be open to participation by any State to which the Council of the League of Nations communicated a copy of the treaty for that purpose. That suggested a way of solving the problem; the competent organs of the United Nations could adopt resolutions permitting the transmission of copies of the treaties in question to all States, thus inviting them to accede. Such a solution would be consonant with the provisions of the treaties and also with the fundamental principles of international law.

51. Mr. de LUNA, referring to a point raised by Mr. Tsuruoka and Mr. Lachs, said that Japan was not the only country which had signed treaties without subsequently ratifying them. Spain and many other countries were in the same position. In most cases, the reason was either that governments had neglected to set in motion the ratification machinery required by the Constitution, or that they had been reluctant to study the possible repercussions of ratification on the State's interests and obligations. He was therefore rather sceptical about the results of the study referred to the Commission.

52. If a new State genuinely wished to accede to one of the treaties in question, it would be able to do so without great difficulty by applying to the parties for their consent. Even if certain organs of the League of Nations had exercised formal functions relating to the application of those treaties, that need not be an insurmountable obstacle if both old and new States showed good will.

53. In paragraphs 23, 28 and 30 of his report, the Special Rapporteur discussed constitutional obstacles to extended participation in the treaties. The Commission should not attach too much importance to that problem. States should be left to act as they wished, so as to overcome those obstacles in the manner they considered most appropriate. Those which sincerely wished to accede to a treaty would certainly find ways and means, both at the international and at the national level. The real aim of the Sixth Committee had been indirectly to encourage the new States to participate in the treaties in question, because it thought that their interest in those treaties needed stimulating. In view of the very small importance of the treaties, he was far from convinced that such encouragement was essential.

54. He agreed with everything the Chairman had said, except his suggestion that the Commission should offer the General Assembly a choice of the various possible methods. That would not be a felicitous innovation. The Sixth Committee, which would consider the matter, comprised representatives of over a hundred States; in such a large assembly, not composed exclusively of specialists in international law, debate might be so discursive as to lead to no conclusion. The Commission should therefore propose the specific solution it considered best; the Sixth Committee would be free to criticize it, to amend it or even, if need be, to consider others.

55. Mr. YASSEEN said he agreed with the Chairman that the Special Rapporteur's report could not, as it stood, constitute the Commission's reply to the General Assembly. The Commission should state what methods it considered possible under existing international law, but — and he was sorry to disagree with the Chairman on that point — it should also express its opinion on the relative merits of each method. It would be failing in its duty if it did not clearly state its preference for the method it considered the best.

56. Mr. LIANG said he would like to reply to the requests by some members for information of a tech-

nical character and to add a few observations based on material in the possession of the Secretariat which was not readily accessible to members of the Commission.

57. The more important conventions of an economic and technical character, but not of course those of a political character, concluded under the auspices of the League of Nations, had already been amended by protocols, all of which dealt mainly with the problem of extended participation. Seven such protocols had been approved by the General Assembly at various dates between 1946 and 1953; one amended a number of conventions and protocols on narcotics, while of the other six, two amended League treaties on the traffic in women and children, two related to obscene publications, one to economic statistics and one to slavery. All seven amended the old treaties so as to permit wider accession.

58. The Secretariat had examined the extent to which States had become parties to those seven protocols. It might be of interest to note that thirty-five States had become parties to the 1947 Protocol amending the Convention for the Suppression of the Traffic in Women and Children concluded at Geneva on 30 September 1921, while thirty-seven States had become parties to that Convention as amended by the Protocol, so that two States had become new parties to the amended Convention.

59. He agreed that it would be useful to make a survey of the extent to which the twenty-one conventions were still in force. In the past the Secretariat had followed the practice described in paragraph 149 of the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7) which read:

> " 149. It has sometimes been asked whether an agreement concluded under the auspices of the League of Nations is still in force. In such cases, the Secretary-General has replied referring either to the denunciations he has received or to the ratifications and accessions deposited, or to information submitted by the parties which indicates that the agreement is being applied."

The fact that such answers had been given in the past might not rule out a more definite conclusion, though the difficulties of the subject should not be overlooked.

60. He also agreed with those members who thought that the subject-matter of the treaties under discussion should be examined in order to determine whether they had been superseded by later treaties.

61. With regard to the question which of the League of Nations treaties would attract the interest of States that had not been members of the League, enquiries had been made by some States regarding the status of the Geneva Convention and Protocols of 20 April 1929 for the Suppression of Counterfeiting Currency;[7] an enquiry on the same point had been received from Interpol. Many of the other treaties were obsolete or obsolescent.

62. Some members had asked for information about the rules under which the United Nations took over functions and powers exercised under international agreements by the League of Nations, in accordance with the protocols relating to the transfer of those functions and powers to the United Nations. The governing resolution of the General Assembly was resolution 24 (I), which contained three separate decisions. Decision A dealt with functions of a purely secretarial character, including the depositary functions; the Secretary-General of the United Nations could continue those functions without any difficulty. Decision C related to functions under conventions of a political character and was not at issue in the present discussion. Decision B dealt with conventions of a technical and non-political character. It was in respect of those instruments that the General Assembly had adopted the protocols to which he had referred.

63. With regard to procedure it could be noted that the General Assembly had dealt with the question in 1948, after referring it to the Economic and Social Council. At its sixth session, the Council had adopted a resolution[8] on the 1928 International Convention relating to Economic Statistics, on the basis of which the General Assembly had itself adopted a resolution to enable the United Nations to assume the functions previously exercised by the League of Nations.[9]

64. Since the General Assembly had so far invariably dealt with the matter by means of a protocol, he thought it would be proper to say that that procedure represented the established practice. It was, of course, a somewhat cumbersome method and there was nothing to prevent the General Assembly from adopting a simpler procedure if it saw fit. It would therefore be appropriate for the Commission to refer in its report to any procedure which amounted to an innovation, stating fully the arguments in its favour.

65. Mr. ROSENNE said that he had stated his general views on the subject at the last session in connexion with article 13 of Part I of the draft on the law of treaties. He had later had occasion to develop them, though not in his personal capacity. As representative of his country, together with the representatives of Australia and Ghana he had submitted a joint draft resolution (A.CN.4/162, para. 11) to the Sixth Committee of the General Assembly, which had been inspired by a passage in the report of the International Law Commission. The opinion of the joint sponsors and, indeed, of the legal counsel, had been that the Sixth Committee itself could deal with the question, but at the 750th meeting of the Committee, the sponsors had accepted a suggestion by the Italian representative that the International Law Commission should study the legal and technical aspects of the question pending reconsideration of the whole matter by the Sixth Committee.[10] That suggestion had been accepted in order to allay the misgivings expressed

[7] League of Nations, *Treaty Series*, Vol. 112, p. 371.

[8] Economic and Social Council resolution 114 (VI).

[9] General Assembly resolution 255 (III).

[10] *Official Records of the General Assembly, Seventeenth Session, Sixt Committee*, 750th meeting, paras. 14 and 23.

by certain representatives and because many delegations had not had time to consider the matter thoroughly.

66. The present discussion and the report by the Special Rapporteur on the law of treaties would go a long way towards clarifying the issues. Since the matter was considered important by some States, even if only in regard to a few treaties, there was every justification for its being dealt with by organs of the United Nations.

67. Interpol had expressed an interest in the wider participation of States in the 1929 Convention for the Suppression of Counterfeiting Currency. At its thirty-first sesssion, held in September 1962, the General Assembly of Interpol had adopted a resolution which opened with the paragraph:

> " WHEREAS certain States may now be faced with difficulties of procedure in acceding to international conventions adopted while the League of Nations was in existence "

The resolution went on to invite the Secretary-General of Interpol " to transmit to the United Nations Assembly its desire that such accessions should be facilitated in so far as the conventions themselves tend towards the suppression of criminal activities ". While a certain amount of interest had been shown in the 1929 Convention for the Suppression of Counterfeiting Currency, and possibly in one or two other treaties, there was no reason to assume that any State would be interested in acceding to treaties that might be obsolescent or even obsolete.

68. The Special Rapporteur's valuable report formed an excellent basis for the Commission's own report to the General Assembly. He accepted the conclusions reached in paragraph 32 of the report, and agreed with those members who had suggested that the contents of that paragraph should be further developed.

69. He also supported the suggestion made by Mr. Lachs and Mr. Tunkin that a full examination of the conventions should be undertaken in order to determine which of them needed bringing up to date. A passage should be included in the report suggesting the possibility of adapting those conventions to present needs; but it should be borne in mind that the process would take time. It had not been possible to formulate a single convention on narcotic drugs until 1961; it had been necessary not only to rewrite the provisions of the existing conventions, but also to modernize and revise those provisions in the light of the scientific advances and social changes that had taken place since the conclusion of the earlier instruments. But setting that process in motion would not solve the immediate problem, for which, as had been pointed out by other speakers, several solutions were available. In his view, the solution in simplified form was both possible and desirable.

70. Mr. AGO said that he entirely agreed with the suggestions made by the Special Rapporteur in paragraph 32 of his report. The Commission might of course develop the ideas a little in order to express them better in its own report, but the method proposed for solving what was essentially a technical problem was perfectly adequate.

71. With reference to the matter raised by Mr. Lachs, he would agree to the Commission's suggesting to the General Assembly that it draw the attention of the States parties to the treaties in question to the advisability of revising them. Only those States could take the initiative in the matter of revision. That was a substantive problem, but there was no reason why the Commission should not draw attention to it at the same time as it proposed a solution of the procedural problem.

72. Sir Humphrey WALDOCK, referring to the suggestion made by Mr. Lachs, said that in paragraph 4 of his report he had pointed out that some of the treaties " may have been overtaken by more modern treaties concluded during the period of the United Nations, while some others may have lost much of their interest for States with the lapse of time." And he had concluded: " Accordingly, there may be a question of distinguishing between those treaties which it is useful and those which it is not useful to open to participation by new States."

73. In preparing his report he had had the advantage of information from the Secretariat regarding some of the treaties. His own general view was that an examination of those treaties would reveal that only a small number of them deserved serious attention. The Sixth Committee of the General Assembly had been aware of that situation, since it had requested information on the subject from the Secretariat. In fact, he had felt encouraged to go thoroughly into the whole problem only because of the interest shown by certain States in acceding to the Convention for the Suppression of Counterfeiting Currency.

74. With regard to form, he had not underlined the legal aspects of the protocol formula because it had already been discussed by the Sixth Committee; the resolution formula had also received attention there; that was why he had concentrated on the simplified solution. There would be little difficulty in amending the text to take into account the suggestion made by several members that the Commission should put greater emphasis on the various possible methods of dealing with the problem.

75. To meet the wishes of certain members, he was prepared to soften the references to constitutional processes contained in the last sentence of paragraph 30 and in the first sentence of paragraph 31 of his report. He was also prepared to expand paragraph 32.

76. He could either submit an amended version of his report or leave it to the Drafting Committee, as the Commission desired.

77. The CHAIRMAN suggested that Sir Humphrey Waldock should be invited to amend his report in the light of the discussion; the Commission would deal with the revised text when it considered its final report.

It was so agreed.

The meeting rose at 1 p.m.