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Summary record of the 801st meeting

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include the provisions of paragraph (c), so as to meet the difficulty which might result from the need to adjust internal law to a new treaty situation, and especially in the case of States whose constitution did not provide for the incorporation of international law in municipal law. If paragraph (c) did not meet with the approval of States, it could be dropped.

86. A further question that could be discussed by the Drafting Committee was the possibility that the effect of the withdrawal of a reservation might be that the treaty entered into force in the relations between two States between which it had not previously been in force.

87. Mr. ROSENNE said that, in the circumstances last mentioned by the Special Rapporteur, the intended effect of the withdrawal of the reservations was precisely to bring the treaty into force between the two States concerned.

88. The CHAIRMAN suggested that article 22 be referred to the Drafting Committee with the suggestions and comments made by members.

*It was so agreed.*⁸

The meeting rose at 1. p.m.

⁸ For resumption of discussion on the section concerning reservations, see 813th meeting, paras. 1-109, and 814th meeting, paras. 1-30.

801st MEETING

Monday, 14 June 1965, at 3 p.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tunkin, Mr. Tsuruoka, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Also present: Mr. Zakariya, Observer for the Asian-African Legal Consultative Committee.

Law of Treaties

(A/CN.4/175 and Add.1-3, A/CN.4/177 and Add.1, A/CN.4/L.107)
(continued)

[Item 2 of the agenda]

ARTICLE 25 (The registration and publication of treaties)

Article 25

The registration and publication of treaties

1. The registration and publication of treaties entered into by Members of the United Nations shall be governed by the provisions of Article 102 of the Charter of the United Nations.

2. Treaties entered into by any party to the present articles, not a Member of the United Nations, shall as soon as possible be registered with the Secretariat of the United Nations and published by it.

3. The procedure for the registration and publication of treaties shall be governed by the regulations in force for the application of Article 102 of the Charter.

1. The CHAIRMAN invited the Special Rapporteur to introduce his revised version of article 25, which read;

1. Members of the United Nations are under an obligation, with respect to every treaty entered into by them, to register it in conformity with Article 102 of the Charter of the United Nations.

2. Parties to the present articles which are not Members of the United Nations agree to register every treaty entered into by them after the present articles come into force.

3. The procedure for the registration of treaties under the foregoing paragraphs and for their publication shall be governed by the regulations from time to time adopted by the General Assembly of the United Nations for giving effect to Article 102 of the Charter.

2. Sir Humphrey WALDOCK, Special Rapporteur, said that, in 1962, the Commission had encountered some difficulties with article 25, because, while not wishing to appear in any way as proposing an amendment of Article 102 of the Charter, it wished to include a provision on registration, a well-established institution of treaty practice. At the same time, it had considered that, in a codifying venture of that nature, the Commission could not confine the provisions it adopted merely to States Members of the United Nations.

3. The Commission had accordingly adopted a text which, in its paragraph 1, provided for the observance by Member States of the existing Charter provisions; paragraph 2 extended the application of the principles embodied in those Charter provisions to any other States that might become parties to the future convention on the law of treaties. Paragraph 3 dealt with the regulations in force for the procedures of registration under Article 102 of the Charter.

4. His proposed new text for article 25 took into account certain Government comments on which he had made his own observations in his report (A/CN.4/177/Add.1).

5. Mr. ROSENNE said that, in general, his thoughts were very close to those of the Special Rapporteur; in particular, the arguments of the Special Rapporteur had allayed his own doubts regarding the possibility of a concealed amendment of the Charter. He agreed that registration was a sufficiently well-established institution of the contemporary law of treaties to justify the retention of article 25, but it would be difficult for him to accept even the amended formulation of the article proposed by the Special Rapporteur. Instead, he proposed that the whole article be replaced by a text reading:

“ The registration of treaties ”

“ The registration of all treaties with the Secretariat of the United Nations shall be performed in accordance with the regulations from time to time adopted by the General Assembly of the United Nations for giving effect to Article 102 of the Charter of the United Nations. ”

6. In the Special Rapporteur's proposed new text, paragraph 1 was redundant, since its provisions were already contained in Article 102 of the Charter. So far as paragraph 2 was concerned, his main objection was to the expression "Parties to the present articles", since the articles had been drawn up throughout in the form of general statements of rules and nowhere was reference made to the parties to the present articles. He objected to paragraph 3 and to the title of the article because they contained a reference to the publication of treaties, which was exclusively a matter for the Secretariat and had nothing to do with the parties to the treaty; the sole obligation of the parties was to register the treaty. The inclusion of the reference to publication might lead to confusion owing to the omission of any corresponding provision regarding promulgation, as indicated by the Government of Luxembourg.¹

7. The text which he himself proposed was intended to cover in a single paragraph all the ideas embodied in paragraphs 1, 2 and 3 of the Special Rapporteur's text; the expression "all treaties" referred to treaties as defined in article 1, which, in the form that the Drafting Committee was likely to propose, did not draw any distinction between treaties concluded by Member States of the United Nations and treaties concluded by non-member States.

8. He asked that the regulations to give effect to Article 102 of the Charter, reproduced as an annex to the Commission's 1962 report (A/5209), should also be included as an annex to the commentary on article 25; that would provide an opportunity to correct the mistakes made when reproducing those regulations in the Commission's report to the General Assembly in 1962.²

9. Sir Humphrey WALDOCK, Special Rapporteur, said that the text proposed by Mr. Rosenne was likely to lead to even greater difficulties. In particular, if it were stated merely that the registration of all treaties must be performed "in accordance with the regulations from time to time adopted by the General Assembly", the effect would be to refer to regulations which made a sharp distinction between registration on the one hand, and filing and recording on the other; under them, registration applied primarily to Member States, and filing and recording to non-members. Mr. Rosenne's proposal might appear to confine the provisions of article 25 to registration and to exclude filing and recording; as a result the article would not be general in its coverage of non-member States and so would not fulfil its main purpose.

10. Consequently, although he sympathized with the suggestion to simplify the language of article 25, he felt that the only possible course was to embody the procedural provisions in a separate paragraph from the substantive provisions, and in the latter, the case of Members of the United Nations should be kept distinct from that of non-member States.

11. Mr. VERDROSS said that, since paragraphs 1 and 3 merely repeated rules which occurred, first, in the United Nations Charter and, secondly, in regulations adopted by the General Assembly, the only problem

raised by the article was that concerning paragraph 2. Did the Commission wish to impose on States not Members of the United Nations the obligation to register treaties? Paragraph 2 of the Special Rapporteur's revised version was definitely preferable to paragraph 2 of the text adopted in 1962, for it clearly indicated that the obligation in question was not imposed on the Secretary-General of the United Nations but on the States not Members of the United Nations which would be parties to the convention being drafted by the Commission—a point left somewhat in doubt in the 1962 text. That obligation could not be imposed on the Secretary-General, but could be imposed on States which agreed to become parties to the convention. For that reason, he would favour the use of a stronger expression that "agree to", such as, for example, "shall" or "are required to". Subject to that observation, he accepted, in principle, the revised version proposed by the Special Rapporteur.

12. Mr. EL-ERIAN said he supported the Special Rapporteur's position and also the general economy of his new formulation, which resembled that of the article adopted in 1962.

13. It was particularly important to include an article on the principal of the registration of treaties. Registration was important in practice; it reflected an achievement of the Covenant of the League of Nations and a departure from the former practice of secret diplomacy and secret treaties which had led to such regrettable results.

14. It was useful to maintain a distinction between States Members of the United Nations and non-member States. The sanction for non-registration was laid down in Article 102 (2) of the Charter: "No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations". Clearly, that sanction would not apply in the same manner to Members of the United Nations and to non-members. Also, the functions of the Secretariat with regard to non-member States would differ, although many non-member States accepted the Secretariat as depositary of their treaties.

15. There were three categories of treaties. The first was that of treaties all the parties to which were Members of the United Nations; Article 102 of the Charter applied to all the parties. The second was that of treaties some of the parties to which were Members of the United Nations and others non-members; the parties which were Members of the United Nations were under an obligation to register the treaty by virtue of Article 102 of the Charter. The third was that of treaties between two or more non-member States. For the purposes of that third category of treaties, it would be useful to generalize the institution of registration. Of course, the system of registration would not be imposed upon them: the States concerned would accept it on signing the draft articles.

16. He asked the Secretariat whether a State which was not a Member of the United Nations could register with the Secretariat of the United Nations a treaty to which it was a party.

17. Mr. BAGUINIAN, Secretary to the Commission, said that a non-member State could register a treaty.

¹ A/CN.4/175, comments by Luxembourg *ad* article 25.

² Rectified version in *Yearbook of the International Law Commission, 1962*, Vol. II, p. 194.

Article 1, paragraph 1, of the regulations on registration and publication of treaties and international agreements adopted by the General Assembly, which had been reproduced as an annex to the Commission's report for 1962,³ provided that :

“ Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after 24 October 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations. ”

18. Paragraph 3 of the same article provided, in part, that “ Such registration may be effected by any party ... ”, including, of course, parties which were not Members of the United Nations.

19. In the Secretariat's answers to questions asked by Mr. Rosenne, the second sentence of paragraph 7 of the reply to question A stated : “ No treaty with a Member has ever been submitted for registration by a non-member ”.⁴ Treaties to which both Members and non-members were parties had, however, been registered by international organizations.

20. If no Member of the United Nations was a party to the treaty, the treaty could not be registered with the Secretariat. However, under article 10 of the regulations, it could be filed and recorded by a non-member if one of the parties was the United Nations or a specialized agency, or if the treaty had been entered into before 24 October 1945.

21. The CHAIRMAN said there was yet another category of States : those which, while not Members of the United Nations, were members of an intergovernmental organization linked to the United Nations by virtue of the Charter. Some of those organizations registered the treaties concluded by their members.

22. Mr. CASTRÉN said that the draft should certainly include a provision concerning the registration of treaties. The revised version of article 25 proposed by the Special Rapporteur was satisfactory on the whole. It would be sufficient if States which were not Members of the United Nations but would be parties to the future convention registered any treaties concluded by them after the entry into force of that convention. He would suggest only one drafting change; the insertion of the words “ with the United Nations Secretariat ” after the words “ to register ” in paragraph 2 of the revised text.

23. The text proposed by Mr. Rosenne had the merit of brevity, but he was not sure that it was desirable to omit the provision which referred particularly to States not Members of the United Nations.

24. Mr. AGO said he was convinced that the article involved no real substantive difficulty. What the Commission wished to do was to transform Article 102 of the Charter into a rule of general law valid for all States. Instead of beginning with a restatement of the rule in the Charter, the article should perhaps open with the broader rule that all States parties to the present articles should register with the United Nations Secretariat treaties entered into by them. That provision might even suffice,

for it would probably not be necessary to add that, so far as non-member States were concerned, the obligation would not commence until after the entry into force of the present articles.

25. The procedure for the registration of treaties should obviously be that adopted by the General Assembly. If the Commission nevertheless wished to include a provision concerning procedure, it might adopt the formula proposed by Mr. Rosenne, which did not differ greatly from the paragraph 3 proposed by the Special Rapporteur.

26. Mr. YASSEEN said that a general convention on the law of treaties should contain an article on the registration of treaties. The obligation to register treaties with a general international organization flowed from the concept of open diplomacy and was evidence of the existence of a unified international community. The obligation already existed in the case of States Members of the United Nations; as Mr. Ago had said, the intention was that it should be extended to other States.

27. For the sake of the clarity and completeness of the draft convention, it was not a bad idea that the article should begin with a paragraph reproducing in essence the rule laid down in Article 102 of the Charter. That would be a precedent which would clearly show that the draft contained existing rules drawn from a conventional source, not merely from a customary source.

28. Paragraph 2 of the revised version proposed by the Special Rapporteur was certainly necessary, and should be strengthened in the manner suggested by Mr. Verdross.

29. Paragraph 3 served a useful purpose in that it made the procedure already followed by Member States applicable to the registration of treaties concluded by non-member States. That rule should be stated in the form of a true obligation, binding also on the United Nations Secretariat. It had been said that the draft convention could not give the Secretariat additional duties; but surely the Commission's work was not outside the United Nations and, as the Special Rapporteur had said, the General Assembly could take the necessary steps before the adoption of the convention to instruct the Secretary-General to register treaties entered into by non-member States.

30. Mr. ELIAS said that he was in favour of retaining article 25 and preferred the Special Rapporteur's new formulation to the 1962 text.

31. Paragraph 1 did not appear to be necessary, since it merely repeated the contents of one of the paragraphs of Article 102 of the Charter.

32. It was paragraph 2 which embodied the essential element of article 25, since its purpose was to make binding upon non-member States certain obligations which already existed for Members of the United Nations. In its comments (A/CN.4/175) the United States Government had objected that the contents of paragraph 2 appeared to go beyond the existing practice, in imposing a new obligation on non-member States and also a new obligation upon the Secretariat. He found the reply given by the Special Rapporteur fully convincing on both those points. The point raised by Mr. Rosenne regarding the opening words of paragraph 2 should be

³ *Ibid.*, *loc. cit.*

⁴ 791st meeting, para. 61.

referred to the Drafting Committee, which might adopt a formula such as "States parties to the present articles . . .".

33. The text proposed by Mr. Rosenne for article 25 did not sufficiently cover the principle which it was the purpose of paragraph 2 to emphasize. Personally, he doubted whether it was possible to compress into a single sentence the contents of all three paragraphs.

34. Paragraph 3 was necessary; if a new obligation was to be imposed on States not Members of the United Nations, the procedure by which the obligation was to be carried out should be specified. However, the language of paragraph 3 should be amended so as to restrict the scope of its provisions to the case covered by paragraph 2.

35. The Drafting Committee should also consider whether the provisions of paragraphs 1 and 2 might not be combined by using some such wording as: "States parties to the present articles, whether or not Members of the United Nations . . .". He agreed with Mr. Castrén that it would be useful to include in paragraph 2 a reference to the Secretariat of the United Nations.

36. Mr. BRIGGS said that all members of the Commission appeared to agree on the desirability of an article on registration, and the only difficulties which had arisen related to drafting. Paragraph 1 did not add anything to the Charter of the United Nations; paragraph 3 was contained in Mr. Rosenne's draft. Paragraph 2 was not contained in that draft but Mr. Ago's suggestion would cover that point. It might therefore be possible to combine all the ideas in article 25 by means of the wording:

"All States parties to the present convention, whether or not Members of the United Nations, are under an obligation to register all treaties with the Secretariat of the United Nations in accordance with the regulations from time to time adopted by the General Assembly . . .".

37. Mr. TUNKIN said that he was in favour of retaining article 25. On the wording, he agreed with Mr. Ago that it would be sufficient to state the substantive rule, leaving out the procedural details. The article would simply state that all treaties signed by parties to the future convention on the law of treaties should be registered, as provided in Article 102 of the Charter. The method of formulating separately one rule for Members of the United Nations and another for non-members was more suited to a code or a manual than to a draft convention. The sole purpose of article 25 was to lay down the obligation to register treaties in general terms. He foresaw difficulties for the draft articles at the future conference of plenipotentiaries if the amount of detail included was excessive.

38. Mr. REUTER said the revised text proposed by the Special Rapporteur was preferable to that adopted by the Commission in 1962.

39. Nevertheless, as the definition of "treaty" given at the beginning of the draft would be quite narrow, the new rule which the Commission was trying to formulate in article 25 could be more limited in scope than Article 102 of the Charter. The application of Article 102 of the Charter depended on the meaning attributed by the General Assembly to the term "treaty or international agreement", and that meaning was much wider than that

which the Commission had decided to give to the term "treaty" for the purposes of the draft articles. For instance, an agreement concerning the headquarters of an international organization came within the scope of Article 102 of the Charter, but not within that of article 25 as it stood. Accordingly, it should be stated that the principle laid down in article 25 would be "without prejudice to Article 102 of the Charter".

40. The CHAIRMAN, speaking as a member of the Commission, said that in his opinion the article was of great importance. The open diplomacy visualized by Lenin and Wilson had not materialized under the League of Nations system, the rule accepted at San Francisco was incomplete, and the problem was further complicated by the fact that in some quarters the Charter of the United Nations was regarded as the constitution of the modern international community, whereas in others it was looked on simply as a conventional rule. The Commission should therefore include in its draft an article making the registration of treaties obligatory for all States which became parties to the convention it was preparing.

41. With regard to the question whether the rule stated in the Charter should be repeated or further developed, he did not agree with Mr. Ago and Mr. Tunkin, for he was always in favour of strengthening existing rules. Some members of the Commission seemed to be afraid that the conference which would eventually have to decide on the draft convention might reject some of the rules proposed by the Commission. Actually, the representatives of States often regretted that the Commission's proposals were not developed further. It was always easier to simplify a text at a conference than to add anything of substance, particularly as it could always be argued that the Commission had not inserted some provision in its draft because it had regarded it as unnecessary.

42. He preferred the revised and much simplified version proposed by the Special Rapporteur, but would support the amendment proposed by Mr. Castrén to paragraph 2; it would be right to make it clear that treaties should be registered with the United Nations, for some of the specialized agencies, the International Civil Aviation Organization, for example, registered treaties concluded by their members dealing with their own specific subjects.

43. It might not be necessary to specify in paragraph 3 the procedure to be followed, for if paragraph 2 was amended on the lines proposed by Mr. Castrén, it would be self-evident that the procedure would be that laid down by the General Assembly.

44. Mr. TSURUOKA said he supported the suggestion put forward by Mr. Ago and taken up by Mr. Tunkin. The Commission should always preferably submit a very simple text; the formula did no violence to Article 102 of the Charter, and so far as the future was concerned, the Commission could rely on the wisdom and progressive spirit of the General Assembly.

45. He could accept either the 1962 text or the Special Rapporteur's redraft, but had a preference for the latter. He was not sure, however, that it would be right to change it so as to impose an obligation on the Secretary-General of the United Nations, because that would mean placing an obligation on someone who was not a party to the convention which the Commission was preparing.

46. Mr. PESSOU said he wished first to associate himself with Mr. Tsuruoka's last observation.
47. Secondly, while grateful to Mr. Rosenne for having proposed a simpler text, he thought that that text left many problems in suspense. His personal opinion was that the Commission should revert to the 1962 text, which he considered more satisfactory even than the Special Rapporteur's redraft. The latter, to which Mr. Verdross had suggested a judicious amendment, would place an obligation on States not Members of the United Nations. It was debatable what was the legal force of such an obligation and what sanction would be applied if the rule were not observed by a non-member State; in any case a State not a Member of the United Nations could not invoke a treaty before an organ of the United Nations.
48. Mr. ROSENNE suggested that, in order to meet the point raised by Mr. Reuter, the language of Article 102 of the Charter should be used; article 25 would then refer to "every treaty and every international agreement" instead of to "all treaties".
49. Mr. TUNKIN said that he had supported Mr. Ago's suggestion simply because he favoured as simple a statement of the rule as possible. The article adopted in 1962, the revised text proposed by the Special Rapporteur, and Mr. Ago's proposal, were all similar in substance; the only difference was in drafting and presentation.
50. He did not share Mr. Reuter's misgivings. By virtue of the definition of treaties, a reference to "all treaties" would cover all international agreements.
51. The CHAIRMAN, speaking as a member of the Commission, said that in the Sixth Committee many States had been critical of the formula adopted at San Francisco on the grounds that it did not settle the question of participation in registration by States which were not Members of the United Nations, and was therefore inadequate. The argument was that, in matters of security, the obligation was binding on all States, whether Members of the United Nations or not, but that in matters of open diplomacy, the obligation was not a universal rule and the sanctions were negligible. There was accordingly a need for a more specific rule. He had always been in favour of a broader formula because he thought that States should not be given an opportunity of impeding the application of the principle of open diplomacy.
52. Mr. YASSEEN said that the intention was that the obligation laid down in Article 102 of the Charter should apply to States not Members of the United Nations which became parties to the future convention. Personally, he did not think that the scope of that obligation could be extended beyond the treaties with which the Commission was concerned. Whatever term was used in the article, it would have to be interpreted in the light of the definition of the word "treaty" given in article 1.
53. Mr. AGO said that, in his opinion, the Commission should lay down rules for the States parties to the convention, and not only rules applicable to States Members of the United Nations, even if the rules reproduced an Article of the Charter word for word. If the Commission wished to guarantee the application of Article 102 to Member States, it should, in order to avoid ambiguity, follow Mr. Reuter's suggestion.
54. He would prefer that course to the proposal made by Mr. Rosenne, as it would seem strange to refer to "treaties" throughout the text, and then in article 25, to "treaties and international agreements".
55. Mr. AMADO said it seemed to him that the Commission had debated the subject long enough, that no one had anything fresh to add, and that there was a danger of complicating matters. The article, with all the suggestions put forward during the discussion, should be referred to the Drafting Committee.
56. The CHAIRMAN said he agreed with Mr. Amado. He invited the Special Rapporteur to sum up the discussion.
57. Sir Humphrey WALDOCK, Special Rapporteur, summing up the discussion, said that in 1962 article 25 had been a troublesome one to draft; it was with that fact very much in mind that he had not suggested any major changes in his revision. He was all for simplification, but wished to remind members that the real difficulties arose from the need to avoid any appearance of amending or replacing Article 102 of the Charter and from the distinction drawn in the regulations between registration and filing and recording. Mr. Tunkin was evidently anxious to retain the reference to Article 102; but it was not quite clear what kind of text Mr. Ago favoured. Was it a general formula omitting any reference to Article 102, or not?
58. Because of the risk of being accused of having proposed an amendment of the Charter, the Commission had decided at its fourteenth session that, in article 25, it should not do more than restate what was laid down in Article 102 for Members of the United Nations. Possibly that preoccupation had been exaggerated, but the Drafting Committee would certainly again encounter the difficulty of framing the article intelligently without referring to Article 102, and then the delicate problem of the relationship with Article 102 would necessarily arise.
59. Mr. Reuter had pointed to a further difficulty consequent upon the Commission's decision earlier in the session to limit its draft articles to treaties between States, because, however desirable it might be in theory that the rule in article 25 should be a general one, it would not, by reason of that limitation, cover treaties between States and international organizations.
60. The Drafting Committee might not find it easy to exclude from the article the procedural elements that were part and parcel of Article 102 because of the interpretation that might be put upon the word "registration" where non-member States were concerned, owing to the distinction made in the regulations between registration and filing and recording. If the provisions of article 25 ultimately came into force as part of a convention on the law of treaties, the General Assembly itself might find it advisable to amend the language of its regulations on registration to take account of that development.
61. The objection that the reference to "publication" would impose an obligation on the Secretariat did not greatly impress him, because the regulations had emanated from the General Assembly in pursuance of the

provisions of the Charter and, in any event, had to be applied by the Secretariat under the General Assembly's direction.

62. The CHAIRMAN suggested that the Commission should refer the texts, together with Mr. Rosenne's proposal and the records of the discussion, to the Drafting Committee.

*It was so agreed.*⁵

Co-operation with Other Bodies

(A/CN.4/180)

[Item 7 of the agenda]

63. The CHAIRMAN invited the Commission to consider the report by Mr. Ago, the Commission's observer, on the seventh session of the Asian-African Legal Consultative Committee (A/CN.4/180).

64. Mr. AGO said that he did not have much to add to his report. The Asian-African Legal Consultative Committee had held its seventh session at Baghdad from 22 March to 1 April 1965. Among the items on its agenda had been the law of outer space, codification of the principles of peaceful co-existence, enforcement of judgments, diplomatic protection of aliens, relief against double taxation, the United Nations Charter from the point of view of the Asian-African countries, as well as administrative questions. Essentially, however, the Committee had discussed the rights of refugees and collaboration with the Commission in connexion with the law of treaties.

65. During the discussion on the rights of refugees, the United Nations Deputy High Commissioner for Refugees and his legal adviser had been present. The Committee's main concern had been that its draft should not duplicate the Convention of 1951.⁶ The text of the principles which it had adopted was reproduced in annex B of the report.

66. On the subject of co-operation between the Committee and the Commission, he had made certain statements (reproduced in annex C of the report) describing the status of the Commission's work and explaining why it had given priority to certain important topics of international law. He had said that the Commission was counting on the co-operation of the Committee, whose members included most of the new countries keenly interested in the Commission's work of codification. He had added that the Commission hoped very much to receive the Committee's observations on its draft articles as soon as possible, even before the completion of the debate on the draft.

67. The Committee's secretariat had prepared a draft of several articles on the law of treaties. Several members, however, had thought it would be inadvisable to discuss a draft differing from the Commission's draft, and in the end the Committee had decided not to consider that draft but to take the Commission's text as the basis for discussion. The Committee had, however, been unable to

discuss the Commission's draft at that session and had appointed a rapporteur who would report to it, at its next session, concerning the Commission's work on the law of treaties. The rapporteur in question was Mr. Zakariya, who had taken a very active and greatly appreciated part in the Committee's proceedings.

68. The Committee was following the Commission's work with much sympathy, and he was sure that the Commission could count on its active co-operation. It was unfortunate, he thought, that the Committee was only partly representative of the vast regions of Africa and Asia; it had only nine members. Several of its members had spoken in favour of enlarging its membership. An increased membership would present some difficulties; for example, English was the Committee's only working language at the moment, whereas a good many African States were French-speaking and were therefore not represented. The Committee's secretariat was considering the possibility of adopting French as a second working language, a step which might attract more African participation. It was very important that as many countries as possible should become members of the Committee: in that way, the Commission would be sure to know the majority point of view of the countries of both regions.

69. He was very grateful for the warm welcome given to him by the members of the Committee and by the Iraqi authorities, which could certainly be attributed primarily to the friendship and preparatory work of Mr. Yasseen.

70. The CHAIRMAN asked the observer for the Asian-African Legal Consultative Committee whether he wished to make a statement.

71. Mr. ZAKARIYA (Observer for the Asian-African Legal Consultative Committee) said that the important work carried out by the Commission was closely followed by students of international law throughout the world. The Asian-African Legal Consultative Committee had very much appreciated the presence of Mr. Ago at some of its meetings during the seventh session and had heard with interest his statement on the Commission's work and on the state of international law in general. It hoped that the Chairman of the Commission's seventeenth session would attend the eighth session, due to be held in Thailand or Pakistan. Such exchange visits between members of the two bodies would foster closer understanding and collaboration in the common cause of world peace and harmony under the rule of law.

72. Although the Consultative Committee did not yet include among its members all or even a majority of Asian and African countries, it was truly representative of a cross-section of the region. Once certain technical and administrative difficulties had been overcome, such as that of the working languages, it was hoped that the number of participating countries would increase, and he fully endorsed what Mr. Ago had said about the desirability of a wider membership.

73. The Committee's declared objectives were, among others, to examine problems under consideration by the Commission, to arrange for its views to be placed before the Commission, to consider the Commission's reports and to make recommendations to governments of participating countries on points arising out of them.

⁵ For resumption of discussion, see 815th meeting, paras. 1-5.

⁶ Convention relating to the Status of Refugees, of 28 July 1951; United Nations *Treaty Series*, Vol. 189.

74. The topic of the law of treaties, though on the agenda for the seventh session of the Consultative Committee, had been deferred, and he had been appointed rapporteur, with instructions to prepare a report on points arising out of the Commission's draft that required consideration from the Asian-African viewpoint. Though conscious of the difficulties of his task, he was confident that the Commission's deliberations at its seventeenth session, and the comments of government members of the Consultative Committee would be of great assistance.

75. The CHAIRMAN, on behalf of the Commission, thanked the representative of the Asian-African Legal Consultative Committee for his invitation, which the Commission would be happy to consider. He also thanked the Committee for having sent an account of its work and hoped that it would continue that practice, which enabled members of the Commission to keep abreast of legal thinking in the countries of Asia and Africa.

76. He asked Mr. Zakariya to convey the Commission's best wishes to the Committee and to assure it of its desire for sincere co-operation. He hoped the Committee would recommend its member countries to send their comments to the Commission regarding its draft articles so that it could further improve the text.

77. Mr. YASSEEN said that as an Iraqi he wished to thank Mr. Ago for his kind words; Iraqi jurists had particularly welcomed the presence of Mr. Ago, an outstanding expert in international law, as the Commission's observer at the Committee's session.

78. Mr. ELIAS said he had noted from paragraph 15 of Mr. Ago's report that member governments of the Consultative Committee were requested to send their comments on the Commission's draft articles to the rapporteur, Mr. Zakariya, by the end of August 1965; the consequence might be that some would have to prepare two sets of comments, one for the Commission and the other for the Committee, but if they were willing to do so that was no problem. What caused him greater concern was that, if the Consultative Committee's eighth session were not to take place until March or April 1966, there would be very little time for the Commission to take into account any comments on its draft transmitted after that date, because according to the established time-table the work on about two-thirds of the draft was to have been completed before the summer session of 1966.

79. The CHAIRMAN said he was sure that Mr. Zakariya would take note of those observations which were of importance for future co-operation between the Commission and the Committee.

80. Mr. EL-ERIAN said he was glad to note that the Consultative Committee was giving more attention to topics under consideration by the Commission, and hoped that in time it would be in a position to make the valuable contribution that was expected of it. Certainly co-operation between the two bodies must be strengthened and extended.

81. Mr. ROSENNE said Mr. Ago was to be congratulated on his remarkable statement to the Consultative Committee, reproduced in annex C of his report, one of

the best justifications in succinct form for codification that he had read for a long time. He wished the Committee success in its work on the law of treaties. The point made by Mr. Elias regarding the Committee's comments was a very pertinent one.

82. He had one other observation to make, directed generally to the Secretariat, and he hoped it would not be taken amiss by either Mr. Ago or the Chairman. He had noted from annex A in Mr. Ago's report that the United Nations had been represented by no less than five persons at a session of a body which, the Commission had just been informed, was not truly representative of the geographical area described in its name. Yet the Commission had been told by the Secretariat during the past fortnight that 100 copies of its *Yearbook* could not be distributed to leading legal reviews because of the expense involved, and that for the same reason members of the Commission were not entitled to receive volume II of its *Yearbook*. He suggested that the United Nations authorities responsible for such matters should examine more closely the question of United Nations representation at gatherings of that kind, so as to make sure that it was not extravagant.

83. The CHAIRMAN said he understood that the representative of the United Nations mentioned in annex A was the Director of the United Nations Information Centre at Baghdad and that Mr. Omar Sharaf was the acting representative of the High Commissioner for Refugees, also at Baghdad.

84. Sir Humphrey WALDOCK, Special Rapporteur for the law of treaties, associating himself with what had been said about Mr. Ago's statement to the Consultative Committee and with the welcome extended to Mr. Zakariya, said he would be interested to know whether the Consultative Committee had given any thought to the question how it could assist in the Commission's work. Its observer would be aware of the relevance of the time factor if the Commission was to be able to give due consideration to the Committee's views. Obviously it would have been desirable that its views should be presented at an earlier stage in the Commission's work, for at its summer session in 1966 the Commission would be extremely busy completing the last phases of its work on the law of treaties and for lack of time might find it difficult to review any fresh considerations that might be put forward by the Committee. There was clearly a general problem as to the best stage in the Commission's work on a piece of codification at which other bodies could assist most effectively, and he had in mind not only the Consultative Committee but also the Inter-American Juridical Committee and others.

85. The CHAIRMAN, speaking as a member of the Commission, said that he had always been in favour of closer co-operation between the Commission and all regional or non-governmental organizations dealing with the same questions, but there had invariably been objections by the Secretariat, based, where the non-governmental organizations were concerned, on certain legal considerations. The Asian-African Committee and the Inter-American Council of Jurists had applied to the General Assembly for consultative status, and the matter had been debated at length in the Sixth Committee, but he did not know whether the same was true with regard to

the Council of Europe. In any case, the question would arise when the agenda item concerning co-operation with other bodies was discussed again, and the Commission would then consider the Special Rapporteur's proposal for mobilizing all available forces in an endeavour to improve the draft articles still further.

86. He suggested that the Commission should approve the report by its observer.

The report by the Commission's observer (A/CN.4/180) was formally approved.

The meeting rose at 5.55 p.m.

802nd MEETING

Tuesday, 15 June 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Pal, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Law of Treaties

(A/CN.4/175 and Add.1-3, A/CN.4/177 and Add.1, A/CN.4/L.107)
(resumed from the previous meeting)

[Item 2 of the agenda]

ARTICLES 26 (The correction of errors in the texts of treaties for which there is no depositary) and 27 (The correction of errors in the texts of treaties for which there is a depositary)

Article 26

The correction of errors in the texts of treaties for which there is no depositary

1. Where an error is discovered in the text of a treaty for which there is no depositary after the text has been authenticated, the interested States shall by mutual agreement correct the error either:

(a) By having the appropriate correction made in the text of the treaty and causing the correction to be initialled in the margin by representatives duly authorized for that purpose;

(b) By executing a separate protocol, a *procès-verbal*, an exchange of notes or similar instrument, setting out the error in the text of the treaty and the corrections which the parties have agreed to make; or

(c) By executing a corrected text of the whole treaty by the same procedure as was employed for the erroneous text.

2. The provision of paragraph 1 above shall also apply where there are two or more authentic texts of a treaty which are not concordant and where it is proposed to correct the wording of one of the texts.

3. Whenever the text of a treaty has been corrected under paragraphs 1 and 2 above, the corrected text shall replace the original text as from the date the latter was adopted, unless the parties shall otherwise determine.

4. Notice of any correction to the text of a treaty made under the provisions of this article shall be communicated to the Secretariat of the United Nations.

Article 27

The correction of errors in the texts of treaties for which there is a depositary

1. (a) Where an error is discovered in the text of a treaty for which there is a depositary, after the text has been authenticated, the depositary shall bring the error to the attention of all the States which participated in the adoption of the text and to the attention of any other States which may subsequently have signed or accepted the treaty, and shall inform them that it is proposed to correct the error if within a specified time limit no objection shall have been raised to the making of the correction.

(b) If on the expiry of the specified time limit no objection has been raised to the correction of the text, the depositary shall make the correction in the text of the treaty, initialling the correction in the margin, and shall draw up and execute a *procès-verbal* of the rectification of the text and transmit a copy of the *procès-verbal* to each of the States which are or may become parties to the treaty.

2. Where an error is discovered in a certified copy of a treaty, the depositary shall draw up and execute a *procès-verbal* specifying both the error and the correct version of the text, and shall transmit a copy of the *procès-verbal* to all the States mentioned in paragraph 1 (b) above.

3. The provisions of paragraph 1 above shall likewise apply where two or more authentic texts of a treaty are not concordant and a proposal is made that the wording of one of the texts should be corrected.

4. If an objection is raised to a proposal to correct a text under the provisions of paragraphs 1 or 3 above, the depositary shall notify the objection to all the States concerned, together with any other replies received in response to the notifications mentioned in paragraphs 1 and 3. However if the treaty is one drawn up either within an international organization or at a conference convened by an international organization, the depositary shall also refer the proposal to correct the text and the objection to such proposal to the competent organ of the organization concerned.

5. Whenever the text of a treaty has been corrected under the preceding paragraphs of the present article, the corrected text shall replace the faulty text as from the date on which the latter text was adopted, unless the States concerned shall otherwise decide.

6. Notice of any correction to the text of a treaty made under the provisions of this article shall be communicated to the Secretariat of the United Nations.

1. The CHAIRMAN invited the Special Rapporteur to introduce his proposals for article 26, which was the first of two complementary articles on the correction of errors in the texts of treaties.

2. Mr. CASTRÉN, speaking on a point of order, proposed that the Commission should deal at the same time with article 27, since the Special Rapporteur suggested the rearrangement in three articles of the