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Summary record of the 815th meeting

Topic:
Law of Treaties

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into force provisionally, and subsequently a State decided that it did not wish to ratify it or adhere to it. That situation was not covered by article 24.

44. Sir Humphrey WALDOCK, Special Rapporteur, said that he had come to the conclusion that it was somewhat inconsistent that article 24 should be the only article in part I which dealt with termination. He had therefore dropped the provision regarding termination which appeared in the 1962 draft and in his fourth report; the matter should be dealt with under termination of treaties. The Drafting Committee had decided that article 24 should deal only with the case of a treaty's entry into force provisionally.

45. Mr. LACHS said that Mr. Ruda had apparently been referring to bilateral treaties; but a like question could also arise in connexion with multilateral treaties. For instance, a treaty might come into force pending ratification. It might be that one of the parties then rejected the treaty. If the treaty contained no provision about entry into force, was it then superseded?

46. Sir Humphrey WALDOCK, Special Rapporteur, said that he did not think that the text excluded the possibility of a treaty being brought into force provisionally between certain of the parties. If no provision was made in the treaty itself, States could not be prevented from bringing the whole or part of the treaty into force by separate agreement.

47. Mr. LACHS said that article 23, paragraph 2, provided for unanimity; did that unanimity cease to exist if one of the parties refused to ratify? In what circumstances did the treaty become a definitive obligation for all the other States?

48. Mr. AGO said that it was impossible to cover all cases. There would be cases where the circumstances of the conclusion of the treaty made it evident that the parties intended that all the States taking part in the negotiations were to be bound by the treaty, failing which the treaty would not exist. If, however, that was not the situation, and interpretation showed that that condition had not been laid down, the treaty would remain in force between the signatories. Everything would depend on the circumstances in which the treaty had been concluded.

49. With regard to Mr. Ruda's point, he thought that the Special Rapporteur's suggestion that the matter should be dealt with in the provisions concerning termination was a good solution. It was open to a State which had accepted provisional entry into force to say that its competent organs were not prepared to ratify the treaty and that, therefore, the treaty which had provisionally entered into force ceased forthwith to be in force.

50. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with Mr. Ago that the point raised by Mr. Ruda should be dealt with in the articles relating to termination. The Special Rapporteur should, however, draw attention to it in his commentary to article 24.

51. Mr. RUDA said that he, too, agreed about the placing of the relevant provision; he had merely wished to bring the point to the Commission's attention.

52. Mr. TSURUOKA said that he did not greatly like the use of the word "provisionally". He agreed with the

Special Rapporteur that the term was in current use, but it gave the impression that the whole matter was rather vague. The Drafting Committee might search for a more adequate word. It might be possible to state straightforwardly that the articles dealt with the entry into force of a treaty depending on certain acts.

53. Mr. AGO said he agreed that the situation was not an ideal one, but it was adequately described by the term "provisionally". The article dealt with a situation where a treaty might cease to be in force when a State declared unilaterally that it would not ratify it.

54. Mr. BRIGGS said that he accepted article 24 in principle, but considered the word "otherwise" in paragraph 2 ambiguous.

55. Sir Humphrey WALDOCK, Special Rapporteur, explained that the Drafting Committee had merely been trying to express the idea of entry into force by an agreement not necessarily included in the terms of the treaty; the Drafting Committee would seek some other way to express the idea.

56. The CHAIRMAN suggested that article 24 should be referred back to the Drafting Committee.

*It was so agreed.*¹⁴

The meeting rose at 5.5 p.m.

¹⁴ For resumption of discussion, see 816th meeting, paras. 74-77.

815th MEETING

Thursday, 1 July 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castren, Mr. Elias, Mr. Lachs, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock, Mr. Yasseen.

Law of Treaties

(A/CN.4/175 and Add.1-4, A/CN.4/177 and Add.1 and 2, A/CN.4/L. 107 and L. 108)

(continued)

[Item 2 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(continued)

ARTICLE 25 (Registration and publication of treaties)¹

1. The CHAIRMAN invited the Commission to consider the new text of article 25 proposed by the Drafting Committee, which read:

"Treaties entered into by parties to the present articles shall as soon as possible be registered with

¹ For earlier discussion, see 801st meeting, paras. 1-62.

the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.”

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the problem with article 25 was the overlap of its provisions with those of Article 102 of the Charter. The Drafting Committee had come to the conclusion that the only satisfactory way of dealing with the problem was to state the rule on the registration and publication of treaties without mentioning Article 102. The rule would apply to all States which subscribed to the draft articles, without raising the question of safeguarding the provisions of Article 102.

3. The CHAIRMAN, speaking as a member of the Commission, said that he supported the article as a contribution to open diplomacy. The Drafting Committee had succeeded in working out a formula which eliminated all the controversial points in the former draft of the article, particularly the question of the obligations of States Members of the United Nations under the Charter and the question of treaties concluded between States not Members of the United Nations. Under the new text, the sole source of the obligation to register treaties was the convention which the Commission was preparing.

4. The question of the obligation, if any, of the Secretary-General of the United Nations to perform the tasks laid upon him by that article was answered by the second sentence of the article. If the regulations adopted by the General Assembly so permitted, registration and publication would take place; if not, the responsibility would fall on another authority. Nevertheless, inasmuch as the existing regulations made a distinction between registration, on the one hand, and filing and recording on the other, the Commission should, when drafting the commentary to the article, draw the General Assembly's attention to the need for the revision of certain provisions of the regulations.

5. He invited the Commission to vote on article 25.

Article 25 was adopted by 13 votes to none.

ARTICLE 26 (Correction of errors in texts or in certified copies of treaties)³

6. The CHAIRMAN invited the Commission to consider the new text of article 26 proposed by the Drafting Committee, which read :

“1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected :

(a) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) By executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(c) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter :

(a) Shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(b) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the contracting States;

(c) If an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States and, in the case of a treaty drawn up by an international organization, to the competent organ of the organization.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which it is agreed should be corrected.

4. (a) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the contracting States.”

7. Sir Humphrey WALDOCK, Special Rapporteur, said that paragraph 1 of the new article 26 dealt with the correction of errors in the text of treaties for which there was no depositary; paragraph 2 dealt with the same question in cases where there was a depositary. Paragraph 3 dealt with the different case in which there was no error in the text, but a lack of concordance between two or more language versions. The wording of that paragraph had been chosen so as to avoid the problem whether the provision should be stated as relating to a text or to a version of the text.

8. Mr. TSURUOKA said that he accepted the article as a whole and merely wished to make two drafting suggestions.

9. First, in paragraph 1 (b), the personal pronoun *y* in the French version should be deleted, as it was not very clear and had no equivalent in the English text.

10. Secondly, in paragraph 2 (a), the words “if no objection is raised within a specified time-limit” were not clearly related to the rest of the sentence. Perhaps an explanation should be given in the commentary.

11. Mr. PESSOU said that Mr. Tsuruoka's suggested amendment might make the French text of paragraph 1 (b) incomprehensible. If the personal pronoun *y* was deleted it would be necessary to say *d'apporter au texte*.

³ For earlier discussion of article 26 (The correction of errors in the texts of treaties for which there is no depositary) and article 27 (The correction of errors in the texts of treaties for which there is a depositary), see 802nd meeting, paras. 1-64. In the light of the discussion the Drafting Committee prepared the new version of article 26, which incorporates the substance of the former article 27.

12. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the phrase "within a specified time-limit" had not caused any difficulty for governments; it reflected the procedure invariably followed by the Secretary-General in the matter.

13. Mr. TSURUOKA said that he had no objection to the substance of paragraph 2 (a) but had merely wished to point out that that provision required careful reading to be understood. It should be explained that the depositary notified the contracting States of the error and of the proposal to correct it, and requested a reply within a specified time-limit, on the understanding that the error would be corrected in the manner indicated if no objection was raised within that time-limit.

14. The CHAIRMAN proposed that the Commission should adopt article 26 and request the Special Rapporteur and Mr. Reuter, the Acting Chairman of the Drafting Committee, to settle the drafting questions which had been raised.

Article 26 was adopted by 16 votes to none.

ARTICLE 28 (Depositaries of treaties)³

15. The CHAIRMAN invited the Commission to consider the new text of article 28 proposed by the Drafting Committee, which read :

"1. The depositary of a treaty, which may be a State or an international organization, shall be appointed by the contracting States in the treaty, or in some other manner, to perform the functions set forth in article 29.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance."

16. Sir Humphrey WALDOCK, Special Rapporteur, said that paragraph 1 of article 28 represented a simplified version of the former article 28; it dealt with the appointment of a depositary by the treaty or by a separate agreement of the contracting States. The former article 28 had contained two presumptions: the first, that a competent organ of an international organization would be the depositary in the case of a treaty drawn up within an international organization, and the second, that in the case of a treaty drawn up at a conference, the depositary would be the State in whose territory the conference had been convened. The Drafting Committee had considered that those presumptions were not likely to be very useful in practice and, since they had given rise to some question, had decided to drop them.

17. Paragraph 2 embodied the provision previously contained in the second sentence of paragraph 1 of the former article 29, to the effect that a depositary was under an obligation to act impartially and internationally.

18. Mr. BRIGGS proposed that, in paragraph 1, the word "appointed" be replaced by the word "designated", a more appropriate term and one which corresponded to the French *désigné*.

19. Mr. TSURUOKA questioned whether the last phrase in paragraph 1, "to perform the functions set

forth in article 29", was entirely appropriate, inasmuch as article 29, paragraph 1⁴, said that the functions of a depositary "comprise in particular" those indicated in the following sub-paragraph. Perhaps the words "in particular" should be inserted after the word "perform" in article 28, paragraph 1.

20. Mr. PESSOU said that he found the text of article 28 excellent. The apparent defect to which Mr. Tsuruoka had drawn attention was more imaginary than real and should not prevent the reader from grasping the meaning of the article.

21. Mr. TSURUOKA said that he would gladly follow Mr. Pessou's line of reasoning if the phrase "comprise in particular" in article 29, paragraph 1, could be interpreted to mean that there were other functions in addition to those mentioned but that they were simply not described. In that case there would be nothing illogical about the passage.

22. Mr. PESSOU said that article 29 was not meant to describe functions which were known to all. The phrase used indicated that the functions described were the essential functions.

23. Sir Humphrey WALDOCK, Special Rapporteur, said that he was inclined to share Mr. Pessou's view but thought that the whole question was not a very important one. Paragraph 1 (g) of article 29 stated in general terms that the depositary performed "the functions specified in other provisions of the present articles". In point of fact, paragraphs 1 (a) to (g) covered most of the possible functions of a depositary.

24. He could accept Mr. Briggs's proposal that the word "appointed" should be replaced by the better term "designated".

25. He would like to draw the Commission's attention to the fact that the Drafting Committee had decided, in the light of its new text of articles 28 and 29, that no definition of "depositary" could be included in article 1.

26. Mr. ROSENNE said that he also was inclined to share Mr. Pessou's view, but suggested that Mr. Tsuruoka's point might be met by modifying the wording "set forth in article 29" to read "as set forth in article 29", a phrase which would indicate that the enumeration of functions was not exhaustive.

27. Mr. TSURUOKA said that he accepted article 28 in any event. The sole purpose of his comment had been to improve the form. Since the Special Rapporteur seemed to consider that a cross-reference to article 29 was not indispensable in article 28, he suggested that the last phrase in article 28, paragraph 1, "to perform the functions set forth in article 29", should simply be deleted.

28. Mr. REUTER suggested that, in deference to Mr. Tsuruoka's comment, the words "set forth" might be replaced by the words "referred to" or "provided for".

29. Sir Humphrey WALDOCK, Special Rapporteur, said that he could accept Mr. Reuter's suggestion.

³ For earlier discussion, see 802nd meeting, paras. 65-102, and 803rd meeting, paras. 18-26.

⁴ *vide infra*, para. 35.

30. Mr. PAL proposed the deletion of the words "to perform the functions set forth in article 29"; they were not absolutely necessary and their deletion would dispose of the difficulty which had arisen.

31. Mr. AGO said that article 28 would lose some of its value if the phrase "to perform the functions set forth in article 29" was deleted.

32. Mr. YASSEEN said that the definition of "depository" given in one of the clauses of article 1 had been replaced by a generalization in article 28, indicating what a depository was; the phrase "to perform the functions set forth in article 29" therefore had its use and should be retained.

33. Mr. REUTER said he doubted very much whether the phrase in question should be retained at all. Paragraph 1 introduced two substantive rules of law; the first that the depository might be a State or an international organization; the second, that the depository was appointed by the contracting States in the treaty or in some other manner. That was the essence of the paragraph, and the deletion of the words "to perform the functions set forth in article 29" could not have any serious consequences, whereas it would have the advantage of preventing any discussion.

34. The CHAIRMAN put to the vote Mr. Pal's proposal for the deletion of the phrase "to perform the functions set forth in article 29".

Mr. Pal's proposal was adopted by 10 votes to 3, with 3 abstentions.

Paragraph 1 as thus amended was adopted by 16 votes to none.

Article 28 as amended was adopted as a whole by 16 votes to none.

ARTICLE 29 (Functions of depositaries)⁵

35. The CHAIRMAN invited the Commission to consider the new text of article 29 proposed by the Drafting Committee, which read:

"1. The functions of a depository, unless the treaty otherwise provides, comprise in particular:

(a) Keeping the custody of the original text of the treaty, if entrusted to it;

(b) Preparing certified copies of the original text and any further texts in such additional languages as may be required by the treaty or by the established rules of an international organization, and transmitting them to the contracting States.

(c) Receiving any signatures to the treaty and any instruments and notifications relating to it;

(d) Examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question;

(e) Informing the other contracting States of acts and notifications relating to the treaty;

(f) Informing the contracting States when the number of signatures or of instruments of ratification,

accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;

(g) Performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State and the depository as to the performance of the latter's functions, the depository shall bring the question to the attention of the other contracting States or, where appropriate, of the competent organ of the organization concerned."

36. Sir Humphrey WALDOCK, Special Rapporteur, said that, in consequence of the transfer to article 28 of the provision which had appeared in the second sentence of paragraph 1 of article 29 of the 1962 text,⁶ the Drafting Committee had reworded the paragraph to state the basic functions of the depository, and in so doing had shortened the wording.

37. The new paragraph 2 of article 29 represented a shortened version of the former paragraph 8, from which it did not differ in substance.

38. Mr. ROSENNE said that he was prepared to accept article 29 as it stood, but would propose the insertion in paragraph 1 of an additional sub-paragraph reading "registering the treaty in accordance with article 25 of these articles". In articles 4 and 5 of the regulations adopted by the General Assembly for the registration and publication of treaties and international agreements,⁷ provision was made for the registration of a treaty by the depository.

39. He suggested that the commentary to article 29 should state that the enumeration in paragraph 1 was not intended to be exhaustive, either with respect to the law of treaties or with respect to other branches of the law. For example, a depository might be asked who were the parties to the treaty and it would have to answer. Requests for such information were addressed to the depository by the Registry of the International Court of Justice in cases where Article 63 of the Statute of the Court had to be applied.

40. Mr. AGO said that in paragraph 1 (e) the word "acts" apparently covered signatures, reservations and instruments. As notifications were also acts, the word "acts" alone would suffice.

41. Mr. TUNKIN proposed the deletion from paragraph 1 (e) of the word "other" before "contracting States". The depository might be not a State but an international organization.

42. Sir Humphrey WALDOCK, Special Rapporteur, said that he did not know enough about existing practice to form a firm opinion on Mr. Rosenne's proposal; at first sight, it seemed a reasonable one.

43. With regard to Mr. Ago's point, he said it would be preferable to maintain the English text of paragraph 1 (e) unchanged as the word "acts" could include legal instruments but hardly notifications.

⁶ *vide supra*, para. 17.

⁷ For the text of the regulations, see *Yearbook of the International Law Commission, 1962*, Vol. II, pp. 194 and 195.

⁵ For earlier discussion, see 803rd meeting, paras. 27-107.

44. Mr. BRIGGS said he agreed with the Special Rapporteur about the text of paragraph 1 (e).

45. The CHAIRMAN, speaking as a member of the Commission, said that he could not agree with Mr. Ago. In his opinion, the word "acts" meant the acts of other contracting States, whereas "notifications" were actions initiated by the depositary.

46. Mr. AGO said that he did not think that the word "notifications" could mean acts emanating from the depositary; in his view, what was meant was notifications made to the depositary. It was provided that instruments of ratification, accession, acceptance or approval would be communicated to the depositary, the contracting States being free either to deposit the instruments itself or to send a "notification" of it. Notification was therefore a true act which emanated from a contracting State. The word "communications" might perhaps be substituted for "notifications".

47. Mr. REUTER said that the title and text of article 29 *bis*⁸ differentiated "communications" and "notifications". The terminology used in articles 29 and 29 *bis* should be concorded.

48. The CHAIRMAN, speaking as a member of the Commission, said that some communications were simply statements of fact made by the depositary, such as that a treaty had entered into force, or else had not entered into force on the date specified in the treaty itself. He would therefore agree to the substitution of the word "communications" for "notifications".

49. Mr. ELIAS said that, in order to meet Mr. Ago's point, paragraph 1 (e) might be redrafted to read: "informing the other contracting States of all acts, including notifications, relating to the treaty". Alternatively, the words "and notifications" might be dropped and the commentary might explain that the term "acts" included notifications.

50. Mr. LACHS said that, although he had no strong objection to Mr. Rosenne's proposal, he hesitated to support it because of the consequences it might have for Member States of the United Nations. Article 102 of the Charter imposed obligations concerning the registration of treaties with the Secretariat, and failure to discharge them would debar Member States from invoking a treaty to which they were parties before any United Nations organ. What would be their position if a depositary neglected to perform its duty to register the treaty? Rather than include a rule of the kind proposed by Mr. Rosenne, the Commission should leave to the parties, at their own risk, the decision whether or not to delegate the function of registration to a depositary.

51. The CHAIRMAN, speaking as a member of the Commission, said that as a general rule the depositary was not expected to submit the treaty to the Secretary-General of the United Nations for registration, but might be authorized to do so. He knew of several cases in which a treaty had specified that the depositary—not a signatory to the treaty—was to arrange for the registration of the treaty. Should that practice be made

a general rule or not? If it was, would that not be inconsistent with actual practice? He had no fixed opinion on the point.

52. Mr. ROSENNE said that, as he had indicated during the discussion,⁹ the provisions concerning a depositary could not be based on the assumption that it would fail to carry out its functions. In any case, it was impossible to provide in the text against any such eventuality. Presumably if a depositary neglected to register the treaty with the United Nations, though required to do so under the terms of the treaty, and one of the parties wished to invoke it in a United Nations organ, that party would effect the registration itself. The practice of imposing the duty to register on the depositary was sufficiently well established to warrant the inclusion of the rule he had proposed. It would still be open to the parties to agree on some other method.

53. Mr. LACHS said that he would not press an objection to the proposal, but he still doubted whether it was necessary to enumerate all the possible functions of a depositary. It was clear from the introductory sentence of paragraph 1 that the list was not intended to be exhaustive.

54. Sir Humphrey WALDOCK, Special Rapporteur, said that he would prefer not to incorporate Mr. Rosenne's proposal in article 29 until its implications for the operation of Article 102 of the Charter, and for the United Nations regulations concerning the registration and publication of treaties, had been fully examined.

55. Mr. REUTER asked whether the Commission had to take a final decision at that juncture. What was being proposed was simply an addition which would not upset the text and which could be introduced during the final reading. He suggested that the Commission should decide to consider the matter at that later stage.

56. Mr. TUNKIN said he supported Mr. Reuter's suggestion that the provision proposed by Mr. Rosenne should be examined at the next session. The Commission might find that article 29 was not the right context.

57. The CHAIRMAN said that the United Nations rules of procedure concerning reconsideration were rather complicated. He believed, however, that if the Commission wished to adopt article 29, it could do so with the proviso that whatever it adopted at that stage would be reviewed again, if necessary, at a later session, and Mr. Rosenne's reservation could be placed on record and examined later, together with the few articles left pending.

58. Mr. CASTRÉN said that when the Commission had decided not to prepare commentaries on part I of the draft articles for the time being, it had also decided that the whole text would be submitted to governments forthwith. It was perfectly free, therefore, to add further provisions and to modify any particular article at a later stage.

59. Sir Humphrey WALDOCK, Special Rapporteur, said he supported Mr. Reuter's suggestion.

60. It would be helpful if the Secretariat could prepare a short paper on existing practice to enable the Commis-

⁸ *vide infra*, para. 61.

⁹ 803rd meeting, para. 43.

sion to reach a decision on Mr. Rosenne's proposal at the next session.

It was agreed to defer consideration of Mr. Rosenne's proposal for an additional sub-paragraph in article 29 until the next session.

Article 29 was adopted by 16 votes to none.

ARTICLE 29 (*bis*) (Communications and notifications to contracting States)

61. The CHAIRMAN invited the Commission to consider the text of a new article 29 (*bis*) proposed by the Drafting Committee, which read :

"Whenever it is provided by the present articles that a communication or notification shall be made to contracting States, such communication or notification shall be made :

(a) In cases where there is no depositary, directly to each of the States in question;

(b) In cases where there is a depositary, to the depositary for communication to the States in question".

62. Sir Humphrey WALDOCK (Special Rapporteur) explained that the purpose of the new article proposed by the Drafting Committee was to give effect to Mr. Tunkin's suggestion¹⁰ that the drafting of the provisions concerning the depositary should be simplified by consolidating in one article provisions covering both the case where there was and the case where there was not a depositary.

Article 29 (bis) was adopted by 16 votes to none.

63. Sir Humphrey WALDOCK, Special Rapporteur, said that, after examining Mr. Rosenne's proposal (A/CN.4/L.108)¹¹ for the inclusion of a provision dealing with the time at which a notification became effective and providing a short interval for the necessary administrative processes to be carried out, the Drafting Committee had decided that the proposal should be discussed at a later stage, after virtually all the articles in the draft had been completed, because it had a bearing on the provisions concerning withdrawal from and termination of a treaty.

64. Mr. ROSENNE said that the Drafting Committee's decision was acceptable to him.

The meeting rose at 11.40 a.m.

¹⁰ 803rd meeting, para. 72.

¹¹ 803rd meeting, para. 30.

816th MEETING

Friday, 2 July 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Lachs, Mr. Pal, 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.1-4, A/CN.4/177 and Add.1 and 2, A/CN.4/L.107)

(continued)

[Item 2 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(continued)

1. The CHAIRMAN invited the Commission to consider the texts of the articles which had been referred back to and revised by the Drafting Committee.

ARTICLE 2 (Treaties and other international agreements not within the scope of the present articles)¹

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the only changes in the revised text of article 2 were drafting changes; it read :

"The fact that the present articles do not relate

(a) To treaties concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form

shall not affect the legal force of such treaties or agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles."

Article 2 was adopted by 14 votes to none.

ARTICLE 3 (Capacity of States to conclude treaties)²

3. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 3 read :

"1. Every State possesses capacity to conclude treaties.

2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down."

4. Paragraph 1 in the English version had been re-drafted in order to conform to the French. Paragraph 2 had been modified on the lines suggested by Mr. Ago at the 811th meeting. The Drafting Committee hoped that the changes would go a considerable way towards meeting some of the objections to the earlier text and that the revised text would commend itself to the majority of the Commission.

5. Mr. BRIGGS asked that the two paragraphs be put to the vote separately.

Paragraph 1 was adopted by 11 votes to 2, with 1 abstention.

Paragraph 2 was adopted by 7 votes to 3, with 4 abstentions.

Article 3 as a whole was adopted by 7 votes to 3, with 4 abstentions.

¹ For earlier discussions, see 777th meeting, in particular paras. 71-73 and 78, and 810th meeting, paras. 12-27.

² For earlier discussions, see 779th meeting, paras. 1-88, 780th meeting, paras. 1-16, 810th meeting, paras. 28-78, and 811th meeting, paras. 2-51.