

Document:-  
**A/CN.4/SR.884**

**Summary record of the 884th meeting**

Topic:  
**Law of Treaties**

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the rules according to which the purpose, which was interpretation, was to be achieved.

98. Mr. ROSENNE said that it seemed unfortunate that article 69 was being discussed separately; on previous occasions the Commission had discussed all the articles on interpretation as an entity.

99. There were three points to which he wished to draw attention. First, could the Special Rapporteur confirm that throughout the series of articles on interpretation, the word "party" had the meaning given to it by the Commission in article 1(1)(f) *bis* of its 1965 text (A/CN.4/L.115), namely, "a State which has consented to be bound by a treaty and for which the treaty has come into force"?

100. Secondly, there was a certain ambiguity in paragraphs 3 (a) and (b) which referred to "the parties", whereas paragraph 2 (a), and by implication paragraph 2 (b), referred to "all the parties". In article 69 it was even more important than in article 68 to make it clear that the reference was to all the parties. If paragraph 3 were put to the vote as it stood, he would ask for a separate vote on paragraphs 3 (a) and (b), so that he could abstain.

101. Lastly, the Special Rapporteur had carefully explained that there was no intention of creating a hierarchy of rules of interpretation; but his explanation had been made in reference to article 69, whereas in his report and in previous discussion in the Commission the absence of any such hierarchy had been taken to apply not only to article 69 but to article 70 and to some extent to article 72. He would be glad if the Special Rapporteur would confirm that the division of article 69 and 70 and paragraph 3 of article 72 into three separate articles was essentially a matter of drafting convenience and did not prejudice the main principle of the unity of the process of interpretation.

102. He agreed in other respects with what the Special Rapporteur proposed to include in his commentary on article 69. He hoped, however, that there would be a single commentary on all three articles.

The meeting rose at 6 p.m.

### 884th MEETING

*Tuesday, 5 July 1966, at 11 a.m.*

*Chairman:* Mr. Herbert W. BRIGGS

later, Mr. Mustafa Kamil YASSEEN

*Present:* Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Castren, Mr. El-Erian, Mr. Jiménez de Aréchaga, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock.

### Law of Treaties

(A/CN.4/186 and Addenda; A/CN.4/L.107, L.115)

(continued)

[Item 1 of the agenda]

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

#### ARTICLE 69 (General rule of interpretation)<sup>1</sup> (continued)

1. The CHAIRMAN invited the Commission to continue consideration of article 69.

2. Mr. CASTRÉN said that he was in favour of the text submitted by the Drafting Committee, but he supported the proposal made by Mr. Tsuruoka at the previous meeting<sup>2</sup> to change the position of paragraph 4 and place it immediately after paragraph 1. He would even go further and make the text of paragraph 4, preceded by the word "However", a second sentence in paragraph 1. It was obvious that the two provisions should be taken together and that the idea stated in paragraph 4 formed an exception to what was provided in paragraph 1.

3. Mr. VERDROSS said he also supported Mr. Tsuruoka's proposal regarding paragraph 4.

4. Paragraph 1 gave the impression that the object and purpose of the treaty should be sought elsewhere than in the text. In order to overcome that difficulty, the words "and in the light of" should be replaced by the words "taking into account".

5. Mr. REUTER said that he approved of the proposed text. Without wishing to reopen the substantive discussion he would, however, point out that the word "contexte" was used inelegantly and indeed incorrectly in the French text. It was possible to speak of the context with reference to a provision in a treaty, but not with reference to the treaty as a whole; the expression "contexte du traité" was therefore unfortunate, especially in paragraph 2, where the "context" was opposed to the "text" and where it was stated that the context included instruments other than the treaty. He would not make any formal proposal, but he thought the drafting would be improved if the words "du traité" after the word "contexte" were deleted in paragraphs 1 and 2.

6. Generally speaking, article 69 introduced the basic idea that different instruments which were formally separate could legally constitute a single homogeneous whole; in other words, that a treaty could consist of several treaties. That important and correct idea was well expressed, which made the minor defect due to the use of the word "contexte" all the more regrettable.

7. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Reuter's remark was equally applicable to the English text. His first proposal for the articles on interpretation had referred to the meaning to be given to each term "in its context in the treaty".<sup>3</sup> He had since bowed to the views of other members who had

<sup>1</sup> For text see previous meeting, para. 90.

<sup>2</sup> Para. 97.

<sup>3</sup> *Yearbook of the International Law Commission, 1964*, vol. II, p. 52, article 70.

expressed a preference for the language used in the text now before the Commission.

8. Mr. JIMÉNEZ de ARÉCHAGA said that the 1964 text of article 69,<sup>4</sup> which was largely reproduced in the Drafting Committee's text, had been well received both by governments and in legal circles. It was therefore undesirable to depart from that text.

9. Paragraph 1 of the Drafting Committee's text stated the golden rule of interpretation. Paragraph 4, on the other hand, dealt with a minor point which was of limited application; in fact, the Drafting Committee had even considered dropping that provision altogether. It would therefore detract from the importance of paragraph 1 if the contents of paragraph 4 were incorporated in it or placed immediately after it as a new paragraph 2. Such a change would also have the disadvantage of breaking the continuity of the provisions of article 69; the present paragraph 2 contained a definition of the "context of a treaty", an expression used in paragraph 1; paragraph 3 logically followed paragraphs 1 and 2, since it referred to means of interpretation additional to those set out in paragraph 1.

10. With regard to the point raised by Mr. Verdross, the use of the conjunction "and" before "in the light of its object and purpose" made the meaning clear in the English text: the object and purpose of the treaty were not divorced from its context.

11. Lastly, he favoured the retention of the expression "the context of the treaty", which had been used in the 1964 text, in order to show that the reference was to instruments such as those referred to in paragraph 2 (a) and (b) and not, for example, to the circumstances surrounding the conclusion of a treaty.

12. The CHAIRMAN\*, speaking as a member of the Commission, said he accepted the basic idea underlying article 69, namely, that a treaty must be interpreted in good faith in accordance with the meaning to be given to its terms in their context and in the light of the object and purpose of the treaty. He was opposed to the use of the expression "the ordinary meaning", but the Drafting Committee had not accepted the alternative wording he had suggested. He still believed that it would be possible to avoid using that unsatisfactory expression and thereby also to obviate the need for paragraph 4.

13. He agreed with the Special Rapporteur that article 69 showed no intention of establishing a rigid hierarchy of means of interpretation.

14. He would vote in favour of article 69.

15. Mr. AGO endorsed Mr. Reuter's comments on the use of the word "context" and suggested that the difficulty might be overcome by replacing the words "to its terms in the context of the treaty" in paragraph 1 by the words "to the terms of the treaty in their context".

16. Mr. TUNKIN pointed out that the purpose of paragraph 2 was to define the special concept of the "context of a treaty".

17. Mr. REUTER said he did not see why paragraph 2 should not begin with the words "For the purpose of its interpretation, a treaty shall comprise . . ."

18. Mr. JIMÉNEZ de ARÉCHAGA said that, in view of the contents of paragraph 2 and the intention of the article, which referred to the meaning given to the terms of the treaty in their context in the treaty as a whole, it was necessary to use the expression "in their context in the treaty" and not merely "in their context".

19. Sir Humphrey WALDOCK, Special Rapporteur, said that he would hesitate to remove the reference to the context of the treaty from paragraph 2, as that would transform the paragraph into a definition of a "treaty" for the special purpose of interpretation. It seemed inadvisable to introduce that expanded notion of "treaty", which might have implications for other articles of the draft.

20. Mr. JIMÉNEZ de ARÉCHAGA pointed out that if Mr. Reuter's suggestion for paragraph 2 were adopted, the draft articles would contain two different definitions of the term "treaty", one in article 1 and another, for purposes of interpretation, in article 69.

21. Paragraph 2 of article 69 was intended to define the expression "the context of a treaty". That expression was meant to cover documents which were not actually part of a treaty, but which shed light on its terms. An example of such documents was the statements on membership and withdrawal which had been agreed upon at the San Francisco Conference.<sup>5</sup> The effect of paragraph 2 was to give those documents a status different from that of mere preparatory work.

22. He was surprised that the definition of the "context of a treaty" should have given rise to so much debate, since the matter had been discussed in 1964 and the definition had not been criticized by governments.

23. Mr. TUNKIN said it would be awkward to have two definitions of the term "treaty", a general definition in article 1 and a definition for purposes of interpretation in article 69. He urged the adoption of the text proposed by the Drafting Committee.

24. Mr. REUTER reiterated that he had not intended to raise a point of substance. In order to get rid of the unsatisfactory expression "The context of a treaty", paragraph 2 might be worded "For the purpose of its interpretation, a treaty shall comprise, in addition to the text . . ."

25. Mr. AGO said he had been about to make exactly the same proposal.

26. Sir Humphrey WALDOCK, Special Rapporteur, said that he could not accept that proposal, which would place paragraph 2 on a different level from paragraph 1. He proposed that the words "to be given to its terms in the context of the treaty" in paragraph 1 should be replaced by the words "to be given to the terms of the treaty in their context" and that the opening sentence of paragraph 2 should be reworded to read:

"The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:"

27. Mr. REUTER said he accepted the Special Rapporteur's proposal.

<sup>4</sup> *Ibid.*, p. 199.

\* Mr. Briggs.

<sup>5</sup> United Nations Conference on International Organization, 1945, vol. I, pp. 615 *et seq.*

28. Mr. ROSENNE requested separate votes on paragraphs 3 (a) and 3 (b), on which he would abstain.
29. Mr. RUDA requested a separate vote on paragraph 3 (c).
30. The CHAIRMAN put paragraphs 3 (a), 3 (b) and 3 (c) to the vote separately.

*Paragraph 3 (a) was adopted by 15 votes to none, with 1 abstention.*

*Paragraph 3 (b) was adopted by 15 votes to none, with 1 abstention.*

*Paragraph 3 (c) was adopted by 13 votes to none, with 3 abstentions.*

31. The CHAIRMAN put article 69 to the vote as a whole, with the amendments to paragraphs 1 and 2 proposed by the Special Rapporteur.

*Article 69 as a whole, as amended, was adopted by 16 votes to none.<sup>6</sup>*

ARTICLE 70 (Supplementary means of interpretation) [28]<sup>7</sup>

32. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following new title and text for article 70:

*"Supplementary means of interpretation"*

"Recourse may be had to supplementary means of interpretation including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 69, or to determine the meaning when the interpretation according to article 69:

- (a) leaves the meaning ambiguous or obscure; or  
(b) leads to a result which is manifestly absurd or unreasonable."

33. A number of changes had been made in the Special Rapporteur's text (A/CN.4/186/Add.6) which the Commission had discussed at its 872nd and 873rd meetings. First, the expression "further means of interpretation" in the title and in the opening phrase had been replaced by "supplementary means of interpretation". Secondly, the words "to verify" had been deleted from the opening sentence. Thirdly, the words "in the light of the objects and purposes of the treaty" had been deleted from sub-paragraph (b).

34. Sir Humphrey WALDOCK, Special Rapporteur, explained that the two deletions were not intended to alter the meaning. The idea of "verification" was contained in "confirmation". The words "in the light of objects and purposes of the treaty" had been dropped as unnecessary and their deletion had no particular significance.

35. In reply to a question by Mr. AGO, he said that the word "supplementary" was the closest English equivalent to the French word "*complémentaire*".

36. Mr. EL-ERIAN said he was grateful to the Special Rapporteur for giving favourable consideration to the

<sup>6</sup> For further discussion of article 69, see 893rd meeting, paras. 7-34. The text, however, was not amended.

<sup>7</sup> For earlier discussion, see 869th meeting (paras. 52-70), 870th-872nd meetings, and 873rd meeting, paras. 1-48.

suggestion he had made at the 871st meeting, that the words "further means" should be replaced by "supplementary means" in order to remove the discrepancy between the English, French and Spanish texts and facilitate the task of finding exact equivalents in the other languages into which the articles would eventually be translated.

37. He would have preferred to retain the words "in the light of the objects and purposes of the treaty", in order to soften any impression given by articles 69 and 70 of two successive and separate processes of interpretation. But after hearing the Special Rapporteur explain that those words were unnecessary and that their deletion had no particular significance, he was prepared to vote in favour of the Drafting Committee's text.

38. Mr. TSURUOKA said that, although he was not opposed to article 70, he had not changed his views since the discussion at the 871st and 872nd meetings. He was still convinced that recourse to the preparatory work should be given a rather more important place in the process of interpreting a treaty; it should not be regarded as a "supplementary means of interpretation". Moreover, there was not much difference between the means referred to in article 69, paragraph 3 (b), and those referred to in article 70.

39. Mr. ROSENNE said that his views were similar to those of Mr. Tsuruoka.

40. The CHAIRMAN,\* speaking as a member of the Commission, said that he, too, agreed with Mr. Tsuruoka. He regretted that the Commission had not seen fit to include the subject matter of article 70 in article 69, but he would nevertheless vote in favour of article 70.

*Article 70 was adopted by 15 votes to none.*

41. Sir Humphrey WALDOCK, Special Rapporteur, said that, in preparing the commentaries on the articles on interpretation, it would be necessary to take into account certain differences of opinion that had arisen in the Commission regarding the relationship between articles 69 and 70. He himself believed that the use, in article 70, of the words "in order to confirm the meaning resulting from the application of article 69", provided the strongest link between the two articles which was acceptable to the majority of the Commission.

ARTICLE 72 (Interpretation of treaties expressed in two or more languages) [29]<sup>8</sup>

42. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the following title and text for article 72:

*"Interpretation of treaties expressed in two or more languages"*

"1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

\* Mr. Briggs.

<sup>8</sup> For earlier discussion, see 874th meeting, paras. 1-43.

“ 2. A version of the treaty expressed in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provide or the parties so agree.

“ 3. The terms of the treaty are presumed to have the same meaning in each authentic text. Except in the case mentioned in paragraph 1, when a comparison of the texts discloses a difference of meaning which the application of articles 69 and 70 does not remove, a meaning which as far as possible reconciles the texts shall be adopted ”.

43. The main difference between that text and the one proposed by the Special Rapporteur in his sixth report (A/CN.4/186/Add.7) was that the substance of the Special Rapporteur's paragraph 3 had been incorporated in the new text of paragraph 1.

44. Mr. VERDROSS pointed out that in paragraph 3, as in paragraph 4 of the version considered at the 874th meeting, the words “ as far as possible ” led the reader to ask himself what would happen if it was not possible to find a meaning which reconciled the texts. Either the words “ as far as possible ” should be deleted or a provision should be added stating that, if it was not possible to find a meaning which reconciled the texts, it was the text in the language in which the treaty had been drafted that was to be considered.

45. Mr. CASTRÉN pointed out that as the Drafting Committee had changed the position of the words “ *autant que possible* ” in the French text, it now corresponded to the English and no longer had the defect to which Mr. Verdross had referred. The words “ as far as possible ” should therefore be retained.

46. Mr. TSURUOKA said he was satisfied with the new wording of article 72, which he preferred to the previous version. At the 874th meeting he had instanced a treaty between Japan and Thailand the text of which was in English as well as in Japanese and Thai, and which stipulated that in the event of a dispute over interpretation the English text should prevail. Paragraph 1 of the new text dealt with that case more satisfactorily than paragraph 3 of the previous version had done.

47. Mr. AGO suggested that, in paragraph 1, it might be necessary to insert the word “ otherwise ” between the words “ parties ” and “ agree ”, since that part of the sentence referred to cases in which the parties concluded an agreement otherwise than by inserting a provision in the treaty.

48. Sir Humphrey WALDOCK, Special Rapporteur, said that the expression “ the parties agree ” was used in certain other places in the draft. It would, however, be desirable to see whether the expression “ the parties otherwise agree ” was not also used in some places with the same meaning; if so, an effort should be made to achieve uniformity throughout the draft.

49. The CHAIRMAN put article 72 to the vote.

*Article 72 was adopted by 15 votes to none.*<sup>9</sup>

<sup>9</sup> For a later amendment to the title and text of article 72, see 893rd meeting, para. 43.

ARTICLE 13 (Consent to be bound expressed by accession) [12]<sup>10</sup>

50. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that having regard to the votes which had taken place in 1965,<sup>11</sup> the Drafting Committee had decided to omit articles 8 and 9 on participation in a treaty. It had considered that some of the legal aspects of participation could be covered in article 13, dealing with consent to be bound expressed by accession. The Drafting Committee now proposed a new version of that article which read :

*“ Consent to be bound expressed by accession ”*

“ The consent of a State to be bound by a treaty is expressed by accession when :

(a) the treaty or an amendment to the treaty provides that such consent may be expressed by that State by means of accession;

(b) it appears from the circumstances of the conclusion of the treaty that the States concerned were agreed that such consent may be expressed by that State by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession ”.

51. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the general questions involved had been fully discussed in 1965<sup>12</sup> and that the Commission had been unable to arrive at a conclusion, none of the proposals then made having been adopted. It had been clear that any decision the Commission might reach by means of a vote would be taken by a narrow majority, and the Drafting Committee had therefore considered that it would be preferable to omit articles 8 and 9. Although the main issue of participation had thus not been dealt with, article 13 as now redrafted did touch on the problem.

52. Mr. AGO said that, in order to bring the French text into line with the English, the words “ *s'exprimer par l'adhésion de cet Etat* ” in sub-paragraphs (a), (b) and (c) should be replaced by the words “ *être exprimé par cet Etat par voie d'adhésion* ”.

53. The CHAIRMAN put to the vote article 13, subject to amendment of the French text as proposed by Mr. Ago.

*Article 13 was adopted by 14 votes to none, with 1 abstention.*<sup>13</sup>

54. Mr. TUNKIN, explaining his vote, said that he very much regretted that the principle of general partici-

<sup>10</sup> For earlier discussion of article 13, see *Yearbook of the International Law Commission, 1962*, vol. I, 648th, 649th, 650th, 665th and 668th meetings. The text of the article, then renumbered article 11, was adopted at the 668th meeting. It was again discussed (as article 13) at the first part of the seventeenth session; see *Yearbook of the International Law Commission, 1963*, vol. I, 786th meeting, 787th meeting (paras. 1 and 2) and 812th meeting, footnote 4.

<sup>11</sup> *Yearbook of the International Law Commission, 1965*, vol. I, 795th meeting, paras. 42-59.

<sup>12</sup> *Ibid.*, 791st meeting, paras. 61-86, 792nd-795th meetings, and 796th meeting, paras. 1-8.

<sup>13</sup> For a later amendment to the title of article 13, see 886th meeting, para. 114.

pation in general multilateral treaties had not found expression in the draft articles. He had abstained from voting on article 13 because it cast doubt on that very important principle of contemporary international law. General multilateral treaties played a most important part in the development of general international law, and the very essence of those treaties required that they should be open to participation by all States. As was well known, even within the United Nations a practice existed which was in conflict with fundamental principles of contemporary international law and which was an outcome of the cold war. He hoped that the diplomatic conference which would consider the draft articles on the law of treaties would remedy the omission.

*Mr. Yasseen took the Chair.*

55. Mr. EL-ERIAN expressed his regret at the Commission's failure to work out an acceptable text for a provision dealing with the important problem of universal participation in the framing of general rules of international law. The gap that left in the draft articles was particularly unfortunate, because in most other instances the Commission had achieved a fairly wide measure of agreement on controversial issues. It could take pride in its record over the years of reconciling different points of view. The decision not to take a vote on the issue of participation in general multilateral treaties was wise, however, because it was clear that even if a satisfactory text had been formulated, the majority would have been a narrow one.

56. Nevertheless, the thesis that all States were entitled to participate in the creation of general rules of international law was well-founded both in theory and in practice and, with regard to general multilateral treaties as defined in the commentary on articles 8 and 9 of the 1962 text,<sup>14</sup> he could not accept the argument that States were free to choose their partners by analogy with municipal systems of the law of contract. If the purpose of a codification conference was to codify general rules on questions of common interest, then all States had the right to take part in the process by virtue of their sovereign equality.

57. Mr. BRIGGS, speaking as Chairman of the Drafting Committee, proposed that the Commission should take a formal decision to delete articles 8 and 9.

58. Mr. JIMÉNEZ de ARÉCHAGA said that there was no need for the Commission to vote on the Drafting Committee's recommendation concerning articles 8 and 9. He interpreted the affirmative vote on article 13 to mean that that recommendation was accepted.

59. Mr. EL-ERIAN pointed out that the Commission had taken no decision either in favour of or against articles 8 and 9, but had only decided not to make any reference to participation in a treaty in its draft at that stage.

60. Mr. TUNKIN pointed out that as the Drafting Committee had not put forward any texts for articles 8 and 9, there was nothing for the Commission to delete; but there was general agreement that it would be inadvisable to vote on the principle at issue at that stage,

because there was little likelihood of reaching agreement by a substantial majority.

61. Mr. REUTER said he agreed with Mr. Tunkin and Mr. El-Erian: articles 8 and 9 had not been deleted, but merely omitted.

62. The CHAIRMAN, speaking as a member of the Commission, said he too thought that article 13 did not meet the requirements which articles 8 and 9 were to have met. A gap would be left in the draft if it omitted to deal with participation in general multilateral treaties, especially codifying treaties, to which he believed that every State was entitled to accede in the interests of the international community. The work of codification was not the private preserve of an exclusive club or even of a certain majority of States: it should be open to all States to take part in it. He had been in favour of including article 8 in the draft, but had accepted the minimum proposal in article 13 on the clear understanding that the vote on article 13 in no way prejudged the Commission's attitude to articles 8 and 9.

63. Mr. BRIGGS, Chairman of the Drafting Committee, said he agreed with Mr. Tunkin. He had been mistaken in proposing that the Commission should vote on the Drafting Committee's recommendation that articles 8 and 9 be deleted and he withdrew the proposal.

64. Speaking as a member of the Commission, he said that the implications of the vote on article 13 could be explained in the commentary.

65. Sir Humphrey WALDOCK, Special Rapporteur, agreed.

66. Explaining his vote on article 13, he said that he too regretted the absence of any provisions on participation in a treaty, since that left a gap in the general scheme of the draft. As he had indicated in earlier reports, his personal view was that the widest possible participation in general multilateral treaties was desirable. The difficulty had arisen over finding the right form of words to express an idea about which there was probably a fairly wide measure of agreement in the Commission.

67. Mr. CASTRÉN said that, for the reasons given by previous speakers, he also regretted the omission from the draft of articles 8 and 9.

68. Mr. AGO said that, as there was so much regret, perhaps the Drafting Committee should try to produce a text. He noted, however, that although everyone deplored the fact that there was a gap in the draft, no one had suggested how it could be filled.

69. The CHAIRMAN, speaking as a member of the Commission, observed that the conference of plenipotentiaries would be sure to remedy the defect.

ARTICLE 15 (Exchange or deposit of instruments of ratification, accession, acceptance or approval) [13]<sup>15</sup>

70. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed the following title and text for article 15:

<sup>14</sup> *Yearbook of the International Law Commission, 1962, vol. II, p. 168.*

<sup>15</sup> For earlier discussion, see *Yearbook of the International Law Commission, 1965, vol. I, 787th meeting, paras. 4-98, 812th meeting, paras. 65-77, and 816th meeting, paras. 28 and 29.*

“*Exchange or deposit of instruments of ratification, accession, acceptance or approval*”

“Unless the treaty otherwise provides, instruments of ratification, accession, acceptance or approval establish the consent of a State to be bound by a treaty upon:

- (a) Their exchange between the contracting States;
- (b) Their deposit with the depositary; or
- (c) Notification to the contracting States or to the depositary, if so agreed.

71. The Drafting Committee had considered the proposal that instruments of ratification, accession, acceptance or approval should take effect after a stipulated interval of time, but had come to the conclusion that the matter could be left to those responsible for drawing up the treaty and that the clause “unless the treaty otherwise provides” would be enough to meet the point. During discussions in the Commission, some members had pointed out that the task of a depositary would become much more difficult if the traditional rule that a treaty entered into force upon the exchange or deposit of certain instruments was modified by the introduction of a thirty- or ninety-day rule.<sup>16</sup> He had been authorized by Mr. Rosenne, who had originally proposed a ninety-day rule,<sup>17</sup> to state that that proposal was withdrawn.

72. Sir Humphrey WALDOCK, Special Rapporteur, explained that some difficulty had arisen over the phrase “becomes operative”, which had been used in the text approved during the second part of the seventeenth session (A/CN.4/L.115). Members would recall the title of article 12, “Consent to be bound expressed by ratification, acceptance or approval”. It was difficult to find appropriate language to describe the point in time at which the instrument or notification took effect and the phrase “becomes effective” had been criticized on the ground that it might cast doubt on the provisions of article 12 and of certain other articles. In the interests of greater precision, the Drafting Committee was now proposing the phrase “establish the consent of a State to be bound”.

73. Mr. ROSENNE thanked the Special Rapporteur and the Drafting Committee for the care with which the proposal he had made at the seventeenth session had been considered. He was satisfied that the problem had been examined from all angles, including entry into force, termination and reservations. He was still inclined to believe that in the long run it would be beneficial to introduce, as a standard practice applicable to general multilateral treaties, a short interval before the exchange or deposit of instruments or a notification to a depositary took effect in regard to the States for which it was intended; but he recognized that, for the time being, no further progress could be achieved than what was suggested in the Drafting Committee’s text. That being so, he no longer wished to maintain his abstention in the vote on article 19, paragraph 5, which had taken place at the 816th meeting, the reservation he had made on article 22 at the same meeting,<sup>18</sup> or the other reservations he had entered during the seventeenth session on the

question of the moment from which an act relating to a treaty took effect in relation to the other parties to a multilateral treaty.

74. Mr. AGO said that he approved of the substance of the article. From the point of view of drafting, the word “Notification” in sub-paragraph (c) was not clear; it should be amended to read “Their notification” or “Notification of the fact that those instruments have been established”.

75. Sir Humphrey WALDOCK, Special Rapporteur, proposed that the word “Notification” should be replaced by the words “Their notification”.

*It was so agreed.*

76. The CHAIRMAN put article 15 to the vote, as amended.

*Article 15, as amended, was adopted by 17 votes to none.<sup>19</sup>*

ARTICLE 23 (Entry into force of treaties) [21]<sup>20</sup>

77. Mr. BRIGGS, Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 23:

“*Entry into force of treaties*”

“1. A treaty enters into force in such manner and upon such date as it may provide or as the States which adopted its text may agree.

“2. Failing any such provision or agreement, a treaty enters into force as soon as the consent of all the States which adopted its text to be bound by the treaty has been established.

“3. When the consent of a State to be bound is established after a treaty has come into force, the treaty enters into force for that State on the date when its consent was established unless the treaty otherwise provides”.

78. The text of paragraph 1 was identical with that approved during the first part of the seventeenth session (A/CN.4/L.115).

79. In paragraph 2, the words “as soon as the consent of all the States which adopted its text to be bound by the treaty has been established” had been substituted for the words “as soon as all the States which adopted its text have consented to be bound by the treaty”. He did not think that change was very felicitous in English.

80. The only change made in paragraph 3 was consequential on the deletion of the phrase “becomes operative” in article 15.

81. Mr. REUTER said that, although the article as a whole was acceptable to him, he supported Mr. Briggs’ comment on paragraph 2, the French text of which should read “... *dès que le consentement à être lié par le traité a été établi pour tous les Etats qui ont adopté son texte*”.

82. Mr. TSURUOKA said that the expression “Failing any such provision or agreement” in paragraph 2 was not very satisfactory; it was not clear what provision or agreement was meant.

<sup>19</sup> For a later amendment to the title and text of article 15, see 892nd meeting, para. 91.

<sup>20</sup> For earlier discussion, see *Yearbook of the International Law Commission, 1965*, vol. I, 789th meeting, paras. 59-74, 790th meeting, paras. 1-70, 814th meeting, paras. 31-37, and 816th meeting, paras. 72-79.

<sup>16</sup> *Ibid.*, 803rd meeting, paras. 38 *et seq.*

<sup>17</sup> *Ibid.*, 803rd meeting, para. 30.

<sup>18</sup> *Ibid.*, p. 284, paras. 51 and 63.

83. Mr. AGO said that the imprecision was partly due to the fact that in paragraph 1, as in article 72 which the Commission had just adopted, reference was made, first to an agreement between the parties expressed by a provision of the treaty and, secondly, to an agreement concluded by the parties in some other way. The Special Rapporteur had said that it would be necessary to review all the articles in which those ideas appeared and make them uniform.

84. The CHAIRMAN, speaking as a member of the Commission, pointed out that the words "any such provision" in paragraph 2 referred to the expression "in such manner and upon such date as it may provide" in paragraph 1, while the word "agreement" in paragraph 2 referred to the concluding words of paragraph 1 "or as the States which adopted its text may agree". The relationship might be brought out more clearly.

85. Mr. AMADO said he agreed that the link between the two paragraphs of the article should be made clearer by expanding the expression "Failing any such provision or agreement" in paragraph 2. Furthermore, the word "*modalités*" in paragraph 1 of the French text was too sophisticated in comparison with the English word "manner".

86. Sir Humphrey WALDOCK, Special Rapporteur, said he doubted whether the English text of paragraph 1 could be made any clearer. The parallel between paragraphs 1 and 2 had been rendered with precision and the insertion of the word "otherwise" would not serve any purpose. The word "or" was clearly being used as a disjunctive and could lead to no misunderstanding. Similar wording had been approved by the Commission on no less than three occasions without provoking any criticism.

87. Mr. AGO said that the problem of the parallel between the two paragraphs arose only in the French text. In paragraph 1 of that text, the words "*ou convenues par les Etats*" should be replaced by the words "*ou par un accord des Etats*". Paragraph 2 should begin with the words "*A défaut de telles dispositions ou d'un tel accord*".

88. The CHAIRMAN put article 23 to the vote with the amendments to the French text proposed by Mr. Reuter and Mr. Ago.

*Article 23, with those amendments to the French text, was adopted by 17 votes to none.*<sup>21</sup>

The meeting rose at 1 p.m.

<sup>21</sup> For later amendments to the title and text of article 23, see 887th meeting, para. 68, and 892nd meeting, para. 109.

### 885th MEETING

*Wednesday, 6 July 1966, at 11 a.m.*

*Chairman:* Mr. Herbert W. BRIGGS  
later, Mr. Mustafa Kamil YASSEEN

*Present:* Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Paredes, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldoack.

### Law of Treaties

(A/CN.4/186 and Addenda; A/CN.4/L.107, L.115)

(continued)

[Item 1 of the agenda]

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue its consideration of articles submitted by the Drafting Committee.

ARTICLE 29 (*bis*) (Notifications and communications)[73]<sup>1</sup>

2. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the following new text was proposed for article 29 (*bis*):

*"Notifications and communications"*

"Unless the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the terms of the treaty or of the present articles:

(a) Shall be transmitted

(i) if there is no depositary, directly to the States for which it is intended;

(ii) if there is a depositary, to the latter;

(b) Shall be considered as having been made by the State in question upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary."

3. The Drafting Committee had decided not to incorporate a rule stating when a notification would be regarded as operative for the recipient State, as had been proposed during the discussion.

4. Sir Humphrey WALDOCK, Special Rapporteur, said that some members had favoured a provision that would allow for a short interval between the time a notification or communication was made and the time it came into effect for the other State or States. The Drafting Committee had considered the possibility of introducing say, a thirty-day rule, in order to meet that point, but after careful examination it had concluded that the eventuality, if it had to be covered at all, was more likely to arise under article 23, dealing with the entry into force of treaties. The general view in the Drafting Committee had been that the existing practice was for instruments of, for example, ratification, accession, acceptance or approval to come into force at the moment they were deposited or notified. In view of the decision taken at the previous meeting not to introduce a specified time-limit in article 23, the new article 29 (*bis*) was designed simply to cover the question of when a notification or communication was to be regarded as having been made or received. The article was of a procedural character and ought to be placed among the provisions dealing with the functions of a depositary.

5. Mr. AGO drew attention to a drafting error in the French text of the introductory sentence which had

<sup>1</sup> For earlier discussion, see 862nd meeting, paras. 2-74.