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Summary record of the 892nd meeting

Topic:
Other topics

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of the commentary, that it was the legal relations between the parties that were referred to.

100. Sir Humphrey WALDOCK, Special Rapporteur, said that the words "between the parties" could be inserted after the words "legal relations" in paragraph 1 (b) of the article itself⁴ and in paragraph (3) of the commentary.

It was so agreed.

Paragraph (3), as thus amended, was approved.

Paragraph (4)

Paragraph (4) was approved.

The commentary to article 54 was approved.

AMENDMENT TO ARTICLE 54 (Consequences of the suspension of the operation of a treaty) [68]

101. The CHAIRMAN formally proposed that paragraph 1 (b) of article 54 be amended by the insertion of the words "between the parties" after the words "legal relations".

The Chairman's amendment to article 54 was adopted.

The meeting rose at 1 p.m.

⁴ See 865th meeting, para. 87.

892nd MEETING

Monday, 18 July 1966, at 10 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Representation of the Commission at the twenty-first session of the General Assembly

1. The CHAIRMAN invited the Commission to appoint a member to represent it at the twenty-first session of the General Assembly.

2. Mr. de LUNA, supported by Mr. BRIGGS, Mr. BARTOŠ, Mr. JIMÉNEZ de ARÉCHAGA, Mr. TUNKIN, Mr. PESSOU, Mr. LACHS, Mr. TSURUOKA, Sir Humphrey WALDOCK and Mr. CASTRÉN, proposed that the Commission appoint the Chairman to represent it at the General Assembly.

It was so decided.

Draft report of the Commission on the work of its eighteenth session

(A/CN.4/L.116 and Addenda)

(resumed from the previous meeting)

CHAPTER II: LAW OF TREATIES (continued)

INTRODUCTION (A/CN.4/L.116/Add.7)

3. The CHAIRMAN invited the Commission to continue its consideration of the draft report.

4. Sir Humphrey WALDOCK, Special Rapporteur, said that it would be helpful if the Commission could start with the introduction to chapter II (A/CN.4/L.116/Add.7), as that would give him time to draft any necessary additions before members left Geneva. For example, he had been uncertain whether to mention in the introduction such matters as most-favoured-nation clauses, which the Commission had decided not to deal with in the draft articles.

5. Mr. BRIGGS said that the Commission must also decide what recommendation it wished to put forward to the General Assembly under article 23 of its Statute, about the convening of a diplomatic conference on the law of treaties.

6. Mr. ROSENNE said that mention should be made in the introduction to chapter II, as had been done in its reports on its fifteenth¹ and sixteenth² sessions, of the main issues which the Commission had decided to leave aside.

7. Some mention should also be made of the fact that the Commission had continued its work on the law of treaties on the lines laid down by the General Assembly in its resolutions 1765(XVII), 1902(XVIII) and 2045(XX) and had complied with the General Assembly's request to take into account the discussions on the law of treaties in the Sixth Committee.

8. Finally, in paragraph 22 a reference should be inserted to paragraph 58 of the Commission's report on its fifteenth session, with an indication that the Commission had taken note of the recommendation by the Sub-Committee on the Succession of States and Governments, that the problems of State succession in the matter of treaties should be dealt with under that topic and not covered in the draft articles on the law of treaties.

9. Mr. TUNKIN said he agreed with Mr. Rosenne's second and third suggestions.

10. Mr. LACHS said that, in his opinion, it was only necessary to mention the main points not covered in the draft articles, such as most-favoured-nation clauses, since otherwise the length of the introduction was going to make the report top-heavy.

11. He doubted whether paragraph 3 need be retained. The account of what had taken place at the Commission's third session was not strictly relevant to the work of the past five years.

12. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that mention should be made of points not covered in the draft and of the relevant decisions by the General Assembly. But he also needed guidance from the Commission on whether, as appeared to have been contemplated earlier in the session, some statement was desirable which would anticipate the kind of arguments that could be expected from many governments and lawyers against any attempt to draw up a convention on the law of treaties as such, and would reinforce the Commission's own recommendation on the subject.

¹ *Yearbook of the International Law Commission, 1963*, vol. II, p. 189.

² *Yearbook of the International Law Commission, 1964*, vol. II, p. 176.

13. The CHAIRMAN said that the Secretariat had prepared a draft recommendation, under article 23 of the Commission's Statute, which clearly suggested that the draft should constitute the basis for a conference of plenipotentiaries.

14. Mr. TUNKIN said that at that juncture the Commission should refrain from arguing a theoretical issue which had already been debated on a number of occasions in the Sixth Committee. It would suffice merely to insert in the introduction the Commission's own brief recommendation for a diplomatic conference on the law of treaties.

15. The CHAIRMAN, speaking as a member of the Commission, said that, like Mr. Tunkin, he considered that there was no need for the Commission to quote arguments in support of its decision. It had already discussed the question and had on several occasions set forth the arguments in favour of its decision to prepare a draft convention on the law of treaties.

16. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with Mr. Tunkin. The Commission's recommendation would be the stronger if it were not argumentative.

17. Mr. WATTLES, Deputy Secretary to the Commission, said that the Secretariat had prepared a tentative draft, consisting of two paragraphs, concerning the Commission's recommendation to the General Assembly. It was modelled on recommendations of a similar character made in the past and read:

"(1) At its — meeting on — July 1966 the Commission decided, in conformity with article 23, paragraph 1 (d), of its Statute, to recommend that the General Assembly should convoke an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject.

(2) The Commission wishes to refer to the titles given to parts, sections and articles of its draft, which it considers helpful for an understanding of the structure of the draft and for promoting ease of reference. It expresses the hope, as it did in regard to its draft articles on consular relations,³ that these titles, subject to any appropriate changes, will be retained in any convention which may be concluded in the future on the basis of the Commission's draft articles."

18. The CHAIRMAN said he thought the Secretariat's draft was acceptable and might be approved.

It was so agreed.

19. Mr. ROSENNE said there was one more point he wished to raise, and that was the general problem of the presentation of the report. Both the Commission and the Drafting Committee had devoted much time and thought to the concordance of the three language versions of the text, English, French and Spanish. It would be extremely helpful, both for governments and for a diplomatic conference, if the three language versions of the text of each article could be printed side by side in the Commission's report to the General Assembly.

³ *Yearbook of the International Law Commission, 1961, vol. II, p. 92, para. 35.*

20. Mr. de LUNA said that he fully supported Mr. Rosenne's suggestion that the text of the draft articles in the three languages should be included in the report. His own experience, both in the Sixth Committee and at the Conference on the Law of the Sea, had demonstrated the convenience of adopting that course, which facilitated rapid reference to the text of the articles in all three languages.

21. The CHAIRMAN said that adoption of that suggestion would depend on the co-operation of the Secretariat, which was not yet in a position to give a final decision; it would do so later.

22. Mr. TSURUOKA said it was essential that the English, French and Spanish versions of the draft articles should agree completely: as it was, there were unfortunately discrepancies between them.

23. The CHAIRMAN said that he had received a list of discrepancies from Mr. Tsuruoka and had handed it to the Secretariat, which would take them into account.

The introduction to chapter II, as amended, was approved.

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

COMMENTARY TO ARTICLE 65 (General rule regarding the amendment of treaties) and TO ARTICLE 66 (Amendment of multilateral treaties) (A/CN.4/L.116/Add.8) [35] and [36]

25. Mr. TUNKIN said that paragraph (1) ought to be deleted, as it was inappropriate to set out the arguments of authors who regarded the amendment or modification of treaties as a purely political issue. If the Commission wished to elaborate the point, it would have to be done at great length, and it was most undesirable, in the commentary to articles 65 and 66, to cast any kind of doubt on the proposition that modification must be carried out in accordance with the rules of international law. The reference to Article 19 of the Covenant of the League of Nations was particularly dangerous because of the way in which certain German authors had used that article to justify the actions of the Hitlerite régime.

26. Sir Humphrey WALDOCK said he agreed that paragraph (1) could be dropped, although he doubted whether its implications were as far-reaching as Mr. Tunkin supposed. It was only a greatly condensed version of an earlier commentary.

Paragraph (1) was deleted.

27. Mr. JIMÉNEZ de ARÉCHAGA proposed that further consideration of the commentary be postponed so as to allow the Commission ample time to review the final texts of the draft articles themselves.

28. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Jiménez de Aréchaga's proposal was acceptable on the understanding that final adoption of the draft articles would be held over until the next meeting.

It was so agreed.

29. The CHAIRMAN invited the Commission to consider the revised draft articles (A/CN.4/L.117 and Add.1).

TITLE OF THE DRAFT

30. Mr. AGO asked what the definitive title of the draft was to be.

31. The CHAIRMAN, speaking as a member of the Commission, said that in his view, it should be "Draft Convention on the Law of Treaties".

32. Mr. AGO said that he would prefer "Draft Articles on the Law of Treaties".

33. Mr. BRIGGS said that the title should read "Draft Articles: Law of Treaties".

34. Sir Humphrey WALDOCK, Special Rapporteur, said that the title should be modelled on that used for the Commission's draft articles on the law of the sea.

35. Mr. ROSENNE said he agreed with the Special Rapporteur, but wondered whether the word "draft" was suitable in view of the fact that the Commission had recommended that the articles be incorporated in a convention.

36. Mr. TUNKIN said he agreed with the Chairman, but must point out that the articles did not yet constitute a draft convention.

37. The CHAIRMAN, speaking as a member of the Commission, said that the title "Draft Convention" would be more realistic. The title "Draft Articles" would give the impression that the Commission was submitting only part of a draft and would thus detract from the significance of its work.

38. Mr. AGO said that that was correct, in the sense that the Commission had in fact prepared a draft convention; but in similar circumstances, perhaps for reasons of modesty, the Commission had always used the title "Draft Articles". Moreover, it had used the words "the present articles" in the provisions which it had adopted. The use of the expression "the present Convention" instead of "the present articles" marked the transfer from the Commission to a conference. If it simply said "Articles on the Law of Treaties", the Commission would be giving the impression that its text was the definitive version.

39. Mr. ROSENNE said that he would not insist on the deletion of the word "draft" but thought that, in view of the likelihood of opposition to the Commission's recommendation that the draft articles should form a convention, it would be unwise to designate them at that juncture as a draft convention.

40. It should be borne in mind that one of the weightiest criticisms levelled in the Sixth Committee against the Commission's draft articles on arbitral procedure had been that they had no beginning or end and were therefore not in the form of a draft convention.

41. Mr. BARTOŠ pointed out that, under article 22 of its Statute, the Commission was called upon to prepare a "Final Draft", and under article 23 of its Statute, might "recommend to the General Assembly . . . to recommend the draft to Members with a view to the conclusion of a convention". In other words, the final decision rested with the General Assembly.

42. Although it would not be wrong to use the title "Draft Convention", he would prefer "Draft: Law of Treaties"; but he would accept the majority view.

43. The CHAIRMAN, speaking as a member of the Commission, said that the Commission had always kept before it the idea that it was preparing a convention. He supported Mr. Bartoš's suggestion.

44. Mr. AMADO said that, although the Chairman's suggestion of anticipating a convention was well-intentioned, it would be better not to complicate matters. The existing title was perfectly clear and acceptable and should be retained.

45. Sir Humphrey WALDOCK, Special Rapporteur, proposed that the title should read "Draft Articles on the Law of Treaties".

46. Mr. TSURUOKA and Mr. AGO supported the Special Rapporteur's proposal.

The Special Rapporteur's proposal was adopted.

NUMBERING OF THE ARTICLES

47. Mr. AGO asked whether the Commission proposed to alter the numbering of the articles forthwith.

48. Mr. CASTRÉN said that the provisional numbering should be retained, as several articles contained cross-references to other articles.

49. Mr. WATTLES, Deputy Secretary to the Commission, said that the Secretariat had assumed that all the articles would be re-numbered consecutively according to the final order approved by the Commission. A table of concordance would have to be attached to the report.

50. Mr. TSURUOKA said that there seemed to be no reason why the Commission should not alter the numbering of the articles there and then.

51. Mr. AGO said that the question was not without importance: as soon as the draft was in final form, experts on international law, both within and without the Commission, would be publishing studies on the subject-matter of the articles which the Commission had adopted and it was therefore essential that, from the outset, they should be able to refer to the final numbering.

52. Mr. WATTLES, Deputy Secretary to the Commission, said that in its resolution 2045 (XX), paragraph 5(b), the General Assembly had asked the Secretary-General to do something slightly different from what had been done in previous years, namely, to transmit to governments, at least one month before the opening of its twenty-first session, the final drafts prepared by the Commission up to that time, and in particular, the draft articles on the law of treaties. As it would not be possible to print the complete text of the Commission's report by mid-August, the Secretariat had accordingly contemplated preparing a Commission document for general distribution containing the full text of the draft articles on the law of treaties, with a brief introductory note explaining that the complete text of the report would be issued in due course. A simple table of concordance giving the old and new numbers and titles of the articles could be annexed to that document for reference purposes.

53. Mr. BRIGGS said that it might even be necessary to give in parentheses the original numbers of the draft articles, since those numbers would have been used in all the summary records of the eighteenth session.

54. Mr. ROSENNE said that editorial problems could be left to the Secretariat. A footnote should be attached to each article indicating the number or numbers under which it had been discussed. It would be difficult to draw up a table of concordance because in some cases parts of articles had been transferred to some other part of the draft.

55. Mr. BARTOŠ said that the matter could safely be entrusted to the Secretariat. It was the Commission, however, that was responsible for the report, and the numbering of the articles formed an integral part of the report. The Commission should therefore take a decision, which would be binding on the Secretariat, first, that the articles should be given their final numbering and, secondly, that, in order to facilitate research, footnotes should be provided giving the number attached to each article at the time it was discussed in the Commission.

56. The CHAIRMAN proposed that the Secretariat be instructed to take the various points raised in the discussion into account when preparing the Commission's documents.

It was so agreed.

FINAL TEXT OF ARTICLES (A/CN.4/L.117 and Add. 1)

PART I. INTRODUCTION

ARTICLE 0 (The scope of the present articles) [1]⁴

Article 0 was adopted.

ARTICLE 1 (Use of terms) [2]

Sub-paragraph (a)

Sub-paragraph (a) was adopted without comment.

Sub-paragraph (d)

57. Mr. AGO said that the repetition of the word "international" in paragraph 1 (*d*) was rather awkward; it would be enough to say "the act whereby a State establishes on the international plane . . ."

58. Mr. BRIGGS said that the point had been discussed in the Drafting Committee, which had decided that it was necessary to stress the "international" character of the act because it was an aspect that some governments seemed to have failed to understand.

59. The CHAIRMAN, speaking as a member of the Commission, said that the words "on the international plane" added nothing to the precision of the text.

60. Mr. PESSOU said that the repetition of the word "international" was tautological; an international act was necessarily an act performed by States.

61. Mr. de LUNA said he agreed that parliamentary ratification and international ratification were sometimes confused, but it should be enough to say "the international act". The words "on the international plane" were unnecessary; it was obvious that when a State

established its consent, it did so on the international and not on the internal plane.

62. Sir Humphrey WALDOCK, Special Rapporteur, said that in the context of sub-paragraph (*d*) it was wise to press the point home that the acts referred to in that sub-paragraph were international acts establishing a State's consent to be bound on the international plane.

63. Mr. BARTOŠ said that he agreed with Mr. Ago. An act of State such as ratification was an act of State authority which took effect on the international plane. There was therefore no need to use the word "international" twice.

64. Mr. TSURUOKA said that he was in favour of repeating the word "international", as that removed any risk of misunderstanding without detracting too much from the elegance of the phrasing.

65. Mr. ROSENNE said it was important to retain the adjective "international" in both places. Far from being tautological, it was essential to the whole structure of part I of the draft articles.

66. Mr. AMADO asked what purpose was served by the words "so named".

67. Mr. AGO said that his only desire had been to achieve greater elegance of form, but he was ready to accept the sub-paragraph as it stood.

68. Mr. PESSOU said that Mr. Amado's question was very much to the point; the words "so named" were redundant, in relation not only to the words "Ratification", "Accession", "Acceptance" and "Approval" but also to the word "mean".

69. Sir Humphrey WALDOCK, Special Rapporteur, said that in his opinion sub-paragraph (*d*), as drafted, was correct and should remain unchanged.

Sub-paragraph (d) was adopted.

Sub-paragraphs (e), (f), (f)(bis), (f)(ter), (f) (quater) and (f) (quinquies)

Sub-paragraphs (e), (f), (f)(bis), (f)(ter), (f) (quater) and (f) (quinquies) were adopted without comment.

Sub-paragraph (f) (sexies)

70. Mr. AGO said that he was in some doubt as to whether the expression "inter-governmental organization" covered organizations like the International Labour Organisation, which was not entirely inter-governmental. It might be better to say "inter-State organization".

71. Mr. BARTOŠ pointed out that, even in the International Labour Organisation, it was the States that were represented, not the governments, employers and workers.

72. The CHAIRMAN, speaking as a member of the Commission, said that he too would prefer the expression "inter-State organization", but "inter-governmental organization" was the one in common use.

73. Mr. BRIGGS said that, in the course of a long discussion on the matter in the Drafting Committee, some objections had been raised to the word "inter-governmental", but there were serious objections to the use of the word "inter-State" as well. He himself

⁴ Yearbook of the International Law Commission, 1965, vol. I, p. 244, para. 10.

thought that the word "inter-governmental" should be retained.

74. Mr. JIMÉNEZ de ARÉCHAGA pointed out that the word "inter-governmental" was used in connexion with the international organizations concerned in Article 57 of the Charter.

Sub-paragraph (f)(sexies) was adopted without amendment.

Paragraph 1 was adopted.

Paragraph 2 was adopted without comment.

Article 1 was adopted.

ARTICLE 2 (Treaties and other international agreements not within the scope of the present articles) [3]

75. Sir Humphrey WALDOCK, Special Rapporteur, said that since, in article 1, the word "treaty" had been defined for the purposes of the draft articles as an "international agreement concluded between States" it was illogical to use the word "treaty" in article 2 to refer to international agreements concluded between States and other subjects of international law. He therefore proposed that in the title of article 2 the words "Treaties and other" be deleted, that in sub-paragraph (a) the word "treaties" be replaced by the words "international agreements", and that in sub-paragraph (b) the words "treaties or" be deleted.

The Special Rapporteur's amendment was adopted.

Article 2, as thus amended, was adopted.

PART II: CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION I—CONCLUSION OF TREATIES

ARTICLE 3 (bis) (Treaties which are constituent instruments of international organizations or are adopted within international organizations) [4]

Article 3 (bis) was adopted without comment.

ARTICLE 3 (Capacity of States to conclude treaties) [5]

Article 3 was adopted without comment.

ARTICLE 4 (Full powers to represent the State in the conclusion of treaties) [6]

Paragraph 1

76. Mr. TSURUOKA said that the expression "instrument of full powers" occurred both in paragraph 1(a) and in the introductory sentence to paragraph 2. But the Commission had already defined "full powers" as "a document emanating from the competent authority of a State", so that the words "an instrument of" were redundant and should be deleted.

77. The CHAIRMAN, speaking as a member of the Commission, said that Mr. Tsuruoka's point was well taken, since, according to the Commission's own definition, the expression "full powers" applied to a document and not to the legal act itself.

Mr. Tsuruoka's amendment was adopted.

Paragraph 1, as amended, was adopted.

Paragraph 2

78. Mr. BARTOŠ said that he understood the words "for the purpose of adopting the text of a treaty" in

sub-paragraph (c), to mean that the treaty had been concluded or adopted by the international conference or organ in question.

79. Sir Humphrey WALDOCK, Special Rapporteur, suggested that at the end of sub-paragraph (c) the words "in that conference or organ" should be added after the words "a treaty", since the sense of those two words by themselves was too general and would give sub-paragraph (c) a much wider meaning than that, for instance, of sub-paragraph (b), which limited the category of treaties which Heads of diplomatic missions were empowered to adopt.

80. Mr. ROSENNE said that the reference to international organizations in sub-paragraph (c) seemed to him to be inconsistent with the provisions of article 3 (bis). In other articles, the Commission had decided to delete any reference to treaties which were constituent instruments of international organizations, and to refer to article 3 (bis) in the commentary.

81. Sir Humphrey WALDOCK, Special Rapporteur, said he disagreed with Mr. Rosenne. The reference in sub-paragraph (c) to representatives accredited to an organ of an international organization was in the form of a general proposition whose application would, in individual cases, be subject to the relevant rules of the organization concerned, in accordance with the provisions of article 3 (bis).

82. Mr. TUNKIN said he agreed with the Special Rapporteur.

The Special Rapporteur's amendment to sub-paragraph (c) was adopted.

Paragraph 2, as amended, was adopted.

Article 4, as amended, was adopted.

ARTICLE 4 (bis) (Subsequent confirmation of an act performed without authority) [7]

Article 4 (bis) was adopted without comment.

ARTICLE 6 (Adoption of the text) [8]

Paragraph 1

83. Mr. AGO proposed that the words "by the unanimous agreement" be replaced by the word "unanimously".

84. Sir Humphrey WALDOCK, Special Rapporteur, said he thought that the word "agreement" in the English text was undesirable, as it might be construed as referring to the text of the treaty itself. Mr. Ago's point might perhaps be met by replacing the words "the unanimous agreement" by the words "the unanimous vote".

85. Mr. JIMÉNEZ de ARÉCHAGA said that the expression "unanimous vote" could hardly be applied to the adoption of bilateral treaties. The words "the unanimous agreement" would cover both the adoption of multilateral treaties as the result of a vote, and the adoption of bilateral treaties.

86. Mr. ROSENNE suggested that the best solution would be to replace the words "*par l'accord unanime*" in the French text by the words "*à l'unanimité*", and to leave the English text unchanged.

87. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, if there were objections to the expression "the unanimous vote", the word "agreement" might be replaced by the word "consent".

The Special Rapporteur's amendment was adopted.

Paragraph 1, as thus amended, was adopted.

Paragraph 2

Paragraph 2 was adopted without comment.

Article 6, as amended, was adopted.

Article 7 (Authentication of the text) [9]

Article 7 was adopted without comment.

88. Mr. AGO suggested that, in the final text, in order to avoid confusion, the Secretariat omit all reference to articles which had been deleted.

ARTICLE 11 (Consent to be bound by a treaty expressed by signature) [10]

Article 11 was adopted without comment.

ARTICLE 12 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) [11]

Article 12 was adopted without comment.

ARTICLE 13 (Consent to be bound by a treaty expressed by accession) [12]

Article 13 was adopted without comment.

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

89. Mr. TSURUOKA, drawing attention to the words "de leur notification" in the French version of subparagraph (c), said that the subject of the sentence was "les instruments de . . .", but one could not notify an instrument; the most that one could do was to deliver it.

90. Mr. BARTOŠ said that although Mr. Tsuruoka was right grammatically, in practice the existence of an instrument was sometimes notified by attaching a copy of it to the notification. Since it was difficult to find an expression to cover both meanings, it would be better to leave the sentence as it was.

91. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, in the title of article 15 and in the first and second lines, the order of the words "ratification, accession, acceptance or approval" be changed to "ratification, acceptance, approval or accession", since that was the order in which the various types of instrument were dealt with in the articles which followed.

The Special Rapporteur's amendment was adopted.

Article 15, as amended, was adopted.

ARTICLE 16 (Consent relating to a part of a treaty and choice of differing provisions.) [14]

Article 16 was adopted without comment.

ARTICLE 17 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force.) [15]

92. Mr. AGO said that he was in some doubt as to whether the French words "de nature à" were really equivalent to the English words "calculated to". A better translation would be "ayant pour but de".

93. Mr. AMADO said that he too disliked the translation "de nature à" and would suggest "destinés à".

94. Mr. AGO said that, in his opinion, there was an element of intent in the words "calculated to", which should be translated by "tendant à".

95. Mr. de LUNA said he agreed; the words "encaminados a" were already used in the Spanish text.

96. Sir Humphrey WALDOCK, Special Rapporteur, suggested that in the English text also the words "calculated to" be replaced by the words "tending to".

Mr. Ago's and the Special Rapporteur's amendments were adopted.

97. Mr. ROSENNE said he thought that the meaning of the French words "réduire à néant" was much stronger than that of the English word "frustrate".

98. The CHAIRMAN, speaking as a member of the Commission, said that he was fully satisfied with the rendering "réduire à néant".

Article 17, as amended, was adopted.

SECTION 2—RESERVATIONS TO MULTILATERAL TREATIES

ARTICLE 18 (Formulation of reservations) [16]

99. Mr. TSURUOKA said that, in subparagraph (c) and in article 69, the expression "object and purpose" appeared in the singular whereas in articles 40 and 42 it appeared in the plural. Both singular and plural had the same meaning, but it would be better to adopt a uniform practice.

100. Sir Humphrey WALDOCK, Special Rapporteur, said that the question raised by Mr. Tsuruoka had been discussed in the Drafting Committee which had decided that the singular form, "the object and purpose", should be used in every case. If the plural form still appeared in the English text of a number of articles, it was merely because the Drafting Committee had approved the text of those articles before it had taken that decision.

Article 18 was adopted without amendment.

ARTICLE 19 (Acceptance of and objection to reservations) [17]

Paragraph 1

Paragraph 1 was adopted without comment.

Paragraph 2

101. Mr. TSURUOKA, referring to the word "parties" at the end of paragraph 2, said he agreed that in practice "the parties" and "the negotiating States" usually turned out to be exactly the same. In logic, however, had it not been the Commission's intention to speak of "the negotiating States" rather than of "the parties"?

102. Sir Humphrey WALDOCK, Special Rapporteur, said there might be a case for replacing the words "all the parties" by the words "all the contracting States", but not by the words "all the negotiating States", though personally he thought that the words "all the parties" should be retained.

103. Mr. LACHS said that Mr. Tsuruoka had raised an important question of substance, namely, whether

a reservation to a treaty required acceptance by States which were not themselves bound by the treaty. If so, without being bound by the provisions of an international instrument, a State could prevent other States from becoming parties to it. He agreed with the Special Rapporteur that the words “by all the parties” should be retained.

104. Mr. AGO said that it was absolutely essential to retain the word “parties”, since it was a matter of the application of a treaty and a treaty could be applied only between the parties. The negotiating States, at a given moment, had given their consent to the application of the treaty as between all the parties, but when the treaty came to be applied, there were only “the parties”.

105. Mr. TSURUOKA said that, as in practice both expressions amounted to the same thing, he would support the majority view. There was no problem where ten States had drafted a treaty and all intended to ratify it; but supposing the treaty came into force after three States had ratified it, would those three then be able to accept the reservation, and thereby prevent the other States from entering into treaty relations? That was the special case that occasioned him some doubt.

106. Mr. AGO suggested that, in paragraph 2, the words “by the treaty” be inserted after the words “to be bound”.

It was so agreed.

Paragraph 2, as thus amended, was adopted.

Paragraphs 3-5

Paragraphs 3-5 were adopted without comment.

Article 19, as amended, was adopted.

ARTICLE 20 (Procedure regarding reservations) [18]

Article 20 was adopted without comment.

ARTICLE 21 (Legal effects of reservations) [19]

Article 21 was adopted without comment.

ARTICLE 22 (Withdrawal of reservations) [20]

Article 22 was adopted without comment.

SECTION 3 — ENTRY INTO FORCE

ARTICLE 23 (Entry into force of a treaty) [21]

107. Mr. AGO said that it would be better to transpose the title of the article, “Entry into force of a treaty”, and the title of section 3, “Entry into force”.

108. Mr. TSURUOKA pointed out that the French and English versions of the title did not correspond exactly; the English referred to “a treaty”, but the French to “*des traités*”.

109. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the titles in question be amended to read:

“Section 3 — Entry into force of treaties”; and
“Article 23 — Entry into force”.

The Special Rapporteur's amendment was adopted.

Article 23 as thus amended was adopted.

ARTICLE 24 (Entry into force of a treaty provisionally) [22]

110. Mr. AGO said that, as in article 23, the words “of a treaty” in the title should be omitted.

Mr. Ago's amendment was adopted.

Article 24, as amended, was adopted.

The meeting rose at 1 p.m.

893rd MEETING

Monday, 18 July 1966, at 3 p.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Draft report of the Commission on the work of its eighteenth session

(A/CN.4/L.116 and Addenda)

(continued)

CHAPTER II: LAW OF TREATIES *(continued)*

FINAL TEXT OF ARTICLES (A/CN.4/L.117 and Add.1)
(continued)

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION I — OBSERVANCE OF TREATIES

1. The CHAIRMAN invited the Commission to continue its consideration of the final text of the draft articles (A/CN.4/L.117 and Add.1).

ARTICLE 55 (*Pacta sunt servanda*) [23]

Article 55 was adopted without comment.

SECTION 2 — APPLICATION OF TREATIES

ARTICLE 56 (Non-retroactivity of treaties) [24]

2. Mr. BRIGGS said that by an oversight the words “its provisions do not bind” had been left out of the English text. They should be inserted after the word “established, . . .”.

Article 56 was adopted.

ARTICLE 57 (Application of treaties to territory) [25]

Article 57 was adopted without comment.

ARTICLE 63 (Application of successive treaties relating to the same subject-matter) [26]

3. Mr. CASTRÉN proposed the deletion of paragraph 5. Now that the Commission had adopted a special article Y (A/CN.4/L.117/Add.1) which reserved the question of the international responsibility of States, the paragraph was no longer necessary.