

Commentary  
on the 1969 Vienna Convention  
on the Law of Treaties

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# History of the Convention

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### Selected Literature:

H.W. BRIGGS, The International Law Commission (1965); O.J. LISSITZYN, Efforts to Codify or Restate the Law of Treaties, Columbia LR 62 (1962) 1172 ff; S.E. NAHLIK, La Conférence de Vienne sur le droit des traités. Une vue d'ensemble, AFDI 15 (1969) 24 ff; SH. ROSENNE, The Law of Treaties. A Guide to the Legislative History of the Vienna Convention (1970); I. SHIHATA, Le projet de loi sur les traités de la Commission du droit international, Revue Egyptienne 23 (1967) 77 ff; I. SINCLAIR, The Vienna Conference on the Law of Treaties, ICLQ 19 (1970) 47 ff; F. VALLAT, The Work of the International Law Commission. The Law of Treaties, NILR 22 (1975) 327 ff; A. WATTS, The International Law Commission 1949–1998, II (2002) 609 ff; R.G. WETZEL/D. RAUSCHNING, The Vienna Convention on the Law of Treaties. *Travaux préparatoires* (1978).

### A. INTRODUCTION

- 1 This section depicts the evolution of the Convention and summarises its *travaux préparatoires*, in particular the proceedings in the International Law Commission (ILC) and at the Vienna Conference in 1968 and 1969. It offers a general view and thus contrasts with, and enables an appreciation of, the preparatory materials summarised in the commentaries of the various Convention articles.

## B. BRIERLY'S REPORTS (1950–1952)

In 1949, upon establishment of the ILC, the UN Secretary General's Survey listed the law of treaties among the topics for codification.<sup>1</sup> At its session in 1949 the Commission decided to give priority to this topic and appointed JAMES L. BRIERLY as Special Rapporteur. His first report of 1950, containing a draft convention with eleven articles, was perceived as the continuation of pre-1945 efforts at the codification of the law of treaties. The ILC debated the draft at its 1950 session, but did not reach any conclusions.<sup>2</sup> In 1951 BRIERLY presented his second report in which he modified or amended articles of his previous report.<sup>3</sup> After further debate, the ILC "tentatively" adopted on the basis of its two texts a draft containing ten articles which it submitted to the UN General Assembly, and requested BRIERLY to present a final draft on the topic.<sup>4</sup> BRIERLY Report III was prepared for 1952; but before the session BRIERLY resigned. Without discussing the report, the ILC elected Sir HERSCH LAUTERPACHT as successor (N. 3).<sup>5</sup>

Apart from the substantive analyses, BRIERLY's efforts possess significance on account of the wide scope of treatment of the topic, and the systematic presentation of the matter.

At the 1951 ILC session BRIERLY also presented a report on Reservations to multilateral conventions (*Article 19*, N. 3).<sup>6</sup> This issue arose from difficulties encountered by the Secretary General in his capacity as depositary under Article 102 of the UN Charter for the Convention on the prevention and punishment of the crime of genocide of 1948. When the Secretary General sought guidance from the General Assembly, the latter in turn requested an advisory opinion from the Court and also invited the ILC to study the matter.<sup>7</sup> The Commission came to the conclusion that "the criterion of the compatibility of a reservation with the object and purpose of a multilateral convention, applied by the International Court of Justice [was] not suitable for application to multilateral conventions in general".<sup>8</sup> However, the General Assembly did not follow

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<sup>1</sup> Survey of International Law in Relation to the Work of Codification of the ILC, at 51 ff. At *ibid.* 92, the Survey identified some key problems, *e.g.*, the concept of treaties, ratification, constitutional limitations upon the treaty-making Power, interpretation, and the doctrine *rebus sic stantibus*. On this section, see generally VILIGER, Customary International Law N. 153–174.

<sup>2</sup> YBILC 1950 II 226 ff; the Appendix, *ibid.* 243 ff, reproduced many earlier efforts at codification. The minutes are at YBILC 1950 I 64 ff.

<sup>3</sup> YBILC 1951 II 70 ff.

<sup>4</sup> YBILC 1951 II 73 ff, 139 ff; for the minutes see YBILC 1951 I 12 ff.

<sup>5</sup> YBILC 1952 II 50 ff; also YBILC 1952 I 220 ff, and 224 ff.

<sup>6</sup> YBILC 1951 I 11 ff; see C.G. FENWICK, Reservations to Multilateral Conventions: The Report of the International Law Commission, AJIL 46 (1952) 119 ff.

<sup>7</sup> GA Res 478 (V) of 16 November 1950.

<sup>8</sup> YBILC 1951 II 128, para. 24; see the *Reservations to Genocide Advisory Opinion*, ICJ Reports 1951 29 f (relevant passages are cited in *Article 19*, N. 2).

the Commission's "traditional" solution and recommended the Secretary General to adhere to the Court's Advisory Opinion.<sup>9</sup>

### C. LAUTERPACHT'S REPORTS (1953–1954)

- 3 Sir HERSCH LAUTERPACHT introduced his first report in 1953 which aimed at encompassing the entire law of treaties and further expanded the scope of the subject.<sup>10</sup> The ILC postponed discussion at its 1953 session, but invited the Rapporteur to present a further report. The LAUTERPACHT Report II of 1954 modified and supplemented the provisions of its precursor, yet once more the ILC could not address the matter.<sup>11</sup> After his election to the ICJ, LAUTERPACHT resigned from the Commission, which—now in its seventh session of 1954—elected Sir GERALD FITZMAURICE (N. 4) as third Special Rapporteur on the law of treaties.<sup>12</sup>

### D. FITZMAURICE'S REPORTS (1956–1960)

- 4 In 1956 FITZMAURICE submitted his first report which covered areas similar to the reports of his predecessors. Of particular interest is the fact that he introduced the different method of codifying the law of treaties by employing a code of principles rather than a draft convention (*Issues of Customary International Law*, N. 22).<sup>13</sup> In 1956 the ILC endorsed both the method and detail of the draft, though the report itself was not discussed.<sup>14</sup> In 1957 and 1958 FITZMAURICE presented his second and third reports on additional issues of the law of treaties, which were again not discussed. In 1959 he prepared his fourth report.<sup>15</sup> The ILC debated parts of FITZMAURICE Report I in 1959 and prepared a draft of 13 articles which were embodied in a code for the reason that "the law of treaties [was] not itself dependent on a treaty, but [was] part of general customary international law".<sup>16</sup> This Draft also prompted the Sixth

<sup>9</sup> GA Res 598 (VI) of 12 January 1952.

<sup>10</sup> YBILC 1953 II 90 ff; see W. JENKS, HERSCH LAUTERPACHT—the Scholar as Prophet, BYBIL 36 (1960) 1 ff, 88 f.

<sup>11</sup> YBILC 1953 I 290 ff, 386, and YBILC 1954 II 123 ff.

<sup>12</sup> YBILC 1955 I 75, para. 3; also YBILC 1955 II 42, para. 32.

<sup>13</sup> YBILC 1956 II 104 ff, para. 9; on the previous reports (N. 2) Sir GERALD wrote that the respective draft articles were "few in number and to some extent general in character", *ibid.* 106, para. 3.

<sup>14</sup> YBILC 1956 I 216 ff, paras. 47 ff.

<sup>15</sup> YBILC 1957 II 6 ff, YBILC 1958 II 20 ff, and YBILC 1959 II 37; see YBILC 1957 I 197, and YBILC 1958 I 175, para. 7.

<sup>16</sup> YBILC 1959 II 91, para. 18; the minutes are at YBILC 1959 I 3 f, 95, paras. 13 ff, and 178 ff.

Committee of the UN General Assembly to debate the law of treaties for the first time. Its comments concerned mainly the method of codification, and in its conclusions it found that the time had not yet arrived to recommend a specific method.<sup>17</sup> FITZMAURICE's fifth Report of 1960 was not examined by the ILC.<sup>18</sup> Upon election to the Court, he resigned from the ILC.

In retrospect, FITZMAURICE's reports offer a detailed, comprehensive and highly systematic analysis of a major part of the law of treaties. Their contribution to the theory of codification is invaluable in providing a unique basis for the comparison of the different methods of *jus scriptum* international law.

## E. WALDOCK'S REPORTS (1962–1966)

### 1. Election

In 1961 the ILC elected Sir HUMPHREY WALDOCK fourth Special Rapporteur on the law of treaties.<sup>19</sup> For the first time, and after some debate, the Rapporteur was given “guidance” as to his task. 5

Remarkably, the ILC requested the Rapporteur to abandon the code method (N. 4) and to return to the use of draft convention articles (*Issues of Customary International Law*, N. 23).<sup>20</sup> In fact, Sir HUMPHREY apparently made this change a condition of his acceptance of the post, aiming at the broadest possible participation, particularly of newly independent States, in the formulation of a text which only a convention could achieve.<sup>21</sup> While the goal remained the systematic codification of the entire topic, Sir HUMPHREY was requested to commence with the conclusion of treaties.<sup>22</sup>

### 2. Reports I–III (1962–1964)

The ILC's work on the topic gathered momentum when, in 1962, WALDOCK presented his first report containing 27 articles.<sup>23</sup> The ILC devoted most of its 1962 session to this report and then adopted a provisional draft as the first of three parts on the subject.<sup>24</sup> While most articles were adopted on a consensual basis, a formal vote was taken on a few provisions, some of which were to be 6

<sup>17</sup> GAOR 14 (1959) 6th SR 601st 5 ff; *ibid.*; Annexes, Agenda Item 55, paras. 12 ff.

<sup>18</sup> YBILC 1960 II 69 ff.

<sup>19</sup> YBILC 1961 I 99, paras. 28 ff.

<sup>20</sup> *Ibid.* 247 ff, 254 ff, and 258, para. 74; YBILC 1961 II 28, para. 39.

<sup>21</sup> See AGO's comment in the 6th Committee, GAOR 20 (1965) 6th SR 851st para. 43; similarly, the ILC Report 1962, YBILC 1962 II 160, para. 17; see also the minutes in YBILC 1961 I 257.

<sup>22</sup> YBILC 1961 I 249 ff; see the comments *ibid.* by AGO, AMADO and TUNKIN.

<sup>23</sup> YBILC 1962 II 28 ff; the report also considered the endeavours of previous Rapporteurs; *ibid.* 30, para. 10; see also LISSITZYN, Columbia LR 62 (1962) 1166 ff.

<sup>24</sup> YBILC 1962 II 159 ff; see the minutes in YBILC 1962 I 46 ff.

sources of dispute at the Vienna Conference in 1968 and 1969 (N. 14).<sup>25</sup> The ILC Draft was subsequently transmitted to Governments for observations.<sup>26</sup> The Sixth Committee of the UN General Assembly scrutinised the draft both for the substance of the articles and the choice of method.<sup>27</sup>

- 7 The ILC discussed WALDOCK Report II in 1963, upon which it adopted in a provisional draft Part II.<sup>28</sup> Most articles were subject to a formal vote. While only eight articles—among them on *jus cogens* (*Article 64, q.v.*)—were adopted unanimously, the remaining provisions attracted a number of abstaining or rejecting votes.<sup>29</sup> Again, these disagreements were to intensify at the Vienna Conference (N. 14), at which the contested articles, as Part V of the ILC Draft 1966, were the source of great dispute. The ILC Draft 1963 was then transmitted to Governments for observations and to the Sixth Committee.<sup>30</sup>
- 8 WALDOCK Report III was discussed by the ILC in 1964.<sup>31</sup> The ILC Draft 1964, containing a provisional draft Part III, was equally transmitted to Governments for their observations; the Sixth Committee did not consider the ILC Report in 1964.<sup>32</sup>

### 3. Reports IV–VI (1965–1966)

- 9 WALDOCK Report IV of 1965 introduced a novel and final phase in the work of the ILC. The report thoroughly reconsidered Part I of the Draft on the Law of Treaties (N. 6) in the light of previous debates, of comments by delegates in the Sixth Committee and of written observations by Governments.<sup>33</sup> In 1965 the ILC re-examined Part I of the topic on the basis of WALDOCK Report IV, most articles being voted upon and adopted unanimously. Thereafter, the revised texts of 25 articles were submitted as the ILC Draft 1965 to the Sixth Committee.<sup>34</sup> At the same session, the ILC decided to defer examination of the question of treaties entered into by international organisations. The ILC also agreed to present the articles on the law of treaties in one single draft rather than in separate parts, and reaffirmed unanimously its decision in 1962 to opt for the convention method (N. 5). Finally, it convened an extraordinary session in January 1966 in order to complete the draft articles before the end

<sup>25</sup> YBILC 1962 I 168 ff.

<sup>26</sup> *Ibid.* 160, para. 19; these observations are reproduced in YBILC 1966 II 279 f.

<sup>27</sup> The Report is at GAOR 17 (1962) 6th SR 734th ff, Annexes, Agenda Item 76, paras. 17 ff.

<sup>28</sup> YBILC 1963 II 189 ff.

<sup>29</sup> YBILC 1963 I 207 ff.

<sup>30</sup> GAOR 18 (1963) 6th SR 780th 5 ff.

<sup>31</sup> YBILC 1964 II 5 ff; for the minutes, see YBILC 1964 I 20 ff, 232 ff, 267 ff, and 315 ff.

<sup>32</sup> YBILC 1964 II 174 ff; see also YBILC 1964 I 162 ff.

<sup>33</sup> YBILC 1965 II 3 ff.

<sup>34</sup> *Ibid.* 156 ff; the minutes are at YBILC 1965 I 3 ff, 243 ff, 299 ff, and 307 ff.

of the members' terms of office.<sup>35</sup> Debate in the Sixth Committee centred on the individual draft articles, most delegates endorsing the draft convention. As a result, the UN General Assembly recommended that the ILC continue its work, with the object of presenting a final draft in 1966.<sup>36</sup>

WALDOCK Report V of 1965 covered Part II of the law of treaties and again had as its basis observations submitted by Governments and comments by delegations in the Sixth Committee.<sup>37</sup> The ILC discussed this report and re-examined 21 additional articles at the second part of its 17th session in 1966. Most articles were adopted by a vote, with but an occasional rejection and few abstentions.<sup>38</sup> 10

In 1966 WALDOCK submitted his sixth report which re-examined the remainder of Part II, and Part III (N. 8) of the topic.<sup>39</sup> At its 18th session in 1966, the ILC examined the remaining draft articles on the basis of this report. It also revised earlier provisions, rearranged the order of all articles and adopted commentaries on them. Most provisions were subject to formal votes; they attracted some abstaining and a few rare rejecting votes.<sup>40</sup> The minutes of this debate are the scientifically most profound of the Commission's collegiate treatment of the matter. The final text of 75 articles and appended commentaries was then submitted to the UN General Assembly in the ILC Report 1966.<sup>41</sup> Therein, the ILC explained the relatively narrow scope of the draft, and the reasons in favour of a single draft convention.<sup>42</sup> The report recommended that the General Assembly convene a diplomatic conference for the conclusion of a convention.<sup>43</sup> 11

<sup>35</sup> YBILC 1965 II 157 f, paras. 16 ff, and 175, para. 21.

<sup>36</sup> GAOR 20 (1965) 6th SR 839th ff 5 ff.

<sup>37</sup> YBILC 1966 II 1 ff; also SH. ROSENNE, *Some Diplomatic Problems of Codification of the Law of Treaties*, Washington LR 41 (1966) 261 ff.

<sup>38</sup> For the minutes, see YBILC 1966 I/1 2 ff; the report is included as Part I of the 1966 Report, YBILC 1966 II 169 ff; the ILC Draft is at *ibid.* 177 ff.

<sup>39</sup> YBILC 1966 II 51 ff.

<sup>40</sup> YBILC 1966 I/2 3 ff, 240 ff, 262 ff; the revised draft articles are at YBILC 1966 II 122 f.

<sup>41</sup> YBILC 1966 II 173 ff; see H. WALDOCK, *The ILC and the Law of Treaties*, UN Monthly Chronicle 4 (1967) no. 5 69 ff; *Id.*, *Some Contemporary Problems in Treaty Law Suggested by the Draft Articles on the Law of Treaties of the ILC*, PASIL 61 (1967) 186 ff; O.J. LISSITZYN, *The Law of International Agreements in the Restatement*, New York ULR 41 (1966) 96 ff.

<sup>42</sup> YBILC 1966 II 176 f, para. 23, and paras. 28 ff; see YBILC 1966 I/2 321 ff, paras. 12 ff, and WALDOCK's comment, *ibid.* 322 para. 16, that the ILC's "recommendation would be strong if it were not argumentative".

<sup>43</sup> YBILC 1966 II 177, para. 35, in conformity with Article 23, subpara. 1(d) of the ILC-Statute.

- 12 In 1966 the Sixth Committee generally endorsed the final ILC Report (N. 11) and agreed that it should be referred to a diplomatic conference as the basis for discussion. As a result, the UN General Assembly agreed to convene “an international conference of plenipotentiaries . . . to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate”.<sup>44</sup> The General Assembly also invited written comments on the draft from UN members, specialised agencies, and the Secretary General. The Sixth Committee discussed the ILC Draft 1966 (N. 11) again at its 1967 session. Part V of the draft, on the Invalidity, termination and suspension of treaties, attracted the greatest attention. Participants distinguished, for the first time, between provisions constituting either codification or progressive development (*Issues of Customary International Law*, N. 18).<sup>45</sup> The General Assembly then decided to convene the first session of the Conference in Vienna in 1968, and also invited participating States (including non-members of the UN) to submit to the Secretary General additional comments and amendments to the ILC Draft.<sup>46</sup>

#### 4. Appreciation

- 13 The WALDOCK Reports I–VI were original, the earlier Rapporteurs having influenced Sir HUMPHREY’s efforts only to a small degree.<sup>47</sup> The reports themselves underwent considerable change, the first three (N. 6) resembling in their descriptive character more a code of principles than a draft convention.<sup>48</sup> While the Convention may bear only few signs of earlier drafts and reports, there can be no doubt that it was moulded mainly by Sir HUMPHREY. This achievement is all the more notable as the law of treaties had until then been the largest project undertaken by the ILC. The latter had devoted 18 years (1949–1966) and 292 meetings to the topic; and four Special Rapporteurs had prepared 17 Reports. These figures may give rise to the assumption that the Commission’s studies were exceptionally thorough. Authors have mentioned as an explanation for this unusually long period the breadth and scope of the

<sup>44</sup> GA Res 2166 (XXI) of 5 December 1966; see also GAOR 21 (1966) 6th SR 902nd-919th 11 ff, paras. 1 ff; Annexes Agenda Item 84 26, para. 100.

<sup>45</sup> GAOR 22 (1967) 6th SR 964th 41 ff.

<sup>46</sup> GA Res 2287 (XXII) of 6 December 1967; the Conference was divided into two sessions to enable all States to send specialists, C.-A. FLEISCHHAUER, *Die Wiener Vertragsrechtskonferenz*, JIR 15 (1971) 203. The amendments to the Conference are reproduced in OR Documents, the observations by States are in Doc A/Conf 39/6; see the complaint in this respect by *Switzerland*, OR 1968 CoW 323, para. 25.

<sup>47</sup> WALDOCK Report I, YBILC 1962 II 30, paras. 9 ff.

<sup>48</sup> *E.g.*, Article 4 of WALDOCK Report I was by 1969 shortened by more than half to the present *Article 7* on Full Powers (*q.v.*, N. 2).

topic,<sup>49</sup> or have attributed this length of time to the “lack of pressure” and to the “well defined or persistent clashes of national interests and policies”.<sup>50</sup>

However, a closer look at these *travaux préparatoires* reveals that the law of treaties was not actually studied at greater length, or more comprehensively, than other topics. Thus; from 1949 to 1961—*i.e.*, 13 of the 18 years—the ILC itself completed only two reports, and even these were provisional, rather short and only covered certain parts of the field (N. 2). Most of the work was actually prepared from 1962–1966, when the ILC devoted approximately 226 meetings (or 32 working weeks) to the subject. Until 1962 the Commission’s resources were devoted to work on the law of the sea, and on diplomatic and consular relations. The frequent changes of Rapporteurs—and, with them, of methods (N. 5)—also checked the ILC’s pace.

## F. THE 1968/1969 VIENNA CONFERENCE ON THE LAW OF TREATIES

### 1. First Session of 1968

The UN Conference on the Law of Treaties was conducted in two sessions. The first session took place in Vienna from 26 March to 24 May 1968 and was attended by delegates of 103 States and by observers from 13 specialised agencies.<sup>51</sup>

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Altogether 115 States participated in both sessions. They represented global regions as follows: *Africa* (31 States); the *Americas* (23); *Asia* (26); *Eastern Europe* (9); *Western Europe* (24); *Australia* and *New Zealand* (2). More than one third of the States represented had achieved independence since 1945.<sup>52</sup>

The Conference organised itself in the initial plenary meetings. Four persons with leading functions were also ILC members, and Sir HUMPHREY WALDOCK attended as Expert Consultant. Many State delegations included ILC members.<sup>53</sup>

<sup>49</sup> SINCLAIR, ICLQ 19 (1970) 50. In 1949 BRIERLY warned that the law of treaties “was a very wide question which might take up several meetings”, YBILC 1949 48, para 15.

<sup>50</sup> LISSITZYN, Columbia LR 62 (1962) 1166 ff.

<sup>51</sup> The Conference expended approximately 75 days on the draft convention. The participants (listed in OR Documents 283) were invited according to the “Vienna Formula” of GA Res 2166 (XXI) of 5 December 1966, *i.e.*, members of the UN and specialised agencies, and parties to the ICJ-Statute (*Article 81*, N. 3). On the first session, see R. AGO, Conferenza delle Nazioni Unite sul diritto dei trattati, *Comunità internazionale* 24 (1969) 436 ff; P. FISCHER/H.F. KOECK, Das völkerrechtliche Vertragsrecht im Lichte der Ergebnisse der ersten Session der Wiener Vertragsrechtskonferenz der Vereinten Nationen, *ÖJZ* 1968 505 ff.

<sup>52</sup> A.K. EL KADIRI, *La position des États du Tiers Monde à la Conférence de Vienne sur le droit des traités* (1980).

<sup>53</sup> See the Secretary General’s Memorandum on Methods of Work and Procedure of the 1st Session of the Conference, approved in OR 1968 Plenary 7, paras. 4 ff; and on the Procedural and Organizational Problems Involved in a Possible Diplomatic Conference on the Law of Treaties, GAOR 21(1966) Annexes Agenda Item 84 1 ff; also Y. DAUDET,

- 15 The Committee of the Whole (CoW) commenced with a first reading of the ILC Draft articles, which served as the “basic proposal” of the Conference.<sup>54</sup> Over 400 amendments were submitted to various articles of the draft convention. The CoW held a debate on each article and the proposed amendments thereto. The debate was opened by the sponsors of the relevant amendments; Sir HUMPHREY occasionally replied to questions and interpreted the ILC Draft 1966.<sup>55</sup>

The voting procedures may be summarised as follows. If the amendment involved a substantive issue, a vote was held with a simple majority being necessary for its adoption. If the amendment concerned drafting issues, it was submitted directly to the Drafting Committee unless objections were raised and a vote requested. The ILC draft article itself was voted upon if an amendment recommended its deletion.<sup>56</sup> Hence, if an amendment involving a substantive issue was rejected, this implied tacit acceptance of the article, whereas acceptance of the amendment implied adoption of the article as amended. If no amendment was proposed, the provision was regarded as adopted and referred to the Drafting Committee.<sup>57</sup>

- 16 The Drafting Committee held private discussions, regularly on a consensual basis, examining issues of drafting, substantive amendments and the ILC Draft 1966 in the light of the CoW records in order to present an acceptable, revised text to the Conference.<sup>58</sup> The Drafting Committee’s report was then discussed in the CoW. If subsequently there appeared to be substantial support in the CoW for the text, it was adopted without formal vote on the understanding that the summary records would reflect statements and reservations of States. In other instances, a formal vote was taken with a simple majority being necessary for the adoption of a text.<sup>59</sup>
- 17 As a result, at the 1968 session the CoW agreed in 83 meetings on 69 articles which it recommended to the plenary Conference (N. 17) for adoption.

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Note sur l’organisation et les méthodes de travail de la Conférence de Vienne sur le droit des traités, AFDI 15 (1969) 54 ff.

<sup>54</sup> Rule of Procedure 23, OR 1968 *xxviii*.

<sup>55</sup> *Ibid.* 108, para. 12. The amendments are reproduced in OR Documents 95 f.

<sup>56</sup> Rule of Procedure 51, OR 1968 *xxx*. The count was based on the representatives present and casting either an affirmative or a negative vote; abstaining votes were not considered (Rule 37). See, *e.g.*, OR 1968 CoW 58, paras. 47 ff, where a vote was taken; and *ibid.* 185, paras. 79 f, where no vote was taken; also *ibid.* 201, paras. 44 ff, regarding ILC Draft Article 34, where an amendment recommended its deletion.

<sup>57</sup> *E.g.*, Article 9 of the ILC Draft 1966, *ibid.* 83, para. 41.

<sup>58</sup> The Drafting Committee consisted of 15 members working on a basis similar to the ILC Drafting Committee; see ROSENNE, *Law of Treaties* 66; NAHLIK, AFDI 15 (1969) 30.

<sup>59</sup> *E.g.*, the adoption of Article 40 of the ILC Draft 1966, OR 1968 CoW 463, para. 5, and the vote on Article 41 of the ILC Draft 1966, *ibid.* 483, para. 10.

The Committee left for further consideration at the second session the final clauses, the preamble and eleven articles.<sup>60</sup>

## 2. Second Session of 1969

The second session took place in Vienna from 9 April to 22 May 1969. 110 States and 14 specialised agencies and international organisations participated.<sup>61</sup> During the first part, the CoW continued during 22 meetings the first reading of those provisions of the ILC Draft 1966, and the amendments thereto, on which it had not been able to agree during the 1968 session (N. 15, 17).<sup>62</sup> In sum, it accepted an additional thirteen articles and recommended them to the Conference for adoption.<sup>63</sup> In Plenary, the Conference undertook a second reading of the draft articles as prepared by the CoW.

In the course of this reading, each article was put to a vote; a two-thirds majority was necessary for adoption, even if the previous debate in the CoW had reflected unanimous support.<sup>64</sup> A negative vote on the article brought about its deletion from the draft convention.<sup>65</sup> Occasionally, if an amendment was adopted, or when the debate revealed drafting difficulties, the matter was referred back to the Drafting Committee, the report of which was—if a formal vote had already been taken—subsequently adopted by the Conference on a consensual basis.<sup>66</sup>

When assessing the final votes in Plenary, it should be borne in mind that up to 110 States participated at the 1969 session and that the Convention consists of 85 articles. Sixty-six articles—over three-quarters of the Convention—were adopted by vast majorities of 90 votes or more, with only an occasional negative vote. Altogether 37 articles—nearly half the Convention—were adopted

<sup>60</sup> For the CoW Draft and various draft resolutions, see OR Documents 209 ff; while ILC Draft Article 38 was deleted, OR 1968 CoW 215, para. 60, the CoW introduced the new articles *9bis*, *10bis*, *23bis* and *69bis*.

<sup>61</sup> See the *Final Act on the UN Conference on the Law of Treaties* (q.v., N. 3–4). See generally P. FISCHER/H.F. KOECK, *Das Recht der völkerrechtlichen Verträge nach der zweiten Session der Wiener Vertragsrechtskonferenz der Vereinten Nationen*, ÖZAP 1969 275 f.

<sup>62</sup> Namely, provisions in regard to which problems had arisen on references to “general” or “restricted” multilateral treaties, in particular Articles *5bis* and *62bis* as proposed at the Conference and the later Convention *Articles 2, 9, 20, 30, 40, 41, 58 and 70* (q.v.).

<sup>63</sup> OR Documents 257 ff; the CoW also adopted the Final Clauses (*Articles 81–84*, q.v.), OR 1969 CoW 310, paras. 1 ff; the *Preamble* (q.v.) was submitted directly by the Drafting Committee to the Plenary, OR 1969 169, paras. 7 ff.

<sup>64</sup> Rules of Procedure 36, para. 1, and 37; the count was based on the representatives present and casting an affirmative or negative vote; abstentions were not considered.

<sup>65</sup> E.g., Article 5, para. 2 of ILC Draft 1966 (Capacity of a federal State to conclude treaties; see *Article 6*, N. 11), OR 1969 Plenary 15, paras. 50; Article *62bis* (Compulsory Settlement of Disputes; see generally *Articles 65–68*, q.v.) as proposed by the Conference, *ibid.* 153, para. 31.

<sup>66</sup> E.g., *ibid.* 4, para. 21; 157, para. 48; and 158 f, paras. 4 ff.

unanimously.<sup>67</sup> Fifteen articles received 80–89 votes,<sup>68</sup> and four were adopted by fewer than 80 votes.<sup>69</sup> Of the provisions not proposed by the ILC but by participating States, six attracted a relatively large number of abstaining or rejecting votes.<sup>70</sup> The Convention itself was adopted by 79 votes to one (*France*), with 19 abstentions (*Article 85, N. 1; Final Act of the United Nations Conference on the Law of Treaties, q.v.*).

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<sup>67</sup> The Conference adopted unanimously *Articles 1, 3, 13, 17, 18, 21–24, 26, 29, 31–37, 39–41, 47, 54, 55, 57–59, 61, 63, 70, 73, 76–80, 82 and 85 (q.v.)*.

<sup>68</sup> *Articles 4, 6, 20, 25, 38, 39, 45, 50, 53, 60, 64, 71, 74, 81, and 83 (q.v.)*.

<sup>69</sup> Fewer than 80 votes: *Article 15* (Consent to be Bound by a Treaty Expressed by Accession, *q.v.*); *Article 27* (Internal Law and Observance of Treaties, *q.v.*); *Article 66* (Procedures for Judicial Settlement, Arbitration and Conciliation, *q.v.*); *Article 67* (Instruments for Declaring Invalid, Terminating, Withdrawing from or Suspending the Operation of a Treaty, *q.v.*).

<sup>70</sup> *Articles 27, 66, 74, 81, 83 and 84 (q.v.)*.