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Summary record of the 489th meeting

Topic:
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62. Mr. LIANG, Secretary to the Commission, suggested that the title of the new article 6 should be amended so as to indicate that it dealt with the "adoption" as well as with the "drawing up" of the text.

63. Referring to Mr. Ago's first point, he observed that the word "administrative" had a narrower meaning in French than in English: in French, it denoted more or less routine matters. As the text might convey the impression that the diplomatic channel was part of an administrative channel, the words "convenient administrative" should perhaps be deleted from paragraph 1.

64. The phrase "or under the auspices of", which was vague, might with advantage be omitted from paragraph 4, sub-paragraph (iii), and replaced by a clear indication that the provision referred to treaties negotiated within an international organization or one of its organs, or drawn up by an international conference convened by an international organization.

65. The Charter of the United Nations did not contain provisions concerning the voting rules applicable in conferences, nor did the constitutions of all the specialized agencies; accordingly, it would be advisable to stipulate in paragraph 4, sub-paragraph (iii), that in the absence of such provisions the rule in sub-paragraph (ii) above would apply. In practice the United Nations had always refrained from making rules about voting procedure and it was interesting to note that even the Council of the League of Nations, which had usually asserted more authority over its subordinate organs, had not attempted to lay down rules of procedure for The Hague Conference for the Codification of International Law of 1930. Perhaps one of the reasons for not doing so on that occasion had been that the Conference had been attended by States not Members of the League. In the United Nations General Assembly, of course, it was always open to any delegation to propose the adoption of a voting rule requiring a two-thirds majority for the adoption of the text of a particular convention, and perhaps that possibility might be covered in paragraph 4, sub-paragraph (ii).

66. Though Mr. Ago's point concerning the last sentence of the new article 6 was valid, the sentence was perhaps superfluous since only someone wholly unversed in law could associate the adoption of a text with the process of becoming a party to the treaty.

67. Mr. YOKOTA found the new article generally acceptable but had some doubts about paragraph 4, sub-paragraph (ii). Though at recent conferences the majority rule might have been adopted, he doubted whether that had yet become established practice. Accordingly, he would prefer the words "equally by a simple majority" to be omitted and the question to be left open. However, if the Special Rapporteur's intention was to bring about a progressive development of international law and if that found favour with the majority, he would not press his view provided that it was clearly stated in the commentary that the rule in question did not reflect present practice.

68. Mr. SCELLE said that the objections to the use of the word *"administrative"* in the French text could be met by the substitution of the word *"officielle"*.

69. He considered that it would be extremely difficult, if not impossible, for the United Nations or any other international organization to impose certain rules of procedure on a conference convened by it if non-member States were invited to participate. Paragraph 4, sub-paragraph (ii), was acceptable in its present form if some mention could be made of the growing popularity of the simple or two-thirds majority rule.

The meeting rose at 1 p.m.

489th MEETING

Wednesday, 6 May 1959, at 9.45 a.m.

Chairman: Sir Gerald FITZMAURICE

Law of treaties (A/CN.4/101) *(continued)*

[Agenda item 3]

NEW ARTICLE 6 (FORMERLY ARTICLE 15) (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the redraft of article 15, which had become article 6, submitted at the previous meeting (488th meeting, para. 46).

2. Mr. FRANÇOIS was opposed to making any definite stipulation concerning the voting rule to be observed at international conferences, because that was not a matter for the Commission to decide *a priori*, once and for all, but for each conference to fix for itself. On the other hand, it was essential to specify in the code by what majority conferences were to adopt their rules of procedure; in his opinion there could be no doubt that the practice of conferences was to adopt their rules by a simple majority.

3. At the previous meeting (488th meeting, para. 66) the Secretary to the Commission had rightly argued that the last sentence in the new article was superfluous. Nevertheless, a statement along the lines of that sentence might usefully appear in the commentary to rebut in advance any such theory as that put forward at the United Nations Conference on the Law of the Sea, held in 1958, when it had been suggested that States willing, in certain circumstances, to accept an extension of the territorial sea had, by voting in that sense, implicitly abandoned the three-mile rule.

4. Mr. PAL said that the discussion had served to confirm his original view, and he saw no reason why any conference should not itself adopt the voting rule governing the adoption of its own rules of procedure. In the absence of any decision to the contrary unanimity should be required. He could see no merit in a simple majority rule in that instance. Securing continued participation by the minority was of great potential consequence; there was always the further possibility of ultimate concurrence as a result of the conference. He did not see any compensatory advantage in keeping to the simple majority rule.

5. The last sentence of the new article was not altogether redundant, for it might reassure States participating in a conference which found themselves in the minority that they were not in any way bound by the text of the convention adopted by the mere fact that they had not withdrawn from the conference.

6. Mr. YOKOTA considered that the last sentence of the new article should be discussed in conjunction with article 17, paragraph 1, since it related to the legal consequences of drawing up the text.

7. Mr. TUNKIN could not agree with Mr. François that the simple majority rule for the adoption of rules of procedure constituted existing practice. Surely, no

majority of States represented at a conference could force a minority to accept a particular rule of procedure. If Mr. François were right, rules of procedure once adopted became *ipso facto* obligatory on all participants, which was patently absurd, since any delegation finding them unacceptable could leave the conference.

8. There was also some contradiction in Mr. François's argument that it was absolutely indispensable for the conduct of international conferences to insert a rule on the subject in the draft, and his contention that the rule already existed.

9. If any rule could be claimed to exist concerning the adoption of the rules of procedure it must be the unanimity rule. But at all events he did not believe there was any need for provision on the subject, which really belonged to a different topic, namely the conduct of international conferences. He therefore urged the omission of paragraph 4, sub-paragraph (ii).

10. He agreed with Mr. Yokota that the last sentence of the article was unsatisfactory and should be deleted, and the point should be taken up during the discussion of articles 17 and 18.

11. Mr. FRANÇOIS said, in reply to Mr. Tunkin, that the Commission had never felt bound to refrain from including a rule in any draft because it was a recognized rule of international law: one of its functions, after all, was codification. Even if no provision were included concerning the adoption of the rules of procedure, the present practice of adoption by simple majority would continue. If Mr. Tunkin's theory were put into practice any one State could force a conference to adopt the unanimity rule.

12. Mr. LIANG, Secretary to the Commission, said that the discussions had prompted him to examine United Nations practice and the views expressed in the General Assembly on the question.

13. The possibility—mentioned by Mr. Ago at the 488th meeting (para. 53)—of an international organ prescribing in advance rules of procedure for a conference convened by it, had been the subject of some discussion at the fourth session of the General Assembly in 1949 when the Assembly had considered the question of implementing Article 62, paragraph 4, of the United Nations Charter.

14. In view of the interest which the Economic and Social Council had shown in convening technical conferences, the General Assembly had asked the Secretary-General to prepare some draft rules for the calling of international conferences, and two schools of thought had emerged during the discussions on that draft in the Sixth Committee.[1] One held that since the Council was entitled to convene conferences it was also entitled to draw up their agenda and rules of procedure, a task for which it was better qualified than a body of experts. The other school contended that the Council could not impose its own views on a conference, but could for guidance provide a provisional agenda and rules of procedure. The second view had prevailed, and had been embodied in rule 7 of General Assembly resolution 366 (IV), entitled "Rules for the calling of international conferences of States". That method had worked fairly satisfactorily, as, for example, in the case of the Conference on the Law of the Sea.

[1] See *Official Records of the General Assembly, Fourth Session, Sixth Committee*, 187th to 199th meetings. See also *Repertory of Practice of United Nations Organs*, vol. III, para. 69, pp. 315 and 316.

15. In view of that practice and the difficulties mentioned by some members, it was questionable whether the Commission should recommend a general rule. He still believed that the Commission might be going too far in attempting to deal with a matter which properly related to the rules for the calling of conferences and their voting procedure: the issue was a crucial one as far as that subject was concerned, but not in a draft on the law of treaties. It might suffice in the present instance simply to state present practice.

16. Mr. AGO said that unless a conference could adopt its rules of procedure by a simple majority it might find itself in the position of being powerless to get to work at all. He strongly deplored the dangerous implication of the theory that, since the majority could not impose its will on the minority in respect of the rules of procedure, then, if the minority did not withdraw, unanimity must be assumed to have been reached. That theory would inevitably lead to the false proposition that unanimity was the rule, with the implication that one State could obstruct the adoption of the rules of procedure and stop all the work of the conference.

17. As far as the voting rule for the adoption of the text itself was concerned, he sympathized to some extent with the view expressed at the previous meeting by Mr. Tunkin (488th meeting, paras. 58 and 59). The Special Rapporteur's redraft seemed to imply that the trend was towards the simple majority rule, which was not the case. The Commission should endeavour to provide for all possible situations, and he thought that the most flexible formula would be to stipulate that any conference decided on its voting rules in accordance with the rules of procedure adopted by a majority vote.

18. Again he considered that all eventualities should be provided for in paragraph 4, sub-paragraph (iii). Clearly, in some cases, it was preferable for the conference to draw up its own rules of procedure, in others —and particularly when the conferences were of a technical nature—it was preferable for the rules of procedure to be prepared in advance by the convening organ.

19. The last sentence in paragraph 4 was self-evident and should be deleted.

20. Mr. PADILLA NERVO said that in practice the provision contained in paragraph 4, sub-paragraph (ii), would presumably be applied by analogy with Article 18 of the Charter, and the approval of the text of the treaty would undoubtedly be regarded invariably as an "important" question. That provision would not influence the voting procedure in the cases envisaged in paragraph 4, sub-paragraph (iii).

21. As for the question of the voting rule for the adoption of rules of procedure, he thought it would be difficult not to accept the simple majority rule, for otherwise the negotiations might never get started.

22. He agreed with Mr. Yokota about the last sentence in paragraph 4.

23. Mr. TUNKIN said that the Secretary's account of United Nations practice had confirmed his opinion that it would be unwise for the Commission to lay down any rule, whether for the adoption of the rules of procedure or for the adoption of the text of a treaty. No proof had yet been produced in support of the contention that there was a general rule of international law governing the adoption of the rules of procedure. The matter did not appear to have led to difficulties in

practice and should be dealt with in conjunction with the topic to which it properly belonged.

24. Mr. BARTOŠ said the crucial question was whether the Commission was engaged, in the present case, in codifying existing international law, or in developing the law. It had decided to embody the law of treaties in a code, rather than in a convention; accordingly, the Commission was codifying existing rules of international law, and not making new rules. If the Commission were engaged in developing international law, he would not oppose the introduction of a rule concerning the majority required for the adoption of the rules of procedure of a treaty-making conference; the fact was, however, that in existing international law there was as yet no rule establishing such a majority, though the unanimity rule was universally recognized.

25. If an international organization convened a conference, the participating States were free to accept or not to accept the rules proposed by that organization; and in any case it was open to the dissenting minority to withdraw from a conference which had approved rules by a majority decision. The text of a treaty approved by a conference by a majority could hardly be binding on States which had not participated in drawing up the text, even though the text might have a certain international or political importance, possibly even for the non-participating States. What was quite inadmissible, however, was a provision to the effect that a text having potentially "obligatory force" should in all cases be adopted by a simple majority. If the simple majority rule was inapplicable to the adoption of the rules of procedure, then *a fortiori* it was inapplicable to the adoption of the treaty.

26. If the Commission were concerned with developing the international law relating to treaty-making, he would accept the idea of recommending the two-thirds majority rule. Since it was, however, codifying the law, the alternatives before the Commission were the unanimity rule—on which he would not insist—and the provision that every conference was free to adopt its own rules of procedure. But the Commission should not lay down the simple majority rule, even if it were qualified by the provision that every organization's pre-established rules must be respected.

27. In that connexion, he was inclined to agree with Mr. Ago that the question of the majority was governed not only by the constitution of the convening organization but also by the rules applicable to the calling of a conference; in other words, the question was often governed by rules of conference law, rather than by constitutional provisions. It was a practice recognized in international law that the negotiators attending a conference had the right to propose or to accept in advance the conditions under which the conference would work; such rules were tacitly accepted by the participants. He was therefore opposed to laying down a new abstract rule to the effect that a text should always be adopted by a simple majority. Under the United Nations Charter, some relatively unimportant decisions were made by a simple majority of the General Assembly but matters of political consequence, enumerated in Article 18, paragraph 2, were decided by a two-thirds majority.

28. If in the present case the Commission was engaged on the progressive development of international law, it would be possible to include in the code a recommendation for a two-thirds majority rule or, better still, a provision along the lines suggested by Mr. Ago that it should be left for each conference to decide by what majority the voting rules would be settled. It should be borne in mind that the whole problem of majorities was approached in many different ways. For example, some technical conferences had their own peculiarities in that respect; thus, under the Constitution of the International Labour Organisation, it was recognized that certain social groups from each State voted separately on texts relating to important social matters. The procedure was also complicated in the case of certain political decisions. In some such cases, the Security Council had decided, in connexion with Chapter VI of the Charter, that nothing should be regarded as finally decided unless the State directly concerned accepted the decision. Moreover, certain questions which did not fall under Article 2, paragraph 7, since they could not be regarded as purely domestic, and which could not threaten international peace and security, nevertheless closely concerned the sovereignty of States. For example, it was a generally recognized rule of modern international law that every international organization could by a majority decide for itself where it should have its headquarters, but in practice the consent of the host State must be obtained. Accordingly, no absolute rule governing majorities could be formulated but, in order to facilitate the work of conferences, some elastic recommendation might be made, to the effect that the conference should decide upon the majority according to voting rules determined by it and, failing such decision, by a two-thirds majority.

29. Mr. PAL said that the facts cited by the Secretary to the Commission (see para. 12 above) had confirmed his view that the code should not contain any provision concerning the voting rules of conferences.

30. He did not think that Article 18 of the Charter, which had been cited by Mr. Padilla Nervo (see para. 20 above), was relevant to the Commission's purposes, since that Article related only to the functioning of the United Nations as a body, and not to the work of conferences. The only relevance of Article 18 lay in the fact that, although the simple majority rule normally prevailed in General Assembly practice, even the Assembly observed the two-thirds majority rule for certain special purposes. If the Commission were to be guided by that provision, then, logically, the question by what majority a treaty-making conference should adopt its voting rules should itself be regarded as an important question and hence should be decided by at least a two-thirds majority. Any special majority rule prescribed for the adoption of the treaty text would be reduced to nothing if it were made subject to modification by a simple majority. He insisted that in prescribing the rules the Commission must not overlook the possibility of harnessing the constructive energy even of the minority group. In the affairs of nations, as in the affairs of humans, there was hardly any course absolutely and demonstrably right to follow among the many combinations that were possible in any complex situation.

31. He would oppose the only proposal actually before the Commission, which was to establish the simple majority rule, but if that proposal were modified by provision for the application of the two-thirds majority rule, he might be able to support it.

32. Mr. VERDROSS said that he could not agree with Mr. Ago, who had stated (see para. 16 above) that juridical logic led to the principle that the rules

of procedure of an international conference might in all cases be adopted by a simple majority. In his opinion, that logic led, on the contrary, to the principle of unanimity. Any international conference which was not governed by the constitution of an international organization could be convened only by agreement among *all* the participating States. Logically, therefore, the rules of procedure of such a conference would also require the agreement of *all* the participating States.

33. Mr. François had raised the separate question whether international practice had already established a positive rule whereby rules of procedure might be adopted by a simple majority. Although he doubted the existence of such a rule, he would not object to its acceptance, since the Commission's task was not only to codify international law, but also to promote its progressive development.

34. With regard to the question of the majority by which an international conference should adopt a text, he shared Mr. Ago's view that the question should be left for each conference to decide for itself.

35. Mr. TUNKIN suggested that, in the light of the views expressed during the debate, paragraph 4 (ii) should be amended to read:

"(ii) In the case of multilateral treaties negotiated at an international conference, and subject to sub-paragraph (iii) below, by a two-thirds majority vote unless the conference decides to adopt another voting rule."

36. The Commission could thus omit any reference to the adoption of rules of procedure, which, in his opinion, fell outside the scope of the code.

37. Mr. AMADO thought that the Commission should concern itself with the adoption of texts, rather than with the rules of procedure of international conferences. A text embodied in written form the settlement of certain problems between States; in order that the text might become an instrument, it must be drafted through negotiation and some rule must be established for the procedure of its adoption. It was self-evident that, in the case of bilateral treaties or treaties negotiated by a small group of States, unanimity had to prevail. In the case of multilateral treaties, however, there was as yet no rule of international law. In order to eliminate the divergences of views concerning the majorities by which such texts should be adopted, he suggested the following simplified version of paragraph 4 (ii):

"(ii) In the case of multilateral treaties, by agreement between States in accordance with the rules established by the international organization under whose auspices the conference is convened or by the conference itself in accordance with the rules which it has itself established."

38. All reference to majorities or unanimity would thus be eliminated and the idea that States must agree in principle would be established.

39. Mr. HSU observed that the first question before the Commission was whether the code should contain a provision concerning the rules of procedure of conferences. He considered that such a provision should be included, since the subject fell within the scope of a code on the law of treaties.

40. The next question to be settled was what kind of rule should be established. In his opinion, that rule should be neither out of date nor unrealistic. He could not agree with the view that unanimity was a generally accepted rule of international law; the question of sovereignty raised in that connexion was misplaced, since States were free to make reservations to treaties and even not to accede to them even though they had participated in their preparation. It would therefore seem that some majority rule was the practical solution. The Commission might follow the example of the United Nations General Assembly, in which under the Charter the two-thirds majority rule applied in important questions and the simple majority rule in subsidiary matters; in the Assembly, the question whether a matter was important or not was decided by a simple majority. A conference might decide for itself to follow the unanimity rule in adopting a text, but the General Assembly's method of establishing the rules of procedure seemed to be sound. It should be borne in mind, moreover, that the United Nations was a practically universal organization and that the precedents it laid down approximated to rules of international law.

41. Mr. ALFARO agreed with the speakers who considered it impossible to apply the unanimity rule to the adoption of the rules of procedure at international conferences.

42. In his view one rule would be applicable to both of the two classes of international conferences referred to in sub-paragraphs (ii) and (iii), and therefore they could be dealt with in a single sub-paragraph, along the following lines:

"In the case of multilateral treaties negotiated at an international conference and in the case of treaties negotiated in an international organization or at a conference convened by an international organization, by the voting rule determined by the conference."

43. He made that suggestion irrespective of whether it was decided to retain or omit the reference to a simple majority.

44. Mr. YOKOTA said, with respect to paragraph 4, sub-paragraph (ii), that he was opposed to the suggestion that no reference should be made in the code to the voting rule observable at international conferences. The manner in which the text of a treaty was established, whether in bilateral or multilateral negotiations, was properly a part of the law of treaties. Therefore, the Commission had to try to arrive at an acceptable rule.

45. The question whether there was an established practice at international conferences for the adoption of the rules governing voting procedure was debatable. Some members had said that there was a majority rule, some had insisted that there was in effect a unanimity rule and some had claimed that there was no established rule. In the circumstances, the Commission could not enunciate a voting rule that would govern the adoption of a conference's rules of procedure.

46. He recalled the suggestion he had made at the previous meeting (488th meeting, para. 67) to omit the words "equally by a simple majority", and noted that it had been acccepted by Mr. Tunkin. For his own part, he was prepared to accept Mr. Tunkin's formula providing for the adoption of texts by a two-thirds majority unless the conference decided otherwise.

47. Mr. SANDSTRÖM said he found it difficult to take a position after listening to the arguments developed in the debate. He suggested that sub-paragraph (ii) should provide simply that in the case of a multilateral treaty negotiated at an international conference, the adoption of the text took place in accordance with the rules

decided on by the conference. All the various positions could then be fully set out in the commentary.

48. Mr. EDMONDS said that a code on the law of treaties would not be complete without a statement on the voting rule by which the text of a treaty was adopted and, by implication, on the vote by which that voting rule was adopted. That was what the Special Rapporteur had tried to do and he had selected the appropriate place to do it.

49. In that connexion he recalled that the famous American jurist Oliver Wendell Holmes had once said that the structure of any law must be such "as to allow some play at the joints", in other words, should permit of practical application. Thus, the rule to be arrived at by the Commission had to be a workable rule. No one could object to the unanimity rule in the case of bilateral treaties or treaties negotiated by a small group of States. Again, in the case of a multilateral treaty drawn up at a conference held under the auspices of an international organization, he saw no reason why the voting rules of the sponsoring organization should not apply.

50. As to independent international conferences, it was simply and utterly impractical to suggest the unanimity rule. Some majority rule must be applied and he could equally agree to the suggestions for a simple majority and a two-thirds majority. He also agreed that a conference must be free to depart from the general rule. What he could not understand, however, was how the Commission could avoid saying by what majority a conference could decide on a different voting rule. Thus, if the Commission decided in favour of the two-thirds majority rule for the adoption of the text of a treaty, it would have to specify "unless the conference by a simple majority (or "equally by a two-thirds majority") decides to adopt another voting rule".

51. The final sentence of paragraph 4, which was completely acceptable to him, was in the nature of an "escape clause", which safeguarded the position of those who feared that obligations might be imposed on States by a majority vote.

52. Mr. KHOMAN said that the question before the Commission was not so much that of the adoption of the rules of procedure but that of the adoption of the text of the treaty, as the introductory clause of paragraph 4 plainly stated. Therefore, the question of the rules of procedure could be set aside and left to the decision of each international conference, on the principle that every independent organ was master of its own procedure. That was implicit in the Special Rapporteur's redraft, for sub-paragraph (ii) stated ". . . unless the conference . . . decides to adopt another voting rule".

53. Accordingly, he did not see the purpose of specifying any particular majority. It would be enough to conclude sub-paragraph (ii) with the words "by a majority to be decided by the conference".

54. At the same time, he would suggest the inclusion of an additional passage, either in the article or in the commentary, indicating that there were three categories of voting rules—unanimity, a simple majority and a qualified majority—and that present practice seemed to favour the two-thirds majority rule. He included unanimity as a possibility, because it had been the rule in the case of certain treaties sponsored by the League of Nations and it was conceivable that special circumstances might be in favour of the unanimity rule at a future conference.

55. However, any rule for voting on texts mentioned by the Commission would have to be in the nature of a suggestion.

56. Mr. SCELLE observed that since the Commission was drafting a code, and not a convention, its text would not be subject to discussion at a conference of States and it therefore enjoyed greater freedom of action. It was enough to say that the purpose of a code was generally to make *tabula rasa* of some customs. That had been the case with the Napoleonic Code and most other codes. The Commission should therefore not permit itself to be influenced by pre-existing rules which were not in keeping with the present state of international society.

57. As to the question of sovereignty, he pointed out that the number of independent States in the world was constantly growing. Was it desired that all those States should form a kind of archipelago of units separated by unbridgeable gulfs? That was the deeper meaning of "sovereignty". Or was it desired to have an international society of peoples who could produce results worthy of codification? In that respect he was completely in accord with Mr. François. It was unavoidable that the Commission should take a decision on the rules of international conferences. Moreover, paragraph 4 very adequately provided in its final sentence for the protection of sovereignty.

58. It was important to include a provision concerning the voting rule governing the adoption of texts. He was in favour of a simple majority but, if necessary, would be prepared to accept the two-thirds majority rule. On the other hand, he would delete the phrase "unless the conference . . . decides to adopt another voting rule", for it was unnecessary to bring those references to the principle of sovereignty at every stage.

59. It was the duty of the Commission to record rules which corresponded to present day reality, and that reality was an international society progressively moving along the road to integration.

60. Mr. FRANÇOIS pointed out that he did not go so far as Mr. Scelle. He would not prohibit a conference from deciding, by a simple majority vote, in favour of the unanimity rule for the adoption of the text of the treaty, if it wished to do so.

61. He had taken note of Mr. Tunkin's new suggestion (see para. 35 above) and he would like to ask by what vote, under that suggestion, a conference would decide to adopt a voting rule other than the two-thirds majority rule.

62. Mr. TUNKIN replied that that was a question which in practice was always resolved in one way or another. From the theoretical point of view, it was admittedly a difficult problem, but it was a problem that related to the organization of international conferences and not to the law of treaties. It might be argued that something had to be included in a code on the law of treaties concerning the voting of the text at international conferences, but that was as far as one could go.

63. The question was similar to that of reconciling the principle of the *Grundnorm* with the principle of *pacta sunt servanda*. That problem, too, was resolved in actual life in spite of a theoretical antithesis.

64. Mr. PADILLA NERVO agreed with Mr. Scelle that the Commission could not ignore in its code the question of how texts were adopted at multilateral conferences. While such conferences would always retain the power to settle their procedure, the Commission had to deal with the question of voting and had to express an opinion concerning what was desirable and practical. He

could not agree with those members who had suggested that the code should be wholly silent on the matter. The Commission had to express a judgment and not leave the question in the air.

65. He recalled that he favoured a wording based on the two-thirds majority rule. In that connexion he pointed out, with reference to Mr. Pal's statement, that he had cited the provisions of Article 18 of the Charter and the General Assembly's rules of procedure as an example and not for the purpose of showing that a conference would necessarily be bound by those provisions.

66. Mr. EL-KHOURI asked why it was necessary to debate the question of voting at international conferences at such length. The fact that a text had been adopted by a simple majority or a qualified majority or unanimously would not affect the right of any State to refuse to ratify or accede to the treaty. He would prefer to leave sub-paragraph (ii) as it stood.

The meeting rose at 1 p.m.

490th MEETING

Friday, 8 May 1959, at 9.45 a.m.

Chairman: Sir Gerald FITZMAURICE

Law of treaties (A/CN.4/101) (*continued*)

[Agenda item 3]

NEW ARTICLE 6 (FORMERLY ARTICLE 15) (*continued*)

1. The CHAIRMAN, speaking as Special Rapporteur, reviewed the Commission's discussion of article 15, which had been redrafted and would appear as the new article 6 (see 488th meeting, para. 46).

2. While most of the discussion had related to the drawing up of the text of a treaty at international conferences, he would first dispose of certain other points that had been made. The Secretary to the Commission had suggested (488th meeting, para. 62) that the title of the article should be amended to read "Drawing up and adoption of the text". He agreed with the suggestion, which should be referred to the Drafting Committee. There had been criticism of the word "administrative", in paragraph 1. He agreed that it was not the best word but explained that he had used it in order to indicate that the process of negotiation was a function of the executive, and not of the legislative, branch of government. He could accept Mr. Scelle's suggestion (488th meeting, para. 68) that the word *"officielle"* should be used in the French text.

3. There had been no special observations with reference to paragraph 2. As to paragraph 3, Mr. Verdross had questioned whether the head of a diplomatic mission possessed inherent authority to negotiate a bilateral treaty between his State and the State to which he was accredited (488th meeting, para. 60). Actually, the head of mission surely had such authority under his diplomatic credentials, which gave him the power to "treat" with the Government of the State to which he was accredited, though admittedly not inherent authority to sign the treaty or to represent his country at a multilateral conference which happened to be held in the territory of that State.

4. In paragraph 4, some members of the Commission had suggested the omission of the final sentence, as self-evident. Others had considered the sentence important as a safeguard against any possible misunderstanding concerning the legal effects of the adoption of a text. Mr. Yokota had called attention to the fact that that point was covered by article 17, paragraph 1 (see 489th meeting, para. 6). He (the Special Rapporteur) was in favour of retaining such a provision in the code, because even international jurists sometimes became confused about the legal consequences of the adoption of a text. If the Commission should decide not to keep it in article 17, the provision should at least appear in the article under discussion.

5. With regard to paragraph 4, sub-paragraph (i), some members had thought it unnecessary to mention that texts of bilateral treaties were adopted by unanimity, and Mr. Ago had suggested (488th meeting, para. 52) that sub-paragraph (i) should be limited to the case of treaties "negotiated between a restricted group of States". He agreed with that suggestion in principle but thought that the drafting committee might mention the case of bilateral treaties parenthetically, so to speak, by a phrase such as "in addition to the case of bilateral treaties".

6. The remaining and major part of the discussion, and most of the suggestions, had dealt with sub-paragraphs (ii) and (iii). He would not review every suggestion but would attempt to group them into categories. One suggestion—he was not sure whether it was still maintained—had been to the effect that it was not necessary to deal with the voting rule at international conferences at all, because that was a question of conference procedure and not strictly part of the law of treaties. In his opinion, to accept that view would be to say that nothing was part of the law of treaties unless it had reference to a completed treaty actually in force. He did not believe that anyone wished to go so far, and all members of the Commission would probably agree that the question of the method whereby the text of a treaty was adopted was certainly a part of the law of treaties and a very important part. If that was agreed to, he could not see how the question could be excluded from the code.

7. In connexion with that question various suggestions had been made. It had been proposed that it should be provided simply that it was for each conference to decide on the method by which it would adopt the text of a convention. While he did not consider that proposal incorrect, he thought that it was inadequate, for it left open the very important question how a conference was to proceed to take that decision, a decision without which it could not adopt any text at all. It was therefore essential for the Commission to go a step further.

8. There again different suggestions had been made. While everyone had agreed that the international conferences referred to in sub-paragraph (ii) would always have the right to adopt whatever voting rule they preferred, many members of the Commission had expressed themselves in favour of mentioning a voting rule, and most of those had suggested a two-thirds-majority rule. After that, there had been a division of opinion as to whether the article should specify the manner in which a different rule would be adopted, some favouring the use of a vague formula, such as "unless the conference decides otherwise", while others