

Document:-
A/CN.4/SR.1085

Summary record of the 1085th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1970, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

1085th MEETING*Thursday, 9 July 1970, at 10.10 a.m.**Chairman: Mr. Taslim O. ELIAS*

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Draft report of the Commission on the work of its twenty-second session

*(A/CN.4/L.156-160 and Addenda)**(continued)**Chapter III***SUCCESSION OF STATES AND GOVERNMENTS***(resumed from the 1083rd meeting)**B. Succession in respect of treaties*

1. The CHAIRMAN invited the Commission to consider chapter III, section B, of the draft report (paragraphs 10-36) (A/CN.4/L.158/Add.1).
2. Mr. TABIBI said that the presentation of section B departed from the usual form of the Commission's reports on the work of its sessions. Those reports, which were prepared for submission to the General Assembly, were always drafted in such a way as to give due weight to the views of all members of the Commission. It seemed to him that, in the section under consideration, too large a place had been given to the views of the Special Rapporteur on succession of States in respect of treaties. Those views occupied the opening twelve paragraphs; the next twelve paragraphs set out the opinions of the members of the Commission and their comments on the reports, while the last four paragraphs summarized the discussion. In his view, the order should be the reverse and the views and comments of members of the Commission should be given before those of the Special Rapporteur.
3. The crucial problem involved in the topic of succession in respect of treaties related to article 6 of the draft. In that connexion, the draft report drawn up by the Special Rapporteur contained at least four references to the question of treaties dealing with frontiers, which were presented as an exception to the rule set out in article 6. On the other hand, the very important principle of self-determination was mentioned only once.
4. Sir Humphrey WALDOCK said that he had been asked to prepare the material for section B of chapter III in order to help the General Rapporteur. It had been intimated to him that it was desirable for that section to

contain a fairly full description of the manner in which the topic had been discussed in the Commission. For that purpose, he had found it necessary to begin by giving the substance of his own report and indicating the main points on which he had asked the members of the Commission to comment. That part of the report could, of course, only take the form of a statement of his own views; otherwise, readers might assume that those views were being attributed to the Commission itself. In the latter part of the section, he had summarized as fully as possible the points raised by members.

5. Where treaties dealing with frontiers were concerned, the references in the report were not to those treaties exclusively; they related to "dispositive", "territorial" or "localized" treaties in general, a category which included various types of treaties establishing régimes and not merely frontier treaties. He himself had had more hesitation than some members with regard to the treatment of "dispositive" treaties and he had therefore been impressed by the fact that many members had spoken of those treaties as an exception not only to article 6 but to other articles as well; he had therefore concluded that it was necessary for him to take that clear indication of the opinion of members into account when he dealt with that category of treaties. He could assure Mr. Tabibi that there had been no intention of over-emphasizing the question of frontier treaties, but equally it would be wrong to disregard the clear trend of opinion in the Commission, which was an objective fact.

6. Mr. ROSENNE said that, although he would not go so far as Mr. Tabibi, he did not think that section B did full justice either to the Special Rapporteur's report or to the debate which had taken place on it. One very important feature of the Special Rapporteur's report had been the meticulous attention paid to the resolutions adopted by the International Law Association at its fifty-third session at Buenos Aires in 1968. Many members of the Commission had commented on those resolutions during the discussion and had expressed the view that they did not constitute an appropriate framework for the Commission's work. He suggested that it might be advisable to mention the fact that the Commission had agreed to depart from the approach adopted by the International Law Association and to do so in the present introductory report rather than in connexion with the individual articles at a later stage.

7. Mr. BARTOŠ (Rapporteur) said that the draft report was his responsibility as General Rapporteur. The report was a summary of the discussion and obviously could not go into every detail. Since, however, it was only a draft, every member of the Commission was entitled to propose amendments if he considered that a point had been omitted or inadequately reported.

8. Mr. REUTER said he had a number of comments on minor translation problems. In order to save time, he proposed to transmit them direct to the Secretariat, which could take them into account in preparing the final text.

9. The CHAIRMAN invited the Commission to consider the section paragraph by paragraph.

Paragraph 10

10. Mr. USHAKOV suggested that it would be useful to include a note explaining what was meant by the term “new States” and, in particular, whether it meant decolonized States.

11. Mr. AGO said he thought that the term could not be confined to States formed as a result of decolonization. He asked the Special Rapporteur for his opinion on that point.

12. Sir Humphrey WALDOCK said that he would prepare a footnote explaining what was meant by “new State”. That point was covered both in his report and in a later paragraph of section B. The term was used as a term of art to denote the emergence of a new State in a pure form, namely, the separation of a piece of territory, whether by way of decolonization or otherwise. The Commission would review the matter when it had considered all the particular forms of succession, including federations and unions.

13. Mr. TABIBI said he had misgivings regarding the phrase “territory passing from one State to another” in the second sentence of paragraph 10, since it might give the impression that the intention was to legalize acts of occupation. He also had misgivings regarding the phrase “the so-called moving treaty-frontier principle” in the same sentence.

14. Sir Humphrey WALDOCK said that the passage related to cases where a piece of territory moved from one treaty régime to another. It was the “treaty-frontier” that moved, as was indicated by the hyphen between the words “treaty” and “frontier”. The reference to territory “passing from one State to another” was quite neutral. Territory could pass from one State to another as a result, for example, of a judicial decision relating to frontiers.

15. Mr. AGO emphasized that only cases of lawful passing of territory were envisaged in that context. There were many such cases, one example being the reciprocal ceding of territory by France and Switzerland at the time of the improvements to Cointrin airport at Geneva.

16. Mr. ROSENNE proposed that the words “the so-called moving treaty-frontier principle” within brackets in the second sentence should be replaced by “the so-called principle of moving treaty-frontiers”.

It was so agreed.

Paragraph 10, as amended, was approved.

Paragraph 11

17. Mr. TABIBI proposed that the words “He further stated that” should be inserted at the beginning of the third sentence so that the contents were clearly attributed to the Special Rapporteur.

It was so agreed.

Paragraph 11, as amended, was approved.

Paragraph 12

18. Mr. ROSENNE proposed that the words “municipal law” should be replaced by “internal law” in paragraph 12 and throughout the rest of section B.

It was so agreed.

19. Mr. USHAKOV said he thought that the expression “*la succession d'un Etat à un autre dans la souveraineté*” in the French text was incorrect. He therefore proposed that the word “*succession*” should be replaced by “*substitution*” in that text.

20. Sir Humphrey WALDOCK pointed out that the word used in the English version of that sentence was “replacement”, which should also be used in the following sentence.

Paragraph 12, as amended, was approved.

Paragraphs 13 to 16

Paragraphs 13 to 16 were approved.

Paragraph 17.

21. Sir Humphrey WALDOCK said that the words “was not bound” in the second sentence should be replaced by “was not to be considered as bound”.

22. Mr. TABIBI suggested that the latter part of the third sentence should be dropped. The Commission had agreed on the fundamental rule contained in article 6; the question of possible exceptions to that rule was being unduly emphasized by repetition in section B.

23. Sir Humphrey WALDOCK said he thought it was essential to retain the third sentence in full. The question of “dispositive” treaties was one which was very much discussed and it was not possible to avoid referring to it. In any case, the language he had used was particularly cautious. Many members had stressed the importance they attached to the matter and had laid much greater weight on it than he had done in his report.

24. Mr. ROSENNE said he was concerned at the misunderstanding which had already arisen and which was likely to be even more serious outside the Commission, in particular in the Sixth Committee. He accordingly proposed that section B should be divided into two subsections with separate sub-titles. The first, covering paragraphs 10 to 21, would be entitled “Summary of proposals by the Special Rapporteur” and the second, covering paragraphs 22 to 36, would be entitled “Summary of the Commission’s debate”.

25. Sir Humphrey WALDOCK said that he welcomed that proposal.

Mr. Rosenne’s proposal was adopted.

26. Mr. REUTER proposed that the word “etc.” should be added after the examples of treaties at the end of the third sentence and that the phrase “*les traités dits ‘de disposition’, ‘territoriaux’ ou ‘localisés’*” in the French text should be amended to read “*les traités ayant un caractère ‘dispositif’ ou des effets territoriaux ou localisés, etc. . .*”. It was necessary to make it clear that the list was not limitative. Moreover, since the term “*traité*”

dispositif" was unknown in French, it was preferable to put the word "*dispositif*" between inverted commas even in the formulation he had proposed.

The amendments proposed by Mr. Reuter were adopted.

Paragraph 17, as amended, was approved.

Paragraph 18

27. Mr. THIAM pointed out that the phrase in the sixth sentence of the French text should no doubt have read "*son intention de devenir partie*".

28. Mr. TESLENKO (Deputy Secretary to the Commission) said that the exact translation of the word "will" in the English text was "*volonté*".

29. The CHAIRMAN suggested that the words "*sa volonté*" should be used in the French text.

It was so agreed.

Paragraph 18 was approved with the amendment to the French text suggested by the Chairman.

Paragraph 19

30. Mr. REUTER said the reference to a new State's right to notify its succession in fact meant its right to notify its intention to exercise the faculty just described. The expression "notify its succession" was therefore not very appropriate.

31. Mr. BARTOŠ (Rapporteur) pointed out that it corresponded to the practice. The expression "exercise a faculty" would raise problems, since the very fact of succession was sometimes contested by other States.

32. Sir Humphrey WALDOCK said that his report contained a definition of "notification of succession", an expression which was used in the practice of the Secretary-General. If there were any objection to the words "notify its succession", they could be replaced by a formula such as "notify that it considers itself a party".

33. Mr. REUTER proposed that the word "succession" should be placed between inverted commas.

It was so agreed.

Paragraph 19, as amended, was approved.

Paragraph 20

34. Mr. TABIBI proposed that a reference should be included to the resolutions which had been adopted by the International Law Association at its fifty-third session at Buenos Aires in 1968 and of which some members had expressed approval.

35. Sir Humphrey WALDOCK suggested that since those resolutions were very long, a reference should be included to the passage of his own report in which they were reproduced.

It was so agreed.

Paragraph 20, as amended, was approved.

Paragraph 21

36. Mr. ROSENNE proposed that the words "having regard to the short time available for the consideration of

his report" in the first sentence should be replaced by the words "at this stage".

It was so agreed.

Paragraph 21, as amended, was approved.

Paragraph 22

37. Mr. REUTER proposed that the word "nineteen" before the word "members" at the beginning of the paragraph be omitted.

It was so agreed.

Paragraph 22, as amended, was approved.

Paragraph 23

38. Mr. AGO asked whether the particular forms of succession mentioned were those resulting from the establishment or from the cessation of the régime in question. In his view it was the latter situation which provided an example of succession.

39. Sir Humphrey WALDOCK said he would prefer to leave such matters open until the following year.

40. Mr. AGO said he would nevertheless like to emphasize that the use of the word "competence" in that context was questionable. In the case of protectorates and similar situations, some writers considered that the competence to conclude treaties passed to the protector State. Others believed, however, that there was only an obligation on the part of the protected State not to conclude treaties itself but to allow the protector State to act as its representative.

41. Mr. USHAKOV proposed that the words "one or two" before the word "members" in the last sentence of the paragraph should be replaced by the word "certain". It was not customary to specify the number of members expressing a particular point of view.

It was so agreed.

Paragraph 23, as amended, was approved.

Paragraph 24

42. Mr. AGO proposed that the words "competence to apply them" in the first sentence should be replaced by the words "practical possibility to apply them".

It was so agreed.

43. Mr. ROSENNE said that a problem of concordance between the English and French texts arose in that connexion. In the text of the articles themselves, where the English original used "competence" the term "*capacité*" was used in French.

44. Mr. AGO proposed that the word "competence" should be translated as "*pouvoir*" throughout the French text of section B.

It was so agreed.

Paragraph 24, as amended, was approved.

Paragraph 25

45. Mr. CASTRÉN said he had no objection to the report occasionally stating that only one member of the

Commission had expressed a certain opinion, if that had indeed been the case. That was current practice in the United Nations. In the last sentence of paragraph 25, however, the words "one or two" should be replaced by "certain", as at least two members of the Commission had expressed the view mentioned.

It was so agreed.

46. Mr. USHAKOV proposed that the phrase "as well as to the case in which several States arose from a single predecessor State" should be added to the end of the last sentence.

It was so agreed.

Paragraph 25, as amended, was approved.

Paragraph 26

Paragraph 26 was approved.

Paragraph 27

47. Sir Humphrey WALDOCK pointed out that the words "in State practice" in the last sentence should read "with State practice".

Paragraph 27 was approved.

Paragraph 28

48. Sir Humphrey WALDOCK suggested that, to meet the susceptibilities expressed by Mr. Tabibi earlier in the meeting, the last sentence should read: "The Commission, however, recognized that the whole question of so-called 'dispositive', 'territorial' or 'localized' treaties would fall to be examined by the Special Rapporteur in his next report."

It was so agreed.

Paragraph 28, as amended, was approved.

Paragraph 29

49. Mr. ROSENNE proposed that the second and third sentences, which described his own point of view, should be replaced by the following text:

"One member doubted whether a proper construction of the modern practice necessarily led to the conclusion that a new State had the right to consider itself a party to the multilateral treaties in question without the consent, express or implied, of the other parties to the treaty. He understood that practice as establishing that the formalities and temporal effect of participation laid down in the treaty could be supplemented by the new procedure of succession whenever the new State would be entitled to become a party to the treaty under its participation clause, and that participation by succession would have retroactive effect to the date of independence. That interpretation of the practice, he considered, would respect the principle of the autonomy of the parties. It would not attribute to depositaries larger powers than they normally possessed and it was, moreover, in conformity with the Vienna Convention on the Law of Treaties, particularly article 11, and, like the Vienna Convention itself, rendered un-

necessary a distinction of substance between bilateral and multilateral treaties."

It was so agreed.

50. The CHAIRMAN suggested that the words "Two members" at the beginning of the fourth sentence should be replaced by "Two other members".

It was so agreed.

Paragraph 29, as amended, was approved.

Paragraph 30

51. The CHAIRMAN suggested that the words "One or two members" at the beginning of the first sentence should be replaced by "Certain members".

It was so agreed.

Paragraph 30, as amended, was approved.

Paragraph 31

52. Sir Humphrey WALDOCK suggested that the words "to make it clear" in the second sentence of the English text should be replaced by "to make clear".

It was so agreed.

Paragraph 31, as amended, was approved.

Paragraph 32

53. Mr. ROSENNE said that, since the terms "one member" and "another member" had been used earlier in the report to introduce dissenting views, it would be preferable not to use them in the third and fourth sentences, since the views reported did not contradict those of the Special Rapporteur or of the Commission as a whole.

54. Sir Humphrey WALDOCK said that it would be possible to refer instead to the first point and the second point. He suggested that the Commission should allow him to recast the paragraph accordingly.

It was so agreed.

Paragraph 32 was approved on that understanding.

Paragraph 33

55. Sir Humphrey WALDOCK suggested that, in order to avoid any ambiguity, the words "deal with them" in the third sentence should be replaced by "examine the comments of members".

It was so agreed.

Paragraph 33, as amended, was approved.

Paragraph 34

Paragraph 34 was approved.

Paragraph 35

56. Sir Humphrey WALDOCK said that although, in his view, the last sentence described the situation correctly, it was not in fact necessary. In deference to the susceptibilities of Mr. Tabibi, he suggested that it could be deleted.

It was so agreed.

Paragraph 35, as amended, was approved.

Paragraph 36

Paragraph 36 was approved.

Chapter III as a whole, as amended, was approved.

Chapter V

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION
(resumed from the 1083rd meeting)

57. The CHAIRMAN invited the Commission to consider chapter V of its draft report (A/CN.4/L.160).

A. *Celebration of the twenty-fifth anniversary
of the United Nations*

Paragraph 1

58. The CHAIRMAN said that when the Commission had last discussed the question of submitting a draft resolution to the General Assembly in connexion with the twenty-fifth anniversary of the United Nations,¹ it had decided to set up a small drafting committee to prepare an agreed text for the Commission's consideration. That text formed paragraph 1 of section A of document A/CN.4/L.160. It read:

"The International Law Commission,

"Recalling that under Article 13, paragraph 1 a, of the Charter of the United Nations the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification and that the Statute of the International Law Commission has been adopted in pursuance of that task of the General Assembly,

"Recalling further that a series of codification conferences has been convened by the General Assembly and that, on the basis of the Commission's drafts, a number of codification conventions have been adopted by those conferences,

"Convinced that conventions dealing with the codification and progressive development of international law, the object and purpose of which are of interest to the international community as a whole, should obtain the widest and, if possible, universal participation,

"Expresses the hope that the General Assembly appeal to States to expedite the process of ratification of or accession to the Vienna Convention on the Law of Treaties of 1969, the Convention on Special Missions of 1969 and other codification conventions previously adopted on the initiative of the United Nations, and take other appropriate measures in order to complete the process of codification and place international law upon the widest and most secure foundations."

59. Although the text was intended to represent a compromise solution, there were still strongly opposing views

with regard to the third paragraph of the preamble. Some members wished the words "if possible" to be deleted, while others would be unable to subscribe to the draft resolution unless those words were retained. Regrettable though it would be to abandon the idea of a draft resolution, he thought that if the disagreement could not be resolved, that might perhaps be the best course.

60. Mr. ROSENNE said that he too thought that if the Commission was not in a position to adopt a resolution without opposition, there was little point in its adopting one at all. He therefore appealed to the members of the Commission to facilitate the preparation of a text that could be proposed by the Chairman and adopted without a vote.

61. Sir Humphrey WALDOCK said that even if the Commission could not agree on the present text, he saw no reason why it should abandon the idea of making some statement on the question of expediting the ratification of the codification conventions it had prepared, since that was a matter on which there was no disagreement among its members. Such a statement might perhaps take a less ambitious form than that of a draft resolution.

62. Mr. USHAKOV said that Sir Humphrey Waldock's proposal was unacceptable to him.

63. Mr. REUTER said he was forced to conclude with regret that, in the circumstances, the wisest solution was to dispense with the draft resolution.

64. Mr. AGO said he agreed with Sir Humphrey Waldock that it would be unfortunate if the Commission did not express its views on the ratification of the codification conventions. As the summary records would show that it had considered adopting a resolution on the subject, it would seem all the more strange that it had been unable to agree on expressing the hope that the conventions prepared on the basis of its work would be ratified.

65. Mr. USTOR said that, while he sympathized with the views of Sir Humphrey Waldock and Mr. Ago, he and other members of the Commission felt very strongly that if the Commission adopted a resolution referring to the ratification of the Vienna Convention on the Law of Treaties, it should affirm the principle of universality which had been accepted in that Convention.

66. Mr. YASSEEN said he had always supported the principle of universality, in the belief that it was logical and natural for a text intended as a basis for international rules to be addressed to the entire international community. He was therefore prepared to support any draft resolution which enunciated that principle unconditionally. If, however, the Commission could not reach agreement on that concept, he would have no difficulty in supporting a draft resolution requesting that the ratification of codification conventions should be expedited and that such conventions should be open to the widest possible participation.

67. Mr. USHAKOV said that while Mr. Ago found it regrettable that the Commission could not agree to recommend the ratification of codification conventions, he personally found it even more regrettable that the

¹ See 1083rd meeting, paras. 63-92.

Commission's members were not unanimously willing to proclaim the principle of universality in regard to the ratification of those conventions.

68. Mr. CASTRÉN said he was in favour of the principle of universality in the case of conventions which concerned all States. He was therefore prepared to accept the draft resolution with or without the words "if possible". Those words might perhaps be replaced by the word "ultimately". Otherwise he believed, like Sir Humphrey Waldock, Mr. Ago and Mr. Yasseen, that a draft resolution confined to recommending speedier ratification of or accession to codification conventions would be preferable.

69. Mr. THIAM said he thought that some members objected to the principle of universality in that context for purely adventitious reasons and that the words "if possible" met the difficulty. It would, however, be best not to take the matter further if the Commission could not agree on an alternative solution.

70. Mr. KEARNEY said that he had agreed to the present wording of the third paragraph of the preamble with considerable reluctance, because, in his view, the problem need never have been introduced, since operative paragraph 17 of part A of General Assembly resolution 2499 (XXIV) referred specifically to Member States of the United Nations. He had agreed to accept the present wording as a compromise solution, and he felt that, if the Commission went any further, it would be taking a political stand that was not consonant with its role. Consequently, if agreement could not be reached on the basis of the present text, it would be better to abandon the idea of a draft resolution altogether.

71. Mr. TABIBI said that, since all members of the Commission agreed on the need to expedite the process of ratification, there was no need to abandon the whole idea of a draft resolution, even if unanimity could not be reached on the present wording. There was no reason why the Commission should not take a vote on the draft resolution; in the early days of its existence, it had often taken votes, even on individual articles. The position of certain members could then be recorded in a footnote.

72. Mr. TSURUOKA said he was afraid that a draft resolution not adopted unanimously by the Commission would carry little weight with the General Assembly as a whole. It would therefore be better to drop the idea if unanimity could not be achieved.

73. Sir Humphrey WALDOCK said that he personally had no difficulty with regard to the principle of universality. The problem was not the principle but its application. He was, however, extremely concerned that, for the first time in his experience, the Commission was unable to reach agreement on a question on which it was in fact unanimous, simply because an extraneous question on which there was disagreement had been introduced into the discussion.

74. The CHAIRMAN asked whether the Commission would prefer to postpone its decision on the question

until the following meeting, in the hope that a compromise solution could be reached.

75. Mr. USHAKOV said he was in favour of dispensing with the draft resolution.

76. Mr. CASTRÉN said that would be unfortunate. He would suggest rather that the third preambular paragraph should be deleted, since the principle of universality was enunciated, although less directly, at the end of the operative part.

77. Mr. USHAKOV said he could not agree to that suggestion. He would have to vote against the draft resolution if it was put to the vote with such an amendment.

78. Mr. USTOR said he agreed with Mr. Tsuruoka that there was little point in adopting the draft resolution if the Commission could not do so unanimously. He deeply regretted that there was apparently no way of reconciling the two extreme positions. In his view, if the Commission was agreed on the principle of universality, it should be possible to express it in a draft resolution, making it clear that the agreement related to the principle alone. If the Commission was unable to do so, it would be preferable not to adopt a resolution on a majority basis.

79. The CHAIRMAN pointed out that some response should be made to the letter from the Secretary-General (A/CN.4/231), drawing the Commission's attention to General Assembly resolution 2499A (XXIV) on the celebration of the twenty-fifth anniversary of the United Nations.

80. Mr. USHAKOV said that he did not regard a request to the General Assembly to appeal to States to expedite the process of ratification as an appropriate response to General Assembly resolution 2499A (XXIV). That resolution was also concerned with acceleration of the work of codification, and an appropriate reply from the Commission might be to inform the General Assembly that the Commission would try to finish certain items of its work.

81. Mr. AGO said it would be better to have no resolution at all than one adopted on a majority basis. He would, however, like to propose one last compromise formula that might prove acceptable to both sides, namely, that the third preambular paragraph should conclude with the words "should obtain the widest participation" and that the operative part of the draft resolution should conclude with the words "and place international law upon the most secure and universal foundations."

82. Mr. YASSEEN said that that suggestion warranted further consideration.

83. Mr. USHAKOV said that he was unable to accept Mr. Ago's suggestion. He was, however, quite prepared to vote on the text of the draft resolution.

84. Sir Humphrey WALDOCK said he agreed with Mr. Ago that a resolution adopted on the basis of a divided vote would serve no useful purpose.

85. The CHAIRMAN said that, regrettably, it would seem that the only course was to drop the whole question of the draft resolution.

Chapter II

RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (resumed from the previous meeting)

86. The CHAIRMAN invited the Commission to resume consideration of chapter II of the draft report.

COMMENTARIES TO ARTICLES 0 AND 00

87. Mr. KEARNEY (Chairman of the Drafting Committee) reminded the Commission of Mr. Rosenne's proposal¹ that the relationship between the different series of definitions should be clarified, and introduced the following new versions of paragraph (1) of the commentary to article 0 and of paragraph (1) of the commentary to article 00:

Article 0 Commentary

(1) Since the article on the use of terms previously adopted by the Commission—article 1—cannot be applied to part III of the draft without modification, and certain additional terms used in this part require clarification, the Commission has placed at the beginning of the present part article 0 which states the meanings with which terms are used therein. Those terms in article 1 which are not repeated in article 0, such as "international organizations", are used in the same sense when they appear in part III. Any exceptions are noted in the commentary. Being aware of a certain amount of overlapping with article 1, the Commission will examine at the second reading whether and to what extent that overlapping can be eliminated. The Commission will also review what adjustments may be required in other articles in part I, such as article 2, in order to clarify their applicability to part III.

Article 00 Commentary

(1) Considerations similar to those stated in paragraph (1) of the commentary to article 0 above apply in the case of article 00. The Commission has, therefore, placed at the beginning of the present part article 00 which states the meanings with which terms are used therein. As is the case with article 0, there is a certain amount of overlapping with article 1. The Commission will also examine at the second reading whether and to what extent that overlapping can be eliminated.

88. Mr. USHAKOV said that he agreed with the proposed new versions. He would, however, like to propose that, in the third sentence of the commentary to article 0, the words "a certain amount of overlapping" should be replaced by "possible overlapping" and that the same change should be made in the third sentence of the commentary to article 00.

It was so agreed.

89. Mr. ROSENNE thanked the Chairman of the Drafting Committee and the Secretariat for meeting his

objections to the earlier versions. He proposed that the word "therein" at the end of the first sentence of the commentary to article 0 should be replaced by the words "in part III", and that the word "therein" at the end of the second sentence of the commentary to article 00 should be replaced by the words "in part IV".

It was so agreed.

The new versions of paragraph (1) of the commentary to article 0 and of paragraph (1) of the commentary to article 00, as amended, were approved.

The meeting rose at 12.55 p.m.

1086th MEETING

Friday, 10 July 1970, at 9.40 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Draft report of the Commission on the work of its twenty-second session

(A/CN.4/L.156-160 and Addenda)
(continued)

Chapter V

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION (resumed from the previous meeting)

1. The CHAIRMAN invited the Commission to continue consideration of chapter V of its draft report (A/CN.4/L.160), beginning with paragraph 3 (section B).¹

B. *The question of treaties concluded between States and international organizations or between two or more international organizations*

Paragraph 3

Paragraph 3 was approved.

Paragraph 4

2. The CHAIRMAN informed the Commission that Mr. Nagendra Singh had indicated his desire to be a

¹ See 1082nd meeting, paras. 76 and 89.

¹ For the discussion of section A, see below, paras. 26-30.