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Summary record of the 494th meeting

Topic:
Law of Treaties

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on it was as yet premature. Accordingly, the only alternatives were either to delete the last phrase of paragraph 1 or else to leave the matter open on the understanding that it would be considered later.

62. Mr. TUNKIN also supported Mr. Yokota's suggestion. In his opinion, the answer to Mr. Ago's question (see para. 59 above) hinged on whether or not there was a rule of international law obliging the parties negotiating a treaty not to take any step which might change the existing situation in any respect. He did not believe there was any such rule. For example, when the United Nations Conference on the Law of the Sea, 1958, had discussed the breadth of the territorial sea, it had been proposed that a resolution be adopted that, as from the beginning of the Conference, no participating State should extend the breadth of its territorial sea. There was, however, strong objection to that proposal. After the Conference a number of States had extended their territorial seas, but it could not be asserted that, even if they had done so during the Conference itself, they would have violated rules of international law. The performance of an act affecting the subject matter of a text might conflict with some other rules of international law, but States were under no specific obligation not to change the *status quo* at such time.

63. Mr. BARTOŠ thought that Mr. Yokota's suggestion was acceptable as a transitory solution, although it was not entirely satisfactory. He would not insist on any other course, however, since there was as yet no precise rule of international law on the question raised by Mr. Ago. However, even if Mr. Verdross's thesis concerning the existence of the good faith rule were accepted, participants in the negotiations were naturally aware whether or not they were acting in bad faith, particularly where law-making treaties were concerned. The Commission could not lay down any rule which was contrary to the established good faith rule.

64. He did not think that the example cited by Mr. Tunkin (see para. 62 above) was apposite, since no text on the breadth of the territorial sea had been adopted at the Conference on the Law of the Sea held in 1958. Accordingly, the subsequent actions of the States concerned merely supported his own and Mr. Ago's views.

65. Since no rule other than that of good faith existed as yet on the subject, the Commission might consider formulating a text to meet the requirements of article 17, pending further developments in international law, which might result in the establishment of a rule.

The meeting rose at 1 p.m.

494th MEETING

Thursday, 14 May 1959, at 9.55 a.m.

Chairman: Sir Gerald FITZMAURICE

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

[Agenda item 3]

ARTICLE 17 (*continued*)

1. The CHAIRMAN invited the Commission to continue its discussion of article 17 of the draft code.

2. Mr. SANDSTRÖM said that, by simply agreeing to negotiate on a particular subject, a State was not committing itself to continue the negotiations until they produced a result. The State could withdraw from the negotiations at any time and would thereupon regain the freedom of action it had previously had. That being so, it could hardly be said that the State's responsibility would be involved if it changed the *de facto* situation during the negotiations. Of course, such action might be discourteous; it might mean the breaking off of the negotiations and provoke a reaction. But it could hardly produce legal effects by reason merely of having occurred during the negotiations and without notice of discontinuance of the negotiations. It might have such effects as an unlawful act, and it was also conceivable that the negotiations had been undertaken in pursuance of a special agreement excluding any change in the *de facto* situation during the negotiations; but that was quite a different situation and immaterial to the rule that negotiations *per se* did not create any obligation to do or not do anything with respect to the subject matter of the negotiations. Accordingly, he found paragraph 1 acceptable in its present form. The last phrase did not seem to be absolutely necessary, however, especially if it might be interpreted as encouraging undesirable action, and he would therefore agree to its omission.

3. Mr. HSU thought that both a substantive and a formal question were involved in paragraph 1. The last phrase of the paragraph would have to be amended. It had been suggested that the provision might be clarified by a reference to the principle of good faith, but some members had objected to that course on the ground that no such rule existed in international law. He considered that the principle applied to all treaty law, but that it was quite admissible to introduce it as a qualification of the situation dealt with in paragraph 1, if the Commission wished to retain the whole sentence. The analogy with the situation at the time of the United Nations Conference on the Law of the Sea, in 1958, which Mr. Tunkin had cited at the previous meeting (see 493rd meeting, para. 62), was a false one, for paragraph 1 dealt essentially with texts already established, whereas at that Conference no final texts had been drawn up concerning the breadth of the territorial sea. When States agreed upon a text, however, they were naturally bound not to alter the fundamental situation to which that agreement related.

4. With regard to the formal question before the Commission, he believed that there were two ways of formulating a code. The first, followed by Professor Brierly in his report on the law of treaties (A/CN.4/23), was to enumerate the principal questions and to leave detail aside, while the second, followed by Sir Hersch Lauterpacht (A/CN.4/63 and A/CN.4/87) and the present Special Rapporteur, was to cover as many situations as possible. He had no personal preference for either of those methods, but thought that the Commission should decide on one of them.

5. Mr. SCELLE said that he would be prepared to go even further than Mr. Ago and to state that the theory of the obligation of States participating in negotiations on specific issues not to frustrate or alter the purposes of the negotiations was founded on a legal principle, and not only on moral principles and good faith. It was important for the Commission, whose task was not only to codify international law but also to promote its progressive development, to establish as a

matter of principle that participants in negotiations had no right to frustrate the purposes of those negotiations.

6. Under the old rule of absolute sovereignty, States were free to settle an issue in any manner they wished—even by force—and were not under any duty to resort to judicial or other pacific means of settlement. By virtue of the Covenant of the League of Nations that rule had been modified, in that States had undertaken not to resort to the use or threat of force for the purpose of settling differences, but even that restriction left considerable possibilities for the exercise of pressure. The modern position was that a State, though bound not to resort to force, was not bound to "negotiate" with another. Article 33 of the Charter referred to "any dispute the continuance of which is likely to endanger the maintenance of . . . peace", but the parties at issue were always free to leave things as they were and not to endanger peace. Every State was the absolute judge of whether a particular issue was susceptible of settlement. The corollary was that, by the mere fact of entering into negotiations, a State surrendered a portion of its sovereignty in that, by no longer claiming to be the sole judge, it conceded to the other party or parties a role in the settlement of the issue. That thesis applied equally to bilateral and to multilateral treaties and was based on the principle *ad huc sub judice lis est.* When an issue was submitted to the *juridiction* of two parties whose agreement was to become law if the treaty was effectively concluded, the legal obligation involved was of exactly the same nature as that imposed by an internal judicial authority, namely, that no action could be taken to prejudice the purposes of the agreement (provisional measures). The Commission had established that principle indirectly in the last draft on arbitral procedure, by admitting that a *jugement d'accord* ratifying the agreement or the *compromis* of the parties was a regular act of *juridiction* and binding on all concerned.

7. The Commission should therefore state a rule of law, and should also include an indication of the extremely delicate question, which did not derive from the notion of sovereignty itself, of the duration of the obligation. The principle *ad huc sub judice lis est* might be interpreted either as an indefinite or as a finite obligation. He believed that the decisive criterion of the solution was whether or not the treaty was signed. There could be no doubt that the obligation continued so long as the text was not signed and the negotiations continued; while a State was in regular possession of the subject matter concerning which it was negotiating with another State, that subject matter could not be affected in any way until the purposes of the negotiation had been achieved. But once a treaty had been signed, the situation became more complex. Although signature involved no definite obligation, it could be said that the beginnings of an obligation had been laid down. After that point, the State in possession of the subject matter had even less right to nullify, so to speak, the signature of its plenipotentiaries. That obligation could not continue indefinitely, however, and he believed, in the light of recent experience, that the question whether or not signature became definitive irrespective of ratification should be made the subject of a rule of international law. In the practice of some countries, ratification was delayed for years, and it might be said that the obligation not to change the subject matter subsisted during that period. While it was perfectly admissible to ponder the consequences of a text for a reasonable period, it was undesirable to allow for the voluntary and gradual modification of the subject matter until it became completely different from that about which the parties had originally negotiated and signed the relevant instrument. A rule which should result from the code was that ratification could not be postponed indefinitely, since that was dangerous both for State policy and for the interests of peace. It should be said therein that, within a reasonable time limit, a State should be deemed to have officially or unofficially declared the issue as no longer susceptible of settlement, and to have regained its sovereignty in the matter, within the limits prescribed by the United Nations Charter.

8. Mr. PAL said that he had found the Special Rapporteur's text of paragraph 1 quite satisfactory, both in its immediate context and in the context of the draft as a whole. With regard to paragraph 2, however, he thought that the omission of the second sentence and the addition of a reference to article 24 would improve the text.

9. He raised a drafting point in connexion with the phrase "does not involve any obligation to accept the text as finally agreed" in paragraph 1. It was not clear whether stress was laid on finality or on the obligation of acceptance. Once a text had been adopted by a certain majority, its finality was established and, after acceptance, no one could say that the text was not final. The wording should be changed in order to emphasize the absence of any obligation to accept the final text; the situation might be clarified by a reference to article 6.

10. He did not share the views of those who had objected to the last phrase of paragraph 1, particularly as the Special Rapporteur had dealt with the effects of error and lack of *consensus ad idem* in his third report (A/CN.4/115); merely to perform or refrain from performing any act in relation to the subject matter of a text involved no legal consequence, but performing an act which affected the *consensus ad idem,* in accordance with articles 9, 11 and 12 of the third report, certainly would have some grave consequences. Pendency of negotiation for a treaty did not by itself at any stage produce any *interim* legal consequence. At least existing international law did not prescribe any such *interim* consequences. The last phrase of paragraph 1 was therefore quite clear in the context; he would not object if it were omitted, but thought it unnecessary to do so.

11. Mr. TUNKIN said it had been asserted that the example he had cited from the Conference on the Law of the Sea to deny the existence of a rule of international law governing the situation between the establishment of a text and its entry into force was irrelevant, because no text on the breadth of the territorial sea had been adopted. He pointed out, however, that article 17 related to participation in negotiations. It could not be denied that the provisions of a treaty became binding only when the process of treaty-making was completed; the question to be answered was whether the negotiators were under any obligation before the treaty was in force. The problem raised by Mr. Ago (see 493rd meeting, para. 32) was real and a complicated one. If a State entered into negotiations with another for the purpose of concluding a treaty and if that treaty were signed but not yet ratified, the expression of the will of a State was there, but as yet no legal obligation existed, nor indeed could it exist until the treaty-making process had been completed. On the other hand, if a State performed an act which would make any treaty on the

subject useless, the result, in his opinion, would be a deficiency of will on the part of the State concerned. In that event, he agreed with Mr. Sandström that the situation would be equivalent to a breaking off of negotiations, or, if the treaty had been signed, to a refusal to ratify. Such an act was not, however, *per se* a violation of international law, since under international law no State was obliged to ratify a treaty and could halt the treaty-making process at any stage. The international responsibility of the State depended on substantive rules of international law; accordingly, any responsibility of the State did not derive from entry into negotiations, but from whatever substantive rules of international law might be violated by such action.

12. The majority of the Commission seemed to be in favour of omitting the last phrase of paragraph 1; personally, he had no strong feelings on the matter.

13. The CHAIRMAN, speaking as Special Rapporteur, said that Mr. Pal's suggestion would be referred to the Drafting Committee.

14. In reply to Mr. Tunkin, he pointed out that the main difficulty did not lie in the failure of a State to carry out a treaty before or after it had been concluded. The hypothetical danger was that a treaty might be carried out literally, but that its effects might be nullified, as, for example, if land were ceded under a treaty, but certain elements which rendered it valuable were removed or destroyed. Some provision to cover those cases should be inserted in the code. It was extremely difficult, however, to formulate a positive rule. He suggested that the word "agreed" might be replaced by "established", that the last phrase of paragraph 1 might be replaced by the words "or to carry out its provisions" and that a new paragraph might be inserted after paragraph 1, along the following lines:

> "This does not however affect such obligations as any participant in the negotiation may possess according to general principles of international law to refrain for the time being from taking any action that might frustrate or adversely affect the purpose of the negotiation or prevent the treaty from producing its intended effect if and when it comes into force."

15. Mr. BARTOŠ agreed with Mr. Scelle that it was a rule of good conduct that a State must not do anything during negotiations that was capable of frustrating the purposes of a treaty, but he could not infer that the negotiations *per se* created obligations. He considered that the rule calling for good faith was no doubt a rule of international law generally, even if it was not strictly a rule of the law of treaties. Within certain limits, therefore, it should apply also to the law of treaties, and the idea should be incorporated in the text of the rules governing the conclusion of treaties. While he did not deny that it was for States to decide whether they would accede to or ratify a text that had been established, he considered it a legal rule that, pending ratification and before declaring its non-acceptance of a treaty, a State which had participated in the negotiation of the treaty was not free to alter the purposes of the treaty. If a State refused to ratify, it was free to act as it chose, since the text would no longer be binding upon it, but pending ratification, it was essential to be able to rely on the good faith of the negotiators. It was difficult to say that the negotiating States were not under an obligation to refrain from taking action contrary to a text provisionally adopted. Furthermore, if the text contained a provision stipulating that no State should, so to speak, aggravate the situation and a State performed such an act pending ratification, that act would be contrary to the intentions of the parties. If a State availed itself of the right to refuse to ratify a text, it could lawfully act as if that text did not exist, but until it had exercised that right, it could not break its promise. The obligation, therefore, was not only moral, but legal. He considered that the good faith rule was a rule of international law; it might not be a rule of the law of treaties, but could be applied to certain aspects of that law.

16. Mr. AGO agreed with the substance of the Special Rapporteur's proposal. It appeared to meet all of the views that had been put forward during the discussion.

17. Mr. LIANG, Secretary to the Commission, pointed out that the Commission was discussing a hierarchy of obligations: first, obligations during participation in the drawing up of the text or during the negotiation of the treaty; secondly, obligations after the establishment of the text but before signature (dealt with in article 17); thirdly, obligations after the signature of the treaty (dealt with in article 30, paragraph 1 (*c*); and fourthly, obligations after ratification.

18. It seemed to him that the Special Rapporteur's latest proposal had to be read in the light of article 30, paragraph 1 (*c*), and might serve as a formulation of the obligations dealt with in article 17, provided that the distinction was clearly made between the second and third stages.

19. Mr. YOKOTA said that he had been about to make the same point. He appreciated the motives that had led the Special Rapporteur to propose his modifications. Apparently the Special Rapporteur had wished to find a formula which would satisfy all the members of the Commission. However, it seemed to him that the clause "or to carry out its provisions" was self-evident from the first part of paragraph 1. Obviously, if participation in a negotiation did not involve any obligation to accept the text as finally established, there would be no obligation to carry out any of the provisions of the text. Again, he saw no need for declaring that a State might have some obligations under the general principles of international law. That was always true and there was no special reason to mention it expressly in article 17.

20. He did not think that those two points were relevant to the stage of the treaty-making process under discussion. They arose after signature and should be dealt with in article 30. He agreed with the Secretary that a clear distinction should be made between the stage before signature and that after signature.

21. The question was whether a State had any obligations to accept the established text before signature. That question was answered by the beginning of paragraph 1 as far as the words "does not involve any obligation to accept the text as finally agreed" or better, "established". He suggested that the remainder of the paragraph as redrafted should be omitted.

22. Mr. SCELLE said that he was convinced that the Special Rapporteur's latest suggestions represented definite progress. They should be referred to the Drafting Committee and later re-examined by the Commission.

23. He reiterated his view that during the negotiations and before the stage of signature, obligations arose which had a bearing on the question whether the subject matter of negotiations could or could not be modified.

That view had now been admitted as correct by Mr. Bartoš, confirmed by the Secretary and duly taken into account in the Special Rapporteur's amendments.

24. Mr. TUNKIN supported the suggestion that the Special Rapporteur's formula should be referred to the Drafting Committee.

25. Mr. ALFARO agreed with the formula read out by the Special Rapporteur. However, he felt that before referring it to the Drafting Committee the Commission should decide on Mr. Yokota's suggestion to omit the clause "or to carry out its provisions".

26. The Chairman, speaking as Special Rapporteur, pointed out that his proposal had been to stop at the words "to accept the text as finally established, or to carry out its provisions". The additional paragraph would follow immediately thereafter. He suggested that article 17 should be referred to the Drafting Committee on that basis.

It was so agreed.

ARTICLE 18

27. The CHAIRMAN, speaking as Special Rapporteur, introduced article 18. He observed that in part I, section B, of the draft code he had tried to follow a certain sequence which he hoped was not only logical but natural in that it conformed to the various stages of the treaty-making process in their natural order.

28. Articles 15 and 16 dealt with the drawing up of the text and article 17, with certain implications of that first stage. After the parties had drawn up a text it was still possible, before the text was authenticated, to propose and consider changes. In article 18 the stage was reached where no further changes in the text could be made.

29. He had drawn attention, in paragraph 33 of his commentary, to the fact that paragraph 1 of the article was the same, with slight verbal changes, as that adopted by the Commission at its third session.[1] Of course, the fact that the article had been adopted in 1951 did not preclude its modification at the present session.

30. The four sub-paragraphs of paragraph 1 described the different ways in which authentication could take place. Sub-paragraph (*a*) applied mainly to bilateral treaties but could also apply to multilateral treaties. Sub-paragraph (*b*) was obviously limited to multilateral treaties. In connexion with sub-paragraph (*c*), he pointed out that the incorporation of a text in a resolution of an organ of an international organization gave the text a status not as a treaty but as a text that was final. Sub-paragraph (*d*) was a kind of omnibus clause that allowed for other possibilities.

31. Paragraph 2 was new. He had added it because some treaties still used the formula concerning the affixing of seals although no seals were actually affixed.

32. Mr. TUNKIN, referring to the title of article 18, asked whether "establishment" and "authentication" of the text were or were not synonymous. The title of section B contained the word "authentication" in parentheses after the word "establishment" whereas the beginning of paragraph 1 of article 18 seemed to imply that the two words were not synonymous.

33. He also suggested that the term *ne varietur*, appearing in paragraph 1, related to the effects of authentication and should preferably be reserved for article 19, paragraph 2.

34. The CHAIRMAN, speaking as Special Rapporteur, agreed that there seemed to be some inconsistency in the use of the words "establishment" and "authentication". The two words had slightly different meanings. He suggested that the question might be considered by the Drafting Committee.

35. He also agreed that the substantive aspect of the term *ne varietur* was dealt with in article 19, paragraph 2. It was a traditional term and he had only used it as a convenient means of identifying the stage of the treaty-making process reached in article 18.

36. Mr. AGO suggested that in paragraph 1, sub-paragraph (*d*), it might be advisable to specify that the "formal means" referred to were formalities relating to the authentication of the text. Otherwise, it might be inferred that the process of authentication included other formalities often prescribed in the text of a treaty, such as those concerned with the exchange of instruments of ratification or with some other subsequent stage of the treaty-making process.

37. The CHAIRMAN, speaking as Special Rapporteur, accepted the suggestion, although he thought that the context was clear.

38. Mr. LIANG, Secretary to the Commission, pointed out that in article 18 and some subsequent articles initialling seemed to have been equated with signature. Signature was an established act in the treaty-making process and might have legal effect in the case of treaties where the text permitted ratification to be dispensed with. In the technical process initialling represented a stage prior to signature and applied to a preliminary draft (*avant-projet*), whereas the signature was affixed to a final text. If the technical distinction was to be retained, initialling should not be given the same status as signature. The simplified procedure of initialling was exceptional, and initialling *ad referendum*, referred to in article 21, paragraph 2, was also rare.

39. The CHAIRMAN, speaking as Special Rapporteur, replied that the Secretary's comment might be relevant to article 20 and succeeding articles, but was not relevant to article 18. Furthermore, he could not agree with the substance of that comment. Initialling and signature were not equated, except with regard to the authentication of the text; in other respects they differed. Initialling was not confined to *avant-projets*, since final texts were frequently initialled and the initials of Heads of States ranked as signatures. Whether a document was an *avant-projet* or not depended on its nature and the intentions of the parties, who would indicate in the document that it was a preliminary draft, and not on whether it was signed or initialled. It would, indeed, be dangerous to regard initialling as the distinguishing mark of an *avant-projet*.

40. Mr. LIANG, Secretary to the Commission, declared himself satisfied by the Special Rapporteur's explanation and withdrew his suggestion, so far as it concerned article 18.

41. Mr. PAL asked whether the reference to signature in article 18, sub-paragraph (*a*), implied that the treaty had been finalized within the meaning of articles 25 and 29.

42. The CHAIRMAN, speaking as Special Rapporteur, replied that the text would have been completely authenticated at that stage, but the other aspects

[1] See *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, and documents A/CN.4/L.28 and A/CN.4/L.55.

of signature were dealt with in the later articles. Signature had a double aspect: in treaties subject to ratification it merely finalized the text of the treaty, but in documents such as protocols, it might both finalize the text and bring the treaty into effect. Legally, the two aspects were always separate, even where the effects were simultaneous.

43. Mr. SANDSTRÖM observed that the point had been brought out clearly in the titles of sections B and C.

44. Mr. KHOMAN questioned the use of the words "is effected" in paragraph 1. With regard to paragraph 2, he agreed that sealing was virtually obsolete, but in any case it authenticated the signature, not the text.

45. The CHAIRMAN, speaking as Special Rapporteur, replied that the words "may be" might well be substituted for the word "is". Sealing had probably by extension come to be associated with authentication. Paragraph 2 might therefore be omitted, or its substance might be placed in the commentary.

46. Mr. ALFARO suggested that paragraph 2 should be retained, as sealing was traditional and was still in current practice in many cases. Mr. Khoman was correct in saying that sealing was the personal authentication of the plenipotentiary, but it did confer another element of authentication on the text. The omission of a reference to it might give rise to questions.

47. The CHAIRMAN, speaking as Special Rapporteur, explained that his only purpose in referring to the traditional formula of sealing had been to show that it was not a necessary element of authentication or formal validity.

48. He suggested that article 18 should be referred to the Drafting Committee with the comments made during the discussion.

It was so agreed.

ARTICLE 19

49. The CHAIRMAN, speaking as Special Rapporteur, introduced article 19 and explained that it was consequential on article 18. He referred to paragraph 34 of his commentary.

50. He realized that some redrafting would be needed. In paragraph 1 the first sentence might end after the word "shown", and the next sentence begin: "This is a necessary condition . . .". Any further steps prior to signature or some other process such as the adoption of a resolution by an international organization must relate to the authenticated text. Paragraph 2 merely carried further the concept that the established text was the text *ne varietur*. He was not sure that any part of paragraph 2 after the phrase "prior to entry into force" should be retained, because it was obvious that a treaty the text of which had been established for signature or embodied in a final act or resolution could not be changed save by a new conference and because the final phrases touched on matters which were dealt with in later articles and further reports on the circumstances in which a treaty might be modified.

51. Mr. PAL said that the Special Rapporteur's amendment to paragraph 2 would certainly improve the text. He wondered whether the phrase in paragraph 1 "unless any flaw in the procedure adopted can be shown" was not too strong, since it was doubtful whether any flaw of whatever nature was necessarily fatal.

52. The CHAIRMAN, speaking as Special Rapporteur, explained that, for example, the flaw to which he referred might be a miscalculation in the vote required for the adoption of a resolution.

53. Mr. TUNKIN had some doubts about the phrase "formal validity . . . as a text" in paragraph 1. It was hardly possible to speak of formal validity when the treaty was not yet in existence. It would not be correct to separate the form of a treaty from its substance. The paragraph seemed to imply that the authentication and establishment of a text had legal effects, but in fact the only consequence was establishment of the text *ne varietur*.

54. Mr. AGO agreed with Mr. Tunkin since the text at the stage to which the article related was still only a draft, whereas only a final text could be said to have formal validity. He agreed that the latter part of paragraph 2 should be deleted, the more so as article 19 dealt only with legal effects of the establishment and authentication of the text, not with the effects of its entry into force. Some observation might, however, be placed in the commentary, since the parties could in fact change an established text, provided that it was recognized, however, that the altered text would, in fact, be a new one.

55. Mr. SANDSTRÖM thought that paragraph 1 might also be deleted since it added little to the statement in paragraph 2 that the text, once established, was final.

56. The CHAIRMAN, speaking as Special Rapporteur, suggested that the statement that authentication of the text was a necessary condition of any further steps in connexion with a treaty should be retained. The article might, however, be redrafted.

57. Mr. YOKOTA agreed in substance with Mr. Ago, but thought that at least the phrase "except by the mutual consent of all the parties" should be retained in paragraph 2.

58. The CHAIRMAN, speaking as Special Rapporteur, did not think that it was possible to speak of mutual consent if any change was desired in a text adopted by vote at a conference and embodied in a resolution or final act. The text as such could not be varied, but the parties might refuse to put it into effect and might establish a new text. The phrase should therefore be omitted.

59. Mr. BARTOŠ observed that, even if all the parties agreed to amend the text, the amended text would be a new text, superseding the earlier text.

60. The CHAIRMAN, speaking as Special Rapporteur, suggested that article 19 be referred to the Drafting Committee with the following recommendations: that some substitute be found for the phrase "formal validity" in paragraph 1, that the words "any flaw" be qualified by some such term as "fundamental" and that the idea that authentication was a necessary condition of any further steps to convert the text into a treaty be retained; and that in paragraph 2 everything after the phrase "prior to entry into force" be deleted, but a passage be included in the commentary explaining the position if proposals for altering the text were made after its authentication.

It was so agreed.

The meeting rose at 1 p.m.