

Document:-  
**A/CN.4/SR.637**

**Summary record of the 637th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1962 , vol. I**

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accomplished by a small group of members who, after thorough study of the topic, would present a report for consideration during the next session.

67. There was no reason why a procedural issue of that kind should not be settled by a vote.

68. Mr. YASSEEN suggested that, in view of the importance of the subject of state responsibility, it should perhaps be approached in stages. During the first stage, the scope of the study and the method to be followed would be determined. Decisions in that regard would certainly greatly influence the final content of the report. That first stage of the study, for which a special rapporteur would be designated by the Commission, could be entrusted to a committee. At the second stage, the Commission would be in a position, in the light of the committee's report, to settle the precise instructions to be given to the special rapporteur, and he agreed with Mr. Amado that the instructions should be very specific. There were obvious drawbacks in deciding forthwith on the special rapporteur for the whole of the study since the one chosen for the preparatory stage might not feel able to undertake the study as ultimately defined after the committee had submitted its report.

*It was so agreed.*

The meeting rose at 12.25 p.m.

### 636th MEETING

*Friday, 4 May 1962, at 10 a.m.*

*Chairman: Mr. Radhabinod PAL*

**Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) (A/CN.4/145) (continued)**

1. The CHAIRMAN said that the consensus of opinion appeared to be that a sub-committee on state responsibility should be appointed. Consequently, after consulting the other officers of the Commission, he would at the next meeting submit suggestions for the composition of the sub-committee, which should begin work during the present session and report some time during the next session.

*It was so decided.*

2. The CHAIRMAN said he believed the Commission would also wish to appoint a similar sub-committee on the succession of states and of governments.

*It was so decided.*

3. Mr. EL-ERIAN urged that the latter decision should be treated as provisional because it was not clear from the discussions on item 2 whether, in the case of the topic of the succession of states and governments, the Commission would be justified in following the same procedure as in the case of the topic of state responsi-

bility; he would not, however, press the point if the majority took a different view.

The meeting rose at 10.25 a.m.

### 637th MEETING

*Monday, 7 May 1962, at 3 p.m.*

*Chairman: Mr. Radhabinod PAL*

**Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) (A/CN.4/145) (continued)**

1. The CHAIRMAN said that at the previous meeting it had been decided that sub-committees should be appointed to consider the two topics of state responsibility and succession of states and of governments. The officers of the Commission now suggested that the sub-committee on state responsibility should be composed of Mr. Ago as Chairman, Mr. Briggs, Mr. El-Erian, Mr. Gros, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Tsuruoka and Mr. Tunkin. They also suggested that the sub-committee on the topic of succession of states and governments should be composed of Mr. Lachs as Chairman, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. Liu, Mr. Elias, Mr. Tabibi, Mr. Tunkin, Mr. Rosenne and Mr. Yasseen.

2. Mr. YASSEEN said that, as a matter of principle, it would have been preferable to consult the Commission as a whole on the composition of the sub-committees, since some members might have special interests. He personally would have preferred to serve on the sub-committee on state responsibility.

3. The CHAIRMAN said that the officers were merely suggesting names; any changes might be made if desired.

4. Mr. AMADO proposed that Mr. Yasseen should serve on the sub-committee on state responsibility rather than on the other sub-committee.

5. Mr. EL-ERIAN said that he was prepared to serve on the sub-committee on succession of states and governments in order to maintain parity of numbers.

*It was so agreed.*

**Co-operation with other bodies (item 4 of the agenda)**

6. Mr. LIANG, Secretary to the Commission, said that he had received a letter from Dr. Charles Fenwick, Director of the Department of International Law and Organization, Pan-American Union, dated 24 April 1962, stating that Dr. Hugo Juan Gobbi of Argentina, a member of the Inter-American Juridical Committee, had been designated at the session held from July to September 1961 as its official observer at the 1962 session of the International Law Commission. He had also

received a letter from Mr. B. Sen, Secretary of the Asian-African Legal Consultative Committee, dated 10 April 1962, stating that, owing to the shortness of the notice, the Committee had found it impossible to send an observer. He suggested that he be authorized to reply that the Commission would welcome the observer designated by the Inter-American Juridical Committee at the current session and also an observer for the Asian-African Consultative Committee at any subsequent sessions.

*It was so agreed.*

**Law of treaties (A/CN.4/144 and Add.1)** (item 1 of the agenda)

7. The CHAIRMAN invited Sir Humphrey Waldock, the Special Rapporteur for the topic of the law of treaties, to introduce his first report (A/CN.4/144 and Add.1).

8. Sir Humphrey WALDOCK, Special Rapporteur, said that it was with a great sense of responsibility that he placed his report before the Commission. As he had stated in the introduction to his report, he owed a great debt to his predecessors, Mr. Brierly, Sir Hersch Lauterpacht and Sir Gerald Fitzmaurice. The discussions conducted by the Commission, especially at its eleventh session in 1959, had provided invaluable guidance, and it was to be regretted that the debate had not covered all the subjects with which he had had to deal. He also wished to acknowledge his debt to jurists outside that Commission, especially Lord McNair and Mr. Rousseau, and to the Harvard Research draft of 1935.

9. By a decision taken at the previous session and which was quoted in paragraph 7 of his introduction, the Commission had instructed its special rapporteur to prepare draft articles as the basis for a convention. The scope of the draft articles had been determined accordingly. His draft was intended to be a general convention on the treaty-making process, leaving aside certain matters such as the question of validity. That was why he had omitted articles 3 and 4 of the 1959 draft which had dealt with the "concept of validity" and "general conditions of obligatory force". The question was whether the Commission was in general agreement with the scheme and scope of his draft articles, leaving aside for the moment the question of their content.

10. In addition to the four chapters which were before the Commission, he was preparing a fifth which would deal with the treaties of international organizations. He had made some progress on that chapter, but was finding it less easy to align with chapter II, Rules governing the conclusion of treaties by States, and chapter III, Entry into force and registration of treaties, than he had expected. As there were arguments both for and against the inclusion of such a chapter, he would suggest that the Commission leave that particular subject in abeyance until it saw what progress it made on the remainder.

11. The question would then be whether the Commission was in general agreement on the subject-matter of the first four chapters, which covered such matters as

the capacity to become a party to treaties, registration of treaties, corrections of errors and the functions of depositaries. His attention had been drawn to General Assembly resolution 1452 B (XIV), in which the Secretary-General had been requested to obtain information with respect to depositary practice in relation to reservations and to prepare a summary of such practices. The relevant secretariat paper was apparently not yet available. The General Assembly had seemed anxious at its fourteenth session that the International Law Commission should study the functions of depositaries; he suggested, however, that provisions on that subject in his draft should for the time being be regarded as purely tentative.

12. He had been uncertain about draft article 6, Authentication of the text as definitive, which laid down general rules. The problem arose in connexion with treaties concluded in more than one language, and especially their interpretation. He would welcome the Commission's views on that matter.

13. The general structure of the draft was modelled on that of the draft articles on consular intercourse and immunities. He thought it would be more elegant to group the definitions together in a single article, but would suggest that each definition should be dealt with in conjunction with the article to which it related. Particular attention should be paid to the distinction drawn in his draft between plurilateral and multilateral treaties.

14. Mr. Rosenne had drawn his attention to an omission from the historical summary attached as an appendix to his report, namely, the debate in the General Assembly, at its fourteenth session, on the Indian Government's reservation to the Convention on the Inter-Governmental Maritime Consultative Organization. That reservation did not affect the substance of the article to which it related, but he would in due course supply the Commission with the salient points of the incident.

15. Treaty practice was developing in response to the needs of international life, as a reading of the *United Nations Treaty Series* would show. In his draft he had endeavoured to reconcile considerations of the development of the law with the need for the certainty of the law. He hoped that the text which the Commission ultimately approved would maintain a judicious balance.

16. Mr. BRIGGS said that the Commission had been well served by the admirable working instrument submitted to it by its special rapporteur, Sir Humphrey Waldock. He agreed with both the general scheme and the scope of the draft.

17. He also fully endorsed the Commission's decision at its thirteenth session to prepare, instead of a draft code, draft articles intended to serve as the basis for a convention.

18. With regard to a possible article on the authentic text of treaties, he recalled Manley Hudson's insistence that a treaty might be in several languages but that there was only one text.

19. With regard to the draft articles themselves, he was impressed by the practical approach of the special rapporteur, who had skilfully avoided theoretical issues which had been a source of schism in past efforts to codify the law of treaties. He had also shown a commendable concern for current practice and an awareness of the needs of an enlarged international community, while laying proper emphasis on the feasibility and practicability of the proposed rules.

20. He would not discuss the draft articles in detail at that stage but would give certain illustrations to show how they could be improved. For example, with regard to the acceptance of reservations to multilateral treaties, he had some doubts regarding the so-called unanimity rule. As was pointed out in paragraph 7 of the appendix to the report, most modern multilateral conventions were adopted by a majority vote, usually a two-thirds majority, for example, the Geneva Conventions on the Law of the Sea, 1958,<sup>1</sup> and the Vienna Convention on Diplomatic Relations, 1961. In the case of a convention thus adopted by a qualified majority, it might be appropriate to replace the requirement of unanimous consent to a reservation by one of acceptance by a similarly qualified majority of the states which had actually become parties to the convention.

21. He drew attention in that connexion to the considerations put forward by the late Sir Hersch Lauterpacht, quoted in paragraph 8 of the appendix to Sir Humphrey's report, although he personally would reverse the order of the three propositions: first, proposition 'C', which stated the general principle that the requirement of unanimous consent of all parties to the treaty as a condition of participation in it of a state appending reservations was contrary to the necessities of international intercourse; second, proposition 'B', to the effect that the unlimited right of any state to become party to a treaty with sweeping or destructive reservations was not admissible; and last, proposition 'A', that it was desirable to recognize the right of states to append reservations, provided that those reservations were not disapproved of by a substantial number of the states which finally accepted the obligations of the treaty. As proposed by the special rapporteur, article 19 of the draft seemed to exclude the possibility of such a system and, at the appropriate stage, he would like to see the question discussed by the Commission.

22. With regard to accession, he felt that no convincing case had been made for the system of accessions subject to ratification; the provisions of draft article 14, paragraph 3, which permitted accession subject to ratification, were not consistent with the definition of accession in draft article 1 (*j*), which indicated that, by acceding to a treaty, a state "definitively gives its consent to be bound by the treaty".

23. He also felt that no convincing case had been made for accession to a treaty which was not yet in force, as provided in article 13, paragraph 2 (*b*) (*i*).

24. With regard to article 1, Definitions, he said that in the past it had been the Commission's practice to consider the "definitions" article after the whole draft had been discussed; he agreed, however, with the special rapporteur's suggestion that each definition should be taken up in connexion with the article to which it related.

25. He did not believe that, on balance, there was any advantage in making a distinction between plurilateral and multilateral treaties. There existed a distinction between two types of multilateral treaties, but that distinction was only valid for certain purposes. He feared that the introduction of the term "plurilateral treaty" would create more problems than it would solve.

26. The CHAIRMAN suggested that, in view of the limited time at its disposal, the Commission should dispense with a general discussion and concentrate on the actual draft submitted by the special rapporteur, article by article.

27. Mr. TUNKIN said he supported the Chairman's suggestion. There was only one preliminary question to be decided: would the draft deal only with treaties concluded by states, treaties entered into by international organizations being disregarded for the moment?

28. The CHAIRMAN said that the Commission would discuss the present draft on the understanding that treaties entered into by international organizations were not within its scope.

29. Mr. AGO suggested that it would be desirable to dispose first of the texts which had been adopted by the Commission in 1959. He would prefer some of the material in the 1959 draft to be retained, particularly in regard to definitions; he thought that, wherever applicable, a comparison should be made with the 1959 texts.

30. The CHAIRMAN said that the special rapporteur would no doubt, when introducing each of his draft articles, compare it with the corresponding provision of the 1959 text, where appropriate.

31. Sir Humphrey WALDOCK, Special Rapporteur, asked members to inform him of any matters omitted from the draft which they considered should be included, since that would enable him to prepare any necessary drafts.

32. As he had stated in his introductory address, he planned to take up each definition in connexion with the article where it first arose. The definition of "party", however, could be left until a later stage of the discussion. The definitions of "plurilateral treaty" and "multilateral treaty" might be discussed in connexion with article 5, where those terms were first used.

33. With regard to article 2, its provisions were closely connected with the definitions contained in article 1, paragraphs (*a*) and (*b*). The whole subject had been very fully discussed by the Commission in 1959 and, in substance, the definitions in article 1, paragraphs (*a*) and (*b*), conformed with those contained in articles 1 and 2 of the 1959 draft. The main change was that the definition of "international agreement" preceded that of "treaty". The 1959 draft had not been altogether logical in defining "treaty" first, for treaties were a particular

<sup>1</sup> *United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. : 58.V.4), Vol. II.

instance of international agreements, and it was more correct to define the more general term first.

34. Mr. EL-ERIAN said that it might be difficult for the Commission to take up the articles *seriatim* at that stage, for certain general questions affected the whole draft; it might perhaps therefore spend some time on a general discussion. Such a discussion would help the special rapporteur in preparing his second report, because some of the points raised could relate to subsequent articles in his draft. Moreover, in the light of the discussion, the special rapporteur might decide to redraft some of his draft articles in a more condensed form, or split them up into a number of articles, instead of grouping them in long single ones like articles 17, 18 and 19, relating to reservations to multilateral conventions, which appeared rather cumbersome in their present drafting.

35. He noted that it had been the Commission's practice to adopt the definitions at the end of its discussion of a draft; however, that had not usually prevented the Commission from discussing the definitions article and adopting it provisionally.

36. Mr. TUNKIN said that a general discussion might lead the Commission too deeply into theoretical issues. It was usually difficult to agree on theoretical points, but much easier to agree on practical rules.

37. He agreed with the special rapporteur that the Commission should discuss each definition in connexion with the article to which it related. It might adopt article 2, paragraph 1, provisionally and consider it again at a later stage, together with the definitions to which it referred.

38. Mr. VERDROSS congratulated the special rapporteur on his report. Turning to article 2, he criticized the reference in paragraph 2 to unilateral declarations. He saw no reason for that statement; the draft articles were concerned with treaties only, so patently would not cover acts other than treaties. Of course, he agreed that unilateral declarations could give rise to international obligations, but that consideration did not affect his argument.

39. The CHAIRMAN said that the issues to which Mr. El-Erian had referred would no doubt be discussed in connexion with the various draft articles; he therefore saw no need for a general discussion.

40. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed with Mr. Tunkin that the Commission was much more likely to make progress if it concentrated on the draft articles instead of discussing theoretical issues.

41. In reply to Mr. Verdross, he said that article 2, paragraph 2, reproduced in substance the terms of article 1, paragraph 4, of the 1959 draft; *ex abundante cautela*, the provisions reserved the question of the force of unilateral declarations, which in certain instances had a consensual element. The Commission had not wished in 1959 to cast any doubt upon the force of such declarations.

42. Mr. BARTOS said that he too agreed with Mr. Tunkin that the Commission should not at that

stage discuss so-called academic questions, even though they might come up later. He also agreed with the special rapporteur's suggestion that each definition should be discussed in connexion with the article to which it related. The need to follow that procedure, instead of leaving the definitions until the end of the discussion, was demonstrated by the fact that article 2 depended on the definitions in article 1, paragraphs (a) and (b), while in turn article 1, paragraph (a), referred to article 3.

43. The provisions of article 2, paragraph 2, should be retained, although there was much force, from the purely formal and technical points of view, in the remarks of Mr. Verdross. Over and above the purely formal question, however, it was necessary to bear in mind an international practice under which certain unilateral declarations, if made *urbi et orbi*, could give rise to international obligations.

44. Two examples of such declarations were, first, the 1917 declaration by the United Kingdom relating to the setting up of a Jewish National Home in Palestine. That unilateral declaration, before it was incorporated in the mandate, had been invoked on several occasions by the United Kingdom Government itself, and of course also by the Jewish Agency, as imposing upon that government obligations comparable to those arising out of a treaty.

45. His second example was drawn from the history of his own country. The autonomy of Serbia had been the subject of the Ottoman Empire declarations known as the Hatti Sherif of 1831 and 1833, subsequently approved by the Conference of Ambassadors at Constantinople. At the Congress of Paris in 1856, those declarations had been treated as having an international character. They had originally been formulated unilaterally because of the desire of the powers to spare the susceptibilities of the Sublime Porte.

46. The declarations to which he had referred had thus been accepted as having certain consequences of an international character. The whole subject of unilateral declarations had been discussed at the Commission's eleventh session in 1959, and the then special rapporteur, Sir Gerald Fitzmaurice, had agreed on the need to include a provision on the subject in order to avoid any misunderstanding.<sup>2</sup>

47. Furthermore, under article 1, paragraph (b), of Sir Humphrey's draft the term "declaration" could also be used to designate a treaty. An example of that type of treaty was the London declaration on restitution of looted property of 3 January 1943, which had been made by several states and had the character of a treaty, at least for the states making that declaration.

48. The retention of the passage under discussion would not affect the substance. The Commission was not called upon to consider the force which unilateral declarations might have in international law; that was a question for the courts.

49. Mr. YASSEEN said that the Special Rapporteur's

<sup>2</sup> *Yearbook of the International Law Commission 1959*, Vol. I, United Nations publication, Sales No.: 59.V.1, Vol. I, pp. 6-7, paras. 42-59.

clear and precise draft would enable the Commission to make rapid progress with the topic of the law of treaties.

50. He agreed with Mr. Verdross that it was not appropriate to mention unilateral declarations in article 2. He noted that Mr. Bartoš, who thought the passage in question should stand, agreed that it did not deal with the question of substance—the binding force of unilateral declarations. Since no question of substance was involved, the matter becomes one of drafting and, as a matter of drafting, it was unnecessary to exclude expressly unilateral declarations from the scope of the draft. Since the draft dealt with the conclusion of treaties, it clearly covered only conventions, in other words, instruments which by definition required the consent of two or more states. It would be correct, of course, to state that unilateral declarations were not included in the scope of the draft, but such a statement would be superfluous and therefore harmful.

51. In cases where two concurrent unilateral declarations related to the same subject, they would together constitute a tacit convention. Such conventions would not be excluded from the draft, but genuine unilateral declarations were, by definition, completely outside its scope and should not be mentioned at all.

52. Mr. AMADO said that the special rapporteur's draft articles reminded him of Boileau's words: "Ce que l'on conçoit bien s'énonce clairement."

53. Commenting on article 2 in conjunction with the definitions in article 1, paragraphs (a) and (b), he said that it merely amplified those definitions. Also, paragraphs (a) and (b) of article 1 could with advantage be combined, by amending the opening words of the definition of "treaty" to read:

"'Treaty' means any international agreement between two or more States in any written form . . ."

54. He did not think that the proposed separate definition of "international agreement" was really necessary. He noted, moreover, that that definition itself used the word "agreement" which was part of the expression to be defined.

55. If paragraphs (a) and (b) of article 1 were merged in the manner he suggested, they would contain all the substance expressed in article 2, paragraphs 1 and 2.

56. He asked for clarification of the meaning of article 2, paragraph 3.

57. Mr. VERDROSS said that it was in a sense contradictory to refer to a unilateral declaration in article 2, paragraph 2, when an "international agreement" was defined in article 1, paragraph (a), as one concluded between two or more states. He was not, of course, denying that a unilateral act could create international obligations, or that a convention could carry the title "declaration".

58. If the Commission decided that the draft should refer expressly to unilateral acts, it should prepare a separate clause on that point.

59. Mr. de LUNA commended the special rapporteur for his clear, concise and convincing report.

60. He agreed with Mr. Verdross that the passage in article 2, paragraph 2, dealing with unilateral declarations, was superfluous; it would be better in the commentary.

61. He also agreed with Mr. Amado's suggestion that paragraphs (a) and (b) of article 1 should be amalgamated. The separate definition of "international agreement" would then disappear; it was inelegant, because it used the word "agreement" in defining an expression which contained that same word.

62. He could not accept the expression "subjects of international law possessing international personality" in article 1, paragraph (a). All subjects of international law possessed international personality. As taught by such great authorities as Anzilotti, the two concepts were synonymous: personality expressed a relationship between an individual or collective entity and a given legal system. But whereas every subject of international law possessed, by definition, legal capacity, every subject of international law did not possess capacity to act through organs of its own or, at any rate, not to an unlimited extent. *Jus contrahendi* was a sub-species of capacity to act. Rebels recognized as belligerents possessed a limited *jus contrahendi*; and Trust Territories, for example, did not possess capacity to conclude treaties. He accordingly proposed the deletion of the words "possessing international personality and".

63. Mr. AGO said that the Commission should not be too hasty in deciding to dispense with discussion of the definitions article at that stage. Little progress would be made with article 2 until agreement had been reached at least on the first four paragraphs of article 1.

64. He agreed with Mr. de Luna that to speak of "subjects of international law possessing international personality" was tautologous, as Sir Gerald Fitzmaurice had admitted during the discussions at the eleventh session. It would suffice to refer to "subjects of international law": the important element from the point of view of the definition in article 1 (a) was treaty-making capacity.

65. With regard to the text of article 2, he had some doubts as to the utility of a provision expressly indicating that the fact that "unilateral declarations or any other form of international acts" were excluded from the application of the present articles did not affect the force of such acts. The 1959 draft had a different purpose when it included certain kinds of unilateral declarations in the acts to which the article was applicable in the then article 1, paragraph 3. He also suggested that, in the draft submitted by Sir Humphrey, the provision now appearing in article 2, paragraph 3, should appear in article 1, immediately after the definition of "treaty".

66. His comments related largely to matters of form; he was in broad agreement with the meanings ascribed to the terms used in articles 1 and 2 by the special rapporteur.

67. Mr. ROSENNE congratulated the special rapporteur on his report. He agreed with Mr. Ago that the Commission would have difficulty in discussing the articles

without first considering the most important of the definitions.

68. Referring to the point raised by Mr. Verdross, he said that it could happen that negotiations between two or more states resulted in a text which took the form of one or more apparently unilateral declarations; such declarations should not be excluded from the scope of the draft. The matter was of some importance because the Secretary-General of the United Nations, following the practice of the Secretariat of the League of Nations and in accordance with decisions of the General Assembly, did accept certain unilateral texts for registration in accordance with article 102 of the Charter.

69. The element of negotiation was fundamental for all treaties, including those expressed in the form of a unilateral declaration, and that should be stressed, and was indeed implied in the word "concluded" in article 1 (a). Nor did the definition of an international agreement as being one in "written form" exclude a unilateral act if the circumstances in which it was made brought it within the concept of a treaty.

70. Mr. BARTOŠ said he was not surprised at the divergence of views provoked by Mr. Verdross's remark, which, like that of Mr. Yasseen, had been prompted by considerations of formal logic with a view to keeping the text clear at any price of any notion of municipal law. His own view, based rather on state practice, was that unilateral declarations to which other states attributed a contractual character fell into at least four groups: declarations *urbi et orbi* such as the Balfour Declaration; declarations required and made under a treaty; declarations such as those on the breadth of the territorial sea, which were notified to but not expressly accepted by third states; and declarations followed by the conclusion of a treaty.

71. The special rapporteur had been right in referring to unilateral declarations as acts which were not treaties in the technical sense and to which the draft articles could not be applied in a formal manner. The international consequences of such unilateral acts would have to be determined by judicial decisions or by other means, and not regulated by the conventions they were preparing.

72. Mr. TABIBI said that the Commission was indebted to the special rapporteur for his report and for following its instructions so closely.

73. He agreed with Mr. Bartoš that certain unilateral declarations affected relations between states and should come within the scope of the law of treaties. Some of them, such as those relating to the right of self-determination, were of vital importance to the cause of the protection of human rights. The point was certainly not of a drafting character.

74. Like other speakers, he considered that it would have been preferable to discuss article 1 before article 2.

75. Mr. TUNKIN congratulated the special rapporteur on his report. Whatever procedure the Commission adopted, once it came to article 5 it would certainly have to take up the question of definitions.

76. There was much force in the objection raised by Mr. Verdross to article 2, paragraph 2, but perhaps it could be retained for the time being, pending receipt of the comments of governments.

77. He would be interested to know for what reason the special rapporteur had added the words "or otherwise" in article 2, paragraph 3; those words did not appear in article 1, paragraph 2, of the 1959 draft and might so broaden the clause as to make it unacceptable.

78. Mr. CASTRÉN, after congratulating the special rapporteur on his report, suggested that the Commission should follow the example of the Vienna Conference of 1961 and consider the definitions before discussing the other articles. At the conclusion of the first reading, it could then go back to article 1 to see whether it required revision.

79. He saw no objection to combining paragraphs (a) and (b) of article 1, but the definition should proceed from the general to the particular.

80. He agreed with Mr. de Luna that the words "possessing international personality" were superfluous.

81. Article 2, paragraph 1, might with advantage be condensed by substituting the words "treaty as defined" for the words "international agreement which under the definitions laid down".

82. Sir Humphrey WALDOCK, Special Rapporteur, replying to comments on the order of the articles, explained that he had deliberately chosen the method of laying down definitions in article 1 and defining the scope of the draft in article 2, which referred back to article 1. He had contemplated the alternative possibility of including the definitions of "international agreement" and "treaty" in article 2, but had decided that his own choice was neater and more consonant with the general structure of the draft. The same problem of method was likely to arise again in connexion with the articles dealing with ratification and accession.

83. He believed that the Commission should maintain the distinction between international agreements and treaties.

84. Mr. AMADO considered that each term should be defined in the substantive provision in which it was first used.

The meeting rose at 6 p.m.

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### 638th MEETING

Thursday, 8 May 1962, at 10 a.m.

Chairman: Mr. Radhabinod PAL

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**Law of treaties (A/CN.4/144 and Add.1)** (item 1 of the agenda) (*continued*)

1. The CHAIRMAN invited the Commission to continue its discussion of item 1 of its agenda; he suggested that it might be preferable to try and reach agreement on