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Summary record of the 642nd meeting

Topic:
Law of Treaties

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87. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to refer article 4, with the observations made during the discussion, to the drafting committee on the terms indicated by the special rapporteur and himself; the drafting committee would formulate a text of a provisional character for the Commission's consideration at a later stage.

It was so agreed.

The meeting rose at 12.45 p.m.

642nd MEETING

Monday, 14 May 1962, at 3 p.m.

Chairman: Mr. Radhabinod PAL

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

1. The CHAIRMAN invited the special rapporteur to introduce article 5 of his draft.

ARTICLE 5. ADOPTION OF THE TEXT OF A TREATY

2. Sir Humphrey WALDOCK, Special Rapporteur, said that article 5 was the first of the substantive provisions of the draft to raise the question of the distinction between plurilateral treaties and multilateral treaties, as defined in article 1 (*d*). In article 6, paragraph 4, of its 1959 draft, the Commission itself had drawn a distinction between multilateral treaties and "treaties negotiated between a restricted group of states".[1] The somewhat novel term "plurilateral" seemed convenient to describe the latter type of treaties, but it was possible to conceive of a different terminology.

3. Regardless of the terminology used, however, the fundamental question for the Commission was whether such a distinction should be introduced into the draft articles. He considered the distinction justified, because some of the rules did not apply in the same manner to plurilateral and to multilateral treaties.

4. As far as article 5, paragraph 1, was concerned, the distinction applied only to sub-paragraphs (*b*) and (*c*). Under article 6 of the Commission's 1959 draft, adoption of the text of what he called "plurilateral" treaties was by unanimity unless the negotiating states decided otherwise; in the case of multilateral treaties, it was by such voting rule as the conference decided. The Commission would be out of touch with current practice if some form of majority rule were not applied in that respect.

5. Since the distinction did not really apply to sub-paragraphs (*d*) and (*e*), he proposed the addition in each of them, after the opening words "In the case of a multilateral treaty", of the words "or a plurilateral treaty".

6. With regard to article 1 (*d*), he proposed that in the definition of "plurilateral treaty" the phrase "number of parties" should be changed to "group of parties" and the final words "such parties" to "such group", while in the definition of "multilateral treaty", the words "not confined to a particular group" should be added after the words "by a considerable number of parties".

7. It was not an easy matter to define the terms "plurilateral" and "multilateral" since in the case of a large regional organization like the Organization of American States, for example, it might be that for the purposes of the member states a treaty concluded among them was a multilateral treaty, although from the point of view of general international law it would be regarded as a plurilateral treaty.

8. Mr. TABIBI said he questioned the advisability of including references to voting procedure in the article; that matter should be dealt with in the commentary. The authors of the United Nations Charter had, except in a very few instances, wisely refrained from legislating on procedure, and the experience of the United Nations had shown how procedure was apt to change from time to time.

9. He accordingly suggested that paragraph 1 should be redrafted to read simply:

> "The adoption of the text or texts, setting out the provisions of a proposed treaty, takes place, in the case of bilateral, plurilateral and multilateral treaties, by the procedures which the parties may agree."

10. That formulation would also cover the case where the procedure was prescribed in the constitution of an international organization or in a decision of the organ competent to determine the voting rule.

11. He thought that the provisions of paragraphs 2 and 3 concerned the participation of a state in treaty negotiations rather than the adoption of the text; the place for those provisions was elsewhere than in article 5.

12. Mr. LACHS said the special rapporteur had been right to omit from article 5 the contents of article 7 (Elements of the text) of the 1959 draft.

13. He was also glad to note that the special rapporteur had dealt with the important question of the distinction between plurilateral and multilateral treaties. In that distinction, there were both objective and subjective elements. As far as the objective element was concerned, plurilateral treaties purported to deal only with matters of concern to the parties; multilateral treaties purported to lay down general norms of international law or to deal with matters of general concern. From the subjective point of view, plurilateral treaties were open only to a restricted group of participants, whereas multilateral treaties were open to participation by all states, or at any rate by a considerable number of states.

14. Unfortunately, the line of demarcation between the two classes of treaty was hard to draw and a large number of treaties were difficult to classify.

[1] *Yearbook of the International Law Commission 1959*, Vol. II (United Nations publication, Sales No. 59.V.1, Vol. II), p. 98.

15. There was first the case of a treaty which, although signed by a limited number of states, concerned a state which was not a party to the treaty. For example, the Treaty of Paris of 1856 concerned the integrity of Turkey, which had not been a party to it and had actually been refused accession to the treaty.

16. Another example was the Treaty of Berlin of 1878 which, although signed by only seven European states, had been claimed by its signatories to have been entered into in a European spirit. The parties to the treaty had thus claimed to be acting in a sense in the interests of all the European states.

17. A vast number of treaties contained stipulations in favour of third states and while it was true that some legal authorities questioned the validity in theory of such stipulations, the important fact was that they existed in practice.

18. There was the case of the peace treaties, many of which could be called law-making treaties. Some of those treaties, such as the Treaties of Paris of 1947, contained provisions in favour of third states.

19. Again, some of the modern military alliances presented very complicated issues.

20. For those reasons, he was inclined to share some of the opinions expressed by Mr. Tabibi. In view of the complexities of the subject, it would be wiser not to lay down hard and fast rules on the subject of voting procedure.

21. Mr. PAREDES said that the distinction between plurilateral and multilateral treaties was perhaps not essential to the draft articles. Instead of improving the text, it might create difficulties over the interpretation of the two terms "multilateral" and "plurilateral". In fact, the two terms were practically synonymous.

22. Certainly, the attempted distinction between treaties open to all, or a considerable number of, states and treaties open to only a limited group of states, was an extremely difficult one to make.

23. Multilateral treaties signed under the auspices of the Organization of American States could, and in fact on occasion were, open to accession by other states as well.

24. A regional organization such as the Organization of American States very often dealt with world-wide problems. If it were to deal, for example, with the law of the sea and arrived at an agreement on that question, that agreement would be open to accession or adoption by other states as well.

25. A distinction could be made between multilateral treaties, which were signed by individual states each acting in its own interest, and plurilateral treaties, entered into between two groups of states such as, for example, the two European economic groupings.

26. Mr. BRIGGS said that the definition of "multilateral treaties" in article 1 (*d*) contained no fewer than six criteria, to which the special rapporteur had just added a seventh. He did not believe that the contents of a treaty, or the fact that it was open or closed, had any relevance to the definition of a multilateral treaty or to the majority required for the adoption of its text.

27. A multilateral treaty was simply a treaty to which more than two states were parties. The problem which arose in connexion with article 5 was simply that of the distinction between a general multilateral treaty and a multilateral treaty participation in which was restricted. That problem was best dealt with not by creating a separate category of so-called "plurilateral treaties" but simply by using where necessary in the draft articles some such expression as "bilateral treaties and multilateral treaties restricted to certain parties".

28. Two extreme examples would show the weakness of the criteria offered for the proposed distinction between plurilateral and multilateral treaties. Under those criteria, the North Atlantic Treaty of 1949 would be classed as a multilateral treaty, because it dealt with matters of general concern; the United Nations Charter, on the other hand, would be classed as plurilateral, because by virtue of its article 4, it was not open to accession by all states indiscriminately; in fact, admission was by the vote of the Members of the United Nations.

29. Although he rejected the proposed terminology, he did not wish to abandon the distinction altogether, for it had some value; the substance of the article should be retained.

30. Mr. JIMÉNEZ de ARÉCHAGA said that, in strict logic, every treaty, even a bilateral one, was "plurilateral".

31. Whatever might be the convenience of a distinction between "plurilateral" and "multilateral" treaties in other parts of the draft articles, such as those dealing with reservations or accession, such a distinction was not appropriate in the article concerning the adoption of the text of a treaty.

32. In that article, the only material question to be dealt with was the procedure for the adoption of the text of a treaty; the article was not concerned with the number of parties to the treaty. If a treaty were adopted after *ad hoc* negotiations, the adoption procedure would be that agreed upon by the parties to the negotiation. Where a conference was convened for the purpose of drafting a treaty, the adoption procedure would be that agreed upon by the participants in the conference, either beforehand or at the time of the adoption of the rules of procedure of the conference. In the case of a treaty drawn up by an international organization, whether regional or universal, the voting procedure would be that laid down by the organization. The important point was that, in the absence of a rule concerning the procedure of adoption, the only residual rule was that the consent of all the parties was required.

33. For those reasons, he urged that the question of the distinction between plurilateral and multilateral treaties should be left for decision at a later stage.

34. Mr. CASTRÉN said that on the whole the special rapporteur's article 5 was an improvement on the corresponding 1959 text.

35. From the point of view of form, however, he noted that sub-paragraph 1 (*a*) referred to "the parties", while sub-paragraph 1 (*b*) referred to "the states concerned"; the Commission should decide which of those two formulations it wished to adopt. The Commission had already decided that the draft articles would deal in the first place with treaties entered into by states, but in articles 1 (*a*), 1 (*c*), 1 (*h*) and 2, references had been introduced to treaties signed by subjects of international law other than states. He had no objection to the draft articles being considered as applying primarily to states, but the Commission should make its position clear on that preliminary point, after which the wording of the draft should be adjusted accordingly; in fact, the title of the whole draft might have to be changed.

36. As to the distinction between plurilateral and multilateral treaties, he said it was drawn in the 1959 draft, although the term "plurilateral" had not then been used, the 1959 text referring to "treaties negotiated by a restricted group of states". Sir Humphrey's formulation was more precise in that his definition in sub-paragraph 1 (*d*) made it clear that a plurilateral treaty dealt with matters of concern only to the parties to the treaty. Admittedly, the line of demarcation between the two classes of treaty was not clear, even in the special rapporteur's text, but it would be very difficult to formulate definitions which would not be open to criticism.

37. He approved the special rapporteur's differentiation between the two types of multilateral treaty referred to in sub-paragraphs (*d*) and (*e*) respectively.

38. He also approved the special rapporteur's formula in sub-paragraphs (*c*) and (*d*), to the effect that the voting rule in international conferences was decided by a simple majority. That system had been adopted by the Commission in 1959, for the reasons given in its commentary to article 6.

39. He preferred the special rapporteur's paragraph 2 to the corresponding provision in article 8, paragraph 1, of the 1959 text. The new text referred to participation in the adoption of the text of a treaty; the 1959 text had referred to participation in the negotiation of a treaty. The second sentence, beginning "*A fortiori*...", should, however, be deleted; it was obvious that participation in the adoption of the text of a treaty did not place a state under any obligation to carry out the provisions of the treaty.

40. Paragraph 3 was also to be preferred to the corresponding 1959 text in article 8, paragraph 2, because the special rapporteur did not go as far as the Commission had done in 1959 in attempting to derive legal consequences from the mere adoption of the text of a treaty.

41. It was unlikely, however, that even the special rapporteur's text would prove acceptable. It was doubtful whether positive international law imposed any specific or general obligations upon states which had participated in the negotiation or the adoption of the text of a treaty, but had not signed the treaty. Moreover, he did not think it would be advisable to propose *de lege ferenda* any rules on the subject.

42. The views of some of the members of the Commission on the subject were set out in paragraphs 3 and 4 of the commentaries on article 8 of the 1959 text. The duration of the alleged obligations resting upon a state in such circumstances had given rise to much discussion, but the 1959 commentary did not throw much light on the subject, paragraph 6 of the commentary on article 8 merely indicating that "the obligation could clearly not last beyond such time as was reasonably necessary in order to enable the negotiating states to decide on their attitude in relation to the treaty".

43. Mr. AGO said that it would be desirable to include in the draft a provision on the lines of that contained in article 6, paragraph 1, of the 1959 text concerning the process of negotiation. He had mentioned the matter informally to the special rapporteur, who had indicated that he would have no objection.

44. With regard to article 5, he said that he largely shared the doubts expressed by Mr. Lachs concerning the definitions adopted by the special rapporteur, who had so frankly described some of the difficulties he had encountered. The task of defining different types of treaties imposed a grave responsibility on the Commission and it would have to give the matter very serious thought.

45. Mr. Lachs had pointed out the problems involved in classifying treaties according to subject matter or to the number of the parties and the difficulty of differentiating exactly between multilateral and plurilateral treaties.

46. It seemed to him that, for the purposes of that differentiation, if such were really needed, it was necessary to take into account the purpose of article 5, which was to indicate that, in some cases, the unanimity rule was the basic rule, in the absence of any express provision to the contrary, while in other cases the majority rule was the normal practice.

47. In his opinion, the essence of the distinction was that, in treaties called by the special rapporteur plurilateral, the parties were constituting, as the term correctly indicated, a plurality of sides, whereas in treaties called multilateral there was in reality not a plurality of different and mutually opposed sides, but only one side, as the parties were not regulating reciprocal relations of rights and duties, but collaborating for the adoption of common rules.

48. Some authors, in the past, had adopted for the purpose of a similar differentiation the distinction between the contractual treaty and the law-making treaty; the Treaty of Versailles and the Vienna Convention on Diplomatic Relations were respectively clear examples of the two categories.

49. The appellation "plurilateral" was entirely acceptable for treaties of the first category which might in fact resemble bilateral treaties because they regulated relations as between different sides, but some other term

should be substituted for the second category, which might be described as collective conventions, in accordance with a generally accepted usage.

50. Mr. LIANG, Secretary to the Commission, said that although a statement similar to that in sub-paragraph 1 (*a*) had been inserted in the 1959 draft, he wondered whether it served any practical purpose to speak of the adoption of the text of a bilateral treaty. Before the era of multilateral or plurilateral treaties there had never been any mention of the institution — the adoption of the text of a treaty — for in the case of a bilateral treaty such a stage simply did not exist. In the case of bilateral treaties, the nearest approach to the adoption of the text would seem to be the initialling of the text. The concept of the adoption of a text only had a meaning in the case of multilateral treaties negotiated at international conferences.

51. With regard to the statement in the sixth sentence of paragraph 8 of the commentary, concerning United Nations practice, he explained that he had had in mind, for instance, the first Conference on the Law of the Sea prior to which the Secretary-General had convened a group of experts, in accordance with a provision in the Assembly resolution convening the Conference. He had no wish to convey the impression that that represented a general practice.

52. With regard to sub-paragraph 1 (*d*), the more general practice was for conferences convened by international organizations to determine their own voting rules and, as he had stated at the eleventh session, at the 488th meeting, in practice United Nations organs had always refrained from making rules about voting procedure for international conferences convened by them; it was interesting to note that even the Council of the League of Nations had not attempted to do so for the Hague Conference for the Codification of International Law of 1930.

53. An additional reason for that practice was that such conferences were frequently attended by non-member states. Accordingly, he considered that sub-paragraph 1 (*d*) should first state, as a general rule, the prevailing practice of leaving the conferences convened by an international organization free to adopt their own rules of procedure, and that only by way of exception should it be stated that the constitutions of some international organizations contained provisions prescribing voting rules governing the adoption of conventions or vested in such international organizations the power to make decisions concerning voting rules for that purpose.

54. On a drafting point, he presumed that the words "or prescription" should be inserted after the words "failing any such decision" in sub-paragraph 1 (*d*), so as to cover both the eventualities contemplated.

55. In the matter of terminology, it would perhaps be wiser to follow the 1959 draft because the meaning of the term "plurilateral" was by no means immediately apparent.

56. Mr. VERDROSS, speaking on the problem of definition, said he favoured a classification distinguishing between treaties which enunciated general rules of law, that was, law-making treaties, which Professor Triepel had called "Vereinbarungen", and those dealing with concrete matters, contractual treaties.

57. He proposed the deletion of the second sentence in paragraph 2, which was self-evident.

58. The provision contained in paragraph 3 was of fundamental importance; the corresponding provision in the 1959 draft had been discussed at great length at the eleventh session, when it had been correctly described as an innovation.

59. Mr. de LUNA said that the criteria characterizing a plurilateral or a multilateral treaty might not all be present in any given case, in which event the special rapporteur's proposed definitions would not fit. Similarly, the classification mentioned by Mr. Ago was already out of date. The Commission should endeavour to choose terms which corresponded with prevailing usage.

60. The CHAIRMAN announced that Mr. Jiménez de Aréchaga had submitted a redraft of paragraph 1, which read:

"1. The adoption of the text or texts setting out the provisions of a proposed treaty takes place:

"(*a*) By consent of all the parties, unless the states concerned shall decide by common consent to apply another voting rule;

"(*b*) In the case of a treaty drawn up at an international conference convened by the states concerned, by any voting rule that the conference shall, by a simple majority, decide to apply;

"(*c*) In the case of a treaty drawn up at an international conference convened by an international organization, by any voting rule that may be prescribed in the constitution of the organization, or in a decision of the organ competent to determine the voting rule, or failing any such prescription or decision, by the rule that the Conference shall by a simple majority decide to apply;

"(*d*) In the case of a treaty drawn up in an international organization, by any voting rule that may be prescribed in the constitution of the organization or, failing any such constitutional provision, in a decision of the organ competent to decide the voting rule."

61. Mr. AMADO said that he was most anxious that the Commission should succeed in drafting rules on the law of treaties, but he thought that the draft wasted too much time in the vestibules before getting on to the first important act in the conclusion of a treaty, namely, the act of signature. Article 5 was only one of those vestibules and, as such, was too detailed.

62. He agreed with other speakers that sub-paragraph 1 (*a*) stated something so evident that it did not need to be stated.

63. Normally voting rules were fixed at the preparatory stage of negotiations and by the participating states themselves.

64. He doubted whether the term "plurilateral" would convey the same meaning to everybody; perhaps the Commission should seek a more readily recognizable and current description for treaties to which the number of parties was limited.

65. The provisions contained in paragraphs 2 and 3 related to a later stage in the treaty-making process and should be placed after the provisions concerning signature.

66. Mr. AGO said that he wished to remove any mistaken impression he might have conveyed in his earlier remarks concerning the classification of treaties. He was not advocating the adoption of terms like "contractual" treaty and "law-making" treaty. He considered that the special rapporteur's term "plurilateral" could be retained, but that the expression "multilateral treaty" should preferably be replaced by "collective convention".

67. He agreed with Mr. Jiménez de Aréchaga that article 5 should be simplified, as it would be unwise for the Commission to engage in discussions on theoretical definitions, and that such definitions should be avoided whenever not absolutely necessary.

68. Mr. TSURUOKA said that Mr. Ago had covered much of what he had intended to say. For purely practical reasons it was not necessary to make a distinction in article 5 between multilateral and plurilateral treaties, although that might be necessary when the Commission came to discuss the question of signature, accession or reservations. In any case, the details of the prevailing practice could be explained in the commentary; the actual rules to be embodied in the draft convention should be very simple and drafted in terms acceptable by all states.

69. The object of the draft was to formulate certain rules to facilitate the work of international conferences convened for the purpose of making treaties; such conferences were always masters of their own procedure. That being so, sub-paragraph 1 (*d*) might not really be necessary, since, whether the conference was convened by the states themselves or under the auspices of an international organization, the conference itself would decide its own voting rules.

70. He agreed that the last sentence in paragraph 2 should be deleted.

71. The practical value of paragraph 3 was open to doubt, and the provision might actually introduce a danger in that it would make states hesitate to participate in a conference which was to prepare a treaty, when under the rule in paragraph 3 they would, by the mere act of participating in the conference, be accepting an advance commitment not to do anything that might "frustrate or prejudice the purposes" of the treaty.

72. Mr. PADILLA NERVO said that the draft should not make the voting procedure dependent on the type of treaty. What mattered in the treaty-making process, at the stage covered by article 5, was the negotiation and the authentication of the text by a procedure agreed on during the negotiations, whatever the nature of the treaty.

73. In many cases, it was impossible to classify a treaty by reference to the number of parties. Some bilateral treaties were subsequently extended to become multilateral treaties. There were also cases, such as the draft treaties on general and complete disarmament and the discontinuance of nuclear tests, in the negotiation of which there had been an understanding that the treaty would be concluded, not by a vote, but consensually. A reference simply to agreement by the will of the parties would be sufficient and would not establish unduly rigid rules.

74. Paragraph 3 might not always correspond to what was politically possible. The negotiations for a treaty on the discontinuance of nuclear tests had been proceeding for three years, but some of the potential parties had carried out actions which were not consonant with the purposes of such a treaty. It would be most unwise for the Commission to lay down conditions that were politically unrealizable.

75. Mr. LACHS said that he had already expressed doubts about the excess of detail in draft article 5; the subsequent discussion had strengthened his doubts. He was now convinced that any rigid definition of a treaty concluded by more than two States would be undesirable.

76. He agreed with Mr. Ago's remarks concerning the classification of treaties, but would go much further and say, with Rapisardi-Mirabelli, "autant de classifications que d'auteurs". In drafting a convention the Commission should eliminate all dubious and controversial points. A treaty either confirmed the law, or created a new law, or applied the law *ad casum*, but all three processes were so closely interwoven and raised such complex problems that he agreed with Mr. Briggs and Mr. Ago that the distinctions should be dropped.

77. He could accept the provision on bilateral treaties in sub-paragraph 1 (*a*).

78. There were two types of multilateral treaty: first, those drawn up in an organ of an international organization which was governed by certain rules; presumably, if states agreed to negotiate within that organ of an international organization, they accepted its rules of procedure. Secondly, multilateral treaties drawn up outside an international organization at a conference, whether called by states or by an international organization; in such cases the participants would be free to settle the conference's rules of procedure whatever rule the Commission laid down. The procedure for the last-named type of treaty should therefore be left to the will of the parties.

79. Mr. ELIAS said that he agreed that sub-paragraphs 1 (*a*) and (*b*) should be merged as in the redraft proposed by Mr. Jiménez de Aréchaga. Sub-paragraphs 1 (*b*) and (*c*) of that redraft might also be merged for the purpose of simplification; in each case the word "may" should be substituted for the word "shall".

80. He agreed that the second sentence of paragraph 2 should be deleted.

81. Paragraph 3 might be retained, subject to the addition of the word "taking" before the words "any action", as in article 8, paragraph 2, of the 1959 draft, while the word "comes" should be substituted for the word "should come".

82. Mr. de LUNA said that even if the Commission reached unanimity on very clear and precise definitions, they would always be *ex post facto*, since they would refer to treaties already concluded, their subject matter and the number of participants; it would be impossible to define any treaty before its substance was known.

83. Mr. Padilla Nervo had made an excellent point in noting that some treaties might begin as bilateral treaties but later become multilateral.

84. Mr. BARTOŠ said there were three points he wished to make. First, with regard to the names to be used for the various groups of treaties, he agreed with Mr. Ago that an absolutely clear definition was needed. To take the case of plurilateral treaties, it was not the states concerned that decided anything but the states that took part in the drafting. The Treaty of Berlin of 1878, for example, had empowered certain newly created states to ratify certain parts of the instrument; those states had certainly been concerned with the effects of the treaty, but they had not influenced the adoption of the text. Even in modern times, states not concerned with the drafting of a treaty were affected by its accession clauses.

85. Secondly, with regard to the point raised by the Secretary of the Commission, it was true that treaty-making conferences convened by the states concerned applied a practice which differed from that applied at conferences convened by the United Nations. In the case of the latter, the rules of procedure remained provisional until formally adopted by the conference. Yet, treaties could be prepared otherwise than at one or other of those two kinds of conference. Many multilateral — or, as Mr. Ago called them, "collective" — treaties were drawn up by a few states and then presented to other states without an international conference and without the sponsorship of an international organization. What was dangerous in the context of article 5 was not the distinction between multilateral and plurilateral treaties, but the fact, pointed out by Mr. de Luna, that the definitions did not entirely correspond with current international practice and did not cover all forms of international transactions.

86. Thirdly, with regard to paragraph 3, he said it would be very dangerous to make a rule which might incite states which had participated in drawing up a treaty to nullify it before renouncing their right to sign, and so to prejudice the purpose of the treaty. Such conduct would be politically unethical and reprehensible, quite independently of any rule of international law. Naturally a state had a sovereign right to renounce its part in drawing up a treaty or to accept it or not, but he would regard it as absolute bad faith if a state, during the negotiations themselves, acted in a manner which conflicted with the spirit in which the negotiators were drafting the treaty. For example, if a treaty on disarmament were concluded and a state did everything it could to elude the purpose of the treaty between the time of the authentication of the text and the time of entry into force, that would be bad faith. In strict law, perhaps such action was not forbidden, but he did not think that a commission of jurists representing the main forms of civilization and principal legal systems of the world should lay down that a state was not obliged to abide by its word. The special rapporteur had been very clear and it had been perfectly open to him to raise the question, but he himself was wholly on the other side. He agreed with Mr. Amado and Mr. Padilla Nervo and would go even further than Mr. Elias in demanding the amendment of paragraph 3.

87. Mr. EL-ERIAN said that he shared Mr. Tabibi's doubts about the advisability of specifying the voting procedure applicable to the adoption of different classes of treaty. The adoption procedure applicable to treaties drawn up at an international conference convened by an international organization and that applicable to those drawn up in an international organization had both been dealt with more conveniently in article 6, paragraph 4 (*d*), of the 1959 draft. The practice of international conferences convened under United Nations auspices was that provisional rules of procedure were prepared by the Secretariat, and the conference adopted them with what amendments it pleased. Thus, what were commonly called United Nations conferences were not conferences "in" an international organization and were not governed by the constitutional rules of the organization.

88. As a matter of principle, as Mr. Castrén had pointed out, the Commission had decided to deal only with treaties between states and not, for the time being, with treaties between states and international organizations or between international organizations.

89. He agreed with Mr. Amado that article 5 as it stood was unnecessarily complicated.

90. He shared Mr. Padilla Nervo's doubts about paragraph 3. The statement that nothing in paragraph 2 should affect any obligation that a state might have under the relevant general principles of international law could be made in the commentary, but was out of place in the body of a draft convention which stipulated precise legal provisions; besides, if such a proviso were written into article 5, many of the other draft articles would have to be similarly qualified.

91. Mr. AGO said that the drafting of paragraph 3 might be improved; in particular, the reference to "general principles of international law" might be omitted. But the substance of the paragraph should stand. The commentary on article 8 of the 1959 draft, in particular paragraph 2 of that commentary, showed how important such a provision would be. The overriding principle which should govern the negotiation of a treaty was that of good faith. If anything, therefore, the provision should be drafted in more rigid terms. He would propose a redraft in the drafting committee.

The meeting rose at 5.55 p.m.