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Summary record of the 668th meeting

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DRAFT REPORT OF THE COMMISSION ON THE WORK OF ITS FOURTEENTH SESSION

CHAPTER II: LAW OF TREATIES

(A/CN.4/L.101/Add.1)

Introduction

76. The CHAIRMAN invited the Commission to consider paragraph by paragraph the introduction to chapter II of the Commission's draft report (A/CN.4/L.101/Add.1).

Paragraph 1 was adopted.

Paragraph 2 was adopted.

77. Mr. BRIGGS suggested that paragraph 3 should include an extract from the advisory opinion of the International Court of Justice on reservations to the Genocide Convention.

It was so agreed.

Paragraph 3 as amended was adopted.

Paragraph 4 was adopted.

Paragraph 5 was adopted.

78. Mr. CASTRÉN said that, in view of the Commission's decision to formulate the draft articles in the form of a convention, it was undesirable to elaborate on the arguments in favour of a "code", as was done in paragraph 6.

79. Mr. TUNKIN agreed with Mr. Castrén and felt that a wrong impression could be given by that paragraph.

80. Sir Humphrey WALDOCK, Special Rapporteur, said that although he felt the Commission had been right in deciding in favour of a convention rather than a code, he considered that the arguments in favour of a code should be set out in the introduction in order to give a more balanced picture.

81. Mr. CASTRÉN and Mr. TUNKIN said they did not wish to press the point.

Paragraph 6 was adopted.

Paragraph 7 was adopted.

Paragraph 8 was adopted.

Paragraph 9 was adopted.

82. Mr. CADIEUX said the statement in paragraph 10 that articles 26 and 27 were "to be regarded as provisional in character" struck him as unsatisfactory. At that stage the whole set of articles was provisional.

83. He suggested that the passage in question should be amended to state that articles 26 and 27 would be re-examined by the Commission.

It was so agreed.

Paragraph 10 as thus amended was adopted.

84. Mr. CADIEUX suggested that the expression "international organizations" in paragraph 11 should be made more precise by introducing the adjective "inter-governmental".

85. Mr. TUNKIN supported that suggestion.

86. Mr. AGO said that the expression "treaties of international organizations" was unsatisfactory; "treaties to which international organizations are parties" would be an improvement.

87. Mr. EL-ERIAN supported Mr. Ago's suggestion.

88. He also supported Mr. Cadieux's suggestion, which was in line with the terminology used by the General Assembly itself in its resolution 1289 (XIII) of 5 December 1958.

89. Lastly, he suggested that the phrase "international organizations possess the capacity to enter into international agreements" should be qualified by the addition of the words: "as a general rule". The Commission had in the past found that the treaty-making power of certain international intergovernmental organizations was clear, while that of others was not.

90. Sir Humphrey WALDOCK said he could accept the drafting changes proposed by Mr. Cadieux and Mr. Ago.

91. To meet Mr. El-Erian's point, he suggested that the passage in question should be amended to read: "international organizations may possess a certain capacity to enter into international agreements".

92. The CHAIRMAN said that, if there were no objection, he would consider the Commission agreed to accept paragraph 11 with the drafting amendments accepted by the special rapporteur.

Paragraph 11 as thus amended was adopted.

93. Mr. TUNKIN, criticizing the second sentence of paragraph 12, said the Commission had not sought to "codify the modern practice of states in treaty-making"; it had sought to codify the rules of international law in force on the subject.

94. The remainder of the second sentence, as also the third and fourth sentences, was unnecessary.

95. Mr. AMADO said that the statements contained in the third and fourth sentences of paragraph 12, while true, were not essential.

96. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, to meet the objections of Mr. Tunkin and Mr. Amado, paragraph 12, as from the second sentence, should be redrafted along the following lines:

"In preparing the draft articles, the Commission has sought to codify the rules of international law concerning the conclusion of treaties. At the same time, these draft articles contain elements of progressive development, as well as of codification of the law."

Paragraph 12 as thus amended was adopted.

The meeting rose at 6.5 p.m.

668th MEETING

Tuesday, 26 June 1962, at 9.30 a.m.

Chairman: Mr. Radhabinod PAL

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

DRAFT ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

(resumed from the previous meeting)

ARTICLE 8. — SIGNATURE AND INITIALLING OF THE TREATY

1. The CHAIRMAN invited the Commission to consider articles 8 to 14, 17 and 18 as redrafted by the Drafting Committee; several of the articles had already been approved by the Commission.

2. Mr. PAREDES said that he would abstain on all the articles because he had not received the Spanish text.

3. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 8:

"1. Where the treaty has not been signed at the conclusion of the negotiations or of the conference at which the text was adopted, the states participating in the adoption of the text may provide either in the treaty itself or in a separate agreement:

"(i) that signature shall take place on a subsequent occasion; or

"(ii) that the treaty shall remain open for signature at a specified place either indefinitely or until a certain date.

"2. (*a*) The treaty may be signed unconditionally; or it may be signed *ad referendum* to the competent authorities of the state concerned, in which case the signature is subject to confirmation.

"(*b*) Signature *ad referendum*, if and so long as it has not been confirmed, shall operate only as an act authenticating the text of the treaty.

"(*c*) Signature *ad referendum*, when confirmed, shall have the same effect as if it had been a full signature made on the date when, and at the place where, the signature *ad referendum* was affixed to the treaty.

"3. (*a*) The treaty, instead of being signed, may be initialled, in which event the initialling shall operate only as an authentication of the text. A further separate act of signature is required to constitute the state concerned a signatory of the treaty.

"(*b*) When initialling is followed by the subsequent signature of the treaty, the date of the signature, not that of the initialling, shall be the date upon which the state concerned shall become a signatory of the treaty."

4. In paragraph 1, sub-paragraphs (*a*) and (*b*) of the earlier draft had been combined as suggested by Mr. Amado.[1]

Article 8 was adopted.

ARTICLE 9. — LEGAL EFFECTS OF A SIGNATURE

5. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 9:

"1. In addition to authenticating the text of the treaty in the circumstances mentioned in article 6, paragraph 2, the signature of a treaty shall have the effects stated in the following paragraphs.

"2. Where the treaty is subject to ratification, acceptance or approval, signature does not establish the consent of the signatory state to be bound by the treaty. However, the signature

"(*a*) shall qualify the signatory state to proceed to the ratification, acceptance or approval of the treaty in conformity with its provisions; and

"(*b*) shall confirm or, as the case may be, bring into operation the obligation in paragraph 1 of article 19 *bis*.

"3. Where the treaty is not subject to ratification, acceptance or approval, signature shall:

"(*a*) establish the consent of the signatory state to be bound by the treaty; and

"(*b*) if the treaty is not yet in force, shall bring into operation the obligation in paragraph 2 of article 19 *bis*."

6. He drew attention to the words in paragraph 2 (*b*), "Shall confirm or, as the case may be, bring into operation...". The reason for those words was that, under the scheme of article 19 *bis*, the obligation not to frustrate the purpose of the treaty applied to a state which had participated in the negotiations; in the case of such a state, therefore, signature would reinforce an obligation which already existed.

Article 9 was adopted.

ARTICLE 10. — RATIFICATION

7. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 10:

"1. Treaties in principle require ratification unless they fall within one of the exceptions provided for in the next paragraph.

"2. A treaty shall be presumed not to be subject to ratification by a signatory state where:

"(*a*) the treaty itself provides that it shall come into force upon signature;

"(*b*) the credentials, full-powers or other instrument issued to the representative of the state in question authorize him by his signature alone to establish the consent of the state to be bound by the treaty, without ratification;

"(*c*) the intention to dispense with ratification clearly appears from statements made in the course of the negotiations or from other circumstances evidencing such an intention;

"(*d*) the treaty is one in simplified form.

"3. However, even in cases falling under the preceding paragraph, ratification is necessary where:

"(*a*) the treaty itself expressly contemplates that it shall be subject to ratification by the signatory states;

"(*b*) the intention that the treaty shall be subject to ratification clearly appears from statements made in the course of the negotiations or from other circumstances evidencing such an intention;

"(*c*) the representative of the state in question

[1] 660th meeting, para. 5.

has expressly signed 'subject to ratification' or his credentials, full-powers or other instrument duly exhibited by him to the representatives of the other negotiating states expressly limit the authority conferred upon him to signing 'subject to ratification'."

8. Mr. ROSENNE said that he would have to dissent completely from article 10. He could not accept the principle stated in paragraph 1, and could not therefore accept either paragraph 2 which was in the form of an exception to that principle, or paragraph 3 which was apparently in the form of an exception to the exception. The reasons for his dissent appeared more fully in what he had said in the 646th and 660th meetings, and he asked that his dissent should be recorded.

9. Mr. TUNKIN said that paragraph 1 of article 10 was completely at variance with the existing rules of international law. It was not correct to state that treaties in principle required ratification; the true situation was that a treaty required ratification if it expressly so provided. In all other cases, a treaty was not subject to ratification under international law. Ratification might, of course, be required under the constitutional law of a country, but that did not affect the position in international law.

10. It was entirely for the parties to a treaty to decide whether ratification was required or not. In modern practice, most treaties did not require ratification, and there were no grounds whatsoever for considering those treaties as an exception to a rule.

11. Mr. CASTRÉN said he agreed with Mr. Rosenne and Mr. Tunkin; he would not, however, vote against article 10, because it allowed so many exceptions to the principle stated in paragraph 1 that the force of that paragraph was considerably weakened.

12. Mr. BARTOŠ said that he would be unable to vote in favour of sub-paragraphs 2 (*c*) and 2 (*d*). Ratification was the act by which a state committed itself to be bound by a treaty; it was an important act which produced serious consequences. He could not admit that the question whether a treaty was subject to ratification or not should be left uncertain, as would occur under the provisions of sub-paragraph 2 (*c*).

13. Nor could he accept sub-paragraph 2 (*d*), under which the requirement of ratification would depend not on the substance but on the form of the treaty.

14. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that the text represented a compromise, and was accordingly unlikely to satisfy anyone fully. The majority view, however, had been that if a general rule had to be stated, it should be that treaties required ratification.

15. His personal view was that there were in fact two rules, one applicable to formal treaties and the other to simplified treaties.

16. As special rapporteur, he suggested that the opening words of paragraph 3 should be amended to read:

"3. However, even in cases falling under sub-paragraphs (*a*) and (*d*) of the preceding paragraph, ratification is necessary where:"

17. Sub-paragraphs 2 (*b*) and 2 (*c*) referred to cases where a clear intention to dispense with ratification had been expressed; it was inconceivable that a contrary intention would appear from the same set of circumstances and so give rise to the application of paragraph 3.

18. Mr. BARTOŠ said that, in the light of the explanations given by the special rapporteur, he would have to dissent from the whole of paragraph 2, in the interests of the defence of the sovereignty of small states. No negotiator was authorized to dispense with ratification, and any suggestion to that effect could only facilitate pressure by powerful nations upon smaller ones in connexion with the signing of international agreements.

19. Mr. CADIEUX supported the amendment suggested by the special rapporteur.

20. Mr. YASSEEN said he reserved his position on article 10, for the reasons stated by him during the earlier discussion.[2]

The special rapporteur's amendment was adopted.

Article 10 as thus amended was adopted.

Article 11. — Accession

21. The CHAIRMAN said that the Drafting Committee proposed the following redraft of article 11:

"A state may become a party to a treaty by accession in conformity with the provisions of articles 7 and 7 *bis* of the present articles when

"(*a*) it has not signed the treaty and either the treaty specifies accession as the procedure to be used by such a state for becoming a party, or

"(*b*) the treaty has become open to accession by the state in question under the provisions of article 7 *bis*."

22. The article contained references to article 7 *bis*. Its adoption would therefore be subject to the understanding that the Commission would revert to it if it were in any way affected by the provisions of article 7 *bis* when adopted in final form.

Article 11 was adopted on that understanding.

Article 12. — Acceptance or approval

23. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 12:

"A state may become a party to a treaty by acceptance or by approval in conformity with the provisions of articles 7 and 7 *bis* when:

"(*a*) the treaty provides that it shall be open to signature subject to acceptance or approval and the state in question has so signed the treaty; or

"(*b*) the treaty provides that it shall be open to participation by simple acceptance or approval without prior signature."

24. Mr. CASTRÉN suggested that the French text of sub-paragraph (*a*) should be amended to correspond with the English: "has so signed the treaty".

It was so agreed.

Article 12 was adopted.

[2] 660th meeting, para. 41.

ARTICLE 13. — THE PROCEDURE OF RATIFICATION, ACCESSION, ACCEPTANCE AND APPROVAL

25. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 13:

"1. (*a*) Ratification, accession, acceptance or approval shall be carried out by means of a written instrument.

"(*b*) Unless the treaty itself expressly contemplates that the participating states may elect to become bound by a part or parts only of the treaty, the instrument must apply to the treaty as a whole.

"(*c*) If a treaty offers to the participating states a choice between two differing texts, the instrument of ratification must indicate to which text it refers.

"2. If the treaty itself lays down the procedure by which an instrument of ratification, accession, acceptance or approval is to be communicated, the instrument becomes operative on compliance with that procedure. If no procedure has been specified in the treaty or otherwise agreed by the signatory states, the instrument shall become operative:

"(*a*) in the case of a treaty for which there is no depositary, upon the formal communication of the instrument to the other party or parties, and in the case of a bilateral treaty normally by means of an exchange of the instrument in question, duly certified by the representatives of the states carrying out the exchange;

"(*b*) in other cases, upon deposit of the instrument with the depositary of the treaty.

"3. When an instrument of ratification, accession, acceptance or approval is deposited with a depositary in accordance with sub-paragraph (*b*) of the preceding paragraph, the state in question shall be given an acknowledgment of the deposit of its instrument, and the other signatory states shall be notified promptly both of the fact of such deposit and of the terms of the instrument."

Article 13 was adopted.

ARTICLE 14. — LEGAL EFFECTS OF RATIFICATION, ACCESSION, ACCEPTANCE AND APPROVAL

26. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 14:

"The communication of an instrument of ratification, accession, acceptance or approval in conformity with the provisions of article 13:

"(*a*) establishes the consent of the ratifying, acceding, accepting or approving state to be bound by the treaty, and

"(*b*) if the treaty is not yet in force, brings into operation the applicable provisions of article 19 *bis*, paragraph 2."

Article 14 was adopted.

ARTICLE 17. — FORMULATION OF RESERVATIONS

27. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 17:

"1. A state may, when signing, ratifying, acceding to, accepting or approving a treaty, formulate a reservation unless:

"(*a*) the making of reservations is prohibited by the terms of the treaty or by the established rules of an international organization; or

"(*b*) the treaty expressly prohibits the making of reservations to specified provisions of the treaty and the reservation in question relates to one of the said provisions; or

"(*c*) the treaty expressly authorizes the making of a specified category of reservations, in which case the formulation of reservations falling outside the authorized category is by implication excluded; or

"(*d*) in the case where the treaty is silent concerning the making of reservations, the reservation is incompatible with the object and purpose of the treaty.

"2. (*a*) Reservations, which must be in writing, may be formulated:

"(i) upon the occasion of the adoption of the text of the treaty, either on the face of the treaty itself or in the Final Act of the conference at which the treaty was adopted, or in some other instrument drawn up in connexion with the adoption of the treaty;

"(ii) upon signing the treaty at a subsequent date; or

"(iii) upon the occasion of the exchange or deposit of instruments of ratification, accession, acceptance or approval, either in the instrument itself or in a *procès-verbal* or other instrument accompanying it.

"(*b*) A reservation formulated upon the occasion of the adoption of the text of a treaty or upon signing a treaty subject to ratification, acceptance or approval shall only be effective if the reserving state, when carrying out the act establishing its own consent to be bound by the treaty, confirms formally its intention to maintain its reservation.

"3. A reservation formulated subsequently to the adoption of the text of the treaty must be communicated (*a*) in the case of a treaty for which there is no depositary, to every other state party to the treaty or to which it is open to become a party to the treaty; and (*b*) in other cases, to the depositary, which shall transmit the text of the reservation to every such state."

28. Mr. BARTOŠ said that the statement in sub-paragraph 2 (*a*) (i) was correct. However, it sometimes happened that a state wished to participate in a treaty but was unable to obtain from the depositary the final act or the records of the other documents of the conference in which the reservations of some of the participants

were recorded. Inability to obtain essential information of that kind frequently led to difficulties which gave rise to litigation over the precise content of the contractual obligations, particularly their scope and interpretation. Perhaps it could be explained in the commentary that participating states should be able to ascertain the contents of such documents and that the depositary was obliged to obtain those documents and place them at the disposal of the states concerned.

29. Sir Humphrey WALDOCK, Special Rapporteur, said that he would include an explanation to that effect in the commentary.

Article 17 was adopted.

ARTICLE 18. — ACCEPTANCE OF AND OBJECTION TO RESERVATIONS

30. Sir Humphrey WALDOCK, Special Rapporteur, said the Drafting Committee proposed the following redraft of article 18:

"1. Acceptance of a reservation not provided for by the treaty itself may be express or implied.

"2. A reservation may be accepted expressly:

"(*a*) in any appropriate formal manner on the occasion of the adoption or signature of a treaty, or of the exchange or deposit of instruments of ratification, accession, acceptance or approval; or

"(*b*) by a formal notification of the acceptance of the reservation addressed to the depositary of the treaty, or if there is no depositary, to the reserving state and every other state entitled to become a party to the treaty.

"3. A reservation shall be regarded as having been accepted by a state if it shall have raised no objection to the reservation during a period of twelve months after it received formal notice of the reservation.

"4. An objection by a state which has not yet established its consent to be bound by the treaty shall have no effect if, after the expiry of two years from the date when it gave formal notice of its objection, it has still not established its own consent to be bound by the treaty.

"5. An objection to a reservation shall be formulated in writing and shall be notified:

"(*a*) in the case of a treaty for which there is no depositary, to the reserving state and to every other state party to the treaty or to which it is open to become a party, and

"(*b*) in other cases, to the depositary."

Article 18 was adopted.

31. The CHAIRMAN said that articles 18 *bis* and 19 had already been adopted at the previous meeting; he therefore invited the Commission to consider articles 19 *bis* to 27 as redrafted by the Drafting Committee.

ARTICLE 19 *bis*. — THE RIGHTS AND OBLIGATIONS OF STATES PRIOR TO THE ENTRY INTO FORCE OF THE TREATY

32. The CHAIRMAN said the Drafting Committee proposed the following redraft of article 19 *bis*:

"1. A state which takes part in the negotiation, drawing up or adoption of a treaty or which has signed a treaty subject to ratification, acceptance or approval is under an obligation of good faith, unless and until it shall have signified that it does not intend to become a party to the treaty, to refrain from acts calculated to frustrate the objects of the treaty, if and when it should come into force.

"2. Pending the entry into force of a treaty and provided that such entry into force is not unduly delayed, the same obligation shall apply to the state which, by signature, ratification, accession, acceptance or approval has established its consent to be bound by the treaty."

33. Mr. BARTOŠ expressed appreciation of the way in which the Drafting Committee and the special rapporteur had found suitable language to express the obligation of good faith to be observed between the signature and entry into force of a treaty.

Article 19 bis *was adopted.*

ARTICLE 20. — ENTRY INTO FORCE OF TREATIES

34. The CHAIRMAN said the Drafting Committee proposed the following redraft of article 20, the title of which had now been shortened:

"1. A treaty enters into force in such manner and on such date as the treaty itself may prescribe.

"2. (*a*) Where a treaty, without specifying the date upon which it is to come into force, fixes a date by which ratification, acceptance, or approval is to take place, it shall come into force upon that date;

"(*b*) The same rule applies *mutatis mutandis* where a treaty, which is not subject to ratification, acceptance or approval, fixes a date by which signature is to take place.

"(*c*) However, where the treaty specifies that its entry into force is conditional upon a given number, or a given category, of states having signed, ratified, acceded to, accepted or approved the treaty and this has not yet occurred, the treaty shall not come into force until the condition shall have been fulfilled.

"3. In other cases, where a treaty does not specify the date of its entry into force, the date shall be determined by agreement between the states which took part in the adoption of the text.

"4. The rights and obligations contained in a treaty become effective for each party as from the date when the treaty enters into force with respect to that party, unless the treaty expressly provides otherwise."

35. Mr. BARTOŠ, referring to paragraph 2 (*a*), said it should be explained in the commentary that unless two states had ratified, accepted or approved by the specified date, the treaty did not come into force, simply because the time-limit had expired. It was a juridical absurdity that a treaty should be in force without there being at least two parties between which it could apply.

36. Sir Humphrey WALDOCK, Special Rapporteur, said that paragraph 2 (*c*) was intended to cover that point and governed both the preceding paragraphs.

Article 20 was adopted.

ARTICLE 21. — PROVISIONAL ENTRY INTO FORCE

37. The CHAIRMAN said that the special rapporteur, at the request of the Drafting Committee, had prepared the following text for a new article 21, on provisional entry into force;[3] it would replace the special rapporteur's original article 21, on the legal effects of entry into force:

"A treaty may prescribe that, pending its entry into force by the exchange or deposit of instruments of ratification, accession, acceptance or approval, it shall come into force provisionally, in whole or in part on a given date or on the fulfilment of specified requirements. In that case the treaty shall come into force as prescribed and shall continue in force on a provisional basis until either the treaty shall have entered into force definitively or the states concerned shall have agreed to terminate the provisional application of the treaty."

38. Mr. ROSENNE said that he did not wish to propose any change in the wording but would like to know whether he was correct in assuming that the second sentence covered the eventuality where the parties agreed to put the treaty into force provisionally pending the occurrence of a certain event and that if that event did not occur the treaty automatically ceased to be provisionally in force. Sometimes, where a formal agreement was made subject to ratification, an agreement in simplified form was concluded for the interim period to bring the former provisionally into force until it had been ratified or until it had become clear that it was not going to be ratified. Perhaps some explanation on that point would be given in the commentary.

39. Sir Humphrey WALDOCK, Special Rapporteur, said that an explanation was necessary in the commentary to indicate that that eventuality was covered, since the language of article 21 did not specifically cover the point.

40. Mr. BARTOŠ thanked the special rapporteur for preparing a text that took into account a practice followed by Italy and Yugoslavia to which both Mr. Ago and himself had had occasion to refer.[4] He agreed that some explanation was needed in the commentary to forestall the argument that there was something illogical in a treaty being brought into force provisionally and made subject to the exchange of instruments of ratification in order to have binding force.

Article 21 was adopted.

ARTICLE 22. — THE REGISTRATION AND PUBLICATION OF TREATIES

41. The CHAIRMAN said the Drafting Committee proposed the following redraft of article 22.

"1. The registration and publication of treaties entered into by Members of the United Nations shall be governed by the provisions of Article 102 of the Charter of the United Nations.

"2. Treaties entered into by any party to the present articles, not a Member of the United Nations, shall as soon as possible be registered with the Secretariat of the United Nations and published by it.

"3. The procedure for the registration and publication of treaties shall be governed by the regulations in force for the application of Article 102 of the Charter."

42. Mr. ROSENNE suggested that article 22 should also refer to the filing and recording of treaties.

43. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee had given thought to that point and had concluded that it would suffice to speak of registration, despite the fact that under the United Nations regulations as adopted in General Assembly resolution 97 (I) and amended by resolution 482 (V) the Secretary-General was required to file and record treaties transmitted by non-member states. The general notion of registration covered that process and Mr. Lachs had put forward the view that the article as drafted might encourage the Secretary-General to "register" rather than "file" the treaties of non-member states.

44. Mr. ROSENNE pointed out that Article 102 of the Charter imposed an obligation on Member States to register their treaties with the Secretary-General and contained sanctions for non-compliance with that requirement. As it stood, article 22 was inconsistent with the regulations and attention to that fact must be drawn in the Commentary.

45. Mr. LACHS said that no problem would arise if non-member states were willing to comply with the regulations under the terms of a draft treaty of the kind under consideration. The only real difference between registration and filing was a technical one and in the draft it was desirable to propose a uniform rule for all states.

46. Mr. ROSENNE said that he was bound to reserve his position on paragraph 2, which was inconsistent with paragraph 1 since the sanctions laid down in Article 102 of the Charter could not be imposed on non-member states. The notion of registration was being used in an entirely different sense in those two paragraphs.

47. Mr. LACHS pointed out that the institution of registration was one and the same, though the legal consequences might be different for member and non-member states.

Article 22 was adopted.

ARTICLE 24. — THE CORRECTION OF ERRORS IN THE TEXTS OF TREATIES FOR WHICH THERE IS NO DEPOSITARY

48. The CHAIRMAN said the Drafting Committee proposed the following redraft of article 24:

"1. Where an error is discovered in the text of a treaty for which there is no depositary after the text has been authenticated, the interested states shall by mutual agreement correct the error either:

"(*a*) by having the appropriate correction made in the text of the treaty and causing the correction to be initialled in the margin by representatives duly authorized for that purpose;

[3] 661st meeting, para. 2.

[4] 645th meeting, para. 79.

"(*b*) by executing a separate protocol, a *procès-verbal*, an exchange of notes or similar instrument, setting out the error in the text of the treaty and the corrections which the parties have agreed to make; or

"(*c*) by executing a corrected text of the whole treaty by the same procedure as was employed for the erroneous text.

"2. The provisions of paragraph 1 shall also apply where there are two or more authentic texts of a treaty which are not concordant and where it is proposed to correct the wording of one of the texts.

"3. Whenever the text of a treaty has been corrected under the preceding paragraphs of the present article, the corrected text shall replace the original text as from the date the latter was adopted unless the parties shall otherwise determine.

"4. Notice of any correction to the text of a treaty made under the provisions of this article shall be communicated to the Secretariat of the United Nations."

Article 24 was adopted.

ARTICLE 25. — THE CORRECTION OF ERRORS IN THE TEXTS OF TREATIES FOR WHICH THERE IS A DEPOSITARY

49. The CHAIRMAN said the Drafting Committee proposed the following redraft of article 25:

"1. (*a*) Where an error is discovered in the text of a treaty for which there is a depositary, after the text has been authenticated, the depositary shall bring the error to the attention of all the states which participated in the adoption of the text and to the attention of any other states which may subsequently have signed or accepted the treaty, and shall inform them that it is proposed to correct the error if within a specified time-limit no objection shall have been raised to the making of the correction.

"(*b*) If on the expiry of the specified time-limit no objection has been raised to the correction of the text, the depositary shall make the correction in the text of the treaty, initialling the correction in the margin, and shall draw up and execute a *procès-verbal* of the rectification of the text and transmit a copy of the *procès-verbal* to each of the states which are or may become parties to the treaty.

"2. Where an error is discovered in a certified copy of a treaty, the depositary shall draw up and execute a *procès-verbal* specifying both the error and the correct version of the text, and shall transmit a copy of the *procès-verbal* to all the states mentioned in paragraph 1 (*b*) of the present article.

"3. The provisions of paragraph 1 shall likewise apply where two or more authentic texts of a treaty are not concordant, and a proposal is made that the wording of one of the texts should be corrected.

"4. If an objection is raised to a proposal to correct a text under the provisions of paragraphs 1 or 3 of the present article, the depositary shall notify the objection to all the states concerned together with any other replies received in response to the notifications mentioned in paragraphs 1 and 3. However, if the treaty is one drawn up either within an international organization or at a conference convened by an international organization, the depositary shall also refer the proposal to correct the text and the objection to such proposal to the competent organ of the organization concerned.

"5. Whenever the text of a treaty has been corrected under the preceding paragraphs of the present article, the corrected text shall replace the faulty text as from the date on which the latter text was adopted, unless the states concerned shall otherwise decide.

"6. Notice of any correction to the text of a treaty made under the provisions of this article shall be communicated to the Secretariat of the United Nations."

Article 25 was adopted.

ARTICLE 26. — THE DEPOSITARY OF MULTILATERAL TREATIES

50. The CHAIRMAN said that the following text of article 26 had already been approved at the 662nd meeting:

"1. Where a multilateral treaty fails to designate a depositary of the treaty, and unless the states which adopted it shall have otherwise determined, the depositary shall be:

"(*a*) in the case of a treaty drawn up within an international organization or at an international conference convened by an international organization, the competent organ of that international organization;

"(*b*) in the case of a treaty drawn up at a conference convened by the states concerned, the state on whose territory the conference is convened.

"2. In the event of a depositary declining, failing or ceasing to take up its functions, the negotiating states shall consult together concerning the nomination of another depositary."

Article 26 was adopted.

ARTICLE 27. — THE FUNCTIONS OF A DEPOSITARY

51. The CHAIRMAN said the Drafting Committee proposed the following redraft of article 27:

"1. A depositary exercises the functions of custodian of the authentic text and of all instruments relating to the treaty on behalf of all states parties to the treaty or to which it is open to become parties. A depositary is therefore under an obligation to act impartially in the performance of these functions.

"2. In addition to any functions expressly provided for in the treaty, and unless the treaty otherwise provides, a depositary has the functions set out in the subsequent paragraphs of this article.

"3. The depositary shall have the duty:

"(*a*) to prepare any further texts in such additional languages as may be required either under the terms of the treaty of the rules in force in an international organization;

"(*b*) to prepare certified copies of the original text or texts and transmit such copies to the states mentioned in paragraph 1;

"(*c*) to receive in deposit all instruments and ratifications relating to the treaty and to execute a *procès-verbal* of any signature of the treaty or of the deposit of any instrument relating to the treaty;

"(*d*) to furnish to the state concerned an acknowledgment in writing of the receipt of any instrument or notification relating to the treaty and promptly to inform the other states mentioned in paragraph 1 of the receipt of such instrument or notification.

"4. On a signature of the treaty or on the deposit of an instrument of ratification, accession, acceptance or approval, the depositary shall have the duty of examining whether the signature or instrument is in conformity with the provisions of the treaty in question, as well as with the provisions of the present articles relating to signature and to the execution and deposit of such instruments.

"5. On a reservation having been formulated, the depositary shall have the duty:

"(*a*) to examine whether the formulation of the reservation is in conformity with the provisions of the treaty and of the present articles relating to the formulation of reservations and, if need be, to communicate on the point with the state which formulated the reservations;

"(*b*) to communicate the text of any reservation and any notifications of its acceptance or objection to the interested states as prescribed in articles 17 and 18 of the present articles.

"6. On receiving a request from a state desiring to accede to a treaty under the provisions of article 7 *bis*, the depositary shall as soon as possible carry out the duties mentioned in paragraph 3 of that article.

"7. Where a treaty is to come into force upon its signature by a specified number of states or upon the deposit of a specified number of instruments of ratification, acceptance or accession or upon some uncertain event, the depositary shall have the duty:

"(*a*) promptly to inform all the states mentioned in paragraph 1 when, in the opinion of the depositary, the conditions laid down in the treaty for its entry into force have been fulfilled;

"(*b*) to draw up a *procès-verbal* of the entry into force of the treaty, if the provisions of the treaty so require.

"8. In the event of any difference arising between a state and the depositary as to the performance of these functions or as to the application of the provisions of the treaty concerning signature, the execution or deposit of instruments, reservations, ratifications or any such matters, the depositary shall, if the state concerned or the depositary itself deems it necessary, bring the question to the attention of the other interested states."

52. Mr. ROSENNE suggested that, at the end of paragraph 8, the words "or the competent organ of the international organization concerned" should be added.

53. Sir Humphrey WALDOCK, Special Rapporteur, said he would accept that amendment.

Article 27 as thus amended was adopted.

ARTICLE 7 *bis*. — OPENING OF A TREATY TO THE PARTICIPATION OF ADDITIONAL STATES

54. Sir Humphrey WALDOCK, Special Rapporteur, said that he had had some difficulty with the commentary on article 7 *bis*, which the Commission might or might not wish to alter in the light of its decision on article 7 at the previous meeting. The effect of that decision would be that, in the case of general multilateral treaties, participation would be open to every sovereign state unless a contrary intention was expressed. That did not necessarily mean that there were no cases of general multilateral treaties containing participation clauses, so that the problem of the admission of further states to participation in a treaty remained.

55. The object of article 7 *bis* had been to provide a procedure for participation which would not involve the operation of the unanimity rule. If only paragraph 1 of article 7 *bis* were retained, the unanimity rule would apply to all treaties, including general multilateral treaties containing clauses limiting participation. Admittedly, the difficulty would not arise in the majority of cases, where there was very wide participation, but in his opinion paragraphs 2 and 3 should not be deleted because of the decision taken by the Commission at the previous meeting.

56. Mr. BRIGGS observed that, in the light of the wording of article 7, which referred to sovereign states, article 7 *bis* would open participation to states which were not sovereign.

57. Mr. TUNKIN considered that, while Mr. Briggs' comment was pertinent, the matter might be remedied by simply deleting the word "sovereign" from article 7.

58. With regard to article 7 *bis*, he suggested that the words "general multilateral" should be deleted from the first sentence of paragraph 2.

59. Sir Humphrey WALDOCK, Special Rapporteur, said he did not consider Mr. Tunkin's solution satisfactory, because it did not take into account the case of plurilateral treaties, where the accession of additional states certainly required the unanimous concurrence of the existing parties.

60. One solution would be to retain paragraph 2 to cover cases where general multilateral treaties were open to all states unless a contrary intention was expressed in the treaty itself. Another solution might be to treat certain broad multilateral treaties on the same basis as general multilateral treaties.

61. If the Commission decided against retaining paragraphs 2 and 3, however, it would be necessary to draft a separate article to cover the case of treaties between small groups of states, where the accession of other states was governed by the unanimity rule.

62. The CHAIRMAN, speaking as a member of the Commission, noted that, since article 7 applied to general multilateral treaties other than those containing express participation clauses, a certain group of general

multilateral treaties still remained to be dealt with in article 7 *bis*.

63. Mr. TUNKIN said he doubted the desirability of retaining article 7 *bis*.

64. Mr. ELIAS suggested that the decision on article 7 *bis* should be deferred until the next meeting.

It was so agreed.

DRAFT REPORT OF THE COMMISSION ON THE WORK OF ITS FOURTEENTH SESSION (*resumed from the previous meeting*)

CHAPTER I: ORGANIZATION OF THE SESSION (A/CN.4/L.101)

65. The CHAIRMAN invited the Commission to resume its consideration of the draft report, starting with Chapter I.

66. Mr. BRIGGS observed that it was customary in the Commission's reports to indicate in section I whether members had attended the session. It should therefore be recorded that Mr. Kanga had been absent throughout the session.

67. Mr. TUNKIN said that in some of the Commission's past reports mention had been made of the Drafting Committee and its work, of which the Sixth Committee of the General Assembly should be aware.

68. The CHAIRMAN said that the amendments suggested by members would be taken into account.

Chapter I as thus amended was adopted.

CHAPTER II: LAW OF TREATIES

INTRODUCTION (A/CN.4/L.101/Add.1) (*resumed from the previous meeting*)

69. The CHAIRMAN invited the Commission to resume its consideration of Chapter II of the draft report.

70. Mr. TUNKIN said that although the twelve paragraphs of the introduction to Chapter II had been adopted at the previous meeting, he would like to suggest three amendments. First, that it should be noted that the draft articles submitted by Mr. Brierly in his first report in 1950 had been in the form of a draft convention. It was only in 1956 that, at the suggestion of a later special rapporteur, Sir Gerald Fitzmaurice, the Commission had tacitly accepted, without any actual formal decision, the idea that the draft articles should be in the form of a code.

71. Secondly, that the presentation of the quotation in paragraph 6 from the Commission's 1956 report should be changed. That quotation set out the arguments in favour of a code but it was placed immediately after a reference to the Commission's 1959 report. In order to give a clearer picture of how the Commission's views had evolved over the years, it would be more appropriate to place that quotation earlier in the introduction; the chronological order would then make it clear that the arguments in question had been put forward in connexion with the Commission's tacit acceptance of 1956 and not in 1959, when the Commission had not taken any decision on the choice between a code and a convention.

72. Thirdly, that in paragraph 7 the sentence: "... an expository code, however well formulated, cannot in the nature of things have the same authority or be so effective as a convention for consolidating the law..." should be amended. That sentence seemed to place on the same footing a code, which expressed only the views of the Commission, and a convention signed by states and binding upon them; a code could not be said to have "authority".

73. Sir Humphrey WALDOCK, Special Rapporteur, said that to meet Mr. Tunkin's first point, he would introduce a reference to the fact that Mr. Brierly's original draft articles had been in the form of a convention.

74. On the second point, however, he said that the passage from the 1956 report to which Mr. Tunkin had referred had been reproduced in the Commission's 1959 report. That report contained only the arguments in favour of a code and there was no doubt that in 1959 the Commission had been contemplating a code.

75. To meet Mr. Tunkin's third point, he suggested the deletion of the words "have the same authority or". The passage would then read "... an expositary code cannot be so effective as a convention...".

76. Mr. TUNKIN said he would not press his second point.

The introduction to Chapter II as thus amended was adopted.

COMMENTARY TO ARTICLE 1.—DEFINITIONS

77. The CHAIRMAN invited the Commission to consider the commentary to article 1.

78. Mr. BARTOŠ said the commentary to article 1 conflicted both with the daily practice of the United Nations and with the express provisions of article 1 and other articles of the General Assembly's regulations on the registration and publication of treaties. Those regulations did not distinguish between instruments on grounds of form; the General Assembly had taken the view that all international agreements constituted treaties. It was therefore quite out of keeping that the commentary should draw a distinction between "treaties *stricto sensu*" and agreements in simplified form. In his opinion, even agreements in simplified form were treaties *stricto sensu*.

Paragraph (1)

79. Mr. AGO said the first sentence of the commentary was unsatisfactory; it was hardly appropriate to say that the definitions were "not intended to provide full definitions".

80. Mr. TUNKIN suggested the deletion of the first sentence; the second sentence was sufficient to express the desired meaning.

81. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed to the deletion of the first sentence.

Paragraph (1) as thus amended was adopted.

Paragraph (2)

82. Mr. TUNKIN proposed that in the second sentence the words "which is commonly subject to ratification" should be deleted.

83. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed to that amendment.

Paragraph (2) as thus amended was adopted.

Paragraph (3)

84. Mr. TUNKIN proposed that the words "much larger than that of the treaty or convention *stricto sensu*, i.e. the single formal instrument" should be omitted. It was by no means certain that agreements in simplified form were more numerous than formal instruments. Moreover, he agreed with Mr. Bartoš that the reference to treaties *stricto sensu* could give rise to controversy.

85. Mr. LACHS said that recent statistics suggested that approximately one-third of international agreements were in simplified form.

86. Mr. CASTRÉN said he saw no reason for using in the English text of paragraphs (3) and (4) the French expression "*accord en forme simplifiée*" instead of the English expression which the Commission had now accepted, "treaty in simplified form". In fact, to correspond to that English expression the French should be changed to "*traité en forme simplifiée*".

87. Mr. GROS said that in French it was preferable to retain the expression "*accord en forme simplifiée*", which was in general use.

88. Sir Humphrey WALDOCK, Special Rapporteur, suggested the use throughout of "treaty in simplified form" in English and "*accord en forme simplifiée*" in French. That would apply both to the articles and to the commentary.

89. He could agree to the deletion of the last portion of the second sentence of paragraph (3), as suggested by Mr. Tunkin.

90. Mr. AMADO said it seemed unnecessary to refer to Sir Hersch Lauterpacht by name.

91. Mr. BARTOŠ said that the reference to the report by Sir Hersch Lauterpacht should be placed in a footnote.

92. Sir Humphrey WALDOCK, Special Rapporteur, agreed.

93. Mr. GROS said that he would not object if the reference were given in the footnote, but the idea contained in the last sentence should be retained; it could be merged with the end of the second sentence so as to read:

"the number of such agreements ... is now very large and their use is moreover steadily increasing".

It was so agreed.

94. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to adopt paragraph (3) as amended by Mr. Gros and with the changes accepted by the special rapporteur.

Paragraph (3) as thus amended was adopted.

Paragraph (4)

95. Mr. AGO proposed that, in both the passages in which it occurred, the expression "treaties *stricto sensu*" should be replaced by "formal treaties".

96. Mr. CADIEUX, while supporting Mr. Ago's proposal in principle, said he would prefer the expression "formal agreement", because it was closer to the corresponding French expression.

97. Mr. de LUNA proposed that the expression "code", which occurred twice, should be replaced by "convention".

98. Mr. BARTOŠ pointed out that the first sentence referred to the juridical differences between formal agreements on the one hand and treaties in simplified form on the other, with respect to their entry into force. In actual fact, in many countries, treaties in simplified form were subject to ratification.

99. Sir Humphrey WALDOCK, Special Rapporteur, said he could accept the amendments proposed by Mr. Ago and Mr. de Luna.

Paragraph (4) as thus amended was adopted.

Paragraph (5)

100. Mr. VERDROSS proposed that in the first sentence the words "treaties in the narrower sense of the word" should be omitted.

101. Mr. BARTOŠ proposed that footnote 22 should be expanded to include a reference to article 1 of the General Assembly's regulations on the registration and publication of treaties.

102. Sir Humphrey WALDOCK, Special Rapporteur, said he could accept the amendments proposed by Mr. Verdross and Mr. Bartoš.

Paragraph (5) as thus amended was adopted.

Paragraph (6)

103. Mr. TUNKIN suggested that the order of paragraphs (7) and (6) should be reversed; paragraph (7) referred to the Statute of the International Court of Justice and so should take precedence over the opinions of jurists, which were cited in paragraph (6).

104. Mr. LACHS supported Mr. Tunkin's suggestion.

105. Sir Humphrey WALDOCK, Special Rapporteur, said he preferred the existing order because paragraph (7), as it stood, provided a suitable ending: the effect was stronger if the argument was concluded with a reference to the Statute of the International Court of Justice. If the opinions of jurists were placed after paragraph (7), the effect would be weakened.

106. The CHAIRMAN said that, if there were no objections, he would consider that the Commission agreed to retain the existing order of the paragraphs.

It was so agreed.

107. Mr. TUNKIN said he saw no reason for singling out one British and two French jurists for special mention in paragraph (6). The names of writers should be mentioned, if at all, in footnotes.

108. Mr. GROS said that unless he was mistaken, the commentaries to the Commission's draft articles on the Law of the Sea contained numerous references to writers, which were of considerable value to readers.

109. The CHAIRMAN said that it was not usual for the Commission to refer to writers by name in the commentaries to articles adopted by the Commission itself.

110. Mr. LIANG, Secretary to the Commission, said that there was a great difference between reports by special rapporteurs and the Commission's own reports. In the reports of special rapporteurs, there was usually a wealth of references to writers: in the Commission's reports, such references were used very sparingly.

111. Mr. AMADO said that references to learned writers should be avoided in the Commission's reports; it should be taken for granted that the members of the Commission read the legal literature on the topics which the Commission discussed.

112. Sir Humphrey WALDOCK, Special Rapporteur, said that he would move the references to individual writers to the footnotes. He had referred to the two French writers because they had been mentioned in the Commission's previous reports on the same topic and to Lord McNair because he was the author of a well-known book on the law of treaties.

113. It would be a pity if the Commission adopted as an absolute rule that its reports would never cite learned writers. For the purposes of the draft under discussion, however, he noted the desire that such references should be used sparingly and should be placed in footnotes.

114. The CHAIRMAN said that the special rapporteur's understanding was correct: there was no intention to adopt any general rule on the subject and the approach suggested was suitable for the Commission's present purposes.

Paragraph (6) as thus amended was adopted.

Paragraph (7)

115. Mr. AMADO said that, in the fourth sentence, it was not appropriate to say that the International Court of Justice was directed to "apply" certain "elements".

116. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the sentence should be redrafted to read:

"Again in Article 38, paragraph (1), the Court is directed to apply, in reaching its decisions, 'international conventions'".

Paragraph (7) as thus amended was adopted.

Paragraph (8)

117. Mr. BARTOŠ said it should be made clear that the list mentioned of "other subjects of international law" was not exhaustive.

118. The opinion was gaining ground that groups of individuals could be subjects of international law, though that opinion had never been accepted by the Commission.

119. Mr. AGO said that, in French, the more usual term "*insurgés*" should be substituted for "*les collectivités en rébellion*".

120. The last sentence should be re-cast in more non-committal form. The theory that individuals could be subjects of international law had been put forward by some writers but was not recognized in practice.

121. Mr. LACHS said he thought that the wording of the penultimate sentence met Mr. Bartoš's second point.

122. The last sentence should be dropped altogether as views on that controversial issue were unlikely to be unanimous.

123. Mr. VERDROSS suggested that the expression "insurgent communities" should be rendered in French by the usual term "*insurgés reconnus comme belligérents*", seeing that not all insurgents were subjects of international law.

124. Mr. TUNKIN said he did not favour that suggestion because it raised the question of recognition. It would be sufficient if the word "communities" were deleted.

It was so agreed.

125. Mr. CADIEUX proposed that the last two sentences should be amalgamated by deleting the words "Whether individuals or corporations are or are not considered to be 'subjects of international law', they", and substituting the word "which".

126. Sir Humphrey WALDOCK, Special Rapporteur, said that he was prepared to drop the reference to the controversy as to whether individuals and corporations were or were not considered to be subjects of international law.

127. Mr. AGO said that the solution proposed by Mr. Cadieux was acceptable.

Mr. Cadieux's amendment was adopted.

Paragraph (8) as thus amended was adopted.

Paragraph (9)

128. Mr. TUNKIN proposed the deletion of the second and third sentences, which read:

"For example, two states may enter into a transaction concerning the sale or lease of diplomatic premises or the sale of commercial goods by an agreement concluded under the local law of one of them. In that case, even if the agreement has as its background the international relations between the two states under international law, the conclusion and application of the agreement itself is not governed by international law, and it is not a treaty for the purposes of the draft articles".

The example given was very controversial.

129. Sir Humphrey WALDOCK, Special Rapporteur, said that the passage had been inserted in deference to Mr. Bartoš's wish that an explanation should be given of the difference between agreements regulated by public international law and those regulated by private law.[5]

130. Mr. BARTOŠ said he was grateful but felt that some reference should be added to the fact that international agreements might be regulated by private international law.

[5] 655th meeting, paras. 59-62.

131. Mr. ROSENNE proposed the deletion of the second sentence and of the words "conclusion and" in the third sentence.

132. Mr. AGO considered that the last sentence at least should be dropped since it concerned a matter regulated by national law.

133. Mr. YASSEEN said that in most cases when there was a conflict of laws the dispute was settled by reference to national law and not to private international law, so that the statement in the commentary was correct.

134. Mr. BARTOŠ said he disagreed with Mr. Yasseen. He was firmly of the opinion that the submission of an instrument to private international law was not always necessarily linked to the municipal law of the states concerned. The modern tendency was definitely to apply the rules of private international law directly, particularly the so-called uniform rules.

Mr. Tunkin's amendment was adopted.

Paragraph 9 as thus amended was adopted.

Paragraph (10)

135. Mr. ROSENNE proposed the deletion of the words "as in the case of declarations under the optional clause of the Statute of the International Court", at the end of the sixth sentence; he would not wish that one particular interpretation out of the several possible ones should be thus endorsed by the Commission.

136. Mr. AGO said that the second sentence should be drafted in stronger terms so as to emphasize that the fact that they were verbal did not diminish the legal force of such agreements under international law.

137. Mr. BARTOŠ said that, as it stood, paragraph (10) did not conform with practice. The question was not whether an agreement had been expressed in writing but whether there was written evidence of an agreement even if it were an oral one. It was common practice for oral agreements to be confirmed by *notes verbales* or other similar documents which did not bear signatures; but the written document recognized by the party concerned was sufficient for the agreement in question to be registered as a treaty with the United Nations Secretariat.

138. The word "oral" should be substituted for the word "verbal" throughout the paragraph. The word "verbal" was badly chosen, because it applied equally to the terms employed in treaties in written form and was an expression which led to endless disputes. The Commission had intended to draw a distinction between treaties in written form and treaties concluded by oral agreement. A satisfactory term was therefore needed.

139. Sir Humphrey WALDOCK, Special Rapporteur, suggested that to meet Mr. Ago's point, the beginning of the second sentence could be amended to read "this is not to deny the legal force of all agreements under international law".

It was so agreed.

140. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that the word "verbal" should be replaced by the word "oral".

141. He had no objection to the deletion proposed by Mr. Rosenne but the question had been discussed before and some members had seemed to want the declaration to be treated on that basis, but there was no need to make any reference to it.

Mr. Rosenne's amendment was adopted.

Paragraph (10) as thus amended, was adopted.

Paragraph (11)

142. Mr. AGO proposed the deletion of the word "invariable" in the second sentence.

It was so agreed.

143. Mr. BARTOŠ said that, although he was opposed to the institution of treaties in simplified form, he was prepared not to reject paragraph (11) outright, because its language was not too categorical. He should be considered as having abstained on it.

Paragraph (11) as thus amended was adopted.

Paragraph (12)

Paragraph (12) was adopted without comment.

Paragraph (13)

144. Mr. CASTRÉN, with regard to the statement in the first sentence, that "The remaining definitions do not require comment, with the exception of 'reservation'", said he considered that a further explanation was needed of the difference between accession, acceptance and approval "on the international plane", to use the words of the definition itself.

145. Sir Humphrey WALDOCK, Special Rapporteur, said that he would be reluctant to expand the paragraph, particularly as further explanations would appear in the commentary to subsequent articles.

146. Mr. BARTOŠ suggested that Mr. Castrén's point could be met by appropriate cross-references. In any event, the first sentence could be dropped altogether as being too categorical.

147. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the first sentence should be deleted and a new paragraph added stating that the remaining definitions did not appear to need comment and giving the references to the relevant paragraphs of the commentary in which they were mentioned. Paragraph (13) would then be confined to the question of reservations.

It was so agreed.

148. Mr. AGO observed that, in seeking to cover the various kinds of reservations, the special rapporteur had omitted to mention the most obvious one, namely, the reservation under which a state declared that it would not be bound by a certain provision of the treaty. The omission should be made good.

149. Sir Humphrey WALDOCK, Special Rapporteur, said he would prepare a suitable passage for insertion in the paragraph to cover Mr. Ago's point.

150. Mr. TUNKIN proposed the deletion of the last sentence reading: "It would be inadmissible to allow a 'reservation', otherwise not allowable, to be formulated in the guise of a declaration of understanding or interpretation or any similar declaration".

Mr. Tunkin's amendment was adopted.

Paragraph (13), as thus amended, was adopted.

Paragraph (14)

151. Mr. BRIGGS proposed the substitution of the word "approved" for the word "ratified" in the second sentence. In the United States, for example, the Senate gave advice and consent to a treaty. The word "ratified" would therefore be inappropriate.

152. Sir Humphrey WALDOCK, Special Rapporteur, said that as the word "approved" had a technical connotation he would prefer the word "endorsed".

It was so agreed.

Paragraph (14), as thus amended, was adopted.

COMMENTARY TO ARTICLE 2. — SCOPE OF THE PRESENT ARTICLES

Paragraph (1)

153. Mr. LACHS said that the last sentence reading "A provision relating to multilateral treaties could hardly, for instance, have any application to 'exchanges of notes'", was not strictly accurate, since there were examples of exchanges of notes between more than two states. For instance, there had been a tripartite exchange of notes between Greece, the United Kingdom and the United States on post-war settlements, and he could quote other cases.

154. Sir Humphrey WALDOCK, Special Rapporteur, supported by Mr. BARTOŠ, suggested that the sentence should be deleted.

It was so agreed.

Paragraph (1), as thus amended, was adopted.

Paragraph (2)

155. Mr. TUNKIN suggested that, in the first sentence, the word "any" should be deleted, so as to emphasize that the Commission had no doubt that oral international agreements had legal force; that the second sentence, in which the Eastern Greenland case was specifically mentioned, should be deleted; and that in the third sentence the word "may" should be omitted, again so as to avoid any element of doubt.

156. Sir Humphrey WALDOCK, Special Rapporteur, said he could accept Mr. Tunkin's suggestions. There was some controversy concerning the Ihlen Declaration in the Eastern Greenland case, which was regarded by some as being more in the nature of an undertaking; nothing would be lost by omitting the reference to that case.

Paragraph (2), as thus amended, was adopted.

Reports of subsidiary bodies of the Commission

157. The CHAIRMAN invited the Commission to consider the reports of the Committee which it had appointed at its 634th meeting to consider the Commission's future programme of work, and of the two Sub-Committees, one on the topic of state responsibility and the other on the succession of states and governments, which it had appointed at its 637th meeting.

REPORT OF THE COMMITTEE TO CONSIDER THE COMMISSION'S FUTURE PROGRAMME OF WORK

158. Mr. AMADO, Chairman of the Committee, said that all Committee members with the exception of Mr. Jiménez de Aréchaga, who had unfortunately already left Geneva, had attended the one meeting the Committee had held, a few days previously, at which unanimous agreement had quickly been reached on the recommendation that the Commission's programme of work should consist of the following seven topics: The law of treaties; state responsibility; the succession of states and governments; the question of special missions; the question of relations between states and intergovernmental organizations; the principles and rules of international law relating to the right of asylum; and the juridical régime of historic waters, including historic bays.

159. It had been the opinion of the Committee that the first three items would take at least ten years to complete.

160. Mr. BARTOŠ added that the Committee had agreed that the Commission should state in its report that, although certain other topics put forward by governments were of great interest and might usefully be codified, they could not be included in the programme of work owing to lack of time. He asked that that conclusion, which had been reached in the Committee, should be recorded in the Commission's report to the General Assembly.

161. The CHAIRMAN suggested that the Commission should endorse the Committee's recommendation and submit to the General Assembly a programme of work consisting of the seven items mentioned.

It was so agreed.

REPORT OF THE SUB-COMMITTEE ON THE SUCCESSION OF STATES AND GOVERNMENTS

162. Mr. LACHS, Chairman of the Sub-Committee, said that the Sub-Committee had held two meetings. At the first meeting, a general exchange of views had been held, and members had suggested a series of topics which might constitute the elements of a future report; the general approach to and the scope of the subject had also been discussed. At the second meeting, after a further exchange of views, it had been decided that it would be premature during the current session of the Commission to draw up a list of the constituent elements of the Sub-Committee's future work, and that further thought should be given to the subject, particularly to the important issues of approach and scope. Discussion had accordingly been limited to procedural matters.

163. In the light of the decision already taken by the Sub-Committee on State Responsibility to meet in the second week of January, the Sub-Committee on the Succession of States and Governments had decided to meet from 17 January 1963, in other words, to begin its work as soon as the Sub-Committee on State Responsibility had concluded its session. That arrangement would save time and money, particularly as the membership of the two Sub-Committees overlapped.

164. The Secretariat would meanwhile proceed with a series of preparatory studies, and submit a questionnaire to States Members of the United Nations, inviting them to submit essential information on the subject, derived from treaties, diplomatic correspondence, judicial decisions and arbitration. The Secretariat itself would prepare a paper on the problem of succession in relation to membership of the United Nations, a paper on the succession of states under multilateral law-making treaties of which the Secretary-General of the United Nations was the depositary, and a digest of the decisions of international tribunals on the succession of states. Members of the Sub-Committee had been asked to submit to the Secretariat papers outlining their views on the essential issues of scope and approach not later than 1 December 1962 for circulation to the other members of the Sub-Committee. In order to provide guidance for the Sub-Committee, the Chairman of the Sub-Committee would, on the basis of those papers of members, prepare a working paper summarizing their views in time for translation and circulation before the Sub-Committee's session in January 1963.

165. Between that session and the fifteenth session of the Commission, the Chairman would prepare a paper summarizing the various stages of the Sub-Committee's work, which would constitute a preliminary report for the Commission's approval. That implied, of course, that the item of state succession would be discussed at the Commission's fifteenth session, and that guidance would thus be provided for the special rapporteur who would be appointed to deal with the question.

REPORT OF THE SUB-COMMITTEE ON STATE RESPONSIBILITY

166. Mr. AGO, Chairman of the Sub-Committee, said that the Sub-Committee had held one meeting, at which it had been agreed that, in a study of the topic of state responsibility, it was necessary to separate the essential principles of responsibility from all the subjects with which it had been traditionally associated. The Sub-Committee could not go further than that so far as substance was concerned, but had reached agreement on procedure.

167. It had been decided to meet again on 7 January 1963 and that its session should last for at least one week, but not beyond 16 January. Possibly the plenary Sub-Committee would meet for a week, and a small group for a few days longer. Preliminary studies had already been submitted by Mr. Jiménez de Aréchaga, Mr. Paredes and Mr. Gobbi, observer for the Inter-American Juridical Committee. It had been thought desirable that each member should submit a written *exposé* giving his general views on the subject and, in particular, should submit proposals for "chapter headings" of topics to be discussed. Those preliminary *exposés* should be sent to the Secretariat in time for translation and circulation before the January 1963 session of the Sub-Committee. No specific programme of work was yet envisaged for the Secretariat, but when the preliminary *exposés* had been received and views on them exchanged, the Sub-Committee would be in a position to decide what research should be requested from the Secretariat and from members, how it should proceed with its work and how it should report to the Commission on its progress.

168. The CHAIRMAN suggested that the reports of the subsidiary bodies of the Commission should be summarized in the Commission's report.

It was so agreed.

The meeting rose at 1.20 p.m.

669th MEETING

Wednesday, 27 June 1962, at 9.30 a.m.

Chairman: Mr. Radhabinod PAL

Draft report of the Commission on the work of its fourteenth session (*resumed from the previous meeting*)

CHAPTER II. — LAW OF TREATIES (A/CN.4/L.101/Add.1) (*resumed from the previous meeting*)

1. The CHAIRMAN invited the Commission to resume its consideration of the draft report.

COMMENTARY TO ARTICLE 3. — CAPACITY TO BECOME A PARTY TO TREATIES

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

2. Mr. TUNKIN proposed first, that in accordance with the Commission's decision at the previous meeting, the term "insurgent community" used in the third sentence, should be replaced by "insurgent".

3. He proposed, secondly, the deletion of the last three sentences, reading:

> "As to the Holy See, treaties entered into by the Papacy are normally entered into not in virtue of its territorial sovereignty over the Vatican State, but on behalf of the Holy See, which exists separately from that state. On the other hand, both in the Geneva Convention on the Law of the Sea, and the Vienna Convention, the Holy See appears in the list of 'States' parties to the Conventions. At any rate the Holy See possesses treaty-making capacity and is certainly comprised either within the term 'States' or within the term 'other subjects of international law'."

Those sentences were redundant in view of the statement in the immediately preceding sentence that the phrase "other subjects of international law" was intended to remove any doubt about the Holy See's capacity to conclude treaties.

4. Mr. BARTOŠ, supporting Mr. Tunkin's second proposal, said that by the Lateran agreement of 1929, the Vatican State had been established with a very small territory. Many states however, still preferred to consider the Papacy as a spiritual Power, as the Holy See. Regardless, however, of whether it was considered as the Vatican State or as the Holy See, all agreed that it