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Summary record of the 670th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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matters of general interest to all states, were open to participation by all states, and another provision allowing for limitations to participation.

148. Mr. AGO thanked members for the effort they had made to reconcile opposing views and said that he would be able to vote in favour of article 7 as revised.

149. Mr. CADIEUX said that, while he would accept the compromise in a spirit of conciliation, he was not satisfied with it. In particular, he had serious doubts concerning the definition of general multilateral treaties, which were said to be of general interest to the community of nations. He could cite many examples of treaties concluded between a large number of Powers, which were of general interest, but which the parties had no intention of opening to all states.

150. The CHAIRMAN suggested that articles 7 and 7 *bis* should be referred back to the Drafting Committee for redrafting in the light of the agreement reached in the Commission.

It was so agreed.

The meeting rose at 1.5 p.m.

670th MEETING

Thursday, 28 June 1962, at 10.30 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 10.—RATIFICATION

Paragraph (1)

2. Mr. BARTOŠ noted that the commentary to article 10 used two different expressions to reflect the same idea: "ratification on the international plane" and "ratification in international law"; he suggested that the same expression should be used throughout.

It was so agreed.

Paragraph (1) as thus amended was adopted.

Paragraph (2)

3. Mr. TUNKIN said he could not accept the first sentence. He doubted whether it was true to say that the modern institution of ratification in international law had developed "under the influence of France and the United States". The Commission, as an international body, should be careful not to make pronouncements of that type.

4. Mr. AMADO said the first sentence might have been unobjectionable in an academic treatise but was quite unsuitable in a report by the International Law Commission.

5. Mr. CADIEUX suggested that the words "under the influence of France and the United States" should be deleted.

It was so agreed.

6. Mr. BARTOŠ said that while the statement in the fourth sentence might be correct in the case of a great many countries, including Yugoslavia, in others treaty-making fell within the exclusive competence of the executive. He, therefore, proposed the insertion, after the words "ratification came, however, to be used", of some qualifying expression such as "in most cases".

It was so agreed.

Paragraph (2) as thus amended was adopted.

Paragraph (3)

7. Mr. TUNKIN said there appeared to be some confusion in the first sentence between inter-governmental agreements not requiring ratification and agreements in simplified form.

8. Mr. ROSENNE suggested the deletion of the second sentence reading: "Indeed, recourse is sometimes had to these less formal types of agreement for the very purpose of avoiding the delay involved in complying with constitutional procedures". That sentence was open to misinterpretation.

It was so agreed.

9. Mr. BARTOŠ suggested that, in the French version of the second part of the first sentence, the word "généralement" should be replaced by "habituellement" which was closer to the English "usually".

10. He reiterated his opposition to the majority view in the Commission regarding the requirement, or non-requirement, of ratification for treaties in simplified form.

11. Sir Humphrey WALDOCK, Special Rapporteur, in the light of Mr. Tunkin's remark, suggested the deletion of the words "and intergovernmental agreements" from the first sentence, which would thus end with the words "amongst which were exchanges of notes".

It was so agreed.

Paragraph (3) as thus amended was adopted.

Paragraph (4)

12. Mr. ROSENNE observed that in the third sentence the term "interdepartmental agreements" was used, presumably for "inter-governmental agreements".

13. Mr. BARTOŠ said he did not approve of the notion that there could exist "inter-governmental" or "inter-departmental" agreements; government departments were merely organs of the state, and all treaties were treaties between states.

14. He also had reservations regarding the use of the words "impliedly excluded" in connexion with ratification. In his opinion, the general and absolute rule was that ratification was necessary.

15. Mr. LACHS said the language of the first sentence, which stated that the general result of the developments described in the previous paragraphs had been "to obscure the law", was unsatisfactory.

16. Mr. AMADO said that the intention was probably to say that it was difficult for states to ascertain the relevant rules of law because of the abundance of factual information to be considered.

17. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the word "obscure" be replaced by a word such as "complicate".

18. The CHAIRMAN proposed that the choice of a suitable word should be left to the special rapporteur.

It was so agreed.

Paragraph (4) as thus amended was adopted.

Paragraph (5)

19. Mr. BARTOŠ noted that the paragraph stated first the views of "some members" of the Commission and then the opinion of the majority. It would have been more appropriate to state the views of the majority before those of the minority.

20. Mr. LIANG, Secretary to the Commission, agreed that if it had been a question of stating the opinion of the majority and that of the minority, the more appropriate order would have been that indicated by Mr. Bartoš.

21. He did not recollect, however, that any vote had been taken on the point dealt with in paragraph (5). In past reports of the Commission, care had always been taken not to refer to a majority view and a minority view when no vote had actually been taken.

22. Mr. ROSENNE said that four or five members, including himself, had expressly stated their dissent and that the Commission had adopted the article on that understanding. It would therefore be accurate to describe him as holding the minority view, even though no formal vote had been taken.

23. Sir Humphrey WALDOCK, Special Rapporteur, suggested that, in order to overcome the difficulty, the expression in the fifth sentence, "The majority of the Commission, however, took the view", should be replaced by: "The view which prevailed, however, was...". A corresponding adjustment would be made wherever the term "majority" was used in the subsequent sentences.

It was so agreed.

Paragraph (5) as thus amended was adopted.

Paragraph (6)

Paragraph (6) was adopted without comment.

Paragraph (7)

24. Mr. ROSENNE suggested that, in the second sentence, the term "delegates" should be replaced by "representatives".

Paragraph (7) as thus amended was adopted.

Paragraph (8)

Paragraph (8) was adopted without comment.

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

Paragraphs (1), (2) and (3)

25. Mr. ROSENNE said he found a general difficulty in articles 24 and 25 over the use of the term "authentic texts" in two separate senses. It would be better to say "two or more authentic language versions" when that was what was meant, for instance in the fifth line and elsewhere. The commentary appeared to diverge a little from the language of the article, but he would not press the point.

26. Mr. LACHS noted that paragraphs (1), (2) and (3) all contained references to "Hackworth's Digest of International Law"; he suggested that they should be dropped, in accordance with the Commission's earlier decision.

27. Mr. GROS suggested that the references to Hackworth should be moved to footnotes, but that the substantive statements should be retained in the commentary.

It was so agreed.

Paragraph (1) as thus amended was adopted.

Paragraph (2)

28. Mr. ROSENNE proposed the deletion from the fourth sentence of the words "there is a dispute and" which appeared before "it becomes", so that the sentence would then read "In that case it becomes a problem...".

It was so agreed.

Paragraph (2) as thus amended was adopted.

Paragraph (3)

Paragraph (3) as already amended was adopted.

Paragraph (4)

Paragraph (4) was adopted without comment.

Paragraph (5)

29. Mr. BARTOŠ said that the question which arose in modern practice was not, as described in the first sentence, that of "correcting not the authentic text itself but versions of it prepared in other languages; in other words of correcting errors of translation". The difficulty arose when there was a lack of concordance of texts in several languages in cases where each text was authentic, not where there was just one original text of which the others were merely translations. The various language versions of the texts of treaties were just so many different originals of texts drafted simultaneously which had to agree with each other and not with a single original basic text. The problem was not that of correcting errors of translation, but that of bringing into line two or more equally authentic texts drafted in different languages.

30. Mr. BRIGGS said that he had some difficulty in understanding the meaning of the first sentence; the five official versions of the Charter were all equally authentic.

31. Mr. LIANG, Secretary to the Commission, said that the case referred to in paragraph (5) was that of

translations of a single authentic text into languages other than that in which the authentic text had been drawn up. That situation did not arise in regard to treaties drawn up under the auspices of the United Nations: in the case of those treaties, the Chinese, English, French, Russian and Spanish texts were all equally authentic. Of course, in practice, the original was usually drafted in one language, or in two languages, and there was then a process of translation; however, when the text of the treaty was adopted in final form, none of the texts was deemed to be a translation.

32. Mr. ROSENNE proposed that the first sentence of paragraph (5) should be deleted and replaced by a passage reading: "The procedure for the correction of errors is also applicable to cases of lack of concordance of the authentic texts in different languages, where that lack of concordance arises from errors of translation made before the adoption of the original text."

33. Mr. TUNKIN suggested the omission of the words "of translation" after the word "errors" in Mr. Rosenne's amendment. In some cases it would be difficult to ascertain whether the error was one of translation or not.

34. Mr. ROSENNE said he would accept that suggestion.

Mr. Rosenne's amendment was adopted.

Paragraph (5) as thus amended was adopted.

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

Paragraph (1)

35. Mr. LACHS said it was not appropriate to say that the process of obtaining agreement to the correction of the text was "complicated" by the number of states. He suggested that the word "complicated" should be replaced by the word "affected".

It was so agreed.

Paragraph (1) as thus amended was adopted.

Paragraph (2)

36. Mr. LIANG, Secretary to the Commission, pointed out that the words "amend" and "amendment" in the phrases "the proposal to correct or amend the text" and "to make the correction or amendment" were not appropriately used, because the question of amendment of substance did not arise under article 25.

37. Sir Humphrey WALDOCK, Special Rapporteur, suggested that in the first sentence the words "or amend" and in the second sentence the words "or amendment" should be deleted.

It was so agreed.

Paragraph (2) as thus amended was adopted.

Paragraph (3)

38. Mr. LACHS proposed that, in the first sentence, the words "the amendment of a text" should be replaced by the words "the correction of a text".

39. Mr. ROSENNE proposed that, in the same sentence, the word "dispute" should be replaced by the word "difference".

It was so agreed.

Paragraph (3) as thus amended was adopted.

Paragraph (4)

Paragraph (4) was adopted without comment.

COMMENTARY TO ARTICLE 26.—THE DEPOSITARY OF MULTILATERAL TREATIES

Paragraph (1)

40. Mr. TUNKIN proposed the deletion of the second sentence, which read: "For a depositary is really a necessity for the smooth working of a multilateral treaty with a large number of states and is a great convenience even for a treaty drawn up between very few"; such a statement was elementary and therefore unnecessary.

It was so agreed.

Paragraph (1) as thus amended was adopted.

Paragraph (2)

41. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the words "the Commission thought it desirable, *ex abundante cautela*..." should be replaced by the simpler language: "the Commission thought it prudent...".

It was so agreed.

Paragraph (2) as thus amended was adopted.

COMMENTARY TO ARTICLE 27.—THE FUNCTIONS OF A DEPOSITARY

Paragraph (1)

Paragraph (1) was adopted without comment.

Paragraph (2)

42. Mr. EL-ERIAN proposed, for the sake of consistency, that the word "state" should precede the words "international organization" in the first sentence.

It was so agreed.

43. Sir Humphrey WALDOCK, Special Rapporteur, said that the reason for transposing the order had been that it was more common for an international organization to act as a depositary. However, he had no objection to the amendment.

Paragraph (2) as thus amended was adopted.

Paragraphs (3) and (4)

44. Mr. TUNKIN proposed the deletion of the words "is not a mere post-box, but" in both paragraphs.

It was so agreed.

Paragraphs (3) and (4) as thus amended were adopted.

Paragraph (5)

Paragraph (5) was adopted without comment.

Paragraph (6)

45. Mr. LACHS said that the first sentence should be simplified, for the depositary's duty to notify the interested states was an absolute one and existed irrespective of whether the entry into force of the treaty depended upon a specific number of signatures, ratifications, etc.

46. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the sentence should be amended to read "Paragraph 7 deals with the depositary's duty to notify the interested states when the conditions for the entry into force of the treaty have been fulfilled."

It was so agreed.

Paragraph (6) as thus amended was adopted.

Paragraph (7)

47. Mr. LIANG, Secretary to the Commission, suggested that the word "final" should be substituted for the word "binding" so as to conform with the wording of paragraph (6).

48. The words "general body" at the end of the paragraph might be too widely interpreted; it would be sufficient to refer to the "states interested".

It was so agreed.

49. Mr. BARTOŠ said that the paragraph should indicate, so as to be consistent with the text of the article, that the consultation in question should be made either on the initiative of the depositary itself or at the request of the interested state.

50. Mention should also be made of the point that a state might not wish to have a difference made public. In that case, particularly if an amicable settlement was reached between the state concerned and the depositary, it was in the general interest that the question should not be raised by a general notification.

51. The same solution was to be recommended in the case where the state concerned withdrew its request before the notification was made.

52. Sir Humphrey WALDOCK, Special Rapporteur, said he would insert appropriate wording to cover the two points made by Mr. Bartoš.

It was so agreed.

53. Mr. LACHS said that the word "determinations", whether qualified or not, was unsuitable. The depositary was not called upon to determine anything but to state a fact.

54. Sir Humphrey WALDOCK, Special Rapporteur, said that the passage stated, correctly, that the depositary "is not invested with competence". That was precisely the point he had been asked to make.

Paragraph (7) as thus amended was adopted.

CHAPTER V.—OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSIONS (*resumed from the previous meeting*)

Section III

55. The CHAIRMAN invited the Commission to consider the draft of section III (A/CN.4/L.101/Add.5) of the report, concerning summary records and translation facilities, which would be included in chapter V (A/CN.4/L.101/Add.4).

56. Mr. BRIGGS said that the first sentence should refer to "documentation" as well as to summary records and translations.

57. At the end of the second paragraph the word "inadequacies" should be added after the word "these".

58. Mr. TUNKIN said that the difficulties which the Commission was experiencing were primarily due to the fact that not even part of the special rapporteur's report (A/CN.4/144) had been reproduced for circulation to members before the opening of the session.

59. Mr. ELIAS proposed the substitution of the words "relating to the production of documents" for the

words "governing documentation" in the first sentence as amended by Mr. Briggs.

60. Mr. BRIGGS said he could accept that amendment.

Mr. Briggs' amendment was adopted.

61. Mr. ROSENNE pointed out that the title of the section would need to be changed accordingly.

62. Mr. LACHS, Rapporteur, said it was the problem of documentation that had been the main difficulty and he had been careful to draft the section in such a way as to reflect no criticism on the members of the Legal Division working for the Commission.

63. Mr. BARTOŠ said that the reference to "technical inadequacies" was not enough: the Commission had suffered from inadequate services.

64. Mr. CADIEUX agreed that the Commission should draw attention to the fact it had not had the benefit of the services to which it was entitled; it should, however, be careful in its choice of language so as not to attribute blame or responsibility wrongly.

65. The CHAIRMAN pointed out that the Commission was complaining of inadequate facilities; it was not criticizing the competence of the staff.

66. Sir Humphrey WALDOCK, Special Rapporteur, said he had been late in submitting his report but, even so, it had not been reproduced in English as quickly as might have been expected, nor had the Secretariat followed his suggestion that it should be circulated to members in parts.

67. The report he would have to produce for the following session would be in two parts and as it was likely to be lengthy, he hoped that at least the first part could be circulated in advance of the session.

68. Mr. TUNKIN said it might be desirable to mention that, whenever necessary, reports by special rapporteurs should be sent to members by airmail before the opening of the session.

69. Sir Humphrey WALDOCK, Special Rapporteur, asked whether there were any rules at Headquarters against the circulation of reports in parts.

70. Mr. LIANG, Secretary to the Commission, said that the Secretariat would look into the matter and do its utmost to see that the Commission's wishes were carried out.

71. Mr. AMADO said he wished to express his appreciation of the work of the members of the Legal Division, who had always given proof of great legal competence and diligence.

72. Mr. LIANG, Secretary to the Commission, said that, in fairness to the technical services of the European Office, it should be made clear that the Commission was drawing attention to inadequacies which had manifested themselves at the current session for the first time. In previous years, the Commission had praised the services placed at its disposal.

73. The CHAIRMAN said it would be clear that the Commission was referring only to the situation at the current session.

74. Mr. LACHS, Rapporteur, said that "technical inadequacies" meant shortages of staff.

75. Mr. GROS, noting that the provisional summary records in French were still three weeks in arrears, said that as far as the French text of Section III was concerned, he would like it to refer to the "*inadaptation des moyens techniques*".

76. Mr. ROSENNE asked that the issue of both volumes of the *Yearbook* should be expedited and that the Secretariat should revert to its former custom of including an index, which the Commission, in its recommendation of 1956, had described as "indispensable".¹ The fact that the English version of the 1961 *Yearbook* was not yet, he believed, available² would cause difficulties for governments preparing for the forthcoming conference on consular relations.

77. He also suggested that in the Secretary-General's proposals for allocating items to committees of the General Assembly, section III of chapter V of the Commission's report should be referred to the Fifth Committee.

78. Mr. BARTOŠ urged that the Chairman and other members who were to attend the meetings of the Sixth Committee at the next session of the General Assembly should explain why the International Law Commission's work at its fourteenth session had been so hampered.

79. Mr. AGO, on the question of the summary records, said that many of the difficulties arose because reports of statements were drafted on the basis of the interpretation. Another difficulty was that some of the *précis*-writers, though otherwise excellent, did not possess the special legal qualifications required for a full understanding of the arguments developed in the Commission and sometimes inevitably failed to grasp the sense of what had been said. The Commission should state in section III that staff with special legal qualifications should be chosen for the work.

80. Mr. BARTOŠ said that it was not for the Commission to interfere in the internal organization of the Secretariat. The fault did not necessarily lie with the *précis*-writers and the technical services but might be the result of the orders they had been given to keep the records short, with the consequence that legal arguments were sometimes unduly curtailed. He had studied the problem very closely and had come to the conclusion that the trouble was due to the organizational arrangements and not to any individual shortcomings or negligence on the part of the staff.

81. Mr. TUNKIN said that he was bound in fairness to state that he had always found the records in English very good and had no complaints, but he recognized that there might be a problem in connexion with the statements of French-speaking members. Perhaps, as Mr. Bartoš had suggested, it was the organization which was at fault.

¹ *Yearbook of the International Law Commission 1956*, Vol. II (United Nations publication, Sales No.: 1956.V.3, Vol. II), p. 301.

² Vol. I of the 1961 *Yearbook* was issued in French on 12 February 1962, and in English and Spanish on 27 April 1962; Vol. II was issued in English on 17 September 1962 and in French on 17 October 1962.

82. Mr. GROS said that the defect of the system was that French statements were not noted in French. The ideal solution would be to have French and English *précis*-writers working alongside and recording statements in the original languages. In that way the speakers' original words would be reproduced, instead of being distorted.

83. Mr. LIANG, Secretary to the Commission, said that the Sixth Committee could propose that section III of Chapter V should be referred to the Fifth Committee or to any other appropriate organ of the United Nations.

84. Mr. CADIEUX said the Commission should formulate its wishes very precisely; he would be interested to hear the Secretary's views as to the most effective way of achieving the Commission's object.

85. Mr. LIANG, Secretary to the Commission, said that many of the problems under discussion would be dealt with by the Office of Conference Services in conjunction with the European Office and in accordance with the existing regulations. Any suggested changes in those regulations would have to be referred to the Fifth Committee, such as the question of providing longer summary records or changing the system of preparing summary records.

86. Mr. LACHS, Rapporteur, proposed that the words "and that in future it will have proper services at its disposal" should be added at the end of the second paragraph of section III so as to reflect more accurately the views put forward.

87. The record of the discussion would indicate that no criticism had been implied of the staff of the Legal Division.

It was so agreed.

Section III as thus amended was adopted.

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 7.—PARTICIPATION IN A TREATY, and 7 *bis*.
—THE OPENING OF A TREATY TO THE PARTICIPATION OF ADDITIONAL STATES (*resumed from the previous meeting*)

88. The CHAIRMAN said the Drafting Committee proposed the following redrafts of articles 7 and 7 *bis*, which had been revised in the light of the discussion at the previous meeting:

"Article 7. — Participation in a treaty

"1. In the case of a general multilateral treaty, every state may become a party to the treaty unless it is otherwise provided by the terms of the treaty itself or by the established rules of an international organization.

"2. In all other cases, every state may become a party to the treaty:

- "(a) which took part in the adoption of its text, or
- "(b) to which the treaty is expressly made open by its terms, or

“(c) which, although it did not participate in the adoption of the text, was invited to attend the conference at which the treaty was drawn up, unless the treaty otherwise provides.

“*Article 7 bis. — The opening of a treaty to the participation of additional states*

“1. A multilateral treaty may be opened to the participation of states other than those to which it was originally open :

“(a) in the case of a treaty drawn up at an international conference convened by the states concerned, by the subsequent consent of two-thirds of the states which drew up the treaty, provided that, if the treaty is already in force and ... years have elapsed since the date of its adoption, the consent only of two-thirds of the parties to the treaty shall be necessary ;

“(b) in the case of a treaty drawn up either in an international organization or at an international conference convened by an international organization, by a decision of the competent organ of the organization in question, adopted in accordance with the applicable voting rule of such organ.

“2. Participation in a treaty concluded between a small group of states may be opened to states other than those mentioned in article 7 by the subsequent agreement of all the states which adopted the treaty ; provided that, if the treaty is already in force and ... years have elapsed since the date of its adoption, the agreement only of the parties to the treaty shall be necessary.

“3. (a) When the Depositary of a general multilateral treaty receives a formal request from a state desiring to be admitted to participation in the treaty under the provisions of paragraphs 1 and 2 of this article, the Depositary :

“(i) in a case falling under sub-paragraph 1 (a), shall communicate the request to the states whose consent to such participation is specified in that sub-paragraph as being material ;

“(ii) in a case falling under sub-paragraph 1 (b), shall bring the request, as soon as possible, before the competent organ of the organization in question.

“(b) The consent of a state to which a request has been communicated under sub-paragraph 3 (a) (i) shall be presumed after the expiry of twelve months from the date of the communication, if it has not notified the Depositary of its objection to the request.

“4. When a state is admitted to participation in a treaty under the provisions of the present article notwithstanding the objection of one or more states, an objecting state may, if it thinks fit, notify the state in question that the treaty shall not come into force between the two states.”

89. Sir Humphrey WALDOCK, Special Rapporteur, explained that the wording of paragraph 1 of article 7 had been brought into line with that used in other

articles. Thus, the expressions “may become a party” and “the established rules of an international organization” had been used because they appeared in other articles.

90. In article 7 *bis*, the question of multilateral treaties had been transferred to paragraph 1 and the word “general” had been deleted, since the provisions of the former paragraph 2 applied to all multilateral treaties, with the exception of treaties concluded between a restricted group of states. The structure of the articles on participation had thus been brought more or less into line with that of the articles on reservations.

91. The provisions of the new paragraph 2 of article 7 *bis* were confined to treaties between restricted groups of states, where the participation of other states was subject to the unanimous consent of the existing parties.

92. Whether the principle of the articles was accepted or not, their new structure was more coherent than it had been before.

93. Mr. BRIGGS asked that a passage should be inserted in the relevant paragraph of the report to read :

“For the reasons given by him at the 648th and 667th meetings, Mr. Briggs did not accept the provisions of article 7”.

94. Sir Humphrey WALDOCK said that, as special rapporteur, he had been obliged to give the articles the most appropriate structure in compliance with the Commission's decision.

95. As a member of the Commission, however, he did not consider that, at the existing stage of practice in the matter and in view of the large number of treaties concluded under the auspices of the United Nations, the presumption contained in paragraph 1 of article 7 was justified. He could not support the article in its new form, because he considered that in controversial cases the decision should remain in the hands of a collegiate body, such as the General Assembly of the United Nations ; otherwise, the depositary of a multilateral treaty would be placed in a very difficult and delicate position. He was convinced that the existing United Nations procedure was more effective than that which would result from the provisions of article 7, and wished to make it quite clear that his objection was motivated by considerations of principle only.

96. Mr. TUNKIN said he hoped there would not be another lengthy discussion on the two articles. Although he was not fully satisfied with the final texts, he was prepared to accept them.

97. Mr. GROS said that, since there was a majority and a minority view on the question, members should be allowed to state their disagreement with the new rule. He fully endorsed the views expressed by Mr. Briggs and Sir Humphrey Waldock, and wished to stress that, as now worded, article 7 bypassed the real problem by completely disregarding the question of recognition of states.

98. Mr. CADIEUX said he wished to associate himself with those members who had expressed objection to the

new article 7. He had already had occasion to give the reason for his objection in detail.

99. Mr. TSURUOKA said that he too endorsed the views expressed by Mr. Briggs, Sir Humphrey Waldock, Mr. Gros and Mr. Cadieux.

100. The CHAIRMAN called for a vote on the new text of article 7.

Article 7 was adopted by 12 votes to 5.

101. Mr. BARTOŠ said that, although he had been out of the room when the vote was taken he was in favour of the new text of article 7.

102. Mr. CASTRÉN said there was an error in paragraph 3 (a) of article 7 bis where the reference to paragraph 2 was unnecessary, since no mention of the cases referred to in paragraph 2 was made in the remainder of paragraph 3.

103. Sir Humphrey WALDOCK, Special Rapporteur, said that the provisions of paragraph 3 did in fact cover both paragraphs 1 and 2, but paragraph 3 (a) contained an error, in that the words "general multilateral" had been inadvertently allowed to remain. The error should be corrected.

104. Mr. ROSENNE suggested that Mr. Castrén's point might be met by inserting the words "and paragraph 2" after the words "under sub-paragraph 1 (a)" in sub-paragraph 3 (a) (i).

It was so agreed.

105. The CHAIRMAN called for a vote on article 7 bis, as thus amended by the special rapporteur and Mr. Rosenne.

Article 7 bis, as thus amended, was adopted by 16 votes to 1 with 1 abstention.

The meeting rose at 12.45 p.m.

671st MEETING

Thursday, 28 June 1962, at 4 p.m.

Chairman: Mr. Radhabinod PAL

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

CHAPTER III.—FUTURE WORK IN THE FIELD OF THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW (A/CN.4/L.101/Add.2)

1. The CHAIRMAN invited the Commission to consider chapter III of the draft report; the paragraphs were not numbered.

Introductory portion

The introductory portion was adopted without comment

Section I

Law of treaties

2. Mr. de LUNA said that some reference should be made to the fact that, at the current session, the Commission had dealt with the conclusion of treaties.

3. Mr. AMADO said he disliked the first sentence, which stated: "The General Assembly recommendation regarding this topic did not give rise to any difficulty." It would be better to omit it altogether and go straight to the subject matter of the paragraph.

4. Mr. VERDROSS said the report should also mention that, at subsequent sessions, the Commission would deal with aspects of the law of treaties other than the conclusion of treaties.

5. Mr. LIANG, Secretary to the Commission, said that that question was dealt with in chapter IV, on the future work of the Commission.

6. Mr. BARTOŠ said he supported Mr. Amado's suggestion regarding the first sentence, as well as the suggestions of Mr. de Luna and Mr. Verdross to include a brief reference to the facts of the situation.

7. Mr. LACHS, Rapporteur, said he could accept all those suggestions; the draft would be amended accordingly.

The sub-section on the law of treaties, as thus amended, was adopted.

State responsibility

8. Mr. CADIEUX said that, although the English text of the first sentence, which constituted the first paragraph, "The Commission duly discussed this topic", did not correspond with the French original, which stated that the Commission had discussed the topic "thoroughly", it was a more prudent statement. The Commission could hardly claim to have had a thorough discussion of the topic of state responsibility.

9. The next seven paragraphs showed a lack of balance in the recital of the arguments on the topic of the treatment of aliens. Five long paragraphs were devoted to the arguments in favour of dissociating the topic of state responsibility from that of the treatment of aliens, but only two short paragraphs to the arguments of those who held that the treatment of aliens was an important topic which deserved priority, and that the law on the treatment of aliens was a mine of information on the subject of state responsibility.

10. He hoped the rapporteur would redraft those paragraphs so as to restore the balance.

11. The last two paragraphs, the sixteenth and seventeenth, should be brought into line not only with each other, but also with the decisions adopted by the Commission.

12. In the last paragraph, he noted the expression "State responsibility *per se*". That seemed to him a novel expression, and he would be glad to have an explanation of its meaning.

13. Mr. GROS, referring to Mr. Cadieux's last remark, said the best solution might be to delete the words "the state responsibility *per se*, that is," so that the opening words of the last paragraph would read: "The Commission approved a suggestion that the sub-committee should confine its future discussions to the general aspects of state responsibility..."