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Summary record of the 688th meeting

Topic:

Law of Treaties

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69. Mr. TUNKIN said that the question at issue was not what was the proper place for article 14 but what should be its substance, and the discussion had not sufficiently clarified that. Few members had put forward really definite opinions and, with all respect to the Special Rapporteur, he himself was not convinced that treaties in violation of a previous agreement only raised problems of responsibility and not of validity.

70. As for the action to be taken by the Commission, he supported Mr. Ago's suggestion that the discussion on article 14 should be suspended, so that it could be decided later where the article should be placed and in what form.

71. Sir Humphrey WALDOCK, Special Rapporteur, said he would like to make it plain that he too favoured the course suggested by Mr. Ago.

72. The CHAIRMAN said that article 14 might be left aside until the Commission was in a position to determine whether it should be included in some part of the draft, or whether the question of conflict with a prior treaty ought to be dealt with under the topic of state responsibility or of state succession.

73. Mr. TUNKIN said it should be understood that the Commission would resume the discussion of article 14 at the present session.

74. Mr. ELIAS agreed with Mr. Tunkin: the argument that some of the issues raised by conflict with a prior treaty did not involve essential validity had not convinced him. The matter should not be held over until the following session.

75. The CHAIRMAN proposed that the decision on article 14 be deferred and that the article be taken up again at a later stage in the session.

It was so agreed.

The meeting rose at 5.55 p.m.

688th MEETING

Tuesday, 28 May 1963, at 10 a.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Law of Treaties (A/CN.4/156 and Addenda)

[Item 1 of the agenda] (*continued*)

1. The CHAIRMAN invited the Commission to consider section III of the Special Rapporteur's second report (A/CN.4/156/Add.1), which began with article 15.

SECTION III (THE DURATION, TERMINATION AND OBSOLESCENCE OF TREATIES)

ARTICLE 15 (TREATIES CONTAINING PROVISIONS REGARDING THEIR DURATION OR TERMINATION)

2. Sir Humphrey WALDOCK, Special Rapporteur, said that articles 15, 16 and 17 were clearly linked together and could be regarded as a unity. Article 15 dealt with the case in which the treaty contained provisions intended to regulate either its duration or its termination. Article 16 was, strictly speaking, of the same kind; it dealt with the case in which the treaty, on its face, appeared to contemplate an indefinite duration, making no provision of any kind for denunciation or for termination by other means; its chief relevance was its link with article 17. Article 17 dealt with the case in which the treaty contained no provisions regarding either its duration or its termination.

3. In article 15 he had stated possible rules, in case the Commission wished or thought it right to state in terms the methods by which the duration or termination of a treaty could be determined, in accordance with the various types of clause which a treaty could contain for that purpose. He fully realized that, as already appeared from one or two of the proposals for amendment, the article could be dealt with quite differently; indeed, it could be said simply that " a treaty shall endure, or terminate, in accordance with its terms, where the treaty itself makes provision for that purpose "; if that method of approach were adopted, it would be possible to shorten article 15 very considerably.

4. There were very few points in article 15 on which the matter did not really follow directly from the treaty. Perhaps the main point was in paragraph 4 (*c*), where there was a little problem to which he had suggested an answer, but which he did not think could be said to be settled by the treaty itself. There were quite a number of treaties which contained a clause preventing the treaty from coming into force until a certain number of ratifications had been obtained; the problem was what was to happen if denunciations should reduce the number of parties below the number originally specified. He had dealt with that point in the commentary, and proposed a rule.

5. Apart from that problem, the provisions set out in the article really followed from the particular provisions of the treaty itself, so that if the Commission wished to adopt a different method it would be quite possible to dispense with some of the paragraphs. It was simply a question of whether, in a codification of that kind, it was useful or not useful to try to state explicitly the rules which would, in fact, be applied under the various forms of treaty clauses.

6. A point which might possibly be raised in connexion with paragraph 5 was that two possible methods of termination were sometimes provided for in the same treaty. Even then, it followed from the treaty itself how the two clauses would operate in conjunction, but it might be argued that it was worth noting that particular point, as he had done in paragraph 5 (*a*).

7. Article 17 dealt with quite a complicated question on which there might be different views. If the Commission were to take a widely different view from the Special Rapporteur as to the extent to which implied rights of denunciation were to be understood in treaties, then the provisions of article 17 could be greatly shortened.

8. When the Commission had discussed articles 15, 16 and 17, it could consider whether some contraction or amalgamation of the text was desirable.

9. The CHAIRMAN drew attention to the amendments to article 15 submitted by Mr. Castrén and Mr. Briggs.

Mr. Castrén's proposal read:

" 1. The provisions of a treaty which relate to the duration or to the termination thereof for one or all the parties shall be applicable subject to articles 18 to 22.

" [or, alternatively, a separate article or a reference in the commentary]. A treaty shall not come to an end by reason only of the fact that the number of parties has fallen below the minimum number originally specified in the treaty for its entry into force, unless the States still parties to the treaty so decide."

Mr. Briggs' proposal read:

" 1. Except as otherwise provided in these articles, a party may denounce a treaty only in accordance with the provisions of the treaty or with the consent of all other parties.

" 2. In the case of a bilateral treaty, denunciation by a party in accordance with paragraph 1 terminates the treaty.

" 3. In the case of a multilateral treaty, the party denouncing it in accordance with paragraph 1 ceases to be a party to the treaty."

10. Mr. CASTRÉN said that according to article 15 the general rule was that the provisions of a treaty regarding its duration or termination, if any existed, were applicable; the other possibilities were dealt with in articles 16 to 22. Consequently, article 15 could be confined to stating the general rule, and it was unnecessary to list all the provisions covering the different cases which were contained in bilateral or multilateral treaties.

11. It might, however, be advisable to retain paragraph 4 (*c*), which provided that a treaty's validity was not impaired by reason only of the fact that the number of parties had fallen below the number originally specified for its entry into force; for the contrary view could also be held. The Special Rapporteur's arguments in favour of that provision were, however, wholly convincing. It was for the Commission to decide whether it preferred to deal with the matter in a separate article or in the commentary.

12. On the other hand, although sub-paragraph 5 (*b*) contained a new element, the case contemplated in it was hardly likely to arise in practice. Indeed, if a treaty whose duration was expressed to be limited by reference to a specified period, date or event provided that it should automatically be prolonged for a further period or periods unless denounced before the expiry of the first period, it was hardly likely that the duration of the further periods would not also be specified. That case might, if absolutely necessary, be mentioned in the commentary, with a statement of the rule proposed by the Special Rapporteur, which seemed on the whole to reflect the intention of the parties to such a treaty.

13. Mr. Briggs' amendment was very similar to his own, particularly so far as paragraph 1 was concerned. The idea stated in paragraph 2 was correct, but self-evident. As to paragraph 3, it should be noted that a treaty might sometimes be terminated by denonciation when it required a minimum number of parties for validity.

14. Finally, he drew attention to footnote 2 to paragraph 2 of the commentary, in which the Special Rapporteur observed that it was the passing rather than the arrival of the date which was relevant when the duration of a treaty was expressed to be limited by reference to a specified date, since the treaty would expire at midnight on the date fixed by the treaty. In his opinion, that raised a question of interpretation. If a treaty was said to terminate on 31 December 1964, for instance, that meant that it expired after the date had passed; but if it was specified that the final date was 1 January 1965, the parties would probably have had the beginning of that day in mind. It was therefore better to say that the treaty remained in force until the specified date, rather than that it came to an end on a certain date.

15. Mr. VERDROSS said that articles 16 to 22 formed a complete whole and that it was essential to indicate their main lines first.

16. The reasons for terminating a treaty fell into three main groups. First, and simplest, came the common will of the parties. Secondly, if it was the will of the contracting parties when concluding a treaty that it should eventually be terminated, the treaty itself generally contained a denunciation clause. But the will of the parties might also be deduced from the records of proceedings or from the purpose of a treaty. There was no denunciation clause in the United Nations Charter, but the records showed that the parties had been in agreement that States could withdraw in certain circumstances. The third and largest group of treaties comprised those in which the parties had made no provision for termination. In that case, the problem was settled directly by general international law.

17. An article stating the general cases in which a treaty could be terminated should precede section III, before the particular cases were dealt with.

18. Mr. YASSEEN agreed with Mr. Castrén that article 15 might be summed up in a form of words to the effect that the duration and termination of a treaty were governed by the relevant provisions embodied in it. That would be better than an enumeration of all possible clauses on the duration and method of termination of a treaty, since in any case an enumeration could not be exhaustive.

19. Although he approved of Mr. Briggs' method of condensing the article, he thought his proposal omitted rather too much; for it dealt only with denunciation, whereas article 15 also referred to other means by which treaties could be terminated. Paragraph 2 of Mr. Briggs'

amendment seemed unnecessary, as the idea it expressed was too obvious.

20. Several ideas in the Special Rapporteur's draft were worth retaining, however; paragraph 4 (*b*), for example, stated a presumption in law, and introduced an innovation. Paragraph 4 (*c*) seemed even more necessary, since the number of signatories required for a multilateral treaty to come into force was not necessarily the same as the number required for it to remain in force. It would also be advisable to retain paragraph 5 (*b*) which introduced a presumption in law, and paragraph 6, the idea of which was useful, though obvious.

21. While he approved of the solutions proposed by the Special Rapporteur in article 15, he did not think the drafting was appropriate.

22. The CHAIRMAN said it would be advisable for the Commission to decide, at that point, whether to discuss article 15 separately or in conjunction with articles 16 and 17. His own view, based on the experience of the Commission, was that it was better to keep to well-defined points, taking each article separately as a basis of discussion. He suggested that the Commission should continue the discussion of article 15, on the understanding that members could refer to the provisions of articles 16 and 17 to the extent they considered necessary.

After some discussion *it was so agreed.*

23. Mr. BRIGGS said he supported Mr. Verdross' suggestion that a general article setting out the various ways in which a treaty could be terminated should be inserted at the beginning of section III; the articles containing detailed provisions would then follow.

24. As far as article 15 was concerned, he preferred the text proposed by Mr. Castrén to the rather lengthy draft put forward by the Special Rapporteur. His own proposal, which was not dissimilar from Mr. Castrén's, was limited to the question of denunciation; it would replace articles 15, 16 and 17, and be followed by other articles dealing with termination of a treaty by means other than denunciation.

25. In paragraphs 3 and 4 of article 15, the Special Rapporteur had really dealt with the consequences of denunciation before dealing with the right of denunciation. Article 17 dealt with the right of denunciation where not provided for in the treaty itself. It would be more correct to state the right of denunciation first and deal with the legal consequences of denunciation afterwards.

26. Paragraph 1 of his own proposal dealt with the subject-matter of article 17. Paragraph 2 was perhaps not necessary, strictly speaking, but he had introduced it because the Special Rapporteur had dealt in article 15 not only with the right of denunciation, but also with its legal consequences. The purpose of his paragraphs 2 and 3 was to formulate in more concise terms the provisions embodied in article 15, paragraphs 3 and 4 (*a*), of the Special Rapporteur's text.

27. In connexion with paragraph 3, he agreed with Mr. Castrén that the denunciation of a multilateral treaty could, in certain circumstances, have the effect of termination.

28. He did not like the use of the term " duration " in the sense in which the Special Rapporteur had used it in articles 15, 16 and 17; the articles did not deal with the beginning of the duration of a treaty, but with its termination. Nor did he like the use in paragraph 4 of the expression " shall continue in force ": the object of the provision was to deal with the legal consequences of denunciation.

29. There were good reasons for dealing with denunciation in a separate article; other ways of terminating a treaty could also be dealt with in separate articles.

30. Mr. LACHS said he supported Mr. Verdross's suggestion that an introductory article embodying a general formula should be inserted in section III; he also agreed with Mr. Castrén and Mr. Briggs that a shorter formulation of article 15 was desirable. The examples given by the Special Rapporteur would be very useful in the commentary, however; they would illustrate methods of terminating a treaty in accordance with the will of the parties, though it was most improbable that all the possible methods could be covered.

31. The provision in paragraph 4 (*c*) should be retained because it dealt with an exceptional case; it could be tranferred to article 17. He agreed with the reasoning in paragraph 7 of the commentary in support of that provision. The mere fact that the number of parties had fallen below the minimum specified for entry into force was not decisive for the termination of a treaty. There were, however, certain borderline cases. For example, the European Agreement on Road Traffic [1] provided for entry into force upon ratification by three States. In view of the emphasis placed on the multilateral character of that type of convention, it was worth considering the situation that would arise if the number of parties fell to two. A further element of complication would be introduced if reservations had been entered by the remaining parties. With all the complications arising from reservations, a quantitative change could alter the nature of the treaty and make it a bilateral treaty.

32. Mr. BARTOŠ observed that the question of the minimum number of parties to a treaty affected its application as well as its entry into force. It sometimes happened that States acceded to a treaty of general interest, such as The Hague Convention on Marriage [2] or the Vienna Convention on Diplomatic Relations,[3] in order to join the group of contracting parties which had dealt with the matter, and that most of them subsequently withdrew. Where it could be presumed that a convention would be universal, reciprocal concessions were made in order to induce certain States to become parties to it. But where many of the States for which

[1] European Agreement supplementing the 1949 Convention on Road Traffic and the 1949 Protocol on Road Signs and Signals, signed at Geneva on 16 September 1950.

[2] *British and Foreign State Papers*, Vol. 95, pp. 411 ff.

[3] *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, Vol. II (United Nations publication, Sales No.: 62.X.1), pp. 82 ff.

they had been made withdrew from the Convention, those concessions proved useless.

33. If, after the number of parties had fallen below the minimum specified for entry into force, the States which remained parties to a convention expressed their will to abide by it, then the convention, hitherto considered to be one of general interest, was transformed into a convention without that quality and might be considered to subsist in that form. In principle, however, the convention having the character of a general treaty had come to an end when the number of parties had fallen below the required minimum.

34. Again, if a treaty whose duration was limited by reference to a specified period contained a clause providing that might be prolonged after the expiry of that period, and if a large number of States denounced it, the question arose whether the States which remained parties were obliged to participate in so limited a community or whether they could denounce the treaty without awaiting the expiry of the further automatic renewal period of, say, three years, in view of the fact that they had remained parties to it because they expected to remain in a larger contracting group and did not wish to be members of a smaller one. He had no strong views on the question, but he wished to draw the Commission's attention to it.

35. Mr. TUNKIN said that the rule embodied in most of the provisions of the somewhat lengthy article 15 was that, where a treaty contained provisions regarding its duration or termination, those provisions must be applied. He was therefore inclined to favour a shorter formulation along the lines proposed by Mr. Castrén, though he had some doubts regarding the actual language of Mr. Castrén's proposed paragraph 1. That could be left to the Drafting Committee, however.

36. Article 15 also laid down another rule, which was stated in paragraph 4 (*c*) and reproduced in paragraph 2 of Mr. Castrén's proposal. He agreed on the need for that provision.

37. When the Commission had completed its consideration of articles 15, 16 and 17, it could consider what gaps, if any, were left to be filled; the discussion might also bring to light some new questions relating to article 15.

38. Mr. ROSENNE said he favoured Mr. Verdross's suggestion of an introductory article dealing in general terms with the matters later considered in detail in the various articles of section III. Such an introductory article would complement the provisions of article 23 of Part I on the entry into force of treaties, in particular paragraph 4, which dealt with the substantive consequences in law of the entry into force of a treaty.

39. For the same reasons as other speakers, he thought that a short article along the lines proposed by Mr. Castrén would be adequate for the purposes of article 15, though it would be useful to retain the provisions of paragraphs 5 and 6 proposed by the Special Rapporteur. The commentary, on the other hand, should be rather full, and he congratulated the Special Rapporteur on his remarkable text.

40. He understood Mr. Lachs' concern about the consequences of a fall in the number of parties to a multilateral treaty, but the question of the effect of reservations was more appropriately dealt with in the articles on reservations. The formulation proposed by Mr. Castrén for paragraph 2 was to the effect that a treaty would not come to an end by reason " only " of the fact that the number of parties had fallen below the minimum number originally specified for entry into force; that formulation, together, if necessary, with the doctrine of *rebus sic stantibus*, opened the way to the solution of the particular problem raised by Mr. Lachs. He believed that a multilateral treaty could be transformed into a different kind of treaty by a reduction in the number of parties, but that was no reason why the surviving parties should not keep it in force. The matter appeared to be one exclusively for the surviving parties themselves.

41. Mr. Gros said he thought that article 15 should be simplified; being a codifying article, it should contain nothing but what was strictly essential. He approved of the substance of Mr. Castrén's proposal; the few suggestions he had for supplementing the text could be submitted to the Drafting Committee.

42. The interesting anomalies pointed out by Mr. Lachs and Mr. Bartoš were resolved by Mr. Castrén's proposal, and incidentally, by the Special Rapporteur's draft, in so far as both texts specified that States still parties could decide to terminate the treaty. To make it quite clear that the will of those States was independent, it might perhaps be appropriate slightly to amend the expression " unless the States still parties to the treaty so decide ", which occurred in both texts. It would be sufficient to specify that in special cases the States would take the necessary decisions.

43. Articles 15, 16 and 17 should be considered together, and the problems arising should be settled without going into the details of certain exceptional situations.

44. Mr. AGO said he acknowledged that it was possible to simplify article 15, but he could not accept so radical a simplification as that proposed in Mr. Castrén's text. It was not enough to say, as was done in paragraph 1 of that text, that the provisions of a treaty which related to its duration or termination were applicable, for all the provisions of a treaty were applicable, and there was no reason to specify that those relating to its duration or termination were particularly applicable. Moreover, the paragraph in question referred to articles 18 to 22; but those articles provided for other cases of termination. The Commission was engaged in codification; it must therefore state all the reasons for termination of treaties, and could not omit to mention expiry, and the resolutory condition. Merely to refer to the relevant provisions of treaties would be an over-simplification.

45. The Special Rapporteur's excellent text could be improved in points of detail. For example, paragraph 1 would become superfluous if, instead of enumerating the circumstances in which the treaty remained in force, the Commission decided, on the contrary, to list those in which the treaty came to an end. The resolutory condition, to which paragraph 2 referred, must certainly be

the subject of a separate provision, for it might be disputable whether the event on which termination depended had in fact occurred. The matters dealt with in paragraphs 3 and 4 could not be left unmentioned either; but there, too, it would be preferable to mention only the circumstances in which the treaty was terminated, as was done in paragraphs 4 (*b*) and (*c*). Paragraph 5 was perhaps not essential.

46. Mr. TABIBI said that Mr. Verdross's suggestion that an introductory article be inserted in section III was acceptable. The subject had been covered in a very comprehensive and helpful manner by the Special Rapporteur in article 15 and the commentary, but the alternative text put forward by Mr. Castrén, though it needed some modification, was preferable.

47. On a general point of drafting, he wished to make a strong plea for simplicity on behalf of those States which had to arrange for the translation of international instruments, a process which could significantly delay ratification as his own Government had found in the case of the Single Convention on Narcotic Drugs.

48. Mr. TUNKIN said that the idea of an introductory article had something to recommend it, but it might prove extremely difficult to formulate; he hoped Mr. Verdross would have some suggestions to offer.

49. The reference to articles 18-22 in paragraph 1 could only be retained provisionally until the Commission had considered those articles, when it might be found either unnecessary or possibly incomplete.

50. Though aware of the dangers of over-simplification, he still favoured a shorter text, rather on the lines proposed by Mr. Castrén. In essence, article 15 was concerned with a single rule which could be stated in one paragraph.

51. If Mr. Ago had intended to suggest that there could be certain limitations on the rule, they could be examined.

52. Mr. AMADO said he supported Mr. Ago's suggestion that the Commission should deal with the termination rather than the duration of treaties. A treaty might come to an end for a variety of reasons: for instance, because the period had expired, because the parties jointly decided that it should terminate, or because it had ceased to have any purpose — a case which justified application of the *rebus sic stantibus* clause. It was not possible to condense all these reasons into one or two provisions.

53. He himself had not yet settled the question raised by Mr. Bartoš, whether the continuance in force of a treaty required a minimum number of States to remain parties to it.

54. He had not a single criticism to make concerning the article proposed by the Special Rapporteur. Simplification was, of course, desirable, as Mr. Tabibi had urged; but the final result must be perfect. He was still opposed to enumerations, which were dangerous. The Commission was laying down rules intended for States, not for children.

55. Mr. VERDROSS said that provisionally he would suggest that the introductory article to be inserted at the head of the section should be worded as follows:

" 1. An international treaty shall terminate:

" (*a*) by express agreement between the parties;

" (*b*) if it becomes obsolete;

" (*c*) by virtue of a clause in the treaty itself, or by the joint will of the parties expressed in some other way while the treaty was being negotiated;

" (*d*) by virtue of a rule of general international law.

" 2. According to general international law, a treaty shall terminate:

" (*a*) if it has been fully implemented;

" (*b*) if its implementation becomes impossible;

" (*c*) if its content becomes unlawful because of a later general rule of *jus cogens*;

" (*d*) if it is denounced because of a breach by the other party;

" (*e*) if the *rebus sic stantibus* clause is applicable;

" (*f*) if the other party has waived all rights arising out of the treaty."

56. In connexion with the last provision, he recalled that Germany, after the First World War, had waived all its rights arising out of the Treaty of Brest-Litovsk.

57. Mr. PAL said that the structure of article 15 might be a little over-elaborate, but none of its provisions had been contested. However, before entering into a detailed discussion of the article it might perhaps save time, since the substance of section III was unlikely to give rise to serious difficulties, if the whole section were referred to the Drafting Committee for rearrangement with an introductory article of the kind suggested by Mr. Verdross. Such an article should list the different types of provision regarding duration and termination or causes of termination in some such order as that suggested by Mr. Verdross, which would mean collecting together, in one opening article, the different topics dealt with in the section. If that general scheme were acceptable, separate articles could then be drawn up to develop each of those specific points further, as was done at present in the various articles of the section.

58. Mr. de LUNA said he fully sympathized with Mr. Tabibi in his desire for simplification with a result as nearly perfect as possible. He preferred a middle course between the two extremes represented by the most complicated text, that of the Special Rapporteur, and the simplest, that proposed by Mr. Castrén. The Commission should seek a text which would combine brevity with the maximum effectiveness.

59. He approved of Mr. Verdross's proposal in principle, but thought it should be developed a little. For instance, one of the causes of termination was denunciation. Denunciation, however, was the outcome of a unilateral declaration, which took effect only when it was agreed to by the other party. If a treaty did not make express provision for denunciation, or if there were any doubt

on the point and one of the parties denounced the treaty, the other parties could object. Experience showed, however, that an objection was not always effective, and that the unilateral act of one of the parties might, in the end, impose the treaty's termination *de facto*. That was what had happened in the case of the Treaty of the Brest-Litovsk.

60. Again, parliaments intervened not only when treaties were concluded, but also when they were terminated. Reference should therefore be made to constitutional restrictions on denunciation, as well as on ratification, accession and acceptance.

61. Mr. BARTOŠ said he approved of the text proposed by Mr. Verdross except for sub-paragraph 2 (*e*); for the application of the *rebus sic stantibus* clause generally entailed revision of a treaty, but very rarely its termination. If, however, the circumstances were such that it could be maintained that far-reaching amendments were necessary, that would be equivalent to the conclusion of a new treaty; but he merely wished to raise the question, without attempting to answer it.

62. Mr. YASSEEN said he agreed with Mr. Bartoš that the main function of the *rebus sic stantibus* clause was to enable a treaty to be revised, but he thought that in some cases the change in circumstances was so general and so far-reaching as to necessitate termination of the treaty.

63. Mr. LACHS said he considered that the Commission should first discuss article 15 and the remaining articles in section III and then take up the question of whether or not to insert an introductory article of the kind suggested by Mr. Verdross.

64. Sir Humphrey WALDOCK, Special Rapporteur, said that as the causes of extinction of a treaty were numerous and likely to be controversial, he had grave doubts about the utility of an introductory article such as that contemplated by Mr. Verdross.

65. The text of article 15 had been criticized on the ground that it was dangerous to list examples. But the text did not contain any examples; they were only given in the commentary and not in the article itself, which merely stated the manner in which treaties came to an end. No doubt new ways of their coming to an end would occur in the future, but all would be covered by the terms he had used in paragraph 2.

66. It was clear from the discussion that there had been some misunderstanding about the drafting of article 15: in fact, it had been based on a close study of a considerable number of treaty provisions concerning duration and termination. Admittedly, the text could be simplified, but the question was to what extent. An article of the kind envisaged by Mr. Castrén would need to be cast in a somewhat different form if it were to escape Mr. Ago's very pertinent criticisms. The simplification some members were pressing for was perhaps excessive. Something between the two extremes was necessary and in a work of codification it was often necessary to state the obvious explicitly.

67. The Commission would do better to model the article on article 23 in Part I, concerning entry into force. It should first state in general terms that when a treaty contained specific provisions regarding its duration, it would terminate in such a manner or upon such a date or event as it might prescribe. Certain other elements in article 15 should then be deal with in succeeding paragraphs; for example, there seemed to be general agreement on the need to retain the provision in paragraph 4 (*c*). The point made in paragraph 3 might also need mentioning: when a treaty terminated upon notice, the act of giving notice was not enough; it had to take effect under the terms of the treaty itself.

68. The point raised by Mr. Ago regarding the need to differentiate between resolutary conditions and other clauses of termination could be left to the Drafting Committee.

69. Perhaps, for the time being, article 15 could be referred to the Drafting Committee on the understanding that its consideration would have to be deferred until the Commission had reached a conclusion about articles 16 and 17.

70. The CHAIRMAN suggested that article 15 be referred to the Drafting Committee for consideration and re-drafting in simpler form once the Commission had completed its discussion on articles 16 and 17.

It was so agreed.

Article 16 (Treaties expressed to be of perpetual duration)

71. The CHAIRMAN invited the Special Rapporteur to introduce article 16.

72. Sir Humphrey WALDOCK, Special Rapporteur, said the article was designed to deal with the special situation in which the parties clearly expressed their intention that the treaty should remain in force indefinitely, thus by implication excluding the right of denunciation. In such cases, the treaty could only fall by subsequent agreement between the parties or by the operation of international law. Perhaps the expression "perpetual duration" would not find favour, but he had thought it necessary to deal with that special case in order to ensure that the provisions of article 17 did not defeat the expressly declared intention of the parties. The discussion would show whether a separate article was in fact necessary or whether the point could be dealt with under article 17.

73. Mr. BARTOŠ said that the idea of the perpetuity of a treaty, which was contradicted by history and by social relations as they really were, should be resolutely rejected. Even the most dogmatic authorities now acknowledged that law evolved. A treaty might be concluded for an indeterminate period which the parties intended to be very long; it was also possible for certain customs to be almost perpetual; but a treaty could in no circumstances be regarded as having perpetual binding force. Hence he was definitely in favour of deleting article 16.

74. Mr. BRIGGS said he entirely agreed with Mr. Bartoš. A treaty could certainly remain in force for a very long time; indeed, during the second world war, the United Kingdom Government had invoked a fourteenth century treaty with Portugal in order to enable the United States to establish military bases in Portuguese island territories in preparation for the landings in North Africa, but the concept of perpetuity was offensive to the legal mind. Perhaps the Commission could pass on to article 17 and then decide whether in fact the point dealt with in article 16 needed to be covered.

75. Sir Humphrey WALDOCK, Special Rapporteur, pointed out that all he had sought to do in article 16 was to indicate what rules applied to treaties of indefinite duration.

76. Mr. VERDROSS said he thought that article 16 should be deleted. In the absence of a specific clause on termination in the treaty itself, or of other provisions adopted by the parties, the treaty remained in force unless its termination ensued from some rule of international law. That was made abundantly clear by the other articles, whose provisions article 16 merely repeated *a contrario*.

77. Furthermore, even if it might be thought that perpetual treaties existed, such treaties could nevertheless become obsolete, so that no useful purpose would be served by declaring them to be perpetual.

78. Mr. AGO said he agreed that the word " perpetual " had somewhat startling implications, but clearly the Special Rapporteur's intention had only been to draft an article on treaties of indefinite duration. However that might be, he himself did not think the article necessary. It met a logical requirement in the system established by the Special Rapporteur, having regard to the form given to article 15; but if the Drafting Committee decided to amend article 15 in the manner he had proposed — namely, by mentioning only the circumstances in which a treaty came to an end — article 16 would become unnecessary.

79. Mr. ROSENNE said that for purposes of codification, the substance of article 16, whether incorporated in a separate article or not, should be retained. He shared Mr. Ago's objections to the word " perpetual " which should be replaced by the word " indefinite ".

80. Mr. de LUNA said that the words " perpetual " and " perpetually ", used in the heading and in the text of article 16, were not very felicitous. The perpetuity of a treaty was a pious hope, not a historical reality. To speak of the " perpetual " duration of a treaty would be a misuse of the term.

81. Mr. CASTRÉN said he favoured the retention of article 16 provided it was reworded in such a way as to replace the idea of perpetuity by a more acceptable idea, such as that of indefinite duration.

82. As to the substance, article 16 was not unnecessary because articles 18 and 22 embodied reservations. Moreover, article 17 went so far that it was important to retain article 16 in order to restrict the scope of article 17.

83. Mr. LACHS said that he had doubts about both the content and the form of article 16: no treaties were eternal. If anything at all needed to be said on the subject, it could be said in the next article.

84. Mr. YASSEEN said he was not greatly embarrassed by the word " perpetual ", which was in common use, though he agreed that the alleged " perpetual " duration might come to an end. However, he agreed with Mr. Verdross and Mr. Ago that, since the conclusions of article 16 followed logically from the other articles, there was no need for a special article in which to state them.

85. Sir Humphrey WALDOCK, Special Rapporteur, said he did not altogether share the view that the rule he had tried to state in article 16 could be held to follow from other provisions in the draft; he believed it would be necessary to devote a special provision to treaties intended to be of indefinite duration. He did not insist on the term " perpetual ", but merely wished to exclude such treaties from the somewhat broad scope of the provisions concerning the right of denunciation contained in article 17. In the latter, as readers of his commentary would be aware, he might have gone rather far in admitting an implied right of denunciation; for after studying existing state practice, he had reached a conclusion as to the general intentions of States in regard to the duration of various types of treaty which he himself had not altogether expected.

86. Perhaps the Drafting Committee could be asked to consider article 16 in the light of the conclusions reached on article 17.

87. The CHAIRMAN suggested that further consideration of article 16 should be deferred. The Commission would be better placed to judge whether article 16 could be deferred to the Drafting Committee for redrafting in the form of an exception to article 17 after the latter had been discussed.

It was so agreed.

The meeting rose at 12.55 p.m.

689th MEETING

Wednesday, 29 May 1963, at 10 a.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Law of treaties (A/CN.4/156 and Addenda)

[Item 1 of the agenda] (*continued*)

1. The CHAIRMAN invited the Commission to consider article 17 in section III of the Special Rapporteur's second report (A/CN.4/156/Add.1).

ARTICLE 17 (TREATIES CONTAINING NO PROVISIONS REGARDING THEIR DURATION OR TERMINATION)

2. Sir Humphrey WALDOCK, Special Rapporteur, said that article 17 raised important issues, and the way in