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Summary record of the 727th meeting

Topic:
Law of Treaties

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727th MEETING

Wednesday, 20 May 1964, at 10 a.m.

Chairman : Mr. Roberto AGO

Appointment of a Drafting Committee

1. The CHAIRMAN said that, having consulted the officers of the Commission, he wished to suggest that a drafting committee be set up comprising, in accordance with the Commission's practice, the two Vice-Chairmen, the General Rapporteur and the Special Rapporteur on the Law of Treaties; the other members could be Mr. Elias, Mr. Jiménez de Aréchaga, Mr. de Luna, Mr. Reuter and Mr. Rosenne. Mr. Bartoš, as Special Rapporteur on special missions, should be invited to take part in the work of the drafting committee on that topic.

It was so agreed.

2. Mr. ROSENNE asked whether it was intended that in future the Drafting Committee should also assume responsibility for the Spanish text of the articles it drafted, as he had suggested at the opening meeting of the session.¹

3. The CHAIRMAN replied in the affirmative.

Law of Treaties

(A/CN.4/167)

(resumed from the previous meeting)

[Item 3 of the agenda]

ARTICLE 55 (*Pacta sunt servanda*) (continued)

4. The CHAIRMAN invited the Commission to continue consideration of article 55.

5. Mr. PAL said that with his illuminating third report, the Special Rapporteur had made yet another signal contribution to the Commission's work. The principle *pacta sunt servanda* was axiomatic and fundamental to the international order. Nothing should be allowed to throw doubt on that proposition and, accordingly, together with some other members of the Commission, he was unable to subscribe to the statement in the last sentence of paragraph 1 of the commentary, where the obligation to observe treaties was characterized as one of good faith and not *stricti juris*. Good faith was in essence a matter of conscience and was too subtle and imprecise a concept to be taken seriously as a basis for international order. It really lay in the realm where rationalization had not yet penetrated and where decisions had to be made in situations that had not yet been subjected to regulation. In a realm where

a sequence of events was intended to follow a regular, expected course, as was the case with conventions, usages and custom, good faith would be relied on only to secure scrupulous observance of the obligation. By the very fact of undertaking to formulate general rules on treaty obligations, the Commission had assumed that the forces operating in that field followed some regular course, so that they were capable of being subjected to regulation.

6. With regard to the formulation of the article, he observed that the underlying principle was substantially acceptable, but perhaps it was not easily capable of being captured in a formula. Paragraph 1, if amended as suggested by Mr. Briggs, would be acceptable, but the word "observed" should be substituted for the word "applied".

7. Paragraph 2 was not acceptable.

8. He would comment on paragraph 3 when the Commission came to discuss it later, as suggested by the Special Rapporteur.

9. Paragraph 4 would be acceptable if re-worded, on the lines suggested by Mr. Briggs at the previous meeting,² to read: "The failure of any State to comply with its obligations under a treaty engages its international responsibility".

10. Mr. TABIBI, after paying a tribute to the Special Rapporteur's scholarly report, said that the cardinal rule *pacta sunt servanda* needed to be framed in clear precise terms at the beginning of the section on the application and effects of treaties.

11. There was no need for the words "in force" in paragraph 1; they were not only redundant, but also conflicted with article 17, paragraph 1,³ according to which a State that took part in the negotiation of a treaty or signed it subject to ratification was under an obligation to refrain from acts calculated to frustrate the objects of the treaty, even before it had come into force. The word "general", qualifying the word "rules", should be deleted, as there might be some detailed rules of interpretation that were applicable.

12. Paragraph 2 should be combined with paragraph 1 and should be amplified, as suggested by Mr. Paredes and Mr. Bartoš at the previous meeting,⁴ so as to take account of both the positive and negative aspects of good faith.

13. As no general rules on State responsibility had yet been framed by the Commission, the limiting clause in paragraph 4, beginning with the words "unless such failure", should be dropped.

14. Mr. TUNKIN said that the *pacta sunt servanda* rule should be stated concisely and in precise terms and he therefore advocated the deletion of paragraphs 2, 3 and 4. The rule was, in his opinion, of much wider application than the law of treaties, as agreement between States underlay every norm of international law.

² Para. 48.

³ *Yearbook of the International Law Commission, 1962, Vol. II, p. 175.*

⁴ Paragraphs 61-64 and 67.

¹ 722nd meeting, para. 20.

But he would not, of course, object to its being stated with regard to treaties. It was enunciated in the third paragraph of the preamble to the United Nations Charter. It was also mentioned in the Czechoslovak draft resolution on the principles of international law concerning friendly relations and co-operation among States in accordance with the United Nations Charter,⁵ submitted to the Sixth Committee of the General Assembly at its seventeenth session, paragraph 18 of which read: "Every State is liable to fulfil, in good faith, obligations ensuing for it from international treaties concluded by it freely and on the basis of equality, as well as obligations ensuing from international customary law".

15. As far as the wording of paragraph 1 was concerned, the phrase "in accordance with its terms" seemed self-evident and served no useful purpose. If the latter part of the paragraph were retained it should not be in its present restrictive form: treaties must be applied in the light of fundamental principles of international law. The words "in force" were useful and established a link with the earlier articles on validity. He did not favour the insertion of the word "legally" to qualify the word "binding", as suggested by Mr. Briggs, because it might convey the impression that in some other respect a treaty was not binding. He supported Mr. Pal's suggestion that the word "observed" should be substituted for the word "applied".

16. The last sentence of paragraph 1 of the commentary suggested that the concept of good faith was a moral rather than a legal one, in which case it had no place in the present draft.

17. Sir Humphrey WALDOCK, Special Rapporteur, explained that the last sentence of paragraph 1 of the commentary was intended to convey that it was not enough for States to fulfil treaty provisions to the letter and to maintain that their actions did not conflict directly with the terms of the treaty; they were also under a legal obligation to refrain from doing anything which might impede its proper execution.

18. Mr. TUNKIN observed that if that were the case, paragraph 2 of article 55 did not express the Special Rapporteur's intention precisely. If the principle of good faith were a legal one it could be formulated, but that should be done in a separate article.

19. Paragraph 3, which was to be discussed later, should be transferred to another part of the draft.

20. The principle laid down in paragraph 4 was correctly stated but belonged to the topic of State responsibility and not to the law of treaties.

21. Mr. TSURUOKA said that the Special Rapporteur had been right to begin his draft with an article on the principle *pacta sunt servanda*, which was the fundamental rule of the law of treaties. A further reason for endorsing his proposal to state the rule at that

particular point was that the Commission had already taken the principle *pacta sunt servanda* as a basis for drafting articles 32, 33, paragraph 1, and article 34, paragraph 1.⁶

22. With regard to the drafting, since the article was to state a fundamental principle of international law, the Commission should endeavour to express the full force of the idea in clear and simple language. He agreed that the words "in force" should be deleted in paragraph 1; in any case, the sentence would be more concise without those words. He could see no objection to deleting the last part of the paragraph, from the words "in accordance with its terms..." down to the end, though it might perhaps be useful to retain some of that wording in an amended form, such as "in accordance with the spirit of the treaty and with its terms", in order to place more emphasis on the nature of the principle of good faith, which went beyond the obligations resulting from the letter of the treaty.

23. Paragraph 2 was not absolutely necessary, and as several members of the Commission had suggested, it would perhaps be better to combine paragraphs 1 and 2. Discussion of the ideas expressed in paragraph 3 could be postponed.

24. Paragraph 4 was perhaps redundant, but there would be no harm in retaining it. Perhaps it could be put into a more concise form.

25. The CHAIRMAN, speaking as a member of the Commission, said that one of the features of the Special Rapporteur's report was that it dealt very fully with all the points that might arise. The Special Rapporteur always included, in each of the articles he submitted to the Commission, more than he himself would wish to see included, leaving it to the Commission to make a selection. That was particularly true of article 55, which might well be drafted more concisely.

26. He agreed with Mr. Tunkin that the principle *pacta sunt servanda* might be taken in a broad sense as the basis of the binding force of any rule of international law, whether conventional or customary. But the members of the Commission were agreed that, in the particular context, it should be construed only in the strict sense as a fundamental rule of the law of treaties. In that sense the rule formulated was a rule of general customary law which recognized the binding force of treaty provisions.

27. He hesitated to give an opinion on paragraph 2. The idea it expressed came from article 17, which concerned the obligation of good faith under which a State taking part in the negotiation was required, before the treaty came into force, to refrain from acts calculated to frustrate the objects of the treaty. That, however, was a very special obligation which existed at a time when the treaty was not yet in force and when, consequently, there were no obligations under the treaty. But, should that principle be repeated in

⁵ Official Records of the General Assembly, Seventeenth Session, Annexes, Vol. III, agenda item 75, document A/C.6/L.505.

⁶ Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, pp. 6-8.

respect of a time when the treaty, being in force, produced its effects and itself gave rise to obligations? An act such as that contemplated in paragraph 2 probably constituted a breach of treaty obligations in itself. Even if the Commission decided to state that principle, it seemed better not to do so in article 55, so as not to weaken the principle, stated in paragraph 1 of that article.

28. Mr. Rosenne had already demonstrated that it would be advisable to insert a reference to the principle of article 55 in the articles mentioned in paragraph 3, which were to be discussed later, rather than adopt the contrary solution.

29. Paragraph 4 stated a principle connected with responsibility, which might be thought out of place in an article on the law of treaties. One of the most firmly established principles of customary law was that breach of an international obligation engaged a State's responsibility. But a State's responsibility was engaged by the breach of an international obligation of any kind, whether imposed by a treaty or by customary law. Hence there was no need to introduce at that point an idea which the Commission would study in general in connexion with the circumstances excluding responsibility. It was a difficult problem, calling for much caution and reflection; it would be dangerous to tackle it prematurely. Moreover, paragraph 4 might seem designed to furnish States with an excuse for failing to respect a treaty, and Mr. Verdross had already pointed out how inappropriate it was to include such a clause concerning State responsibility in article 55.

30. To revert to paragraph 1, like Mr. Briggs and Mr. Tsuruoka, he thought the wording should be as concise as possible, but he urged that the expression "in force" should be retained. It had been argued that it was superfluous, because a treaty which was not in force was not binding; but at its fifteenth session the Commission had considered a number of cases in which a treaty ceased to be in force; for example, in consequence of a new peremptory norm of general international law supervening after the treaty's entry into force, or by the operation of a resolute condition in a treaty. If article 55 did not specify that it referred to a treaty in force, a State might require the performance of an obligation deriving from a treaty which had in fact ceased to be in force.

31. The expression "in good faith" should also certainly be retained, for those words were the very essence of the rule stated. The obligation was not only a moral, but also a legal one. On the other hand, although he was in favour of codifying certain principles relating to the interpretation of treaties, he saw no need to refer to them in article 55. It was sufficient to say that the treaty was binding upon the parties and must be applied by them in good faith.

32. Mr. BRIGGS, in answer to the objections made by Mr. Amado and Mr. Tunkin to the insertion of the word "legally" before the word "binding" in paragraph 1, said he admitted that it might appear redundant, but he had been prompted to make the suggestion by the last sentence in paragraph (1) of the

commentary, in the light of which it seemed necessary to emphasize that the *pacta sunt servanda* rule was a legal obligation and not merely one of good faith; he had been reassured by the Special Rapporteur's oral explanation of the meaning of that sentence. Part of the difficulty was perhaps due to the not very felicitous expression "obligation of good faith" used in article 17, paragraph 1, and in paragraph (4) of the commentary on article 55. The concept was imprecise and could be read as either going beyond or falling short of a legal obligation. He had accordingly suggested that, if paragraph 2 were retained, it should start at the words "a party to a treaty", but he was inclined to think that the article would have more force if reduced to a single paragraph based on paragraph 1, with some of the changes suggested during the discussion.

33. Despite the arguments put forward by Mr. Tunkin and the Chairman, he still maintained that the words "in force" in paragraph 1 were superfluous, particularly in view of the definition in article 1 (a).⁷ Perhaps the opening words of paragraph 1 might be redrafted to read "When a treaty is in force it is binding . . . etc."

34. Mr. de LUNA said that the Special Rapporteur had very clearly perceived all the aspects of the problem dealt with in article 55, and he approved of its content. As to the drafting, he was in favour of concise, clear and convincing language. The concept of good faith was perfectly appropriate in that article and was important not only as a rule for interpreting a treaty, but as the very foundation of the principle *pacta sunt servanda*. True, the principle *pacta sunt servanda* could be construed as emanating from the principle *consuetudo est servanda*. But although in international practice States had always recognized that once they had declared their will together with other States they were bound by the declaration, that was not a requirement of logic; for why should past will prevail over future will? It was a requirement of the principle of good faith, without the observance of which no society could exist. But it was not necessary to define the principle at that point.

35. With regard to the points raised by Mr. Briggs, he agreed with Mr. Ago that the expression "in force" should be retained in order to make clear in what circumstances the principle *pacta sunt servanda* applied. On the other hand, there was no objection to deleting the last part of the sentence, from the words "in accordance with".

36. With regard to the general rules governing the interpretation of treaties, some argued mistakenly that only the rules of logic and grammar were applicable; but the social function of the law, which was to maintain order in society, must also be taken into account. That was precisely why the Special Rapporteur had referred to the general rules of international law governing the interpretation of treaties.

37. He associated himself with Mr. Rosenne's observations on paragraph 3 and with those made by the Chairman on paragraph 4.

⁷ *Yearbook of the International Law Commission, 1962, Vol. II, p. 161.*

38. Mr. BARTOŠ, referring to the question of the interpretation of treaties, said that most international disputes arose out of the interpretation, not the content, of treaty provisions. The case-law of the International Court of Justice, and most arbitral awards, showed that a State rarely contested the existence or wording of a treaty's provisions; the dispute was generally due to an interpretation incompatible with good faith. The Special Rapporteur had therefore been right to emphasize, at the end of paragraph 1, that treaties must be interpreted in accordance with certain international rules which ensured the application of the principle of good faith. The reference to those rules did not, of course, remove the obligation to apply the very general fundamental principles of international law. On that point he was arguing not only from the theoretical, but also from the practical point of view, for it was necessary to prevent the abuses which frequently occurred and remind States of their duty.

39. Mr. EL-ERIAN said he appreciated the way the Special Rapporteur had responded to the appeal made by some members at the previous session, that the articles should be presented in a rather more concise form than in his previous drafts. His scheme for combining in Part III provisions on the application, effects, revision and interpretation of treaties was to be welcomed; it was particularly appropriate to deal with application and interpretation together, as was often done in provisions on the pacific settlement of disputes in treaties in general.

40. An article on the principle of *pacta sunt servanda*, regarded as *la norme suprême* or the first foundation of the norms of international law by such authorities as Kelsen and Anzilotti, should certainly be placed at the beginning of Part III and be so drafted as to refer not only to the negative, but also to the positive aspects of the obligation. It was noteworthy that the preamble to the Covenant of the League of Nations spoke of the "maintenance of justice and scrupulous respect for all treaty obligations in the dealings of organized peoples with one another", whereas the preamble to the United Nations Charter was couched in more positive terms, since it referred to the establishment of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". The rule *pacta sunt servanda* required not only the formal performance of treaty obligations, but also respect for their spirit and the fulfilment of obligations deriving from general treaties to which the States concerned might be parties.

41. With regard to the actual drafting of the article, it would be useful to retain the words "in force" in paragraph 1 and to qualify them with the phrase "in accordance with the provisions of Part II", which would link article 55 with the clauses concerning essential validity. The latter part of paragraph 1 should be amended to remove the restrictive connotation; treaties must be applied in the light of fundamental rules of international law and the Charter, not merely in the light of rules of interpretation.

42. Paragraph 2 should be expanded to show that good faith required not only that the parties refrain

from certain acts, but also that they give effect to the spirit of the treaty. As drafted, the paragraph was too negative.

43. Mr. PESSOU, associating himself with the compliments paid to the Special Rapporteur on the quality of his work, said the comments he had intended to make on article 55 had already been made by previous speakers, in particular by the Chairman. In his opinion, the words "in force", in paragraph 1 should be retained, but the latter part of the paragraph, starting with the words "in accordance with", should be deleted. The question of the rules of interpretation could be dealt with in another part of the draft.

44. Mr. AMADO thanked the Chairman for pointing out that the Special Rapporteur had submitted a very complete text so that the Commission could make a selection from the ideas it embodied.

45. As to the question whether the words "in force" would be retained or deleted, he did not see how anyone reading the sentence could be led to believe that it applied to a treaty that was not in force.

46. Mr. LIANG, Secretary to the Commission, said that he would confine his remarks to the words "in force" in paragraph 1. Personally, he subscribed to the view that those words were not necessary, for the reasons already given by several members of the Commission.

47. It was true that the expression "treaties and conventions in force" was used in Article 36, paragraph 1, and Article 37 of the Statute of the International Court of Justice; it also appeared in the corresponding provisions of the Statute of the Permanent Court of International Justice. But the reason for using the words "in force" in that context was that time was of the essence of the matter. It was very important to find out whether, at the time when a dispute was submitted to the Court, a particular treaty conferring jurisdiction on the Court was in force or not. One example was the declarations made under Article 36, paragraph 2, of the Statute of the Court; some of the declarations made under Article 36 of the Statute of the Permanent Court of International Justice had lapsed in 1945 when the Statute of the International Court of Justice had come into force.

48. The third paragraph of the preamble to the United Nations Charter referred to the establishment of "conditions under which justice and respect for the obligations arising from treaties" could be maintained; it had not been considered necessary to add the words "in force" after the word "treaties", it being naturally assumed that the term "treaty" meant "treaty in force".

49. He could see no more reason for using the expression "treaty in force" in article 55 of the draft than in the other articles where the term "treaty" was used with the obvious meaning of "treaty in force".

50. Mr. YASSEEN said he still doubted the need for the words "in force". The characteristic of a treaty in force was that it was binding on the parties. Since

paragraph 1 spoke of a treaty being "binding upon the parties", obviously the treaty was in force. A treaty that was not in force could not bind the parties, and it was therefore tautological to say "A treaty in force is binding upon the parties".

51. He also doubted whether it was advisable to retain the last part of paragraph 1, from the words "in accordance with" to the end. A treaty should be interpreted in a reasonable manner, according to logic and to the rules of law governing interpretation. Mr. Tunkin had rightly argued that treaties must be applied in the light of all the general rules of international law. Every provision should be construed in the light of the entire body of law. The idea that good faith should also preside over the interpretation of a treaty was quite right, but it was already implicit in the first part of the sentence; to say that the treaty must be applied in good faith meant, *inter alia*, that it must be interpreted in good faith, for there could be no application without prior understanding of the meaning, and hence without interpretation.

52. He still thought it unnecessary to retain paragraph 2; and he had the impression that the Commission was moving towards that conclusion. What was said in paragraph 2 followed from the binding force of the treaty, and there was no reason to mention that consequence rather than the others.

53. With regard to paragraph 4, no one contested that the non-performance of a treaty engaged the international responsibility of the defaulting State. A general convention on the law of treaties would not be complete if that principle were not at least mentioned, but there was no need to go into details. It should, however, be added that the responsibility was not absolute, for there were cases in which a State could invoke other rules of international law which justified or excused a derogation. To insert a clause to that effect in article 55 would not be encroaching on the law of the international responsibility of States.

54. Mr. ROSENNE said he favoured Mr. Pal's suggestion that the word "applied" in paragraph 1 should be replaced by a more suitable term.

55. With regard to the words "in force", he did not support Mr. Briggs's suggestion that the opening words be amended to read: "When a treaty is in force...". If, as he believed, the intended reference was to a period of time rather than to the question of essential validity, an appropriate wording would be "Whenever a treaty is in force...", but he himself considered the word "Whenever" redundant and would prefer the opening words to remain as they stood. The Secretary to the Commission had commented on the use of the expression "in force" in articles 36 and 37 of the Statute of the International Court of Justice. That expression, which had first been inserted in the Statute of the Permanent Court of International Justice for special reasons, had given rise to a good deal of controversy, and the Court had attributed slightly different meanings to it in the different articles, according to the circumstances of each case.

56. With regard to paragraph 4, he pointed out that the Commission had already obliquely recognized the

connexion between the law of treaties and State responsibility in the concluding sentence of paragraph (6) of its commentary on article 42 (Termination or suspension of the operation of a treaty as a consequence of its breach), which spoke of "the injured party's right to present an international claim on the basis of the other party's responsibility with respect to the breach".⁸ It would be appropriate to include such recognition somewhere in the draft articles themselves.

57. Mr. ELIAS said that no case had been made for the retention of the words "in force"; nor did he favour the compromise suggestion by Mr. Briggs. The *pacta sunt servanda* rule was a basic rule of public international law and should be formulated in categorical terms. The qualification "in force" weakened the formulation of what was a paramount principle of international law by introducing an element of controversy. The controversy mentioned by Mr. Rosenne in connexion with articles 36 and 37 of the Statute of the Court strengthened the case for dropping the words "in force".

58. The issue raised in connexion with the words "in force" was one which had been disposed of when the Commission had adopted article 30 (Presumption as to the validity, continuance in force and operation of a treaty).⁹ That article provided that: "Every treaty concluded and brought into force in accordance with the provisions of Part I shall be considered as being in force and in operation with regard to any State that has become a party to the treaty...". Since Part III of the draft articles was an integral part of the whole draft, it was clear that any reference in it to a "treaty" meant a treaty brought into force in accordance with the provisions of Part I and therefore "in force" within the meaning of article 30. There was no more reason for using the expression "a treaty in force" in article 55 than in article 56 or any other article of Part III.

59. Mr. TABIBI said that in his opinion, the provisions of paragraph 2 were not consistent with those of article 17,¹⁰ which the Commission had adopted at its fourteenth session and which had been submitted to governments for their comments. Paragraph 1 of that article provided that a State which had taken part in negotiating a treaty, or which had signed it subject to ratification, was under an obligation, prior to the entry into force of the treaty, to refrain from acts calculated to frustrate its objects if and when it should come into force. A statement in article 55 that a State which was actually a party to a treaty was under a similar obligation would be difficult to reconcile with the terms of article 17.

60. The CHAIRMAN, speaking as a member of the Commission, said he wished to add three comments. First, he agreed with Mr. Amado, that article 55 could only refer to a treaty in force. Nevertheless, there

⁸ *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9*, p. 18.

⁹ *Ibid.*, p. 3.

¹⁰ *Yearbook of the International Law Commission, 1962, Vol. II*, p. 175.

was no harm in saying so, because the Commission had previously contemplated all sorts of circumstances in which, for extraneous reasons, a treaty ceased to be in force. In such cases, a State should not be able to invoke article 55 to argue that the treaty existed and must be applied.

61. With regard to paragraph 2, the Special Rapporteur's intention had not been to define good faith, but to add a principle related to the one stated in article 17.

62. As to the clause referring to State responsibility, he would bow to the Commission's decision, but he still thought it would be strange if the Commission inserted such a clause in the present draft although it had not done so in the other draft conventions it had prepared, and despite the fact that it was going to codify the topic of State responsibility. In the present draft, that question should, at most, be mentioned in the commentary, for it went beyond the law of treaties.

63. Mr. YASSEEN observed that it was precisely in order to avoid having to express the idea contained in paragraph 4, in every special convention, that the provision should be inserted in the general convention on the law of treaties.

64. Sir Humphrey WALDOCK, Special Rapporteur, said he would deal with the comments made on each paragraph separately.

65. There appeared to be a clear majority in favour of deleting the last part of paragraph 1. He attached no special significance to the words "in accordance with its terms"; he had introduced them merely to connect the first part of the sentence with the last part, which referred to the rules governing the interpretation of treaties.

66. He shared, to a large extent, Mr. Bartos's view that the observance of a treaty in good faith was very often a matter of interpretation. It was generally through specious interpretations that attempts were made to avoid the observance of treaties. It must be recognized, however, that the difficulty would not necessarily be overcome by including in paragraph 1 a reference to the rules of international law governing the interpretation of treaties, which themselves often provided arguments for arriving at divergent conclusions regarding the meaning of a treaty text. In principle, therefore, he was prepared to drop the reference from paragraph 1, which would then end with the words "in good faith". If the Commission decided to include, somewhere in the draft articles, provisions on the rules governing the interpretation of treaties, they would operate automatically in the application of article 55.

67. Nor was there any need to include in article 55 a reference to the principles of international law generally, because that point would be covered in effect in the succeeding article.

68. He saw no purpose in introducing the word "legally" before the word "binding", and he noted that the majority seemed to share that view.

69. He had included the words "in force", largely for the reasons given by Mr. Rosenne. The Commission had adopted a number of articles dealing with the

obligations incumbent on States with respect to a treaty prior to its entry into force and on the entry into force of treaties; there was also an article on provisional entry into force. Furthermore, the Commission had adopted a whole series of articles on the validity and termination of treaties. As a matter of drafting, therefore, he thought there was a lot to be said for using the expression "a treaty in force" in article 55. It had been suggested that the words "in force" weakened the formulation of the *pacta sunt servanda* rule. But it was not the presence of those words in paragraph 1 that weakened the rule; if the rule was weakened, it was by reason of the provisions on essential validity and termination which the Commission had adopted at its fifteenth session. The expression "a treaty in force" was merely an implicit recognition that those provisions existed.

70. With regard to paragraph 2, he did not think that it conflicted with the provisions of article 17. But perhaps the use of the expression "good faith" with slightly different meanings in the two articles could lead to some confusion. In article 55, the intended meaning was that a treaty must be applied and observed not merely according to its letter, but in good faith. It was the duty of the parties to the treaty not only to observe the letter of the law, but also to abstain from acts which would inevitably affect their ability to perform the treaty. In article 17, on the other hand, good faith was the foundation of an obligation which did not, strictly speaking, arise out of the treaty itself.

71. There appeared to be a division of opinion in the Commission regarding the desirability of retaining paragraph 2; perhaps the Drafting Committee could be invited to consider the possibility of combining it with paragraph 1, so as to strengthen the principle stated there.

72. It seemed to be generally agreed that paragraph 3 had no place in the article and he was prepared to drop it. If the Commission ultimately agreed on the difficult provisions contained in articles 59, 62 and 63 in a form that called for the application of the *pacta sunt servanda* rule to States which were not parties to a treaty, the necessary references to articles 55 could be introduced in those articles.

73. He had included paragraph 4 mainly for the sake of completeness. He could not accept the suggestion that it should be abridged by deleting the concluding proviso, for it was not sufficient just to state the principle of international responsibility for the failure to comply with treaty obligations; there were certain exceptions to that principle, such as self-defence, and a reference should be made to them. Personally, he would prefer to see paragraph 4 deleted altogether if members thought that it weakened the article; the idea it expressed could either be put in a later article, or mentioned in the commentary.

74. The CHAIRMAN suggested that article 55 be referred to the Drafting Committee, together with the comments made during the discussion.

It was so agreed.

The meeting rose at 12.55 p.m.