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Summary record of the 759th meeting

Topic:
Law of Treaties

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759th MEETING

Monday, 6 July 1964, at 3 p.m.

Chairman: Mr. Roberto AGO

Law of Treaties

(resumed from the 755th meeting)

[Item 3 of the agenda]

ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to resume its consideration of the articles proposed by the Drafting Committee.

ARTICLE 55 *(Pacta sunt servanda)*

2. The CHAIRMAN said that, in consequence of the Commission's decision at its 749th meeting, article 55 had been redrafted to read:

> "A treaty in force is binding upon the parties to it and must be performed by them in good faith".

3. Since he understood that members desired to have a formal vote on each article, he called for a vote for the article 55 in that text.

Article 55 was adopted by 16 votes to none, with 2 abstentions.

4. Mr. PAREDES explained that he had abstained from the vote because he was opposed to the formulation of article 55. The purpose of the article was, first, to state that a treaty in force was binding upon the parties to it, and second, to declare that the parties must act in good faith. Both statements were undoubtedly true, but he could not accept the manner in which the article had been formulated. The position created by article 55 was similar to that which would arise if, in internal law, legislative provisions were to be enacted to the effect that the parties to every contract must carry out their contract and must act honestly and in good faith. Moreover, no indication was given of what was meant by "good faith".

5. Mr. BARTOŠ said that at the 748th and 749th meetings he had expressed himself in favour of the retention of the second sentence of the earlier draft of the article, which the Commission had decided to delete. That was why he had abstained.

6. Mr. CASTRÉN said that he had likewise expressed himself in favour of the retention of the second sentence; nevertheless, he had voted for article 55 as redrafted.

7. Mr. EL-ERIAN said that his position was similar to that of Mr. Castrén. He had expressed a reservation during the discussion, but that reservation did not prevent him from accepting the article as a whole.

ARTICLE 57 (Application of a treaty in point of time)

8. Sir Humphrey WALDOCK, Special Rapporteur, said that article 57 had given rise to considerable difficulty. The Drafting Committee had adopted the following text for that article:

> "1. The provisions of a treaty do not apply to a party in relation to any fact or act which took place or any situation which ceased to exist before the date of entry into force of the treaty with respect to that party, unless the contrary appears from the treaty.
>
> "2. Subject to article 53, the provisions of a treaty do not apply to a party in relation to any fact or act which takes place or any situation which exists after the treaty has ceased to be in force with respect to that party, unless the treaty otherwise provides."

9. Mr. PAREDES said that he would support article 57, but wished to maintain two reservations which he had made when article 57 had been discussed for the first time.[1] The first reservation referred to the problem of treaties which were null and void. The question arose of the facts or acts which had taken place or situation which had arisen while the treaty was in force, before the claim for nullity had been made. In the case of such a treaty, all its effects must be erased, since the treaty was radically void and should be treated as though it had never been concluded.

10. His second reservation concerned the case where one of the parties failed to perform its undertakings under a treaty. He could not see how it was possible to maintain that the injured party would remain bound by its obligations under the treaty, notwithstanding the unwillingness of another party to perform the treaty.

11. Mr. de LUNA said that he could accept article 57, notwithstanding its reference not only to acts and situations, but also to "facts". The law was only concerned with acts and situations; when it took cognizance of a "fact" the law contemplated it as an *acte juridique* (*acto juridico*). In the opinion of Roubier, the author of an outstanding monograph in two volumes on the subject (in municipal law) entitled "*Le droit intertemporel*", the law knew only acts and situations; a fact, upon being taken into consideration by the law, became an *acte juridique*.

12. Although, for the reasons which he had explained, it would be more appropriate to drop the reference to facts, he would still be able to vote in favour of article 57.

13. The CHAIRMAN, speaking as a member of the Commission, pointed out that the expression "any situation which exists after the treaty has ceased to be in force", in paragraph 2, might give rise to misunderstanding. Was the reference to a situation which continued to exist or to a situation which began to exist after the treaty ceased to be in force?

14. Sir Humphrey WALDOCK, Special Rapporteur, explained that article 53 dealt with the legal conse-

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[1] See summary record of the 730th meeting, paras. 34 to 38.

quences of the termination of a treaty and set forth the permanent legal effects of a treaty while it was in force. It might be necessary, in the light of the discussion of article 57, to make some adjustment to the language of article 53.

15. The point might be covered by referring, in article 57, both to a situation which existed and to a situation which continued to exist.

Paragraph 1 of article 57 was adopted unanimously.

Paragraph 2 of article 57 was adopted unanimously.

Article 57 as a whole was adopted unanimously.

ARTICLE 58 (The territorial scope of a treaty)

16. The CHAIRMAN said that the Drafting Committee proposed the following text (including a new title) for article 58:

"*The territorial scope of a treaty*

"The scope of application of a treaty extends to the entire territory of each party, unless the contrary appears from the treaty."

17. The Commission would no doubt be interested to learn that the International Labour Conference had that same morning adopted an instrument for the amendment of the ILO Constitution which contained a passage reminiscent of the Special Rapporteur's original draft of article 58 (A/CN.4/167). The instrument was a long one and included the following passage for incorporation into the ILO Constitution by way of amendment:

"With a view to promoting the universal application of Conventions to all peoples, including those who have not yet attained a full measure of self-government, and without prejudice to the self-governing powers of any territory. Members ratifying conventions shall accept their provisions so far as practicable in respect of all territories for whose international relations they are responsible".

18. Mr. TUNKIN expressed the hope that the Commission would make a greater contribution than the International Labour Conference to the progressive development of international law.

19. The CHAIRMAN explained that the object of the amendment just adopted by the International Labour Conference was to deal solely with the existing situation. It was to be subject to review in five years' time.

20. Sir Humphrey WALDOCK, Special Rapporteur, said that he was still somewhat uneasy regarding the use of the expression "the entire territory". He recalled that recent conferences which had debated the so-called colonial clause had adopted a form of words along the lines of his original proposal.

21. Mr. ROSENNE said that he shared the Special Rapprteur's uneasiness and would be grateful if anyone could explain to him the exact meaning of the expression "the entire territory".

22. Mr. TUNKIN said that there had been a protracted discussion of article 58 in the Commission. The Drafting Committee had also discussed the text af the article at considerable length. That Committee's intention, in the text as proposed, had been to reflect the opinion of the majority in the Commission.

23. Mr. BARTOŠ said that he would be compelled to abstain in the vote on article 58, which was still as vague as it had been in the form considered at the 749th meeting, when he had expressed his opposition to it.

24. The CHAIRMAN stressed that article 58 no longer had any real relevance to the situations with which the amendment adopted by the International Labour Conference was mainly concerned. Nevertheless, from the point of view of Mr. Rosenne and Mr. Bartoš, the article still had a certain usefulness, especially in cases where some parts of a State's territory were subject to a special regime or were self-governing, as were, for example, certain British and certain Danish islands. In such cases, where a convention established, for example a procedure for safeguarding human rights, or an extradition procedure, it was important to make it clear that the convention would apply to the whole of the State's territory so that the State could not argue that the convention did not apply to a certain part of its territory.

25. Mr. BRIGGS said, in reply to the question by Mr. Rosenne, that the meaning of article 58 was when a State became a party to a treaty, that treaty was applicable throughout the whole of its territory unless otherwise indicated.

26. Mr. PESSOU said that he was fully satisfied with article 58, which was very concise and very precise. The main clause set forth the principle, and the subordinate clause allowed for derogations which would be pertinent, in particular, in the case of federal States or of States some of whose territories had a special status.

27. Mr. PAREDES said that, as pointed out by the Chairman, the purpose and intent of the amendment to the ILO Constitution was completely different from the purpose of article 58. In the ILO, there was a trend towards ensuring the universal protection of certain human rights; there was a sort of aspiration for a universal rule of conduct. In the case envisaged in article 58, the question which arose was that of the effects of a treaty for the contracting States.

28. When the original text of article 58 had been discussed, his views had been completely different from that of a number of other speakers. His opinion then had been that, unless a treaty was expressly made extensive to a colonial or trust territory, it would have to be taken that the treaty applied only to the metropolitan territory of the contracting State. It should be remembered that a trust territory or a colony often had an administration and a legislation separate from the metropolitan country's. Normally, where a country with possessions or trust territories subscribed to a treaty, it did so primarily to safeguard its own interests and having in view its own legislation. There were, of course, cases where the treaty could be of interest to the colonies and trust territories but in those cases the treaty would be made applicable to them.

29. The redraft of article 58 made no reference to " territories for which the parties are internationally responsible ". However, he would have to abstain from voting upon it because he believed that it still contained that same idea. Even in a country without colonies, the scope of application of a treaty did not extend to the entire territory of the State. After all, even such countries might have outlying territories, such as islands, which had a distinct legislation or a separate administration ; the State, when entering into the treaty, would not have those territories in mind.

30. Accordingly, he did not believe that a treaty could be applied to all the territories for which a State was responsible. What the article could state was that a treaty was applicable to the territory that formed the substratum of the legal personality of the State, but not to the dependent territories.

31. For those reasons, he would abstain from voting on the text of article 58 as proposed.

32. Mr. YASSEEN pointed out that the text of article 58 as proposed by the Drafting Committee differed entirely from that originally proposed by the Special Rapporteur (A/CN.4/167). The original article had contemplated, in particular, the colonial clause, in other words, the possibility of extending the effects of a treaty to territories other than the national territory. The redraft tended rather to provide for the possibility of narrowing the area of the treaty's application. Understood in that way, the article was justified, and was useful in a general convention on the law of treaties. The application of some treaties could be restricted to a part of the territory of a State which was a party to the treaty, but the general principle, in the case of a treaty whose application was connected directly with the territory, was that it should apply to the whole of the territory. He would vote for the article.

33. Mr. AMADO said that during earlier debate the Chairman, Mr. Tunkin and Mr. Bartoš had pointed out that there were treaties whose application had nothing to do with the territory of States. Mr. Yasseen had just defined the kind of treaty with which the article was concerned. It might perhaps be desirable to add that definition in the text in the form of a reservation such as " if a treaty has a territorial application ". In any case, he would vote for the article.

34. The CHAIRMAN said that it was implied in the text that the article related solely to treaties capable of being applied territorially.

35. Mr. de LUNA said that the purpose of article 58 was quite contrary to that of the amendment to the ILO Constitution. Article 58 was intended to state that a treaty applied to the entire territory of each party ; in that manner it was intended to exclude the proposition that a treaty could normally apply outside the national territory of the parties. Article 58 also made it clear that if a party intended to exclude a part of its territory from the application of the treaty, it would have to do so by way of an express provision in the treaty. In that connexion, he referred to the example of Spain's entry into GATT. The question had then arisen of the Canary Islands, which were part of the national territory of Spain but which constituted a free zone for customs purposes.

36. For those reasons, he did not share the misgivings expressed by Mr. Paredes and could support the provisions of article 58 on the territorial scope of a treaty.

37. Mr. TSURUOKA said that he accepted article 58 as drafted, but wished to make the following reservation : if a State found it impossible in law or in fact to apply a treaty in a region which it regarded as an integral part of its territory, the rule set forth should not have the effect that the State in question was regarded as responsible for he non-application of the treaty in that region.

38. The CHAIRMAN said that the Commission would certainly discuss that question in the context of State responsibility ; a State could not be held responsible for what happened in a region which it regarded as its own but in which it did not effectively exercise control.

39. Mr. ROSENNE thanked Mr. Briggs and the Special Rapporteur for their explanations, and also the other speakers who had contributed to the discussion raised by his question. In spite of those explanations, he was not altogether satisfied regarding the clarity of the provisions of article 58. Nevertheless, he would vote in favour of that article, while reserving his right to revert to the matter at a later stage.

40. Mr. EL-ERIAN said that he found article 58 acceptable as a precise general formulation of the rule in the matter. The Commission had decided to include in the draft articles a provision on the territorial scope of treaties, and he recalled his remarks during that debate on the question of the definition of the territory of a State. He thanked the Drafting Committee for preparing a text which avoided a formula that had given rise to difficulty.

41. The CHAIRMAN said he wished to explain that the article related solely to the territory of the State itself, and not to the territories for whose external relations the State was responsible. The new article in the ILO Constitution regulated a temporary situation with which the Commission had decided not to concern itself in its draft.

42. Speaking as a member of the Commission, he congratulated the Drafting Committee on having succeeded in finding a sufficiently flexible wording for the last phrase in the article.

43. Sir Humphrey WALDOCK, Special Rapporteur, said that some of the explanations which had been given during the discussion had complicated rather than clarified the issue from his point of view.

44. With regard to the final proviso of the article, he urged that a broad view should be taken. It was sufficient that a contrary intention should appear from the treaty. Under the terms of that proviso, it was not necessary that the contrary intention should be stated expressly in the treaty. In many cases, the intention

of the parties to exclude certain territories from the operation of a treaty would result from the *travaux préparatoires* and could be a matter of interpretation. For example, in certain treaties concluded by the United Kingdom, the exclusion of the Channel Islands resulted only from the preamble of the treaty. With regard to certain treaties signed by the Soviet Union, and also by the Byelorussian SSR and the Ukrainian SSR, the exclusion of those States from the USSR signature was implicit; otherwise the situation would be that two signatories contracted on behalf of one and the same territory.

45. Mr. TUNKIN said that he had given an explanation regarding the position of the Ukrainian SSR and the Byelorussian SSR when the Commission had discussed article 58 at the 731st meeting.

46. The CHAIRMAN put to the vote article 58 as proposed bt the Drafting Committee.

Article 58 was adopted by 16 votes to 1, with 1 abstention.

ARTICLE 61 (General rule limiting the effects of treaties to the parties)

47. The CHAIRMAN invited the Commission to consider the Drafting Committee's text for article 61:

> "A treaty applies only between the parties and neither imposes any obligations nor confers any rights upon a State not party to it [without its consent]."

48. Mr. VERDROSS said that the language of article 61 should conform to that used in article 55; the first phrase should therefore read "a treaty in force is binding only upon the parties".

49. With regard to the second part of the sentence, he maintained the objections which he had voiced during the general debate, at the 750th and 751st meetings, and would therefore be obliged to abstain in the vote on article 61.

50. Sir Humphrey WALDOCK, Special Rapporteur, said that the words "in force" had been inserted in article 55 for a special reason which would not apply in the case of article 61.

51. Referring to the suggestion that the words "is binding on" should replace the word "applies" he said that since articles 55 and 61 dealt with different matters, it did not seem essential to use the same wording in both. Furthermore, the expression "is binding" was used primarily in connexion with an obligation.

52. The Drafting Committee had inserted the words "without its consent" in square brackets as one way of overcoming the logical inconsistency which some members claimed existed between articles 61 and the next three articles. The Drafting Committee submitted that phrase for decision by the Commission.

53. Mr. CASTRÉN said that, despite his earlier doubts, he was prepared to accept the proposed new wording of article 61 as a compromise provided that the words "without its consent" formed part of it. By the addition of those words, which had been suggested by Mr. Ruda and Mr. Tunkin and had later been supported by the Chairman, the article would provide an introduction to the immediately following articles; the words in question would provide the necessary link between articles 61, 62 and 62A, and would improve the wording of article 61, which was too categorical.

54. Mr. YASSEEN said that he was prepared to accept the article, which was very well drafted, provided that the words "without its consent" were not included. Without those words, the articles was a statement of positive international law. There was no need to provide, by means of those words, an introduction to the subsequent articles for those articles did not deal with exceptions, since in order that the effect of a provision could be extended to third States a supplementary agreement was necessary.

55. Mr. EL-ERIAN said that the title and text of article 61 as proposed by the Drafting Committee were acceptable to him. In his opinion there was no need for the addition of the words in square brackets.

56. Mr. BARTOŠ said that he would be unable to vote for the first part of the article since the statement which it contained was incorrect: there were cases where provisions binding only on the parties were applied to other States. So far as the second part of the sentence was concerned, his view was that a treaty could not of itself impose an obligation and that articles 62 and 63 constituted exceptions wholly at variance with that phrase. He could not vote for the article unless the words "without its consent" were included.

57. Mr. ROSENNE said that as he had indicated during the general discussion that he had no strong views about the thoretical issues covered in the four articles dealing with the effects of treaties on non-parties, he would abstain from voting on the inclusion of the words in square brackets. Nevertheless, he thought that in the article those words should preferably not be included.

58. Mr. PESSOU said that he had previously suggested that the article should be drafted on the following lines: "A treaty is binding only on the contracting parties; it cannot constitute a direct source of rights and obligations for non-party States"; nevertheless, he would support the text as it stood.

59. Mr. TSURUOKA said that he endorsed the principle laid down in article 61. He was inclined to favour the retention of the words "without its consent" since they reflected existing custom more accurately.

60. Mr. TABIBI said that he was in agreement with the content of the article but was not in favour of the inclusion of the words in square brackets.

61. Mr. BRIGGS pointed out that articles 55 and 61 dealt with different matters and the differences in wording were deliberate.

62. Article 61 was concerned with the application of a treaty between the parties, and articles 62 and 62A with the obligations or rights which might arise out

of a provision of a treaty as distinct from an entire treaty; he saw no contradiction between the former and the latter two.

63. He was not in favour of including the words in square brackets.

64. Mr. de LUNA said that he would abstain in the vote on article 61 if the words "without its consent" were retained. The Commission had decided that the article should be drafted in neutral terms that would not favour either of the two opposing doctrines. If the article included the words "without its consent", it would seem to be ruling against those who held that a right could be conferred on a non-party State, although that State was not obliged to make use of the right.

65. The CHAIRMAN said that in any case the text would be clearer if the words in question read "without the latter's consent". Had the Drafting Committee considered the possibility of solving the problem by inserting the words "as such" before the words "neither imposes any obligations ..."?

66. Sir Humphrey WALDOCK, Special Rapporteur, considered that the words in square brackets were neutral, whereas to say that a treaty "as such" did not confer any rights upon a non-party State would underline the point rather more heavily.

67. Mr. BRIGGS believed it would be preferable to vote on the Drafting Committee's text as it stood rather than to attempt to amend it in the Commission.

68. Mr. TUNKIN said that it could accept the inclusion of the words in square brackets as they were non-committal.

69. Mr. RUDA said that he had suggested the words "without its consent" for the sake of logic; it was surely anomalous to lay down a categorical rule in article 61 and then to contradict it immediately afterwards in the next articles.

70. Mr. YASSEEN said that considerations of logic caused him, for his part, to regard the words in question as unnecessary. The Commission was dealing with a series of rules that were complementary to one another; article 61 laid down a general principle and was followed by two articles under which the extension of the effect of a treaty required an agreement. Those two articles would superfluous if the words "without its consent" were allowed to stand, since they simply stressed that the effect of a treaty could be extended to third States by consent.

71. Mr. AMADO said that even on grounds of symmetry he could not agree to the retention of the words "without its consent".

72. Mr. BARTOŠ said that he was still convinced that, since articles 62 and 63 openly contradicted article 61, it was absolutely necessary to herald those articles by some such expression as "as such", "as a general rule" or "without the latter's consent".

73. The CHAIRMAN suggested that three votes should be taken: first, on the principle, in other words on the text as far as the words "a State not party to it"; secondly, on the words "without its consent", and lastly on the article as a whole.

74. Mr. BARTOŠ, supported by Mr. RUDA, pointed out that, in United Nations practice, a vote was first taken on the disputed passages in a text and then on the text as a whole.

75. Mr. ROSENNE suggested that provisional votes be taken, first on the text up to the square brackets, and then on the last three words. Such a procedure was sometimes followed in organs of the General Assembly.

76. Mr. TUNKIN supported Mr. Rosenne's suggestion as a means of avoiding a vote first on the words in square brackets.

77. Mr. PAL considered that the words in square brackets were tantamount to an amendment and should be voted on first.

78. The CHAIRMAN observed that those words were not an amendment but an alternative. He then put to a preliminary vote the text of article 61 up to the brackets.

There were 16 votes in favour, none against, and 3 abstentions.

In the preliminary vote on the words in square brackets there were 8 votes in favour, 3 against, and 7 abstentions.

79. The CHAIRMAN put to the vote formally the words in square brackets.

Those words were adopted by 10 votes to 5, with 4 abstentions.

Article 61 as a whole, including the words in square brackets, was adopted by 14 votes to none, with 5 abstentions.

80. Mr. TABIBI asked for the inclusion of a footnote in the report stating that he would have supported article 61 but for the inclusion of the words in square brackets.

81. Mr. LACHS said that, though he had voted for article 61 and later for article 62, he wished it to be recorded that they were not applicable to aggressor States, which were not covered by the articles.

82. Mr. TUNKIN associated himself with Mr. Lachs's reservation and said that the point should be mentioned in the Commission's report as one which should be taken up under subject of the responsibility of States.

83. Sir Humphrey WALDOCK Special Rapporteur, said that the point could be dealt with in the commentary.

ARTICLE 62 (Treaties providing for obligations for States not parties)

84. The CHAIRMAN invited the Commission to consider the text of article 62 proposed by the Drafting Committee:

"An obligation may arise for a State from a provision of a treaty to which it is not a party if the parties intend the provision to be the means of establishing that obligation and the State in question has expressly agreed to be so bound."

85. He questioned whether the words "the parties intend the provision to be the means of establishing that obligation and" were necessary.

86. Mr. TUNKIN pointed out that the assent of the non-party State was not sufficient; it was necessary to state that the parties to the treaty intended the provision to be the means of establishing the obligation.

87. Sir Humphrey WALDOCK, Special Rapporteur, explained that the passage criticised by the Chairman had been included deliberately to remove any impression that an obligation was being imposed upon the third State. Two elements had to be present for the obligation to arise, first, the intention of the parties and, secondly, the consent of the third State. One objection to the deletion of the passage would be that, without it, the article might be taken to mean that third States of their own volition could decide to participate in a treaty.

88. The CHAIRMAN, speaking as a member of the Commission, suggested that the passage might be amended to read "if such was the intention of the parties and if the State in question has expressly agreed to be so bound". One could hardly talk of a provision as being "the means of establishing that obligation", for an obligation could be created only by a meeting of two wills.

89. Mr. BRIGGS said that, as far as the English text was concerned, it exactly expressed what the Drafting Committee had intended.

90. The CHAIRMAN suggested that the words "so intend" might be substituted for the words "intend the provision to be the means of establishing that obligation and".

91. Mr. ROSENNE pointed out that such a modification would entirely defeat the purpose of removing any implication that an obligation could be imposed upon a State not party to a treaty.

92. Mr. AMADO asked to what the word "*ce*" in the phrase "*par ce moyen*" referred. Should the phrase read "*par le moyen de cette disposition*"?

93. Mr. CASTRÉN pointed out that the word "*expressément*" was missing in the French text after the word "*consent*"; the English text read "expressly agreed" and the French text should be altered to conform to it.

94. Mr. YASSEEN said that the Commission had decided to translate the English word "arise" by the French word "*naître*"; but the word now used in the French text was "*découler*".

Article 62 was adopted subject to a review of the wording by the Drafting Committee.

ARTICLE 62 A (Treaties providing for rights for States not parties)

95. The CHAIRMAN invited the Commission to consider article 62 A as proposed by the Drafting Committee:

"1. A right may arise for a State from a provision of a treaty to which it is not a party if (*a*) the parties intend the provision to accord that right either to the State in question or to a group of States to which it belongs or to all States, and (*b*) the State expressly or impliedly assents thereto.

"2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty."

96. Mr. BARTOŠ said that he had some misgivings about the use of the word "accord", which suggested condescension.

97. The CHAIRMAN agreed; it would be more correct to say that a right was "offered". He added that, in the French text, the word "*découler*" should again be replaced by "*naître*".

98. Sir Humphrey WALDOCK, Special Rapporteur, suggested that perhaps language modelled on that of the previous article might be more suitable, e.g. "intend the provision to be the means of creating rights in favour of ...". To introduce the concept of an offer would be to destroy the compromise reached in the Commission.

99. The CHAIRMAN suggested that the passage should read "intend that right to be accorded".

100. Mr. de LUNA said that the Drafting Committee's text represented a compromise; he would abstain in the vote if that text was replaced by language that was not genuinely neutral.

101. The CHAIRMAN pointed out that the language he had suggested was entirely neutral, and not inconsistent with the articles just adopted by the Commission.

102. Mr. TUNKIN said that in his view the text was practically neutral. The intention of the parties to accord the right and the requirement of the assent of the State concerned were two elements that should be taken together. The Commission should be able to accept the Drafting Committee's text.

103. Mr. BARTOŠ said that, possibly because he came from a small country, he was still inclined to dislike the words "to accord"; he would prefer some other verb.

104. The CHAIRMAN suggested that the words "to accord" should be replaced by the words "to confer", on the understanding that the words "from a provision" should be replaced by "as a result of a provision".

Article 62 A, paragraph 1, was adopted by 18 votes to none, with 1 abstention.

105. Mr. VERDROSS said that he had abstained in the vote because he could not accept the proposition that the consent of the non-party State was required to bring the right conferred into existence.

106. Mr. BARTOŠ referring to paragraph 2, said that he would be unable to support the paragraph because, in creating the rights in question, the parties to a treaty sometimes laid down conditions that went beyond what objective international law entitled them to prescribe.

107. Mr. RUDA said that he would abstain in the vote on paragraph 2 for the same reasons as those given by Mr. Bartoš.

Article 62 A, paragraph 2, was adopted by 17 votes to none, with 2 abstentions.

Article 62 A, as a whole, was adopted by 15 votes to none, with 3 abstentions.

108. Mr. BARTOŠ explained that he had voted for article 62 A as a whole because it was the practice in the United Nations to vote for the text as a whole if one had voted for one part of it and abstained on another.

109. Mr. RUDA said that his vote was explained in the same way as that of Mr. Bartoš.

ARTICLE 62 B (Revocation or amendment of provisions regarding obligations or rights of States not parties)

110. The CHAIRMAN invited the Commission to consider the text of article 62 B proposed by the Drafting Committee and reading:

> "When an obligation or a right has arisen under article 62 or 62A for a State from a provision of a treaty to which it is not a party, the provision may be revoked or amended only with the consent of that State, unless it appears from the treaty that the provision was intended to be revocable."

111. Mr. AMADO said that in the French text the words "*a découlé*" should be replaced by "*est né*".

112. Mr. YASSEEN said that in his view the words "intended to be" had no justification.

113. The CHAIRMAN proposed that the words "intended to be" should be deleted and that, in the French text, the word "*ressorte*" should be replaced by "*découle*".

114. Mr. BARTOŠ said he could accept the article as so amended, on the understanding that the passage "unless it appears from the treaty that the provision was revocable" corresponded to positive international law and on condition that the States which had stipulated the revocability of the provision had been entitled to do so; they could not revoke a right which already belonged *ex jure* to the third State.

115. Mr. de LUNA said that he agreed with Mr. Bartoš, but added that the clause in question was a general one applicable to all treaties.

116. Mr. PAREDES said he approved Mr. Bartoš's observation, but would go even further. He had in mind the case of a State on which a right had been conferred and which, in consequence, had had to perform certain acts and adopt certain procedures in order to conform with the treaty. Such a State would thereby have established a particular situation which it was entitled to regard as stable, and it might find itself in a difficult position if the parties to the treaty sought to withdraw from it the right which they had previously conferred on it. It would be wrong if a State which had done no more than accept a right offered to it was placed in a subordinate position.

117. Mr. LACHS said that the commentary should mention that rights in favour of third States having their source outside the treaty which was merely declaratory of them existed independently of it.

118. The CHAIRMAN confirmed that all the reservations expressed would be recorded in the summary record; he felt, however, that they were prompted by an excess of caution. If the parties to a treaty offered to a State a right which that State knew it already possessed, then all that was necessary was for that State to drawn attention to the fact that it already possessed the right in question.

119. Mr. BARTOŠ said that his own reservations had been prompted, not by excessive caution, but by historical experience.

Article 62B was adopted by 14 votes to none, with 3 abstentions.

120. Mr. EL-ERIAN reiterated his reservation concerning article 62 B and the revocation of rights having their source outside the treaty.

The meeting rose at 6 p.m.