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Summary record of the 767th meeting

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would or would not have a meaning, everything that needed to be said on the subject was already said in article 70, paragraph 2.

110. Mr. LACHS agreed with the preceding speaker and considered that the substance of article 72 could be incorporated in article 70, paragraph 2, subject to the omission of the words "as to give it the fullest weight and effect consistent with" for they might give the impression that the aim was to save the treaty at all costs regardless of whether it fulfilled the requirements of the time.

111. Mr. AMADO supported the suggestion made at the preceding meeting by Mr. de Luna and Mr. Tunkin that the reference to the objects and purposes of the treaty should appear in the fundamental rules of interpretation. He also agreed with Mr. Ruda's remarks.

112. However, in following the debate, he had been struck by the repeated references to the idea of extensive interpretation, whereas no one attached any importance to the word "weight", which some members seemed to associate with the idea of extensive interpretation. But surely, the idea of "weight" in that connexion was a very concrete one and one of particular importance in a text intended fully to elucidate the substance and effects of a term.

113. He believed that the Latin maxim, highly respectable though it was, was out of date.

114. He paid a tribute to Mr. Bartoš, who, although opposed to any subjective interpretation, had agreed to the use of the expression "objects and purposes of the treaty".

115. Mr. BRIGGS agreed with the majority that article 72 should not be maintained as a separate article, for if it were allowed to stand it would single out for special treatment one of the many canons of interpretation.

116. Perhaps the words "and so as to give it effect" might be inserted after the word "term" at the end of the opening phrase in article 70, paragraph 1.

117. Mr. RUDA considered the formula suggested by Mr. Briggs to be extremely dangerous. To give effect to a treaty, within a political conference at which there was a certain degree of tension, was particularly risky because the small States were under the sway of the large ones. Furthermore, with respect to whom could the provisions of a treaty be given effect?

118. Sir Humphrey WALDOCK, Special Rapporteur, said that the discussion had been valuable in making it clear that the Commission attached great importance to the primacy of the text. He did not favour Mr. Briggs's amendment, for it might diminish the force of the fundamental rule.

119. The CHAIRMAN said that the majority of the Commission seemed to hold the view that the maxim *ut res magis valeat quam pereat* should not form the

subject of a separate rule. In so far as it stated a logical rule, it was in any case implicit in the earlier provisions of sections III of the draft and there was perhaps no need to state it explicitly.

120. Accordingly, he suggested that for the time being article 72 should not appear in the section on the interpretation of treaties.

It was so agreed.

ARTICLE 73 (Effect of a later customary rule or of a later agreement on interpretation of a treaty)

121. Sir Humphrey WALDOCK, Special Rapporteur, introducing article 73, said that if earlier in section III the "context of a treaty" was defined as comprising the rules of international law, then it might perhaps be argued that the evolution of those rules would be automatically taken into account at any point in time. In the first instance, in the interpretation of a treaty it was necessary to establish what the treaty was intended to mean, and it was questionable whether the effect on it of the emergence of later rules of law raised problems of interpretation. Rather he thought that it raised problems of the application of those rules to the treaty. As the emergence of later rules affected both the interpretation and the application of a treaty, it seemed preferable to deal with the question separately as one of inter-temporal law; he looked to the Commission for guidance.

122. Article 73 also dealt with subsequent treaties touching on or overlapping with the same subject matter and intended to modify the earlier treaty.

The meeting rose at 1 p.m.

767th MEETING

Thursday, 16 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Tributes to Mr. Liang

1. The CHAIRMAN said that the session was the last one that Mr. Liang would be attending in his present capacity. Mr. Liang was an old friend of many members of the Commission, and no doubt they would wish to associate themselves with the tribute to be paid by Mr. Amado, the senior member.

2. Mr. AMADO thanked the Chairman for having given him the opportunity of expressing publicly his feeling of friendship for Mr. Liang, which dated back to the earliest days of the United Nations.
3. Mr. Liang was a man of learning whose intellectual curiosity he admired, a person without political bias who had the gift of making friends; above all he had always and with evident zest devoted himself unsparingly to his duties.
4. Mr. Liang was deeply versed in the law and a learned author of note; he was warm-hearted and a man of integrity, and as head of his Division he had succeeded in winning the friendship of his assistants. Although he was leaving the Commission, he would always be present in the hearts of its members with whom he had worked for so long.
5. Mr. BRIGGS paid a tribute to the scholarly contribution made by Mr. Liang to the development of international law and to his work as Secretary of the Commission. For many years he had contributed articles to the *American Journal of International Law*, mostly on United Nations activities in the field, and his writings were indeed indispensable for anyone wishing to know about the Commission's formative years. He had also played an important part in the framing of the Commission's Statute and as Secretary of the Committee on the Progressive Development of International Law and its Codification.
6. Mr. TABIBI said that members would regret Mr. Liang's retirement. As the Commission's records showed, he had greatly contributed to its discussions out of his long experience and wide knowledge. He had always displayed modesty, wisdom and scholarship, both within the United Nations and in his academic work.
7. Mr. PAL said that the foregoing tributes were entirely deserved as he knew from personal experience, for he had had the benefit of Mr. Liang's encyclopaedic knowledge as Chairman of the Drafting Committee and twice as Chairman of the Commission. It seemed difficult to imagine the Commission without Mr. Liang's presence. He wished him and his family all the best in his future activities.
8. Mr. VERDROSS said that, although he had first met Mr. Liang at the Aix-en-Provence session of the Institute of International Law, he had known of him long before through his scientific work. He wished to express his admiration for the active share which Mr. Liang had taken in the work of the Commission, for his learning, and for the care with which he had prepared its work. Mr. Liang was on terms of cordial personal friendship with all the members of the Commission. He wished to take the opportunity of expressing his warmest good wishes both to Mr. Liang and to Mrs. Liang.
9. Mr. ROSENNE, associating himself with Mr. Amado's remarks, first paid a tribute to the kindness with which Mr. Liang had assisted him when in the early stages of his career he had been sent for the first time to participate in the work of the Sixth Committee; and he had since on many occasions had cause to be grateful to Mr. Liang. He also recalled that Mr. Liang's association with the codification of international law antedated his appointment as head of the Codification Division in the Secretariat. In his capacity as a member of the delegation of China at the Dumbarton Oaks and San Francisco Conferences, Mr. Liang had played an important part in the discussion leading to the inclusion of the reference to codification and progressive development of international law in Article 13 of the Charter; and in that endeavour Mr. Liang was continuing along a path which had commenced when he had been a member of the Chinese delegation at the League of Nations Codification Conference of 1930.
10. Mr. BARTOŠ said that he had first worked with Mr. Liang during the London meetings of the Preparatory Commission of the United Nations late in 1945 and early in 1946. Mr. Liang's gifts had been of great value on that occasion, for he had acted as adviser and guide to delegates who in those days had often been inexperienced.
11. In the Sixth Committee of the General Assembly, it had in the early days been customary to ask the Secretariat for notes for the information of representatives on all the questions to be discussed; there, too, Mr. Liang had made an important contribution.
12. During the meetings at Lake Success of the committee which had prepared the Statute of the International Law Commission, Mr. Liang had played an important part. The report of the Sixth Committee, as a result of which the International Law Commission had been brought into existence, had been largely due him.
13. He had learned much from Mr. Liang, to whom the Commission would forever be in debt for all that he had done ever since its establishment. It would be hard to visualize the meetings of the Commission without Mr. Liang.
14. Mr. de LUNA said that Mr. Liang was a jurist of distinction, a linguist, an outstanding civil servant and above all a man for whom he had the highest esteem and to whom he wished to express his deep and lasting gratitude. He hoped that Mr. Liang, wherever he might be, would regard him as a grateful friend who would always be at his disposal and who would ever be glad of an opportunity to prove his friendship.
15. Mr. YASSEEN said that he had first heard Mr. Liang speak at the Hague in 1948, at the opening meeting of the conference on the legal profession, when he had described the role of the United Nations in the codification of international law. He wished to pay a tribute to Mr. Liang as a great expert in international law, as a distinguished international civil servant and as true friend.
16. Sir Humphrey WALDOCK joined in the tributes paid to the Secretary, from whom he had received a great deal of assistance in his work on the law of treaties. The Commission had already given proof of

its value in the work accomplished on the law of the sea and the law on diplomatic and consular relations, and Mr. Liang could in his retirement have the satisfaction of knowing that he was passing on to his successor a worthy inheritance.

17. Mr. RUDA said that he particularly wished to mention Mr. Liang's attitude towards the younger generation of jurists who had had the privilege of making his acquaintance. He had worked under Mr. Liang in the Codification Division in New York, and at the same time had been one of his students at New York University Law School. Mr. Liang's influence on him had been very great, and he looked forward with pleasure to meeting him again in the future.

18. Mr. PAREDES said that since 1962, when he had become a member of the Commission, he had had an opportunity of appreciating Mr. Liang's work, his intellectual capacity and also his kindness. He was indeed sorry to hear that he was leaving and wished to take the opportunity of expressing his admiration for his scientific work and his best wishes for the future.

19. Mr. CASTRÉN said that he wished to associate himself with the tributes so eloquently paid by Mr. Amado, the Commission's senior member. Mr. Liang fully deserved all that the members of the Commission has said of him. He was a man of learning, and an international civil servant of the highest class who had carried out his work with devotion and skill. He wished to thank Mr. Liang for his help in the three years of his membership of the Commission and to offer him his most sincere good wishes for the future.

20. Mr. TSURUOKA said that he wished, like the previous speakers, to express his sincere admiration for Mr. Liang and his appreciation of all that he had done for the Commission and for the progressive development of international law and its codification. He had been proud to find in the Commission a man with such outstanding attainments who came from the same part of the world as his own. There was one thing that he wished to add, which was implicit in the tributes already paid, namely that Mr. Liang combined in his person East and West, ancient culture and modern culture; that was a feature characteristic both of China and Japan, the peoples of which, despite occasional differences, were bound to one another by a centuries-old friendship.

21. There was a Far Eastern proverb that every meeting was the beginning of a parting. In the case of Mr. Liang, however, it might be said that parting was in a way the beginning of a meeting, for all the members of the Commission were sure that they would meet Mr. Liang again on many occasions, both in person and through his work. He hoped that Mr. Liang would have a very brilliant career in the service of the great causes of the peace and prosperity of the international community to which he had always devoted himself.

22. Mr. TUNKIN expressed appreciation for the services rendered by Mr. Liang to the Commission and

for the devotion with which he had discharged his responsibilities. He had taken the keenest interest in the problems discussed by the Commission and had often proffered helpful advice.

23. Mr. PESSOU associated himself with the preceding speakers, who had known the Commission's Secretary longer and more intimately than he. He would continue to follow Mr. Liang's work through his writing, since he was above all an eminent internationalist and his presence would therefore continue to be felt in the Commission.

24. The CHAIRMAN said that Mr. Liang, who was no doubt moved by the tribute and the friendship expressed by all the members of the Commission, and in particular by its veteran member, Mr. Amado, could not fail to realize that all held him in high esteem and were grateful for the outstanding services which he had rendered to the Commission and to the cause of the codification of international law. In paying a tribute to Mr. Liang, who was devoted to scholarship and the pursuit of knowledge, and who had been able to enlist the goodwill, affection and attachment of all, the members were saddened at the prospect of losing his valuable collaboration, his presence and his friendship, which they had known for so many years.

25. One should not give way to sadness, however, since to look to the future rather than to the past was to remain young. One should therefore think of Mr. Liang's future career and of the many services which, owing to his cultivated mind, his knowledge and his intelligence, he would continue to render to the cause of international law. It was therefore with confidence in the future that he concluded his tribute to Mr. Liang, who had been the Commission's Secretary for so many years.

26. Mr. LIANG, Secretary to the Commission, warmly thanked members of the Commission for their kind words. He had no regrets at having dedicated 20 years of his life to the cause of codification. He had had the privilege of being the spokesman of his delegation during the conversations at Dumbarton Oaks in 1944 when China had proposed that a provision be inserted in the Charter of the United Nations, then being prepared, concerning the codification of international law, and both during the preparatory stages of the San Francisco Conference and at the Conference itself he had pressed for the adoption of the formula now to be found in Article 13. His country had thus been a leading proponent of codification during the post-war period.

27. He had learned much from his long period of association with the luminaries of learning in the Commission. He had learned, for example, that labels used to indicate the school of philosophy of international law to which a jurist belonged were deceptive in the extreme. In the past, some members had been apt to label others as romanticists. But they themselves were far from adopting a positivist approach to the practical problems which had to be dealt with by the Commission. They constructed theoretical edifices with all romantic flourishes, and their thinking demonstrated a

high degree of unreality. Those were true romanticists in international law as distinguished from jurists, like Mr. Amado, who, while always insisting on adherence to the canons of *elgantia juris*, never departed from the strict path of positivism.

28. He had also learned that it was necessary to follow the teaching of Confucius who had said that the trouble with humanity was the anxiety to teach others. He had consistently refused to yield to the pressure from uninformed circles, which tried to ask the Secretariat of the Commission to give "guidance" to the Commission by putting forward studies proposing solutions to the most controversial problems of international law such as State responsibility, etc.

29. He was grateful that his duties had kept him in close touch with international law, which would not have been the case had he been engaged in diplomatic activities. He felt bound to apologize for the fact that he had found himself occasionally unable to help the members to adjust certain administrative problems arising from their service with the Commission.

30. Referring to his relations with individual members, he recalled that in the early nineteen-thirties he had considered himself already a disciple of Mr. Verdross. His works and particularly a treatise entitled "Völkerrechtsgemeinschaft" had fascinated him. In the years immediately before and after the founding of the United Nations he had worked together with Mr. Bartoš and Mr. Lachs. His acquaintance with the first vice-Chairman, Mr. Briggs, dated back to 1930 when he had been pursuing advanced studies in the United States. He admired Mr. Rosenne's prolific writings and appreciated particularly his assistance and criticism in connexion with the publications of the Codification Division. Mr. Tabibi's close knowledge of the United Nations administrative law and its operation was bound to be of great help to the Commission.

31. He had been elected to the Institute of International Law in the same year (1950) as Sir Humphrey Waldock, Mr. Castrén and Mr. de Luna, and it was a special pleasure to work the them closely in the Commission. He had known Mr. Tsuruoka in 1955 in the United Nations Conference on the Conservation of the Resources of the Sea. In the course of the subsequent years he had been privileged to co-operate with him on many occasions and to get acquainted with his juridical acumen and diplomatic skill. He had learned to appreciate the qualities of the comparatively new members, Mr. Paredes and Mr. Pessou, and was certain that they would contribute more and more to its work. He had a high admiration for Mr. Ruda, who as his former student in the New York University Law School and his colleague in the United Nations Secretariat, had exhibited qualities of a brilliant international lawyer. He expressed deep gratitude to Mr. Pal, senior next only to the Mr. Amado in the Commission, for his inspiration and guidance during his two terms as Chairman of the Commission. As to the present Chairman, Mr. Ago, he held him in the greatest respect not only for his penetrating insight into the theories of international law but also for his rigorous precision in the formulation of juridical rules. He was tempted

to compare him to the Chairman of the first session (in 1949) of the Commission, the late Judge Manley O. Hudson, of the United States, a tower of strength in the formative days of the Commission. He would like to thank Mr. Tunkin and Mr. Yasseen, who were also officers of the Commission, for their constant encouragement. Last but not least, he wished to state how gratified he was to have had also the opportunity of working with those members who were not present at the meeting, Mr. Cadieux, Mr. Elias, Mr. El-Erian, Mr. Jiménez de Aréchaga, Mr. Kanga, Mr. Liu and Mr. Reuter.

Visit by the Secretary-General

32. The CHAIRMAN made the following statement :

" Mr. Secretary-General,

" The International Law Commission of the United Nations feels highly honoured by your visit and is impressed by the consideration that you have shown to the importance of its work and to its position in the framework of the United Nations.

" When the Charter was drafted in 1945, no provision was made for a permanent organ entrusted with the task of preparing the codification and the progressive development of international law, and the only legal organ of the United Nations provided for in Chapter XIV was a judicial organ: the International Court of Justice, charged with applying that law to the settlement of international disputes.

" Thanks to the vision and action of a group of enlightened men, some of whom are in this very room, the idea of the progressive development of international law and its codification was embodied in the Charter as a matter for the General Assembly to initiate studies and make recommendations. But neither at that time, nor later, when, in execution of Article 13 the International Law Commission was established, could anyone have realized what, within just a few years, would be the extent and the urgency of the task of the newly created body.

" It is the great revolution which is now taking place in the world society under the auspices and with the encouragement of the United Nations, and which has given independence to a number of States which today is greater than the number of those who created the United Nations—it is that event which has thrust into the foreground the pressing need for codification and evolution of the law of the Community of States.

" In a human society which is going through such a radical change, the need for certainty in the law and the need to bring it into line with the new conditions is one of the utmost urgency. It is with full awareness of that need that the International Law Commission has now directed its attention to its work.

" Its first great achievements, such as the preparation of the codification of the law of the sea, of diplomatic and consular law, are well known. The Commission is now preparing to complete this work

by new drafts concerning special missions and the relations between States and international organizations.

“But the Commission has above all realized that the time has come for it to devote itself to the revision, clarification and codification of the main topics of international law, in the light of the characteristics of the renewed international society. It is chiefly in these fields that the main principles demand to be re-stated, that evolution must be provoked, and at the same time certainty re-established, on the basis of the widest possible agreement of the States and on a sound scientific foundation.

“For this reason the Commission boldly put on its agenda the principal chapters of contemporary international law, like the law of treaties, State succession and State responsibility. I do not hesitate to say, Mr. Secretary-General, that if the Commission, thanks to its work and with your help and that of your services, succeeds in completing such an ambitious programme, and if the States will then consummate this work in diplomatic conferences, progress absolutely without precedent since the time of Grotius will have been achieved in international law, and a contribution of inestimable value to the peaceful development of international relations will have been made.

“In order to speed up the attainment of this goal, the Commission has also decided to take some exceptional measures, like proposing for future years an extension of its sessions, and other steps for further intensifying its work. At the same time, it must never be forgotten that the codification of the law is a very heavy and difficult burden and cannot be achieved too rapidly.

“To be able to meet its present responsibilities, the International Law Commission greatly needs the full collaboration of the other organs and, above all a full understanding of the importance, of the delicacy and of the urgency of its task. For these reasons you may realize, Mr. Secretary-General, how deeply we appreciate your decision to visit us just in the moment of our most intensive work, how we greatly hope that your present visit will be the beginning of regular future contacts, and how warmly and sincerely we all welcome the presence among us of your person, Mr. Secretary-General: a person who, in the eyes of us all represents the first champion in the struggle for peace, for the achievement of greater justice and of a higher standard of living for all the human beings, and, last but not least, for the rule of law in international relations.”

33. The SECRETARY-GENERAL made the following statement :

“Mr. Chairman and members of the Commission : I am particularly grateful to you, Mr. Chairman, for your very clear exposé of the activities of the Commission as well as its aims and objectives and the measures of accomplishment so far and the prospective measures of achievement in the future.

And first of all let me say that I am almost completely unversed in this sphere of law — and for that matter international law — and I do not think I can express any opinion or make an assessment of the rate of progress of the functioning of your Commission ; but this much I can say — that from all available accounts, the work of the International Law Commission has been quite impressive in the face of very real and practical difficulties.

“Last year my good friend, Dr. Tabibi, suggested to me in Geneva that in the course of my next visit to Geneva it would be worthwhile to visit the International Law Commission. I readily accepted his very kind suggestion because I feel very strongly that the Secretary-General of the United Nations should be in as close a touch as possible with all Commissions and Committees — particularly the creations of the principal organs of the world organization. I am particularly gratified to be here and delighted to meet with you, and I thank you for your very gracious welcome.

“Just a few minutes I want to take of your time by making a brief observation on some of my thinking, which in my view may have some relevance to the work of the International Law Commission. So long as I am performing the functions of the Secretary-General of the United Nations, Mr. Chairman, it shall be my constant endeavour to try to carry out my responsibilities with as much objectivity and impartiality as possible. Of course, being human, I must admit that from time to time my judgment may be at fault. I may run into circumstances and conditions in which one party or other may have occasion to question my integrity, to question my impartiality or to question my honesty — I am prepared for that. But one thing I am convinced of ; that is about one of the principal functions of the United Nations, of which I have the privilege to be the Chief Executive.

“In the Charter of the United Nations there is a very important provision which to me is basic to the operation of all committees and commissions operating within the framework of the resources of the principal organs of the world organization. The provision of the Charter I am referring to urges all Member States to practice tolerance and live with one another as good neighbours and to unite their strength for the achievement of the common objectives. And at the same time the Charter explicitly mentions that one of the functions of the United Nations is to harmonize the actions of Member States. Although there is no specific mention of the area of harmonizing which the Charter of the United Nations envisages, I am confident that the founding fathers of the United Nations nineteen years ago had in mind all activities of human endeavour — political, economic and social, as well as legal. If my interpretation of human history is correct, I have a feeling that there are unmistakable trends towards a big synthesis in human history, not only in the political field, but also in the economic and social field and, I am sure, also in the legal field. From the basis of thesis and

antithesis we are now heading towards a big synthesis, the harmonizing of all different viewpoints, all different legal concepts too.

"In the political field particularly, I am confident that there have been obviously, liberalizing tendencies all over the world — progressive tendencies all over the world — and the future is bright with the prospects of a big synthesis which we all dream about and which we all hope for.

"Mr. Chairman, in the noble endeavours of your Commission, in your endeavours to codify and evolve a new system of international law, I am sure the members of the Commission have in mind this very pertinent chapter of the Charter, concerning the attempts to harmonize the actions of Member States, and I am sure you are all very conscious of the fact that this enjoining on Member States to harmonize their actions involves not only political, economic and social spheres, but also the legal field.

"Mr. Chairman, I wish to thank you once again, and the members of the Commission, for a very patient hearing and for the privilege I have today of meeting with you."

Law of Treaties

(A/CN.4/167/Add.3)

(resumed from the previous meeting)

[Item 3 of the agenda]

ARTICLE 73 (Effect of a later customary rule or of a later agreement on interpretation of a treaty) (*continued*)

34. The CHAIRMAN invited the Commission to continue its consideration of article 73 of the Special Rapporteur's draft.

35. Mr. VERDROSS considered that only sub-paragraph (c) of article 73 was concerned with the interpretation of treaties, for (a) and (b) actually dealt with the modification of treaties. If a rule of customary law emerged, or an agreement containing a new rule was entered into between the same parties, after the conclusion of the treaty, then what would need interpretation was not so much the original treaty as the new rule. Sub-paragraph (c) was quite correct, but the idea which it contained was already implied in article 71, paragraph 2, under which interpretation could take account of the subsequent practice of parties in relation to the treaty. Consequently, article 73 did not belong in section III concerning the interpretation of treaties.

36. Mr. de LUNA, associating himself with the views expressed by Mr. Verdross, said that, according to the decision in the *Island of Palmas* arbitration,¹ a juridical fact must be appreciated in the light of the law con-

temporary with it and not of the law in force at the time when a dispute concerning it arose or was brought before a tribunal.

37. Accordingly, he thought that article 73 was not in its proper place in the section concerning the interpretation of treaties; its provisions should appear in the section dealing with the application of treaties. Moreover, with characteristic intellectual honesty, the Special Rapporteur had himself expressed doubt concerning the place of that article. Sub-paragraph (c) dealt with the modification of treaties and the extension of their application and therefore had nothing to do with interpretation. All that related to interpretation in the light of the subsequent practice of parties had already been stated in article 71 — a reference, of course, to interpretative practice and not to practice tending to modify the terms of the treaty. Both those possibilities could be considered, but in the particular instance only the first was involved.

38. Sir Humphrey WALDOCK, Special Rapporteur, said that he did not disagree with the two previous speakers, but pointed out that he had been asked by the Commission to re-examine the so-called inter-temporal rule in the context of interpretation. Even if, which he believed would be correct, it were regarded as relevant to application as to interpretation, it was not easy to draw the line between the two so far as the effect of subsequent practice was concerned.

39. He would feel the same uneasiness as Mr. Verdross and Mr. de Luna in dealing with the matter simply as one of interpretation, and it might be found necessary to transfer the whole or part of article 73 to another place. He was anxious to have guidance from the Commission on how to treat the question of subsequent practice, as the Commission's indications would affect the way in which he redrafted articles 70 and 71. As he saw it, the subsequent practice of some parties to a general multilateral treaty, if concordant, could be regarded as evidence of a proper interpretation. A concordant subsequent practice accepted by all the States concerned would come close to an authentic interpretation similar to a subsequent agreement on interpretation. But the case with which article 73 was concerned was one where subsequent practice could not be reconciled with the ordinary meaning of a treaty though purporting to be an application of it.

40. Mr. ROSENNE said that article 73 did not cause him any particular difficulty either as to substance or as to its place in the draft. He assumed that the phrase "at any time" would introduce the necessary element of flexibility in recognition of the fact that interpretation might change over a period of time. He had noted the difference between the wording of sub-paragraph (c) and that of article 71, paragraph 2, which presumably referred to the parties between which an issue of interpretation had arisen. If article 73 were omitted, the alternative would be to revert to article 56, paragraph 2, concerning which no decision had been taken.

41. Mr. PAL said he did not believe that article 73 was well placed, for it dealt with a matter not connected

¹ *Reports of International Arbitral Awards*, Vol. II (United Nations publication, Sales No. 1949, V.1).

with interpretation. He associated himself with the views expressed by Mr. Verdross and Mr. de Luna.

42. The CHAIRMAN said that it was his impression that the Commission considered that the article under consideration dealt with the modification and revision of treaties rather than with their interpretation.

43. Speaking as a member of the Commission, he said it was obvious that whenever a rule of customary law emerged or a new treaty relating to the subject matter of the first treaty was concluded, problems of interpretation would arise. The real problem, however, would be that of the subsequent conduct of the parties, and for the purpose of solving that problem one would either have to inquire into the evidence of the true intention of the parties at the time of the conclusion of the treaty or else determine whether the parties had subsequently shown an intention of modifying the treaty. In strict logic, however, in dealing with interpretation, the Commission should only be concerned with the first of the two alternatives, for the other came under the heading of the modification of treaties.

44. Mr. YASSEEN agreed with Mr. Verdross and Mr. de Luna that the article should be placed elsewhere. Subsequent agreements might affect the interpretation, but it was not clear that the provision was concerned with interpretative agreements. The parties could at any time have recourse to the method of the subsequent agreement, for the purpose not only of interpreting but also of modifying or abrogating a treaty.

45. With regard to sub-paragraph (c), he said that subsequent practice might certainly have a bearing on interpretation by indicating the intention of the parties. The sub-paragraph was, however, clear as it stood; it was not concerned with interpretation at all but with the modification or extension of the application of a treaty, for it spoke of the subsequent practice which was followed by the parties in respect of the treaty and which constituted evidence of the consent of all the parties to a modification of the treaty or to the extension of its application. Consequently, the article as drafted could not remain in a chapter dealing with interpretation; in essence, it dealt with the subsequent modification and extension, which was a itself a modification, of a treaty.

46. Mr. TUNKIN said that whether sub-paragraph (a) was retained in article 73 would of necessity depend on the wording ultimately adopted for paragraph 1 of article 70 and, in particular, on the drafting of the concluding words of that paragraph, which he had suggested² should be amended so as to refer simply to the principles of international law, and not to the rules of international law in force at the time of the conclusion of the treaty.

47. Turning to sub-paragraph (b), he said that a later agreement between the same parties could have a bearing on the interpretation of a treaty. However, there

were aspects other than interpretation: the two treaties could raise questions of conflicting treaty provisions or questions of amendment. It was essential to clarify the wording of sub-paragraph (b) so as to make it clear that it referred to interpretation and not to conflict or amendment.

48. On the subject of sub-paragraph (c), he completely agreed with Mr. Yasseen that, as drafted, it dealt with the modification of a treaty and had no place in the articles on interpretation. He agreed with Mr. de Luna that subsequent practice could have a twofold effect: first, it could have the effect of amending the provisions of a treaty and, second, it could supplement the interpretation of the treaty. Article 73 was concerned solely with the question of interpretation, and its sub-paragraph (c) should therefore be amended to make that fact clear and to exclude the question of modification by subsequent practice. He therefore suggested that the concluding words of the clause "...to an extension or modification of the treaty" should be amended along the following lines:

"...evidencing the consent of all the parties to a certain interpretation of the treaty".

49. Commenting on the opening sentence of article 73, he said that he had doubts regarding the necessity of the words "at any time" and also regarding the need to refer to articles 70 and 71.

50. He thought that sub-paragraphs (b) and (c) of article 73 did not properly belong to the subject-matter of article 73, which should be devoted to the matter of subsidiary sources of interpretation.

51. Sir Humphrey WALDOCK, Special Rapporteur, said that in his original draft of article 56 (A/CN.4/167) he had frankly recognized that the effect of subsequent practice was not really a matter of interpretation but rather a matter of modification of treaties. However, several members of the Commission, in particular Mr. Reuter, had claimed that the matter was one of interpretation and the Commission had instructed him to re-examine the question in that light. That was the sole reason why he had dealt with the subject in the articles on interpretation.

52. The problems which had arisen would, he thought, be minimized if the Commission ultimately altered the order in which the various sections of the draft articles on the law of treaties had been arranged. He believed that many of the problems which had arisen were due to the fact that the articles on interpretation had been placed after the articles on modification. He suggested that, when the Commission came to consider all the draft articles on the law of treaties in second reading in the light of Government comments, it should rearrange them on the following lines: first, the articles on the conclusion, entry into force and registration of treaties; second, the articles on validity; third, the articles on interpretation; fourth, the articles on the application and effects of treaties; fifth, the articles on the modification of treaties, and, last, the articles on the termination of treaties. With a rearrangement of that kind, there should be no difficulty in disposing of

² Summary record of the 765th meeting, para. 49.

the problem which had arisen regarding the placing of sub-paragraphs (b) and (c) of article 73.

53. If it were decided to limit article 73 to questions of interpretation, its provision should deal solely with the effects of subsequent practice on interpretation. It would, however, be difficult to draw the dividing line between interpretation proper and modification by way of purported interpretation.

54. He added that the Commission had entrusted him with the task of redrafting articles 70 and 71. Article 70 would include a first paragraph stating the general rule on interpretation; that provision would be followed by a paragraph stating what was meant by the "context of the treaty". He personally would be inclined to include in the context of the treaty any agreements for the interpretation of the treaty, but the subject-matter of sub-paragraph (c) of article 73 could not be so included. In connexion with that provision, he agreed on the need to amend its wording so as to make it clear that it was intended to deal only with interpretation by subsequent practice.

55. The question remaining to be decided by the Commission was whether subsequent practice should be regarded as a subsidiary source of interpretation or whether it should be treated as evidencing in some sort an authentic interpretation, when that subsequent practice was the concurrent practice of all the parties to the treaty.

56. The CHAIRMAN said that it would be preferable to resume the discussion later on the basis of a new text. The Commission seemed to have accorded special importance to the subsequent concordant practice of the parties, regarding it as more akin to true interpretative agreements than to an aid to interpretations. If the parties agreed to interpret a text in a certain way, that agreement prevailed; it was not merely a secondary means of clearing up an obscurity or resolving some other difficulty of interpretation. The new text might perhaps be drafted along those lines, for it would then be likely to meet with more general approval.

57. Sir Humphrey WALDOCK, Special Rapporteur, said that if it were accepted that concurrent subsequent practice was evidence of a sort of authentic interpretation, there remained the question of the subsequent practice of some of the parties to the treaty and not disputed by the others. The case he had in mind was not that of the concurrent practice by all the parties but that of a practice of some, the others remaining silent. In his view, that silence was not conclusive and the situation which he had just described could not be equated with the concurrent subsequent practice of all the parties to the treaty; instead, therefore, of constituting evidence of an authentic interpretation, it would merely provide an indication of the intention of the parties. Perhaps the best way to deal with the point was simply to leave it to be covered by some general reference to "other means of interpretation as secondary sources".

58. The CHAIRMAN said that the practice of parties might be classified into three categories: first, a prac-

tice which was not very definite but which was an auxiliary element in interpretation; second, a wholly concordant and definite practice, which was tantamount to a kind of interpretative agreement; and, third, practice which was equivalent to the amendment of the treaty. It was for the Special Rapporteur to determine in his final draft the value of practice for the purposes of interpretation; he would then be able to decide whether it should be mentioned only once or several times.

59. He suggested that the Special Rapporteur should be asked to redraft article 73 in the light of the debate.

It was so agreed.

ARTICLE 74 (Treaties drawn up in two or more languages) and

ARTICLE 75 (Interpretation of treaties having two or more texts or versions)

60. Sir Humphrey WALDOCK, Special Rapporteur, introducing his draft articles 74 and 75, referred to the commentary to those articles and said that, in article 74, the only point which had caused him some difficulty was that dealt with in paragraph 2 (b): that of a language version drawn up within an international organization. He understood that there existed some practice regarding treaties drawn up under United Nations auspices but that that practice was not altogether uniform. He was not sure whether the procedure followed in that respect could be said to be based on the established practice of organizations or on the implied agreement of the parties. It had become apparent to him that much more information was needed on the question of language versions drawn up within an international organization. Perhaps the Secretariat would be able to provide such information and facilitate further study of the question.

61. Mr. CASTRÉN said that he approved of article 74 in form and substance, though he considered that at the end of paragraph 1 there should be added the words "or in so far as the parties agree otherwise", which would balance the words appearing at the end of paragraph 2 (a).

62. Mr. ROSENNE said that, at that stage, he would confine his remarks on article 74 and 75 to the statement of his general agreement with their provisions.

63. He strongly supported the remarks of the Special Rapporteur regarding the need for further information as to the procedures followed in international organizations.

64. State practice on the subject under discussion had developed at a time when problems had arisen concerning the interpretation or bilingual bilateral treaties, and to a great extent international jurisprudence was similarly restricted. In modern times such problems frequently arose in connexion with multilateral treaties drawn up in as many as five different languages, and he was not sure that the earlier restricted practice and jurisprudence fully covered the matter. The Secretariat

should be able to provide information regarding the different techniques used in the preparation of multi-lingual versions. It sometimes occurred that the drafting committee of an international conference submitted to the conference a report stating that the various language versions were concordant. Where no such report existed, the situation would, of course, be completely different. Those cases indicated the importance of the *travaux préparatoires* for that aspect of the law of treaties.

65. It would therefore be extremely useful for the Commission if the Secretariat were to submit at the next session a document giving all useful factual information on conference procedures in respect of the versions of a treaty in different languages.

66. Mr. TUNKIN said that he found himself in general agreement with the provisions of article 74, but understood the hesitation of the Special Rapporteur regarding paragraph 2 (b). The provisions of that paragraph might well conflict with the constitutions of certain international organizations and with the practices adopted by them. He therefore urged that those provisions should be worded more cautiously, along the lines already adopted by the Commission when it had referred to international organizations in certain other articles of the draft on the law of treaties.

67. Mr. BRIGGS favoured the inclusion of draft articles on the question of treaties drawn up in two or more languages or having two or more texts or versions. Draft articles on those points would represent a valuable contribution by the Commission to the codification and development of the law of treaties.

68. As far as he had been able to assess, the rules set forth in articles 74 and 75 appeared satisfactory.

69. He had been struck by the statement in the second sentence of paragraph (5) of the commentary: "But it needs to be stressed that in law there is only one treaty . . . even when the two authentic texts appear to diverge". It was correct to state that there was only one text of any treaty, although there might be versions in several languages. For those reasons, he believed that Article 111 of the Charter was not correct when it referred to the Chinese, French, Russian, English and Spanish "texts" rather than to versions of the text.

70. Accordingly, he was not altogether satisfied with the drafting of article 74, in so far as it suggested that a treaty could have two or more authentic texts. The provisions of the article should be reworded in such a manner as to refer to two or more language versions of the same treaty.

71. Mr. BARTOŠ said that he had no objection to article 74 but he would like to draw attention to a practice which had become common in the past ten years. For reasons of prestige some States required a treaty to be drawn up in their national language. There thus existed a version in the language of each of the parties, but, because the languages of the parties were not widely known and were not recognized as diplomatic languages, to facilitate understanding and interpretation a translation in a third language was annexed

which was authoritative, the other two versions being also regarded as authentic. That was an innovation not considered in the draft. He would ask the Special Rapporteur at least to refer to the practice in his commentary, if he could not do so in the articles.

72. Mr. TUNKIN said that he could add other examples of a similar kind. The practice of States showed a considerable variety of approach to the languages question. For example, the Treaty of Friendship of 1928 between the Soviet Union and Yemen had been drawn up in Arabic and Russian but the treaty itself stated that only the Arabic text was authentic.

73. In his view, the provisions of paragraph 1 of article 74 covered cases like those mentioned by Mr. Bartoš and himself.

74. The CHAIRMAN said that he also thought that paragraph 1 of article 74 covered those cases.

75. He suggested that articles 74 and 75 should be referred to the Drafting Committee, with the comments made during the discussion.

It was so agreed.

The meeting rose at 1 p.m.

768th MEETING

Friday, 17 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Representation of the Commission at the nineteenth session of the General Assembly

1. Mr. LIANG, Secretary to the Commission, suggested that, as in former years, the Commission should appoint its Chairman to represent it at the next session of the General Assembly. He drew attention, in that respect, to the relevant passage in the Commission's report on its fifteenth session.¹

2. Mr. BRIGGS, supported by Mr. TUNKIN and Mr. AMADO, proposed that the Chairman should be asked to represent the Commission at the nineteenth session of the General Assembly. No one was better qualified to present to the Assembly the views of the Commission and to represent its interests.

The proposal was adopted by acclamation.

¹ *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, para. 80.*