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Summary record of the 772nd meeting

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58. Mr. de LUNA agreed with Mr. Lachs that the last sentence should be deleted.

59. The CHAIRMAN, speaking as a member of the Commission, said that in his opinion the reference was not necessary.

60. Mr. ROSENNE said that the sentence might be redrafted to read "Neither of those reports had been examined at the time; at the present session they have been taken into account."

61. Mr. TUNKIN suggested that the sentence should read: "The Commission at this session has naturally taken these reports into consideration".

62. The CHAIRMAN suggested that the sentence be retained with the insertion of the words "at the time" after the word "examined" and the substitution of the words "at the present session the Commission has taken them into account" for the words "the Commission has naturally given them full consideration".

It was so agreed.

Paragraph 3 was adopted as amended.

Paragraph 4

63. Mr. TUNKIN proposed the deletion of the word "self-contained" in the second sentence, for the word was inaccurate.

It was so agreed.

Paragraph 4 was adopted as amended.

Paragraph 5

64. Mr. RUDA said that no mention should be made in the last sentence of paragraph 5 of the month in which the eighteenth session would commence in 1966.

It was so agreed.

Paragraph 5 was adopted as amended.

Paragraph 6

65. Mr. de LUNA said that he doubted whether the question of conflicts between treaties referred to in the second sentence really had anything to do with the rules concerning treaties and third parties; it was, however, closely linked with the rules concerning the modification and the interpretation of treaties.

66. The CHAIRMAN suggested the following wording: "... which it found to be closely connected especially with the rules concerning the interpretation and modification of treaties"

The Chairman's suggestion was adopted.

Paragraph 6 was adopted as so amended.

Paragraph 7

67. Mr. BRIGGS proposed the deletion of the word "all" in the fourth sentence, as the question of State responsibility was, in fact, referred to in one of the articles on the law of treaties.

It was so agreed.

68. Sir Humphrey WALDOCK, Special Rapporteur, said that the latter part of paragraph 7 might need adjustment in the light of the discussion earlier in the meeting about the topic of State succession.

69. Mr. TUNKIN said that the whole paragraph needed to be entirely recast or omitted altogether.

70. Sir Humphrey WALDOCK, Special Rapporteur, agreed that the paragraph might be too explicit but it would be difficult to omit it altogether as he had received express instructions from the Commission to mention in the introduction the question of the points at which the topics of State responsibility and State succession impinged upon the law of treaties.

71. The CHAIRMAN said that in the first sentence the expression "overlap to a certain extent" was not satisfactory.

72. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the words "have some connexion with" might be substituted for the expression in question.

73. The CHAIRMAN proposed that at the end of the paragraph the words "and will decide later ... law of treaties" should be omitted.

Paragraph 7 was adopted with the changes suggested by Mr. Briggs, the Special Rapporteur and the Chairman.

Paragraphs 8, 9, 10, 11, 12 and 13

Paragraphs 8, 9, 10, 11, 12 and 13 were adopted subject to drafting changes.

The meeting rose at 12.20 p.m.

772nd MEETING

Wednesday, 22 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Draft Report of the Commission on the Work of its Sixteenth Session (A/CN.4/L.106 and addenda)

(continued)

CHAPTER II: Law of treaties

1. The CHAIRMAN invited the Commission to continue its consideration of chapter II (Law of treaties) of its draft report.

Commentary on article 55 (Pacta sunt servanda)
(A/CN.4/L.106/Add.3).

Paragraph 1)

2. Mr. VERDROSS said that the Commission should explain that by "good faith" it meant that a treaty should be applied in accordance with its spirit rather than too strictly according to the letter: *Scire leges non hoc est verba earum tenere, sed vim ac potestatem.*

3. The CHAIRMAN, speaking as a member of the Commission, said that the first sentence might be taken to mean that the principle *pacta sunt servanda* dated only from the signing of the Charter.

4. Sir Humphrey WALDOCK, Special Rapporteur, said that in drafting the paragraph he had had in mind the kind of reader to whom it was addressed. It was stated that the obligation to perform in good faith was a fundamental principle of the law of treaties, but the concept of good faith, being difficult to express, had better be left undefined. The word "moreover" should be deleted from the second sentence.

5. Mr. BRIGGS said that the Chairman's point might be met by inserting a full stop after the word "treaties" in the first sentence and by amending what would then become the second sentence to read "Its importance is emphasized etc." He agreed with the Special Rapporteur that it would be undesirable to attempt a definition of good faith even for insertion in a commentary.

It was so agreed.

6. The CHAIRMAN, speaking as a member of the Commission, thought that the rulings of the International Court cited in paragraph 2 of the commentary should to some extent suffice to explain what was meant by "good faith".

Paragraph 1) was adopted as amended.

Paragraphs 2) and 3)

Paragraphs 2) and 3) were adopted.

Paragraph 4)

7. The CHAIRMAN suggested that, in the first sentence ("... advantage in also stating the negative aspect of the rule, namely, that a party ..."), the reference to the "negative aspect" should be omitted.

It was so agreed.

Paragraph 4) was adopted as amended.

Commentary on article 57 (Application of treaty provisions ratione temporis)

Paragraphs 1) and 2)

Paragraphs 1) and 2) were adopted without comment.

Paragraph 3)

8. Mr. ROSENNE said that as drafted paragraph 3) was not acceptable because the extract from the Permanent Court's judgment in the *Mavrommatis Palestine Concessions* case, in fact, substantiated the first proposition, whereas the jurisdictional clause itself, being attached to the substantive clauses of a treaty as a means of securing their application, came within the

scope of the second proposition. The paragraph in fact dealt with the definition of disputes and it should not touch upon the jurisdiction of courts *ratione temporis*. If the paragraph could not be omitted altogether only the first sentence should be retained with the text of the two sentences in footnote 1.

9. Sir Humphrey WALDOCK, Special Rapporteur, said that the paragraph dealt with a particularly difficult problem and might perhaps be shortened, but the extract from the *Mavrommatis Palestine Concessions* case certainly helped to elucidate the provisions of the article, which had been drafted with considerable care.

10. Mr. BRIGGS agreed that the paragraph would lose in clarity if the quotation were removed.

11. Mr. PAL said that there was no disagreement on the question of the principle of non-retroactivity and thought that the quotation should be retained.

12. Mr. ROSENNE suggested the deletion of the full stop at the end of the first sentence and of the words "When the treaty is purely and simply a treaty of arbitration or judicial settlement, the jurisdictional clause will normally". The word "providing" should then be substituted for the word "provide".

13. The sentence opening with the words "The reason is that the 'disputes' with which the clause is concerned" should also be eliminated, as there could be other reasons.

Those changes were accepted.

It was also agreed to delete the words "Thus, being called upon to determine the effect of Article 26 of the Palestine Mandate", the words "On the other hand" and the words "found not in a treaty of arbitration or judicial settlement but".

Paragraph 3) was adopted as amended.

Paragraph 4)

14. Mr. ROSENNE proposed the deletion of the last sentence as the Commission had not considered the problem of extradition in any great detail.

15. Sir Humphrey WALDOCK, Special Rapporteur, said that he would be glad to delete the sentence particularly as he had some misgivings about the substance.

16. Mr. BRIGGS said that, as the member responsible for having brought up the question of extradition in the discussion, he would have no objection to the deletion of that sentence.

Paragraph 4) was adopted subject to the omission of the sentence in question.

Paragraph 5)

17. The CHAIRMAN said that there was some ambiguity in the reference to "facts or acts which are completed" and to "situations which have ceased when the treaty comes into force". He therefore suggested the following wording: "In other words, the treaty will not apply either to facts or acts which have been completed before the treaty comes into force or to situations which have ceased (and do not recur) when the treaty comes into force".

It was so agreed.

Paragraph 5) was adopted as amended.

Paragraphs 6) and 7)

Paragraphs 6) and 7) were adopted without comment.

Commentary on article 65 A (The effect of breach of diplomatic relations on the application of treaties)

Paragraph 1)

18. Mr. VERDROSS asked for the deletion of the sentence reading: "Similarly, the problems arising in the sphere of treaties from the absence or withdrawal of recognition do not appear to be such as should be covered in a statement of the general law of treaties". He could not see how it was possible to refuse to recognize a State which actually existed and, in any case, he did not think one could speak of the withdrawal of recognition. The only possible case was that of the severance of diplomatic relations. The Commission should not give the impression that it accepted such a paradoxical situation.

19. Sir Humphrey WALDOCK, Special Rapporteur, said that in referring to recognition, he had had in mind the recognition of Governments, not that of States. He suggested that the sentence in question should be redrafted in a more non-committal way e.g. "Similarly, any problems that may arise, etc."

20. Mr. TUNKIN proposed the deletion of the words "or withdrawal" and the insertion of the words "of a Government" after the word "recognition" in the third sentence.

The changes suggested by the Special Rapporteur and Mr. Tunkin were accepted.

Paragraph 1) was adopted as amended.

Paragraph 2)

21. Mr. ROSENNE proposed as a matter of drafting the substitution of the word "severance" for the word "breach" in the second sentence.

It was so agreed.

Paragraph 2) was adopted as amended.

Paragraph 3)

Paragraph 3) was adopted without comment.

Paragraph 4)

22. Mr. YASSEEN thought that it was going too far to talk of a "decisive criterion" said to be inherent in the nature of the treaty. The machinery of the treaty itself might lead to suspension; for the application of the treaty might necessitate action by the diplomatic mission of the State.

23. The CHAIRMAN, agreeing with Mr. Yasseen, suggested that the word "decisive" be deleted.

It was so agreed.

Paragraph 4), as amended, was adopted.

Paragraph 5)

Paragraph 5) was adopted without comment.

Commentary on article 58 (The territorial scope of a treaty) (A/CN.4/L.106/Add.5)

Paragraph 1)

24. Mr. TUNKIN said that there seemed to be no logical connexion between the third and fourth sentences.

25. He proposed in addition that the seventh sentence should be omitted.

26. Sir Humphrey WALDOCK, Special Rapporteur, said that in the third sentence he had sought to provide examples of the territorial scope of a treaty. In the light of Mr. Tunkin's remark, he suggested that the seventh sentence should be dropped as should the phrase in the fourth sentence reading "or the circumstances of its conclusion" and the word "thus" at the beginning of the fifth sentence.

It was so agreed.

27. The CHAIRMAN suggested that the reference to the boundary treaty between Italy and Yugoslavia might be dropped, so that the examples cited would be of a general nature.

It was so agreed.

Paragraph 1) was adopted as amended.

Paragraph 2)

Paragraph 2) was adopted without comment.

Paragraph 3)

At Mr. Tunkin's suggestion, the last sentence was deleted.

Paragraph 3) was adopted as amended.

Paragraph 4)

28. Mr. ROSENNE proposed the deletion of the last part of the paragraph from the words "until it was in possession".

29. Sir Humphrey WALDOCK proposed that the last part of the paragraph from the word "aside" be replaced by the words "to be examined in connexion with its study on the topic of succession of States and Governments".

It was so agreed.

Commentary on article 61 (General rule limiting the effects of treaties to the parties)

Paragraphs 1) and 2)

Paragraphs 1) and 2) were adopted without comment.

Paragraph 3)

30. Mr. VERDROSS said that the *German Interests in Polish Upper Silesia* case did not substantiate the provision in the article itself, according to which a treaty could not create rights in favour of third States. Nor did the other two cases mentioned in paragraph 3) offer convincing support of that provision, for they had only yielded the finding that normally rights could not be created in favour of third States, and in neither had it been laid down that such rights could never be created.

31. Sir Humphrey WALDOCK, Special Rapporteur, said that the cases mentioned were relevant to situations where there was a doubt as to whether rights had been created and had arisen out of claims by non-party States to rights under treaties in which the parties had not included provisions conferring rights on others.

32. Mr. ROSENNE proposed that the first part of the quotation from the Permanent Court's finding, reading "A treaty only creates law as between the States which are parties to it" be transferred to paragraph 1) of the commentary on article 61. The second part of the quotation should be dropped.

It was so agreed.

Paragraph 3) was adopted as amended.

Paragraph 4)

Paragraph 4) was adopted without comment.

Commentary on article 62 (Treaties providing for obligations for States not parties)

Paragraph 1)

It was agreed that in the English text of the commentary and titles of the articles concerned (though not in the articles themselves) the expression "third State" should be used instead of "non-party".

Paragraph 2)

Paragraph 2) was adopted without comment.

Paragraph 3)

33. Mr. BRIGGS said that paragraph 3) could be omitted as the discussion on the subject could be found in the summary records.

34. Mr. TUNKIN believed that that course would be contrary to the Commission's decision to mention in the commentary an important issue and one that was acquiring growing significance in the modern world.

35. The CHAIRMAN suggested that the second and third sentence should be redrafted to read "The Commission recognized that they would fall outside the principle laid down in the present article and would concern the question of the sanctions for violations of international law."

It was so agreed.

36. Mr. ROSENNE said that the Commission had consistently refrained from interpreting the Charter of the United Nations and accordingly the words "constitute a violation of the principles of the Charter and would not therefore" should be deleted in the last sentence.

It was so agreed.

Paragraph 3) was adopted as amended.

Commentary on article 62 A (Treaties providing for rights for States not parties)

The commentary was adopted.

CHAPTER III : Special missions

37. The CHAIRMAN invited the Commission to consider chapter III of its draft report, relating to the topic of special missions.

INTRODUCTION (A/CN.4/L.106/Add.6)

Paragraph 1)

38. Mr. BARTOS, Special Rapporteur, said that footnote 1 should be omitted.

39. The CHAIRMAN suggested that, to avoid the use of the word "mission" in the sense of "task" the phrase "questions relating to special missions entrusted with tasks for specific purposes" should be substituted for the phrase "questions relating to special missions, that is to say, to temporary envoys entrusted with special missions for specific purposes".

It was so agreed.

Paragraph 1), as amended, was adopted.

Paragraph 2)

40. The CHAIRMAN asked that the expression "it was based on the idea that... should be applied" should be substituted for "it took the view that... should be applied".

41. To avoid repetition, the words in the fourth sentence, "based on the idea of applying the general rules by analogy" should be deleted and the sentence might read simply: "The Commission expressed the opinion that this brief draft should be transmitted...".

Paragraph 2), as amended, was adopted.

Paragraphs 3) to 10)

Paragraphs 3) to 10) were adopted subject to drafting changes.

Paragraph 11)

42. The CHAIRMAN suggested that the word "provisionally" should be added before the word "adopted" in the third sentence.

It was so agreed.

43. Mr. ROSENNE suggested the addition of a passage stating that the articles on special missions provisionally adopted at the current session were included in the report for information only. A passage of that type had been included in the report on similar occasions in the past, to show that the draft articles in question were not submitted for Government comments and that no action on them was called for.

44. Mr. BARTOS, Special Rapporteur, suggested that the sentence: "They are reproduced in the draft below for the information of the General Assembly" should be added.

It was so agreed.

Paragraph 11), as amended, was adopted.

Commentary on article 1 (The sending of special missions)

Paragraph 1)

Paragraph 1) was adopted without comment.

Paragraph 2) (a)

45. Mr. TUNKIN said that it was unnecessary to say that a State was a subject of international law.

46. The CHAIRMAN suggested that the first sentence should read: "it must be sent by a State to another State".

47. At the end of the next sentence the word "such" should be inserted before "a movement".

48. He asked the Special Rapporteur what precise meaning and weight he attached to the use of the word "provisional" in connexion with the recognition of political movements as subjects of international law.

49. Mr. BARTOŠ, Special Rapporteur, replied that such recognition was very often provisional or subject to conditions. He had no objection, however, to the deletion of the word "provisionally".

Paragraph 2)(a), as amended, was adopted.

Paragraph 2)(b)

50. The CHAIRMAN said that the word "precisely" was unnecessary at the end of the first sentence. In the second sentence the word "examination" might be substituted for "review".

51. Mr. TSURUOKA said that it would be preferable to use the adverb "narrowly" rather than "severely" in the second sentence.

52. Mr. ROSENNE suggested that the last two sentences of paragraph 2)(b) should be merged.

53. The CHAIRMAN suggested that the two sentences might be simplified to read: "In the Commission's view, the specified task of a special mission should be to represent the sending State in political matters and also in technical matters".

Paragraph 2)(b) was adopted as amended and subject to drafting changes.

Paragraph 2)(c)

54. The CHAIRMAN said that the text might be simplified to read: "... but the Commission points out that the way in which consent is expressed to the sending of a permanent diplomatic mission differs from that used in connexion with the sending of a special mission".

55. In reply to a remark by Mr. Rosenne he suggested that the last sentence might be amended to read: "In practice recourse is generally had to an informal agreement and, less frequently, to a formal treaty providing that a specific problem will be entrusted to a special mission ...".

Paragraph 2)(c), as so amended, was adopted.

Paragraph 2)(d)

56. The CHAIRMAN said that the phrase "the term fixed for the duration of the mission" was inappropriate. He also thought that the words "its being given a specific assignment" should be dropped. He therefore suggested that the second sentence should read: "Its temporary nature may be established either by the

term fixed for the mission or by its being entrusted with a specific task and it is usually terminated either on the expiry of its term ...".

Paragraph 2)(d), as amended, was adopted.

Paragraph 3)

57. Mr. ROSENNE suggested that in the fourth sentence the concluding passage, stating that certain writers had alleged that special missions could be exchanged only by States that maintained diplomatic or consular relations with each other, should be omitted. Preferably the Commission should not engage in polemics with individual authors.

58. In addition he suggested that the last sentence of paragraph 3) should be reworded, since its meaning was not clear.

It was so agreed.

Paragraph 3) was adopted as amended and subject to drafting changes.

Paragraph 4)

59. Mr. PESSOU considered the expression "there are a number of ways of achieving this end" inappropriate.

60. Mr. TSURUOKA suggested that the words "with specific assignments" in sub-paragraph (a) should be omitted; it would be sufficient to refer to a special mission, without mentioning its assignment.

61. Mr. BARTOŠ, Special Rapporteur, accepted Mr. Tsuruoka's suggestion; the necessary explanations regarding the characteristics of special missions were given in earlier passages.

62. Mr. ROSENNE thought that, in sub-paragraph (b), it would be preferable to refer to "questions ... settled by a special mission" rather than to "questions ... settled through the sending of a special mission".

63. Mr. BARTOŠ, Special Rapporteur, said that he preferred the expression "by means of a special mission", for, in that context, it was necessary to convey a very precise shade of meaning. It was not the special mission which would settle the questions; rather the procedure of sending a special mission was used to settle them.

Paragraph 4) was adopted as amended and subject to drafting changes.

Paragraph 5)

64. The CHAIRMAN suggested that the opening passage should be amended to read "Where regular diplomatic relations have been broken off or armed hostilities are in progress between the States".

65. He asked the Special Rapporteur whether it would not be possible to omit the words "or for the settlement of preliminary questions on which the establishment of such relations depends" at the end of the paragraph. To some extent those words seemed to be repetitive.

66. Mr. BARTOS, Special Rapporteur, said that he had wished to emphasize that two different stages were involved. In the first, the special mission was used as a kind of mission of enquiry, whereas in the second it was used for the immediate object of establishing diplomatic relations. In any case the object was always the establishment of diplomatic relations. Accordingly, he had no objection to the amendment suggested by the Chairman.

Paragraph 5) was adopted as amended.

Paragraph 6)

67. Mr. de LUNA said that the text of paragraph 6) was somewhat cumbersome. In practice, negotiations with a special mission sent by one State to another could be conducted either by a delegation expressly appointed for that purpose by the receiving State or directly with the Ministry of Foreign Affairs or some other appropriate authority. There was therefore no need to speak of "appointing a particular delegation as a special mission".

68. Mr. ROSENNE said that he had no quarrel with the contents of paragraph 6) as such, but considered that it belonged more properly to the general introduction than to the commentary on article 1. The contents of paragraph 6) of the commentary did not relate to any of the provisions in article 1.

69. Mr. BARTOŠ, Special Rapporteur, said that the article was of an introductory nature. In practice, certain Ministries of Foreign Affairs considered it indispensable to appoint special delegations when a special mission was sent by another State. It would therefore be desirable to indicate in the text that that practice did not necessarily have to be followed. There was no need for the two negotiating bodies to have the same status.

70. The CHAIRMAN thought that Mr. Rosenne's comment might well apply to paragraph 7) also.

It was agreed that paragraph 6) would be amended in the light of the foregoing remarks.

Paragraph 7)

Paragraph 7) was adopted without comment.

Commentary on article 2 (The task of a special mission)

Paragraph 1)

Paragraph 1) was adopted.

Paragraph 2)

71. Mr. YASSEEN suggested that the "consent" should be qualified by the word "mutual". In the third sentence the words "the instrument by which the sending and reception of special missions is agreed on" should read "the instrument relating to the sending and reception".

It was so agreed.

Paragraph 2) was adopted as amended and subject to drafting changes.

Paragraph 3)

72. Mr. de LUNA suggested that the word "some"

should be inserted before the word "importance" in the last sentence.

It was so agreed.

73. The CHAIRMAN suggested that, in the third sentence, the words "propitious atmosphere" should be replaced by the words "propitious circumstances" and that the word "beneficial" in the phrase "certain beneficial treaties" should be dropped.

It was so agreed.

74. Mr. ROSENNE pointed out that, in cases like these mentioned in the second sentence special missions had been known not only to enter into treaties but to perform other acts such as making binding statements.

75. Mr. BARTOŠ, Special Rapporteur, said that Satow in his "Guide to Diplomatic Practice" mentioned that treaties had been concluded by delegations which had come to convey their condolences on the occasion of the death of the King of England.

76. The CHAIRMAN suggested that the passage in question should read: "... propitious circumstances to conduct negotiations on other subjects". The next sentence would be omitted.

It was so agreed.

Paragraph 3) was adopted as amended and subject to drafting changes.

Paragraph 4)

77. Mr. YASSEEN suggested that the words "prior treaties" in the first sentence should be replaced by the words "a prior treaty".

78. Mr. BARTOŠ, Special Rapporteur, suggested that, in the same sentence, the words "or by the agreement concerning the sending and acceptance of the special mission" might be deleted. In the third sentence the word "permanent" should be deleted.

It was so agreed.

Paragraph 4) was adopted as amended and subject to drafting changes.

Paragraph 5)

79. Mr. de LUNA said that the text of paragraph 5) should be toned down. There was no need to dwell so much on possible disputes between special missions and permanent diplomatic missions. He had in mind more especially the second and third sentences, where there was a reference to the intervention by permanent missions in the negotiations and to the fact that they considered themselves entitled to override the special mission.

80. Mr. TUNKIN suggested that the opening words of the paragraph should be amended to read "A question which also arises ...".

It was so agreed.

81. The CHAIRMAN suggested that in the light of Mr. de Luna's criticism the two sentences relating to intervention by regular diplomatic mission in the work of the special mission should be omitted.

It was so agreed.

82. Mr. TSURUOKA thought that in the penultimate sentence, the words "In practice the guiding principle has been" should be amended to read "Certain members of the Commission held that".

It was so agreed.

83. Mr. TUNKIN said that it seemed to him to be an exaggeration to refer in the last sentence to the importance of the point for the safeguarding of juridical relations between States. It would be better to say simply "The Commission decided to draw the attention of Governments to this point and to ask them...".

84. Mr. BARTOS, Special Rapporteur, said that, although he accepted Mr. Tunkin's suggestion, he did so with reluctance, for in practice the question was one of the greatest importance.

Paragraph 5) was adopted as amended and subject to drafting changes.

Paragraph 6)

Paragraph 6) was adopted subject to drafting changes.

85. Mr. TUNKIN said that he would have preferred the paragraph to be omitted altogether, in order to avoid placing too much emphasis on the disputes that might arise between the two missions.

Communication from the International Law Association

86. The CHAIRMAN read to the Commission a letter he had just received from the President of the International Law Association inviting the Commission to send a representative to its session to be held at Tokyo in August.

87. The letter raised a question of principle: should the Commission send an official representative to meetings of bodies such as the International Law Association? The Commission had never done so in the past.

88. In any event, for various reasons, and in particular for financial reasons, it did not seem possible to send a representative.

89. Mr. BARTOS said that Mr. Liang had attended the Brussels meeting of the International Law Association, not as a representative of the Commission but as a member of the Secretariat. It would be advisable to keep in contact with such bodies, but it would probably be enough to send a message.

90. The CHAIRMAN suggested that Mr. Bartos should be asked to convey orally the Commission's best wishes for the success of the meeting of the International Law Association.

It was so agreed.

The meeting rose at 1.10 p.m.

773rd MEETING

Thursday, 23 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Draft Report of the Commission on the Work of its Sixteenth Session

(A/CN.4/L.106 and addenda)

(continued)

CHAPTER II: Law of Treaties (A/CN.4/L.106/Add. 7 and 10)

1. The CHAIRMAN invited the Commission to continue consideration of chapter II of the draft of its report. He suggested that the Commission should concentrate on substance and should empower the Secretariat to make any necessary drafting and linguistic corrections, in particular in the chapter concerning special missions.

It was so agreed.

Commentary to article 62 B (Revocation or amendment of provisions regarding obligations or rights of States not parties)

The commentary to article 62 B was approved without comment

Title of article 64 (Rules in a treaty becoming binding through international custom)

2. The CHAIRMAN proposed that the title of article 64 should be amended so as to make it clear that it referred to the rules in a treaty that became binding for third States in consequence of the formation of international custom; the omission of all reference to third States from the title would make it difficult to understand the meaning.

3. Mr. ROSENNE said that it would not be appropriate to introduce the words "for third States" after "binding". Article 64 dealt with the case where a treaty created or reflected international custom binding for all States and not just for third States.

4. Mr. de LUNA pointed out that the matter was explained in paragraph 2) of the commentary.

5. Mr. BRIGGS proposed that the question should be dealt with by introducing the word "generally" before "binding".

The title of article 64 was adopted with that amendment.

Commentary to article 64

Paragraph 1)

6. Mr. ROSENNE said that the language of the second sentence of paragraph 1) would have to be adjusted: it was not correct to say that a treaty could "for-