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A/CONF.39/L.28 and A/CONF.39/L.40

Communications from the Expert Consultant

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions (Documents of the Conference)*

F.—COMMUNICATIONS FROM THE EXPERT CONSULTANT

DOCUMENT A/CONF.39/L.28

**Letter dated 5 May 1969 from the Expert Consultant
addressed to the Chairman of the Drafting Committee**

[Original: English]
[7 May 1969]

The Drafting Committee, I understand, asks why there is no mention of a ground for “denouncing” a treaty in article 41, paragraph 2, and in article 42. The answer is that we only use the term “denounce” in article 53 where the right to denounce arises not from a “ground” but from the express or implied *agreement* of the parties. We did not think that article 42 could have any application in cases where the matter was governed by the agreement of the parties.

As to article 41, paragraph 1 of the article deals expressly with cases provided for in the treaty itself and therefore mentions denunciation. Paragraph 2, on the other hand, deals with *grounds* of invalidity and termination and does not therefore mention “denunciation”; for we do not use this word in either of these connexions. We did not do so because it is a word of general meaning which may refer either to invalidity or a ground of termination or termination by agreement.

If you will look at article 53, you will easily see that it was purely for drafting reasons that we there used the word “denunciation” in cases of “*termination*” by *agreement*. In that article we had to use the word “*termination*” in the sense of “*expire*” and then used “denunciation”

in order to denote the process of termination in the other sense of “putting an end” to the treaty.

For me, the real question would rather be whether “denunciation” should be mentioned in article 62, because it is possible to conceive of disputes in connexion with a claim to an express or implied *right* to terminate a treaty arising under its own provisions. I did mention this possibility to the Drafting Committee; but they did not think it necessary to mention “denunciation” in article 62.

DOCUMENT A/CONF.39/L.40

**Communication dated 13 May 1969 received from the
Expert Consultant in reply to a question put by the
representative of Afghanistan at the 22nd plenary
meeting* of the Conference**

[Original: English]
[14 May 1969]

Commission considered self-determination a principle operating wholly independently of article 59, paragraph 2(a), (see para. 11 of commentary).¹ My understanding Commission also considered article 40 and articles 45 to 50 as containing autonomous principles of general application.

* See A/CONF.39/11/Add.1, 22nd plenary meeting, para. 21.

¹ See sect. B above.