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# Summary record of the 678th meeting

Topic:
**Law of Treaties**

Extract from the Yearbook of the International Law Commission:-
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Agent in the Persian Gulf and a Persian Minister, which the British Government afterwards said had been concluded without any authority whatsoever.[6]

67. There was now, however, rather more possibility of the provisions of paragraph 1 being useful, since the adoption of article 4, paragraph 4 (*b*), of Part I, which stated that " in the case of treaties in simplified form, it shall not be necessary for a representative to produce an instrument of full-powers, unless called for by the other negotiating State." It was now not at all uncommon for a Minister for Economic Affairs, a Minister of Health or a Minister of Civil Aviation to negotiate and sign treaties; only fifty years ago such a situation would have been impossible. In view, therefore, of the large number of authorities which now concluded treaties, it was not at all unlikely that a case might occur of a treaty being signed without any authority at all.

68. With regard to paragraph 2, he agreed with the explanations given by Mr. Tunkin and Mr. Yasseen. The reference was not to secret instructions regarding the substance of the negatiations, but to limitations upon the authority to conclude a treaty. What he had had in mind was the possible omission by a representative to enter a reservation which he had been instructed to make at the time of signing a treaty. It was a feature of contemporary international practice that agreements were entered into quickly and that instructions were given, cancelled and altered by cable or airmail, with the consequent possibility of misunderstanding. It was therefore desirable to cover the situation which could arise as a result of such misunderstandings.

69. In conclusion, he concurred with the suggestion that the Drafting Committee should be invited to produce a new draft of article 6, together with a new draft of article 5, and to make the provisions of both articles consistent with article 4 of Part I.

70. The CHAIRMAN suggested that article 6 should be referred to the Drafting Committee for study, in the light of the comments of members, in connexion with other articles of the draft and of the articles of Part I.

*It was so agreed.*

The meeting rose at 12.40 p.m.

[6] Adamyiat, F., *Bahrein Islands*, New York, 1955, F. A. Praeger, pp. 106 ff.

## 678th MEETING

*Monday, 13 May 1963, at 3 p.m.*

*Chairman:* Mr. Eduardo JIMÉNEZ de ARÉCHAGA

### Law of Treaties (A/CN.4/156 and Addenda)

[Item 1 of the agenda] (*continued*)

1. The CHAIRMAN invited the Special Rapporteur to introduce article 7 in section II of his second report (A/CN.4/156).

ARTICLE 7 (FRAUD INDUCING CONSENT TO A TREATY)

2. Sir Humphrey WALDOCK, Special Rapporteur, introducing article 7, said that his hesitation in proposing an article on the question of fraud inducing consent to a treaty had really been far greater than appeared from the commentary. He now felt that he had attributed too much importance to the fact that an article on the subject had been included both in the Harvard draft and in the drafts prepared by his two predecessors, Sir H. Lauterpacht and Sir G. Fitzmaurice.

3. The possibility of fraud in connexion with treaties did exist, but there had been no case precisely on the question of fraud inducing consent to a treaty.

4. If the Commission felt disinclined to put an article on fraud before governments at all, the matter could be covered by the provisions on the subject of error, since the error of one of the parties could be induced by fraud on the part of the other. The argument in favour of a separate provision on fraud was, of course, that when fraud occurred it struck at the root of a treaty in a way somewhat different from error; it destroyed the whole basis of confidence between the parties.

5. The first question to be decided by the Commission, therefore, was whether it desired to have a separate article on fraud or not.

6. Mr. TSURUOKA said that, though usually in favour of simplicity, he was in favour of including a provision, if not an article, dealing with fraud, for modern international law attached great importance to the notion of good faith.

7. With regard to the formulation of an appropriate clause, previous special rapporteurs had drafted provisions leaving it to the courts to determine whether the instrument allegedly vitiated by fraud was void. That was as it should be, but in the present stage of development of international law it might not be a practical solution, for in most cases a dispute could not be brought before an international tribunal without a *compromis*; in view of that consideration it was provided in article 7 that a State could plead fraud in negotiations with the fraudulent party. Two conflicting interests were involved, however: the need to ensure the protection of the aggrieved State and the obligation to maintain the stability of the system of law, which required no less protection. If the draft was to leave invoking of the ground of fraud *prima facie* to the aggrieved party, then clearly the concept of fraud would have to be defined in a precise and restrictive manner, so as to prevent any abuse.

8. The Commission should also decide what effects were produced by an instrument vitiated by fraud — in other words, whether such an instrument was void *in toto* or only in part. The simpler solution was probably to allow the ground of fraud to have effect only if fraud vitiated such instruments *in toto*; for, especially in the case of multilateral treaties, the other solution might produce an effect not unlike that of a reservation to a multilateral treaty — a thorny and controversial matter. In such cases it would be preferable for the instrument to be regarded as wholly void.

9. It was not easy to see the grounds for the distinction drawn in article 7, paragraph 1, between the cases covered by sub-paragraph (*a*) and those covered by sub-paragraph (*b*); loss or damage might equally well ensue in the cases covered by sub-paragraph (*a*). It should be observed that in paragraph 2 (*a*) the notion expressed in the words " or without regard to whether they are true or false " might be relevant if the existence of fraud was to be decided by a court; but if the aggrieved State was allowed to decide that fraud had occurred, the provision would be open to abuse because the notion of fraud was a subjective one. He had similar doubts about paragraph 2 (*b*); the limitation implicit in the words " material facts " might be inadequate.

10. Mr. YASSEEN said that the need to base the draft on practice did not mean that the problem of fraud should be ignored. States were not all equally experienced in diplomacy and the art of negotiation, nor were they all equally able to call on advisers. It should therefore be expressly laid down that any error due to fraud vitiated consent; the absence of a provision of that kind might possibly encourage fraud or increase distrust in international relations.

11. Article 7 gave a precise definition of fraud and also solved the controversial problem of non-disclosure. Fraud by non-disclosure, though rare, was not impossible. The treaty negotiated might relate to a part of the territory of a State. The other State might know something about that part of the territory which was not known to its partner; for instance, the existence of certain resources there. That situation was not impossible in theory, or even in practice, if the State having such knowledge was a former colonial Power, protector or mandate-holder, which might have its own sources of information about the part of the territory in question. If that State did not disclose its knowledge, its conduct would certainly be blameworthy. Paragraph 2 (*b*) was well drafted and — despite Mr. Tsuruoka's fears — was not open to abuse, for the provision was qualified: not all forms of non-disclosure were regarded as fraud, only non-disclosure where there was a moral duty not to remain silent. On the whole, therefore, article 7 was satisfactory.

12. Mr. TABIBI said he favoured the inclusion of an article on the subject of fraud. Where fraud induced consent to a treaty, it undermined the reality of the treaty; it rendered the treaty voidable, as in the case of any contractual relationship. The inclusion of provisions on the subject would stress the need for moral rules to govern the conduct of States in the same way as that of individuals.

13. He had noted the statement in the commentary that the only instance mentioned in the books as one where the matter of fraud had been discussed at all was the 1842 treaty which had fixed the boundary between the north-eastern United States and Canada. While it might be true that not many cases were actually on record, the fact remained that cases of fraud did occur, though they might not be recorded. Generally, the fraud was committed by a country with more experience of treaty-making, at the expense of a country with less experience. With the increasing maturity of States, cases of that type were more likely to occur in the future and it was necessary to make provision for them. That it would be wise to do so was shown by the inclusion on the agenda for the seventeenth session of the General Assembly of the " Question of boundaries between Venezuela and the territory of British Guiana ". One of the parties had contended that the arbitral tribunal which had settled that dispute some sixty years ago had been misled with regard to material facts.

14. He therefore believed that, for the protection of small countries and of the new countries of such regions as Latin America, Africa and Asia, an article such as article 7 was necessary. It would be better to include the article and find that there were few if any cases to which it applied, than to omit the article and fail to give the protection that might be needed.

15. With regard to the drafting, while he supported the general tenor of article 7, he thought that the definition of fraud contained in paragraph 2 should be placed at the beginning of the article; it would be better to begin by defining the concept and then to enunciate its effects.

16. He considered paragraph 1 (*c*) and paragraph 3 unnecessary. The danger of the appearance of some new element of fraud not covered by the definition was a point that must not be overlooked.

17. Mr. GROS said he was convinced that article 7 was unnecessary. Since it was not possible to cite a real case of fraud in international law, the discussion on the point was purely theoretical, and he was not prepared to affirm that a rule on fraud existed in positive law.

18. There seemed to be no justification for transferring to international law a case of defect in consent in private law. The Special Rapporteur himself, who in his great impartiality had proposed the article in question, had made it clear that he did not favour it. It would indeed be hazardous to take rules applicable to contracts between private persons and apply them to treaties between States which, as the Commission's discussions in 1962 had shown, were not the same as ordinary contracts. That would be taking a first step towards an international law theory of " vitiated consent " in the conclusion of treaties — a theory which was not necessary.

19. Fraud within the meaning of article 7 would enable the injured State to declare a treaty void *ab initio* by a unilateral decision. Such a declaration was possible in the case of civil and commercial obligations, but with how many safeguards, including the decision of the court, and how many conditions to be satisfied in the definition of cases of fraud ! Few cases of the kind were to be found in any country's case-law, for fraud was very difficult to prove in connexion with an obligation in private law; that applied *a fortiori* in the case of a treaty.

20. Even in the hypothetical case suggested by the Special Rapporteur — that of an underground stream

whose existence had not been disclosed to one of two States negotiating an agreement for the mutual exploitation and use of water resources — what was involved was not so much fraud as the incompetence and negligence of one of the parties, which had not acted with prudence which the Special Rapporteur regarded as the first requirement in any negotiations. It was open to any State to hold the necessary consultations and to find out what the other party was trying to conceal. In reality, the cases of fraud which could be imagined remained academic instances, whereas article 7 might impugn the negotiator's good faith. The International Court had said that error could not be pleaded if it could have been avoided (Commentary, p. 39), and that could also apply to fraud.

21. If the question of fraud was to be dealt with, it could be considered during the discussion on articles 8 and 9, for some errors might be in the nature of fraud, and certain systems of private law spoke of " fraudulent mistake ", which meant mistake induced by fraud. Moreover, the Special Rapporteur referred to such fraud in his article, so that it would be possible to deal with the subject without giving it unnecessary emphasis.

22. In matters of detail, it was easy to show the insuperable difficulties involved in any attempt to draft precise provisions on fraud. In paragraph 2 (*a*), for example, the phrase " in the knowledge that they are false " involved an inquiry into the intention. Was it the intention of the State or of its representative that must be established? Could the " knowledge " be subjective or must it be determined whether it was objectively established? As to the idea expressed by the words " without regard ", it was difficult to prove a negative state of mind. Similarly, the expression " material fact " in paragraph 2 (*b*) raised the difficulty of deciding what was and what was not material. Finally, the fraud must have been " determining " — i.e., it must have caused the treaty to be concluded.

23. He therefore reserved his general position on the value of a theory of defects in consent in international law. He considered that both the difficulties involved in defining the object of article 7, and international practice, showed that it was unnecessary to set out, in a convention on treaties, a rule on fraud that would be purely theorical. Where there was so-called " vitiation of consent ", in reality a rule of international law had been broken, as would be shown by the problems of errors and duress, and that rule was not based on the idea of vitiation of consent.

24. Mr. ELIAS said he shared the Special Rapporteur's hesitation over the inclusion of article 7.

25. After examining the explanations contained in the commentaries on articles 8 and 9, he had reached the conclusion that, because of the special nature of the problem of fraud, it could best be dealt with in article 8 or article 9, rather than in a separate article.

26. He had been much impressed, both by the fact that there had not been a single arbitral or judicial decision in which the issue of fraud as such had been judged, and by the statement in the commentary on article 7: " Clearly, cases in which governments resort to deliberate fraud in order to obtain the conclusion of a treaty are not likely to occur, while cases of fraudulent misrepresentation of material facts would in any event be largely covered by the provisions of the next article concerning the effects of error." That articles 8 and 9 could cover the point was also indicated by the statement in paragraph 10 of the commentary on article 9, that " The position of a party which has been led into error by the fault of the other party would seem to be similar to that of a party induced to enter into a treaty by fraud." He therefore considered that, while there might be some need to cover the question of fraudulent misrepresentation, it was not appropriate to devote a whole article to that question.

27. The remarks made by Mr. Gros about the case of two States negotiating a treaty for the mutual exploitation of water resources had reminded him of some recent negotiations concerning the river Niger, in which he had participated. A hydrological survey had been made by experts supplied by the United Nations, and he thought that in cases of that kind it was unlikely that the existence of an underground stream would remain unknown to one of the parties until the treaty had been concluded. In fact, it was difficult to find any specific instance in which a treaty had had to be abrogated because of the non-disclosure of material facts or because of fraudulent misrepresentation vitiating consent.

28. It was stated in the second paragraph of the commentary on article 7 that " Fraud, when it does occur, strikes at the root of a treaty, as of a contract, in a rather different way from innocent misrepresentation and error; it destroys the basis of mutual confidence between the parties as well as nullifying the consent of the defrauded party." In fact, a very similar statement could be made with regard to error in substance, and decisions by national courts could be cited in support of the statement that the legal effects of error and of fraud were the same.

29. Apart from those arguments of substance, there were also arguments of form for not including a separate article on fraud. The provisions of article 7, paragraph 1, were very similar to those of article 8, paragraph 2, and of article 9, paragraph 2. From the point of view of drafting, it would be appropriate to combine the contents of articles 7, 8 and 9 in a single provision condensing all the ideas contained in those articles. When the Commission came to consider articles 7, 8 and 9 in detail he would put forward more specific suggestions for combining those articles and retaining a reference to the question of fraud vitiating consent.

30. Mr. BARTOŠ paid a tribute to the Special Rapporteur's objective approach and complimented him on his clear statement.

31. With regard to the principle of article 7, he thought that the general rule of law *fraus omnia corrumpit*, from which the idea that fraud vitiated consent was derived, could also apply in international law. He did not accept Mr. Gros's proposition that the only issue was the greater or lesser skill of diplomats. When he

had studied the question in its theoretical aspects for the purposes of the third volume of his treaties on international law, he had found many applications of the *fraus omnia corrumpit* rule in what were called *ex aequo et bono* decisions delivered by international arbitral tribunals. In modern theory, the typical case of fraud was that in which one party was under a misapprehension and the other party was aware of the misapprehension but did nothing to remove it. There was thus no difference between active fraud and passive fraud. The concept of fair dealing should be introduced into international relations, and it was natural and reasonable to transfer the notion of good faith from internal law to international law.

32. Still, while he approved the principle, he had some reservations with regard to the approach. In the first place, it was true that the concept of fraud was not sufficiently well defined in the present draft of article 7, but it was equally true that fraud was difficult not only to define but also to establish in any particular case in public relations. To begin with, the answer to the question " What is fraud ? " differed according to the nature of the clause in respect of which fraud was alleged — according to whether the clause related to substance or to a subsidiary point. It had been asked whether a treaty vitiated by fraud should be voided *ab initio* wholly or in part; but if it was voided in part, there arose the problem of the general balance of what remained of the treaty. In the particular case where the injured party had begun to implement the treaty before discovering the fraud, did the choice lie only between the solutions contemplated in article 7, paragraph 1? Another possible solution might be to rectify the treaty for the future, without denouncing it, and to make provision for indemnification for the past.

33. A further question was whether there had been fraud in the acts only, or also in the intention. That question was connected with prospects fraudulently held out by a party, which had not only influenced but even determined the formation of the will of another party (misrepresentation of prospects). In such cases, after it had been shown that the prospects were not as represented, the fraud resulted in situations very like those considered to justify application of the *rebus sic stantibus* clause. There were cases in which fraud was akin to other defects in consent; but there were also cases of fraud *stricto sensu*, which came within the scope of the rule *fraus omnia corrumpit*, even in treaties governed by public international law. In his view, the Commission should not concern itself with the question of proof; the substantive rules should be kept distinct from the rules governing proof. It was for the court to produce the proof by applying the substantive rules laid down for that purpose. The Commission was not at present concerned with the law of procedure before international courts.

34. Again, did the problem of fraud as a determining cause of invalidity of a treaty take the same form for multilateral treaties as for bilateral treaties ? Of course, the possibility of bad faith in international relations could be taken into account; but the case was hardly likely to arise in multilateral treaties of general interest concluded under the auspices of the United Nations or of other international organizations. It had been argued that, in the case of the treaties relating to the international control of narcotic drugs, the reticence of some representatives on technical details could amount to veritable deceit. Nevertheless, he thought that the Commission should confine itself to bilateral treaties and to multilateral treaties which were not of general interest. The question of jurisdiction was quite separate and should not be considered in that context.

35. In general, the ideas set out in article 7 were necessary and useful in a set of rules on treaties, though certain points needed to be rectified; he was sure the Commission could rely on its Special Rapporteur to do that.

36. Mr. CASTREN said it was debatable whether there was any real need to include an article dealing with fraud, since in practice hardly any cases arose in which fraud was pleaded as a ground for challenging the validity of a treaty, denouncing a treaty or claiming damages. On the other hand, the commentary by the Special Rapporteur and the examples quoted by a number of members had made it clear that such cases were not inconceivable, and that it would therefore be advisable to include some specific provisions relating to fraud. Actually, no new ground would be broken, since references to fraud appeared in all textbooks on international law.

37. Article 7 was generally acceptable. It was more condensed than the corresponding provision drafted by the previous Special Rapporteur, and in that respect was an improvement. The definition given in paragraph 2 was satisfactory; though some of the expressions it used might be open to different interpretations, it was not easy to find less ambiguous terms.

38. In the English text of paragraph 2 (*a*), the words " a material " should be inserted before the word " fact " to correspond to the wording of sub-paragraph (*b*), while the French text should be brought into line with the English by adding the words " *sur un fait important* " after the words " *représentations fausses* ". It might be advisable also, as Mr. Tabibi had suggested, to reverse the order of paragraphs 1 and 2.

39. He would be interested to hear the replies to the questions raised by Mr. Tsuruoka, particularly with regard to paragraph 1 (*a*). There were some other problems to be decided as well, but he was confident that the Special Rapporteur and the Drafting Committee would be able to prepare a text acceptable to the majority of the Commission's members.

40. Mr. TUNKIN said he associated himself with the majority view that article 7 should be retained.

41. From the theoretical point of view fraud must vitiate the validity of a treaty, because it destroyed the very foundation on which it was built, namely, mutual agreement between States. Mr. Gros's arguments to the contrary had not convinced him. The history of international relations showed that fraud had been used by some States, especially as an instrument of colonial or other aggressive policy. Perhaps instances should not be sought in the literature on the subject, because the

authorities might be disinclined to discuss shameful acts belonging to the past. But one example was the finding of the Nuremberg Tribunal that the Nazi Government had been guilty of fraud in concluding the 1938 Munich Agreement in that, whereas the apparent object of the Agreement was to regulate the so-called problem of the German minorities in Czechoslovakia, that government had never intended to fulfil the provisions of the agreement, and had regarded it merely as a step towards the complete annexation of Czechoslovakia.

42. An earlier instance of fraud was the Italo-Abyssinian Treaty of Friendship of 1889,[1] when the Italian delegation had practised a deception by drawing up texts in Italian and Amharic which did not agree. The provision in the Amharic text about the Emperor making use of the Italian Government's services for the conduct of foreign relations was permissive in form, whereas in the Italian text it was mandatory and on the strength of that provision the Italian Government had proclaimed a protectorate over Ethiopia shortly after the signing of the treaty. The Emperor had rejected that interpretation of the Treaty, basing himself on the Amharic text, and in consequence Italy had made war on Abyssinia in 1895.

43. Those two examples of fraud were obviously of far greater significance than the Webster-Ashburton Treaty [2] mentioned by the Special Rapporteur in his commentary, and he wondered whether the terms of article 7 as it stood, and in particular those of paragraph 2 (*a*), were comprehensive enough to cover such cases. Mr. Bartoš appeared to share that doubt.

44. He had no firm view on whether the provisions concerning fraud should or should not be incorporated in the same article or articles as those dealing with error, but perhaps that matter could be left to the Drafting Committee.

45. He agreed with Mr. Bartoš that the settlement of disputes as to whether or not there had been fraud inducing consent to a treaty was a separate problem that should not be dealt with in the present draft.

46. Mr. AGO recognized that there was a great temptation to transfer to international law the principles of private law relating to unreality of consent. But there were wide differences between the practical situations to which private law and international law applied, and he therefore shared the doubts expressed by the Special Rapporteur.

47. With regard to fraud, the Commission should confine itself strictly to that concept, which was clear, and which related to serious cases. The more or less inaccurate representations of fact which could be made in any negotiations, private or international, were not really cases of fraud. If they were, there would be many contracts and treaties which would not be valid. Even in private law, fraud was rarely pleaded; and in negotiations between States, as opposed to individuals, the idea of fraud was somewhat academic. Moreover, although some possibilities of fraud on points of geography might have arisen in former centuries, they were now becoming more and more difficult to imagine. The only example quoted by the Special Rapporteur belonged to a past era.

48. The two examples quoted by Mr. Tunkin could not be regarded as genuine cases of fraud. It might be true that Germany had negotiated at Munich without any intention of complying with the agreement concluded; but the agreement had not been vitiated by fraud: the proof of that was precisely that Germany by its subsequent actions had broken the agreement, which was legally valid.

49. In the case of the treaty of Uccialli of 1889 between Italy and Abyssinia, there had been a discrepancy between two texts in different languages. But neither of the parties had been able to claim that its consent had been vitiated by fraud; in reality, as the discrepancy related to an essential point, there had been no consent; hence, it could not have been vitiated by fraud or in any other way.

50. The application of the *rebus sic stantibus* clause, to which Mr. Bartoš had referred by analogy, was also an entirely different case from fraud. That clause applied to valid treaties at the time of whose conclusion there had been no defect in consent.

51. In fact, the only case in which fraud was conceivable would be one in which a State misrepresented certain facts to another States and obtained its consent to a treaty on the basis of that misrepresentation; and even so the matter in question would have to be a very serious one. In negotiating a treaty of economic aid, for instance, the beneficiary State rarely explained every aspect of its situation accurately, but that did not mean that there was fraud.

52. It was the Commission's duty to safeguard the sanctity of treaties. It should not provide pretexts and excuses for the non-fulfilment of treaty obligations. The theory of defects in consent could be extremely dangerous and might open the way for abuses. In private law a contract was voided by the court. But in international law it was the State concerned which declared that it was not bound by a treaty; and history showed that States were more inclined to use fraudulent ingenuity in evading treaty obligations which no longer suited them than in concluding a treaty.

53. The words " or fraud " in article 9, paragraph 1, of the Special Rapporteur's draft reintroduced the question of possible fraud. He therefore suggested that the Commission should take no decision on article 7 until it had considered articles 8 and 9.

54. Mr. AMADO said he had hoped that all the members of the Commission would readily agree to the deletion of article 7; but it had proved otherwise. Nevertheless, it was obvious from the first three paragraphs of the commentary on article 7 that the article was unnecessary. The Commission should not give the impression that it was drafting conventions dealing with purely theoretical cases which would never arise in practice. No general definition of fraud could be given, since there were only particular cases involving all the psychological subtleties of intention.

[1] *British and Foreign State Papers*, vol. LXXXI, p. 733.

[2] *Ibid.*, vol. XXX, p. 360.

55. He did not wish to be dogmatic, but he was in favour of deleting the article, which would strike a discordant note in the Commission's work.

56. Mr. ROSENNE said he assumed from the discussion that there was general assent to the proposition underlying article 7, and that the real problem was to be sure that the parties had really given their consent to the treaty. As Sir Gerald Fitzmaurice had put it in article 4, paragraph 2, in his first report, " For the obligation to exist, the consent must be true consent." [3]

57. The question confronting the Commission was whether the insertion of an article on fraud was desirable, and in considering the matter he was guided by three main considerations. First, international lawyers must exercise the greatest caution in transferring to the international plane analogies from municipal law; secondly, if international law was to perform its real function of upholding peace between nations it must, as far as possible, eschew formulations which, for their application in concrete cases, required pejorative assertions: and thirdly, its rules must be capable of practical application.

58. He could not agree with previous speakers that questions of substance must be kept distinct from questions of procedure, for in international law and relations, there was a real identity between the substantive rules and the procedure for their application. For example, article 7 raised important problems of imputability and proof, especially of psychological factors such as knowledge and intention. For example, to whom was the making of false statements or representations of fact to be ascribed; was it to the negotiators or to those from whom their instructions had emanated ? He had had personal experience of the kind of difficulty to which that problem could give rise when he was asked to interpret the intention behind an agreement he had himself negotiated and signed. He has been unable to give a satisfactory answer to that question; while he might have been able to recollect his own intentions, that was of secondary importance since he had had no knowledge of the psychological reasons that had prompted his government's instructions.

59. He feared that a provision framed in such emphatic terms as that contained in paragraph 2 (*a*) would either remain a dead letter, and possibly bring the Commission's work into disrepute, or would render the conduct of international negotiations impossible. The only way to achieve the object in view was to devise a provision containing an objective criterion to determine when fraud was present.

60. Broadly speaking, he agreed with the views expressed by Mr. Elias and Mr. Ago and suggested that the Commission should forthwith take up articles 8 and 9 and discuss them in conjunction with article 7. He also sympathized with the position taken by the Special Rapporteur.

61. In conclusion, he asked whether the term " *dol* " used in the French text accurately rendered the sense of the word " fraud ".

[3] *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 1956.V.3, vol. II), p. 108.

62. Mr. VERDROSS agreed with Mr. Gros and Mr. Ago that true instances of fraud were very rare, since all States could protect themselves against deceit by calling upon the services of experts. Nor was there any doubt that certain general principles of law applied in international relations, one of them being, precisely, *fraus omnia corrumpit*. The statement by the International Court of Justice regarding error in the *Temple* case [4] recognized that general principles of law could be applied to international relations; the same applied to fraud.

63. The objection that in private law it was the court which decided and that there was no such authority in international law showed up a deplorable weakness in the latter — the lack of compulsory jurisdiction. That objection might be validly made in regard to all the articles, but it did not mean that the principle did not exist.

64. It had also been stated that where there was fraud, the other contracting party was led into error and that, consequently, the case of fraud was identical with that of error. But fraud was the means, whereas error was the consequence; the two should be kept separate.

65. He was not opposed to the suggestion that the substance of article 7 should be combined with that of articles 8 and 9, but it was important that fraud should be covered in one way or another.

The meeting rose at 5.55 p.m.

[4] *I.C.J. Reports*, 1962, p. 26.

## 679th MEETING

*Tuesday, 14 May 1963, at 10 a.m.*

*Chairman:* Mr. Eduardo JIMÉNEZ de ARÉCHAGA

### Law of Treaties (A/CN.4/156 and Addenda)

[Item 1 of the agenda] (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of article 7 in section II of the Special Rapporteur's second report (A/CN.4/156).

ARTICLE 7 (FRAUD INDUCING CONSENT TO A TREATY) (*continued*)

2. Mr. EL-ERIAN said he was surprised that the question of including article 7 should have led to controversy. After listening carefully to the arguments for and against, he was convinced that the article should be retained. During the discussion on article 6, in reply to the argument that the Commission was inclined to go into too much detail, the Special Rapporteur had rightly said that if a point needed to be covered the Commission should not omit it from the draft merely for fear of being accused of going into excessive detail. Personally, he thought that no draft on the law of treaties would be complete without a provision on fraud, which was