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Summary record of the 841st meeting

Topic:
Law of Treaties

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841st MEETING

Thursday, 27 January 1966, at 11 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Bedjaoui, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldoock, Mr. Yasseen.

Law of Treaties

[Item 2 of the agenda]

(continued)

ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

(continued)

ARTICLE 37 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*)) (continued)

1. The CHAIRMAN asked whether any other members wished to explain their vote on article 37.
2. Mr. RUDA said that he had voted in favour of article 37 because he believed that, in keeping with logic and because the law was normative, there was no reason why international rules of law should not come into existence from which there could be no derogation, just as in municipal law rules had come into existence which had the character of rules of "public order"
3. There was nothing in international law to prevent such rules from coming into existence by means of a universal treaty, or through the formation of an international custom arising out of a practice that was generally accepted practice and consequently had the force of law. That possibility was taken into account by the very careful drafting of article 37.
4. Failing unanimous agreement, the question whether a norm had or had not the character of *jus cogens*—and if it did, could be invoked as a ground for invalidating a treaty—would in the final analysis have to be submitted to compulsory adjudication.

ARTICLE 38 (Termination or suspension of the operation of a treaty by application of its own provisions)¹

5. Sir Humphrey WALDOCK, Special Rapporteur, said that after discussing whether to maintain article 38 or to leave its provisions to be implied from other parts of the draft, the Drafting Committee had decided to drop paragraph 1 of the earlier text and to transfer to other articles certain elements of the remainder. Thus the new article 39 (*bis*) now stated the rule which had formerly appeared in paragraph 3 (*b*).
6. The Drafting Committee had also decided that the content of paragraph 2 should be incorporated in article 50,² which dealt with the procedure whereby a notice

¹ For earlier discussion, see 828th meeting, paras. 65-91, but see also 836th meeting, paras. 53-55.

² For the consideration of article 50, see 836th meeting.

of termination, denunciation or withdrawal would take effect.

7. Consequently, what the Drafting Committee now proposed was that article 38 in its present form be deleted.

8. The CHAIRMAN, speaking as a member of the Commission, said that he would not vote for the deletion of article 38; even if it stated the obvious, a rule of that kind would still be useful in the draft.

9. Speaking as CHAIRMAN, he put the Drafting Committee's proposal for the deletion of article 38 to the vote.

The Drafting Committee's proposal for the deletion of article 38 was adopted by 14 votes to 1 with 3 abstentions.

10. Sir Humphrey WALDOCK, Special Rapporteur, said that he had abstained because it seemed somewhat meaningless to vote when certain elements of the article were to be retained and their fate could not be finally determined until the Commission had completed its work on part II of the draft.

11. Mr. AGO said he associated himself with what had been said by the Special Rapporteur.

ARTICLE 39 (Denunciation of a treaty containing no provision regarding termination)³

12. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed the following text for article 39 :

Denunciation of a treaty containing no provision regarding termination

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it otherwise appears that the parties intended to admit the possibility of denunciation or withdrawal.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

13. In essence, the new text was the same as that approved in 1963, but it had been divided into two paragraphs. The Drafting Committee had avoided going into detail about the interpretation of the intention of the parties and had simply used the general phrase "the parties intended". Possibly that point might need reconsideration when the Commission came to review the provisions concerning interpretation in part III.

14. The CHAIRMAN put article 39 to the vote.

Article 39 was adopted by 18 votes to none.

15. Mr. de LUNA said that he had voted in favour of article 39 although he was not satisfied with the Spanish and French texts of paragraph 1. The expressions "*a no ser que se desprenda*" and "*à moins qu'il ne découle par ailleurs*" were not very felicitous. The passage might have said that the treaty did not provide expressly for possible denunciation or withdrawal, but that the intention of the parties could have been inferred from the context or from, say, the preparatory work.

³ For earlier discussion, see 829th meeting, paras. 1-61.

16. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. de Luna should be reassured by the fact that the article would be re-examined in connexion with the articles dealing with interpretation. He did not suppose that anyone was fully satisfied with the present text of article 39.

17. The CHAIRMAN pointed out that the Commission had already decided that it would review all the articles during its summer session and amend them if necessary.

ARTICLE 39 (*bis*) [formerly part of article 38] (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force)

18. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed the following text for article 39 (*bis*) which, as he had explained at the 836th meeting,⁴ was based on paragraph 3 (*b*) of article 38, which had been discussed at the 828th meeting:⁵

Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

A multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

19. The Drafting Committee had accepted his view that that rule should be stated as a general provision which affected not only the termination of treaties through the operation of their own provisions, but also cases where no provision existed in the treaty for termination or denunciation.

20. The CHAIRMAN put article 39 (*bis*) to the vote.

Article 39 (bis) was adopted by 18 votes to none.

ARTICLE 30 (Validity and continuance in force of treaties)⁶

21. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed the following text for article 30:

Validity and continuance in force of treaties

1. The invalidity of a treaty may be established only as a result of the application of the present articles.

2. A treaty may be terminated or denounced or withdrawn from by a party only as a result of the application of the terms of the treaty or of the present articles. The same rule applies to suspension of the operation of a treaty.

22. At the present session, the Commission had decided that the 1963 formulation of the article in the form of a presumption was not very satisfactory and it had been criticized for stating the obvious. On the other hand, the article would serve a definite purpose and state a definite rule if it provided that invalidity, termination, etc., could only be established in accordance with the

provisions of the draft articles. The Commission had accordingly decided to reformulate the article in that sense.

23. The Drafting Committee considered that a distinction must be made between invalidity on the one hand, and termination, denunciation or withdrawal on the other, because invalidity could not be established under the terms of the treaty, as could the other three. That was the reason why the article was now divided into two paragraphs.

24. Mr. ROSENNE suggested that the Special Rapporteur consider splitting article 30 into two when he came to review the order of the articles in the whole draft. Paragraph 1 might go into the section on invalidity and paragraph 2 into the section on termination.

25. He regarded article 30 as essential and exhaustive when applied to cases in which the *sedes materiae* of invalidity or termination lay in the law of treaties itself, but not exhaustive when the *sedes materiae* belonged to another branch of international law, such as the law of State succession.

26. Mr. YASSEEN said that he could not accept paragraph 1 for the reasons he had given at the previous meeting. He did not believe that the draft exhausted all the causes of nullity. He still thought that article 36, as now worded, left room for doubt; indeed, it was not certain from that wording that coercion by economic or political pressure could be considered as a cause of nullity. But according to existing positive international law, treaties concluded under such conditions were void. Coercion by economic or political pressure was incompatible with certain principles of the United Nations Charter such as the principle of the sovereign equality of States and the principle of non-intervention in the domestic affairs of States.

27. He therefore requested that article 30 be put to the vote paragraph by paragraph. He would abstain on paragraph 1.

28. Mr. BEDJAOUI said that he too would abstain on paragraph 1.

29. Mr. de LUNA said the Drafting Committee and the Special Rapporteur were to be commended for their successful efforts to produce a precise and valuable text which no longer confined itself to stating the obvious.

30. He had no reservations on paragraph 1; it seemed to him that Mr. Yasseen's remarks would apply rather to the interpretation of another article. It should be remembered that Article 2, paragraph 4, of the Charter not only prohibited the threat or use of force against the territorial integrity or political independence of any State but also prohibited the threat or use of force "in any other manner inconsistent with the Purposes of the United Nations". Once the Commission had incorporated in the draft a blanket rule referring to the principles of the United Nations, it could be said that the list of causes of invalidity was complete.

31. With regard to paragraph 2, he agreed with Mr. Rosenne's remarks, which should be mentioned in the commentary. There were indeed other cases, such as failure to register a treaty with the United Nations

⁴ See 836th meeting, para. 53.

⁵ See 828th meeting, paras. 65-91.

⁶ For earlier discussion, see 823rd meeting, paras. 1-65.

Secretariat. But it was not worth altering the clear and concise text of the article merely in order to make it applicable to such cases.

32. Mr. TSURUOKA said he noticed that the English words "only as a result of" were translated by the French expression "*que sur la base des présents articles*" in paragraph 1, and by "*qu'en application des dispositions du traité ou des présents articles*" in paragraph 2. He wished to know whether that difference was intentional. His own preference was for the second rendering.

33. Sir Humphrey WALDOCK, Special Rapporteur, said that the English text was certainly correct; the fact that the French deviated from it was due to inadvertence.

34. Mr. BRIGGS asked whether the French text was correct in referring to "*nullité*".

35. Mr. REUTER said that it was the invariable custom in the Drafting Committee to translate "invalidity" by "*nullité*". For the purpose of the Commission's work, the two terms could be considered to correspond exactly.

36. Mr. de LUNA, confirming Mr. Reuter's explanation, said that Spanish legal terminology never referred to the "*invalidéz*" of contracts, although the word existed, but to their "*nullidad*".

37. Mr. VERDROSS said that he did not see how the Commission could vote on article 30 when its members did not agree on the subject of invalidity as a result of the corruption of a representative of a State; that meant that its list of cases of invalidity was incomplete.

38. The CHAIRMAN said that the Commission had decided to consider the question of the corruption of the representative of a State at its summer session. Since paragraph 2 referred to "the application of the terms of the treaty or of the present articles", instances of such corruption would be covered.

39. Sir Humphrey WALDOCK, Special Rapporteur, said that, as there seemed to be general agreement that corruption would have to be covered, perhaps Mr. Verdross could vote on article 30 on that understanding.

40. The CHAIRMAN put article 30 to the vote paragraph by paragraph.

Paragraph 1 was adopted by 14 votes to none, with 4 abstentions.

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

Article 30 as a whole was adopted by 14 votes to none, with 4 abstentions.

41. Mr. REUTER said that he had provisionally abstained from voting, but reserved the right to change his position later. As a result of the many explanations given and of a certain amount of reflection, he had gained the impression that the question of the relationship between the draft articles and the United Nations Charter was highly complex. Some members seemed to think that the draft did not cover everything covered by the Charter, whereas others appeared to consider that it would involve a revision of the Charter.

ARTICLE 31 (Provisions of international law regarding competence to conclude a treaty)⁷

42. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed the following text for article 31:

Provisions of internal law regarding competence to conclude a treaty

A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating that consent unless the violation of its internal law was manifest.

43. The text represented a delicate compromise, based on the agreement reached in 1963, but had been considerably shortened. As there had been general agreement that the reference to article 4 was inappropriate, it had been dropped. The Drafting Committee had maintained the limitation decided on in 1963, that the provision of internal law should be one regarding competence to conclude a treaty.

44. Mr. VERDROSS said that the text had been greatly improved by the Drafting Committee's revision. Even so, the idea would be brought out more clearly if the words "of such a provision" were inserted after the word "violation" in the last line, because the expression "its internal law" covered the whole of internal law; the point was thus left vague.

45. Mr. PESSOU said it seemed hardly likely that a State would give its consent in actual and manifest violation of its own constitutional law. Such a situation seemed inconceivable from a psychological standpoint. Consequently, he could not accept the text of the article and noted that it could be re-examined later.

46. Mr. CASTRÉN, supporting Mr. Verdross's amendment, suggested that it could be still further improved by the use of the expression "unless such violation of its internal law . . .".

47. Mr. VERDROSS said he accepted Mr. Castrén's suggestion.

48. Mr. BEDJAOUÏ said that Mr. Castrén's suggestion would be less cumbersome if the words "of its internal law", which were redundant, were omitted.

49. It would also be better if the last words in the French text were to read "*que si cette violation a été manifeste*", instead of "*à moins que cette violation n'ait été manifeste*".

50. Mr. AGO pointed out that the words "*à moins que*" were a standard form which the Commission had decided on after several attempts to find a suitable expression on the lines suggested by Mr. Bedjaoui. The words "*à moins que*" defined the circumstances in question as closely as possible and should be retained in article 31, as elsewhere.

51. Mr. BEDJAOUÏ said that he withdrew his second suggestion.

52. Mr. de LUNA said he supported Mr. Verdross's amendment as revised by Mr. Bedjaoui. The Spanish text should follow the English and French texts and the words "expressed" and "*exprimé*" should be rendered by the Spanish word "*expresado*" instead of "*manifestado*".

⁷ For earlier discussion, see 823rd meeting, paras. 80-104.

53. Sir Humphrey WALDOCK, Special Rapporteur, said that he did not think the meaning of the sentence was in doubt, though the idea behind Mr. Verdross's amendment could be accepted. As far as the English text was concerned, it would suffice to substitute the words "such consent unless that" for the words "that consent unless the".

54. The CHAIRMAN put article 31, with the amendments accepted by the Special Rapporteur, to the vote.

Article 31, as thus amended, was adopted by 16 votes to none, with 2 abstentions.

55. Mr. RUDA, explaining his abstention, said that failure to comply with a provision of internal law regarding competence to conclude treaties did not affect the validity of the consent given to a treaty. He could not therefore accept the exception embodied in the proviso, "unless that violation of its internal law was manifest".

56. Mr. BRIGGS said that he also had abstained from voting because he was opposed to the proviso, "unless that violation of its internal law was manifest".

ARTICLE 40 (Termination or suspension of the operation of treaties by agreement)⁸

57. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed that article 40 be amended to read:

1. A treaty may at any time be terminated by agreement of all the parties.

2. The operation of a treaty may at any time be suspended by agreement of all the parties.

3. The operation of a multilateral treaty may not be suspended as between certain parties only except under the same conditions as those laid down in article 67 for the modification of a multilateral treaty.

58. The Drafting Committee had decided to drop the former paragraph 2, protecting the rights of the parties to a treaty against its premature termination by a few parties, on the ground that it would unduly complicate the article, and that it covered a somewhat unlikely contingency.

59. Paragraphs 1 and 2 represented a simplification of the former paragraphs 1 and 3. The new paragraph 3 had been introduced to deal with the question, raised by Mr. Ago during the discussion, whether the agreement of all the parties was always necessary for the suspension of the operation of a treaty.⁹

60. In 1964, the Commission had adopted articles 65, 66 and 67 on the amendment of treaties. With regard to multilateral treaties, articles 66 and 67 made an important distinction. In normal cases, the modification of a multilateral treaty required the consent of all the parties. Article 67, however, made provision for the exceptional, but not uncommon, case of an agreement to modify multilateral treaties between certain of the parties only. That same article laid down very precise and strict conditions for such an agreement.

61. In the light of those provisions on the modification of treaties, the Drafting Committee now proposed to

include in article 40 a provision, in the form of the new paragraph 3, which would cover the case of an agreement to suspend a multilateral treaty between certain of the parties only. Paragraph 3 made such agreements subject to the same strict conditions as those laid down in article 67 for modifying agreements in similar circumstances.

62. Mr. JIMÉNEZ de ARÉCHAGA asked that the three paragraphs of article 40 be voted upon separately, as he wished to vote against paragraph 3.

63. The Commission had not had sufficient time to study that very important new provision and there was not a sufficient body of State practice to support the *inter se* suspension of the operation of a treaty.

64. It was true that, from the logical point of view, it could be argued that since the Commission had adopted article 67, it would be possible to arrive at an *inter se* suspension of the operation of a treaty under the guise of *inter se* modification, since the meaning and scope of the term "modification" had nowhere been defined.

65. Article 67 had a limited purpose and scope and could not be enlarged in the manner proposed. Many members had accepted article 67 because there existed an important body of State practice which allowed for the non-unanimous revision and bringing up to date of such multilateral treaties as the conventions which had been revised after the Second World War when, largely for political reasons, it was not possible to bring all the pre-war parties to the conference table.

66. The system of *inter se* modification provided a solution to a very real difficulty and served the purpose of modernizing international relations and advancing co-operation among States. That, however, did not authorize outright *inter se* suspension of the operation of a multilateral treaty, because the result could well be anything but progressive. If a group of States agreed to suspend *inter se* the operation of important multilateral conventions, that might constitute a step backward in international co-operation. Modification, if applied in good faith, should result in a new and improved treaty to replace the old one. Suspension *inter se* of the operation of a treaty would lead to the disappearance of important treaty relations.

67. Under the proposed provision, a group of States parties to a free trade association might be able to agree to suspend *inter se* the operation of the treaty, while continuing to apply it in their relations with the parties which had not participated in the arrangement for suspension. Even if the rights of those latter parties were not affected, they could well have an interest in the integral application of the treaty among all the contracting parties. Paragraph 3 would be less objectionable if the words "under the same conditions as those laid down in" were replaced by the words "as a result of the application of". With a formulation of that type, the suspension of the operation of the treaty would be a consequence of the *inter se* modification under article 67.

68. But a third paragraph was not really necessary, even from a logical point of view, because the application of article 67 did not contradict either paragraph 1 or paragraph 2 of article 40. In fact, article 67 dealt with a matter that was different from suspension, just as it was different from termination; a new agreement re-

⁸ For earlier discussion, see 829th meeting, paras. 62-95.

⁹ See 829th meeting, para. 84.

placed an old treaty for some of the parties. In several cases an *inter se* modification had consisted in the establishment of new machinery, precisely in order to put an end to the *de facto* suspension of the operation of pre-war multilateral treaties.

69. The CHAIRMAN, speaking as a member of the Commission, said that he too was opposed to the provision in paragraph 3 and therefore supported the request for a separate vote on that paragraph.

70. Mr. YASSEEN said that paragraph 3 raised what could be described as a new problem which the Commission had not examined thoroughly.

71. He therefore proposed that paragraph 3 be reserved for further study and referred to the eighteenth session.

72. He would not be able to vote for paragraph 3 because he had not yet made up his mind concerning the point with which it dealt.

73. Mr. de LUNA said that he was unable to agree with Mr. Jiménez de Aréchaga. The Commission had already accepted the principle of separability and had therefore disposed of the question whether multilateral treaties should be treated as indivisible.

74. The proposed paragraph 3 did not involve any danger, because its provisions were made specifically subject to the requirements laid down in article 67. Accordingly, no agreement to suspend the treaty between certain of the parties was possible in the following three cases: first, if the suspension affected "the enjoyment by the other parties of their rights under the treaty or the performance of their obligations"; secondly, if it related "to a provision derogation from which is incompatible with the effective execution of the objects and purposes of the treaty as a whole"; and thirdly, if such suspension was "prohibited by the treaty".

75. Since the Commission had accepted the notion of separability in other cases, he saw no reason for not accepting it also in the present case, subject to the safeguards specified in article 67.

76. Mr. TUNKIN, pointing out that paragraph 3 did not appear either in the 1963 text of article 40 or in the Special Rapporteur's fifth report, said that since the question had not been discussed in the Commission and since there was certainly no time to deal with it now, he supported Mr. Yasseen's proposal to refer paragraph 3 to the summer session.

77. Mr. PESSOU said he agreed with Mr. de Luna. He could not see why it was thought that paragraph 3 would give rise to difficulty: States were free at any time to conclude or not to conclude a treaty. Moreover, the safeguards provided in article 67 should be sufficient to allay the misgivings aroused by paragraph 3.

78. He approved article 40, which was very well drafted.

79. Mr. CASTRÉN said that, at first sight, he was inclined to agree with Mr. de Luna on the subject of paragraph 3. However, he would not object to a postponement of the decision on that paragraph, since the problem with which it dealt had not really been discussed at all.

80. With regard to paragraph 1 and 2, he asked whether the Drafting Committee had had any special reason for separating the provisions dealing with termination from those dealing with suspension. An amalgamation of those two paragraphs would avoid repetition.

81. Mr. ROSENNE said that, without prejudice to his position on the substance, he was now persuaded that paragraph 3 needed further reflection. He therefore gladly supported Mr. Yasseen's proposal to refer paragraph 3 to the summer session.

82. Mr. TSURUOKA said that he accepted Mr. Yasseen's proposal that the consideration of paragraph 3 be deferred until the eighteenth session. His first impression was, however, that paragraph 3 could easily be dispensed with, since in practice, paragraphs 1 and 2 and article 67 achieved the same purpose as that envisaged in paragraph 3.

83. Sir Humphrey WALDOCK, Special Rapporteur, said he should explain that paragraph 3 had been introduced somewhat abruptly as a result of a point which had arisen during the discussion. It had been pointed out that it might not be entirely accurate to say that, in order to suspend the operation of a multilateral treaty, it was always necessary to have the agreement of all the parties.

84. The question arose of the relationship between the provisions of article 40 and those of article 67. In adopting article 67 in 1964, it had been the Commission's intention to allow *inter se* modification of a multilateral treaty only where the treaty established a régime which operated bilaterally. If the conditions specified in article 67 were observed, the rights of the other parties would not be affected. Therefore, although he appreciated the point made by Mr. Jiménez de Aréchaga, he saw no great danger in allowing for *inter se* suspension, subject to the conditions specified in article 67. Those conditions were very strict; if they were not strict enough for purposes of suspension, they would be equally inadequate for purposes of modification.

85. He would have no objection to the postponement of paragraph 3 until the summer session in order to give members more time for reflection.

86. The CHAIRMAN put to the vote Mr. Yasseen's proposal to defer consideration of paragraph 3 until the 1966 summer session.

Mr. Yasseen's proposal was adopted by 14 votes to none, with 4 abstentions.

87. Mr. JIMÉNEZ de ARÉCHAGA said he withdrew his request for a separate vote on each paragraph.

88. Mr. ROSENNE said he would urge Mr. Castrén to withdraw his proposal for the amalgamation of paragraphs 1 and 2; the question could be decided when the Commission dealt with paragraph 3.

89. Mr. CASTRÉN said that he would not press his proposal.

90. Sir Humphrey WALDOCK, Special Rapporteur, proposed that consideration of the whole of article 40 be deferred until the summer session.

It was so decided.

ARTICLE 41 (Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty)¹⁰

91. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed that the title and text of article 41 be amended to read:

Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and:

(a) it appears that the parties intended that the matter should thenceforth be governed by the later treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. However, the earlier treaty shall be considered as only suspended in operation if it appears that such was the intention of the parties when concluding the later treaty.

92. There had been a proposal to combine articles 40 and 41, but the Drafting Committee had decided to keep the provisions of the two articles separate.

93. Much of the discussion in the Commission at the present session had centred on the provisions of paragraph 1 (b). Those provisions had to be considered in relation to those of article 63, which laid down the rule that, where two treaties had incompatible provisions, those of the later treaty superseded those of the earlier one. The purpose of paragraph 1 (b) was to state that the earlier treaty would be terminated if the provisions of the later treaty were so far incompatible with those of the earlier one that the two treaties were not capable of being applied at the same time.

94. Mr. VERDROSS proposed the deletion of the word "However" at the beginning of paragraph 2. The paragraph did not state an exception: it dealt with a different situation.

95. Mr. ROSENNE said that he still considered the whole article to be unnecessary and asked that a separate vote be taken on paragraph 1 (b). In practice, the situation envisaged in that sub-paragraph was covered by the provisions of article 63. He would therefore vote against paragraph 1 (b) because he regarded it as otiose, and if it were adopted, he would abstain on the article as a whole.

96. Mr. CASTRÉN asked why the Drafting Committee had deleted the paragraph on separability, which had appeared in the text submitted by the Special Rapporteur at the 830th meeting.

97. Sir Humphrey WALDOCK, Special Rapporteur, said that it seemed an unnecessary complication to cover in article 41 the question of partial suspension. Article 63 stated the rule that where the provisions of two treaties were incompatible, those of the later treaty prevailed. The fact that the provisions of the later treaty were applied meant that those of the older treaty were suspended.

98. Mr. LACHS said he supported Mr. Verdross's amendment to delete the opening word, "However", of paragraph 2.

99. Sir Humphrey WALDOCK, Special Rapporteur, said that he had no objection to that proposal.

Mr. Verdross's amendment was adopted unanimously.

100. The CHAIRMAN put to the vote paragraph 1 (a), and paragraph 2 as amended.

Paragraph 1 (a), and paragraph 2 as amended, were adopted by 16 votes to none, with 2 abstentions.

Paragraph 1 (b) was adopted by 15 votes to 1, with 2 abstentions.

Article 41 as a whole, as amended, was adopted by 15 votes to none, with 2 abstentions.

The meeting rose at 1 p.m.

842nd MEETING

Thursday, 27 January 1966, at 3 p.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Cast-rén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldoock, Mr. Yasseen.

Law of Treaties

[Item 2 of the agenda]

(continued)

ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

(continued)

1. The CHAIRMAN invited the Commission to continue its consideration of the articles submitted by the Drafting Committee.

ARTICLE 42 (Termination or suspension of the operation of a treaty as a consequence of its breach)¹

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed the following text for article 42:

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) The other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either (i) in the relations between themselves and the defaulting State or (ii) as between all the parties;

¹⁰ For earlier discussion, see 830th meeting, paras. 40-89.

¹ For earlier discussion, see 831st meeting, paras. 16-80, and 832nd meeting, paras. 1-27.