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**Summary record of the 843rd meeting**

Topic:  
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ARTICLE 47 (Loss of a right to allege the nullity of a treaty or a ground for terminating or withdrawing from a treaty)<sup>11</sup>

98. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee proposed that the title and text of article 47 be amended to read :

*Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty*

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 31 to 34 inclusive or articles 42 to 44 inclusive if, after becoming aware of the facts :

(a) it shall have expressly agreed that the treaty, as the case may be, is valid or remains in force or continues in operation; or

(b) it must by reason of its conduct be considered as having acquiesced, as the case may be, in the validity of the treaty or in its maintenance in force or in operation.

99. The main rule was that contained in sub-paragraph (b). It would be noted that the term "acquiesced" had been used in deference to the wishes of those members who did not favour placing the provision on the basis of consent.

100. Mr. de LUNA suggested that the words "as the case may be" in paragraphs (a) and (b) were unnecessary.

101. Mr. AGO said that those words were essential to make it clear that paragraphs (a) and (b) applied to a series of different situations.

102. Mr. YASSEEN said that he agreed with Mr. Ago. The words "as the case may be" were necessary in paragraph (a) to make it clear that a State could no longer invoke a ground for invalidating a treaty if it had agreed that the treaty was valid, could no longer invoke a ground for terminating or withdrawing from a treaty if it had agreed that the treaty remained in force, and could no longer invoke a ground for suspending the operation of a treaty if it had agreed that the treaty continued in operation. The words "as the case may be" had a similar import in paragraph (b).

103. Mr. de LUNA said that he would not press his suggestion.

104. Mr. CASTRÉN pointed out that the words "*de l'application du traité*" should be inserted in the French text of the title in order to bring it into line with the English text.

105. Sir Humphrey WALDOCK, Special Rapporteur, said that in the English title the words "the operation of" were used after "suspending". He would have no objection to the French title being brought into line with the English.

106. The CHAIRMAN put article 47 to the vote.

*Article 47 was adopted by 15 votes to none.*

<sup>11</sup> For earlier discussion, see 836th meeting, paras. 21-51, 837th meeting, paras. 80-95, and 838th meeting, paras. 1-38.

## Report of the Chairman of the Drafting Committee on Articles 49 and 50

107. Mr. JIMÉNEZ de ARÉCHAGA, Chairman of the Drafting Committee, said that the Drafting Committee had decided to report to the Commission on articles 49<sup>12</sup> and 50<sup>13</sup> at the 1966 summer session; those articles were closely connected with article 51, which the Commission had been unable to consider at the present session.

### Draft Resolution submitted by Mr. Amado

(A/CN.4/L.114)

108. Mr. AMADO, submitting the draft resolution in document A/CN.4/L.114, said that it expressed in very restrained terms the Commission's gratitude to H.S.H. Prince Rainier III of Monaco and his Government for their hospitality and for the attentions it had been shown. Thanks to the welcome it had received, to the beauty of the scenery and to the mildness of the climate, the Commission had been able to do fruitful work.

*The draft resolution was adopted by acclamation.*

The meeting rose at 5.30 p.m.

<sup>12</sup> For earlier discussion, see 838th meeting, paras. 39-67 and 839th meeting, paras. 1-58.

<sup>13</sup> For earlier discussion, see 836th meeting, paras. 52-91.

## 843rd MEETING

*Friday, 28 January 1966, at 9 a.m.*

*Chairman:* Mr. Milan BARTOŠ

*Present:* Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. de Luna, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Sir Humphrey Waldock, Mr. Yasseen.

### Law of Treaties

[Item 2 of the agenda]

(continued)

ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE  
(continued)

ARTICLE 46 (Separability of treaty provisions) (continued)<sup>1</sup>

1. The CHAIRMAN invited the Commission to resume its consideration of article 46.

2. Sir Humphrey WALDOCK, Special Rapporteur, said that, following the discussion at the previous meeting, he had prepared a redraft of paragraph 2 of article 46, reading :

<sup>1</sup> For earlier discussions, see 836th meeting, paras. 2-20, 837th meeting, paras. 1-79, and 842nd meeting, paras. 79-97.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty admitted in the present articles may only be invoked with respect to the whole treaty except as provided in the following paragraphs or in article 42.
3. In the interests of uniformity of language, he proposed that the phrase "under a treaty" in paragraph 1 of the article be replaced by the phrase "provided for in a treaty". A contrast would thus be established between a right provided for in the treaty itself—the subject of paragraph 1, and a ground provided for in the draft articles—the subject of paragraph 2.
4. The new formulation of paragraph 2 was intended to stress that the paragraph referred to cases not provided for in the treaty; that result was achieved by the insertion of the words "admitted in the present articles", after the words "of a treaty".
5. The former concluding words of paragraph 2, "in the present articles", had been replaced by the words "in the following paragraphs or in article 42", in order to meet a point raised at the previous meeting by Mr. Castrén. As he himself had pointed out at that meeting, a reference to article 42 was necessary because a ground for terminating or suspending the operation of a treaty could arise under the provisions on breach contained in that article.
6. Mr. BRIGGS suggested that the word "admitted" in paragraph 2 be replaced by a better term, possibly "envisaged".
7. Mr. ROSENNE suggested that it be replaced by the word "recognized". The term "admitted" had several different connotations in law and could lead to confusion.
8. Mr. TSURUOKA suggested that the word "contemplated" might be used.
9. Sir Humphrey WALDOCK, Special Rapporteur, said that the term "admitted" had been used in order to show that the paragraph referred to a ground accepted as a valid legal ground under the draft articles. He could accept Mr. Rosenne's suggestion that the word "recognized" be used instead.
10. Mr. CASTRÉN said that the new text of paragraph 2 was much clearer than the one proposed at the previous meeting.
11. Mr. REUTER said that the French text of paragraph 3 (b) was liable to be misunderstood. He therefore proposed that it be amended to read: "*si l'acceptation des clauses en question n'a pas constitué, pour l'autre partie ou les autres parties, une base essentielle de leur consentement au traité dans son ensemble*".
12. Sir Humphrey WALDOCK, Special Rapporteur, said that although he considered that the principle of separability ought to apply to cases falling under article 35, he would nevertheless vote in favour of article 46 as a whole.
13. The CHAIRMAN put to the vote the amended text of article 46 as a whole, which read:

*Separability of treaty provisions*

1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may only be exercised with respect to the whole

treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles may only be invoked with respect to the whole treaty except as provided in the following paragraphs or in article 42.

3. If the ground relates to particular clauses alone, it may only be invoked with respect to those clauses if:

- (a) the said clauses are separable from the remainder of the treaty with regard to their application; and

- (b) acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole.

4. In cases falling under article 33 the State entitled to invoke the fraud may do so with respect either to the whole treaty or to the particular clauses alone.

5. In cases falling under articles 35, 36 and 37, no separation of the provisions of the treaty is permitted.

*Article 46 as a whole, as amended, was adopted by 14 votes to none.*

**Report of the Commission on the Work of the Second Part of its Seventeenth Session**

(A/CN.4/L.112)

14. The CHAIRMAN invited the Commission to consider the draft report on the second part of its seventeenth session (A/CN.4/L.112).

15. Mr. de LUNA, referring to paragraphs 6-11, said that he again wished to point out that the correct terms in Spanish for "Rapporteur" and "Special Rapporteur" were "*Relator*" and "*Ponente*" respectively. He asked that the term "*Ponente*" be used in the Spanish text as the equivalent of "Special Rapporteur" in paragraph 11 and in all future documents of the Commission.

*It was so agreed.*

16. Mr. TSURUOKA asked whether the text of the Commission's resolution of thanks to the Government of Monaco, referred to in paragraph 13, had been transmitted to that Government.

17. The CHAIRMAN replied that, in his capacity as representative of the Secretary-General, the Secretary to the Commission would ensure that the resolution was transmitted that day.

18. In paragraph 14 of the report, the Secretariat would insert a statement to the effect that the Commission had decided to consider the following topics at its eighteenth session: first, the law of treaties, secondly, special missions, and, thirdly, the organization of future work on other topics.

19. Paragraph 18 would be expanded to give a fuller account of co-operation with the Inter-American Council of Jurists, thus ensuring a better balance between that part of the report and the previous paragraphs dealing with the European Committee on Legal Co-operation.

20. At the beginning of paragraph 19, the Secretariat would insert a sentence to the effect that the General

Assembly, in its resolution 2045 (XX), had noted with appreciation that the European Office of the United Nations had organized a seminar on international law during the first part of the Commission's seventeenth session and had expressed the wish that other seminars should be organized in conjunction with future sessions of the Commission.

*Subject to those changes, the draft report was adopted.*

#### **Closure of the Seventeenth Session**

21. The CHAIRMAN said that, as it was the last occasion on which he would be taking the Chair, he wished to take the opportunity of thanking the members of the Commission for the assistance they had given him in discharging his duties.

*At the Chairman's invitation, Mr. Novella, Secretary-General for Cultural Affairs and Congresses of the Principality of Monaco, took a place at the Commission table.*

22. The CHAIRMAN, speaking on behalf of the Commission, requested Mr. Novella to convey to H.S.H. Prince

Rainier and his Government the Commission's thanks for the hospitality extended to it.

23. Mr. NOVELLA, Secretary-General for Cultural Affairs and Congresses of the Principality of Monaco, said it was the hope of the authorities of the Principality that the Commission would hold another session in Monaco in the near future.

24. Mr. AMADO said he was sure that he was expressing the feelings of every member of the Commission in paying a tribute to the Chairman, who had shown that he possessed great qualities of leadership as well as erudition.

25. He again expressed his satisfaction that circumstances had enabled the Commission to meet in Monaco and said that it would certainly wish to return there.

26. After the customary exchange of courtesies, the CHAIRMAN declared the seventeenth session of the Commission closed.

The meeting rose at 10.25 a.m.

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