Document:-
A/CN.4/SR.888

Summary record of the 888th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1966, vol. I(2)

ARTICLE 12 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) [11]

90. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from paragraph 1 (*a*) of the words " or an established rule of an international organization ".

The Drafting Committee's amendment to article 12 was approved.

ARTICLE 18 (Formulation of reservations) [16]

91. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from sub-paragraph (*a*) of the words " or by the established rules of an international organization ".

The Drafting Committee's amendment to article 18 was approved.

ARTICLE 26 (Correction of errors in texts or in certified copies of treaties) [74]

92. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from paragraph 2 (*c*) of the words " and, in the case of a treaty drawn up by an international organization, to the competent organ of the organization. "

The Drafting Committee's amendment to article 26 was approved.

ARTICLE 29 (Functions of depositaries) [72]

93. The CHAIRMAN, speaking as Chairman of the Drafting Committee, said that the Drafting Committee proposed the deletion from paragraph 1 (*b*) of the words " or by the established rules of an international organization ".

94. Mr. TSURUOKA said that the words " the competent organ of that organization " were still used in article 19, paragraph 3, whereas everywhere else any reference of that kind had been dropped. In his view it would be useful to retain those words in that paragraph but he wished to know if that was what the Drafting Committee intended.

95. Sir Humphrey WALDOCK, Special Rapporteur, explained that the Drafting Committee had thought it necessary to retain a reference to an international organization in article 19, paragraph 3, because at the initial stage its constituent instrument might not contain rules about the acceptance of and objections to reservations, so that the provisions of the draft articles could usefully fill a gap. Reference to a competent organ of an international organization was needed in article 29, paragraph 2, because of the functions it might have to fulfil as a depositary.

The Drafting Committee's amendment to article 29 was approved.

The meeting rose at 6 p.m.

888th MEETING

Tuesday, 12 July 1966, at 11 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Draft report of the Commission on the work of its eighteenth session

(A/CN.4/L.116 and Addenda)

1. The CHAIRMAN invited the Commission to consider the draft report on the work of its eighteenth session.

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the commentaries to the draft articles had been produced under conditions of stress; a good deal of editorial work would have to be done on them by the Secretariat and by himself after the Commission had completed its work.

3. There was, however, a general question on which he wished to have the Commission's guidance: it related to the references to legal literature contained in the footnotes. In the final report, references to Secretariat documents and to reports of previous special rapporteurs would, of course, have to be retained. The question, however, arose whether the Commission would wish to retain in its final report references to authors, for example where a publication contained evidence of practice, such as Hackworth's *Digest*, the *Harvard Research Draft* and Kiss's *Répertoire*.

4. Mr. TUNKIN said he was glad the Special Rapporteur had raised a question on which it was essential that the Commission should take a decision. References to legal literature were appropriate in a Special Rapporteur's report but should be avoided in the Commission's final report. Mention of certain writers could give the impression that the Commission had taken no account of the works of others. Since the Commission was an organ of the United Nations and of the General Assembly, its final report should only contain references to official documents and official compilations of State practice.

5. Mr. BRIGGS said that he could not agree with Mr. Tunkin. References to official documents should be retained, but the footnotes should also indicate the material relied upon both by the Special Rapporteur and by the Commission itself. The works mentioned in those footnotes represented the material subsumed in the commentaries. It should be remembered that the final report would be read by the delegations to the General Assembly, some of which did not include among their members persons with a long training in international law. References in the footnotes to legal writings would be of great assistance to those delegations. If it were decided to confine references to official documents, that would eliminate such essential material as McNair's standard

work on the law of treaties and the *Harvard Research Draft*.

6. Mr. de LUNA said that he was in full agreement with Mr. Tunkin. As an organ of the United Nations, the Commission could not give special prominence to any body of legal theory. The Commission's commentaries had their roots not only in the works consulted by the Special Rapporteur but also in the literature in many different languages on which the individual members had relied in forming their opinions. Although the commentaries had been prepared by the Special Rapporteur, when they received the approval of the Commission they became the Commission's work. Any footnotes included in the final report should, therefore, refer only to official documents and not to the works of writers in individual countries.

7. Mr. AMADO said that he fully agreed with Mr. de Luna. The Commission was not called upon to explain where it had learned how to serve States by formulating rules on the law of treaties; its members had taken the proper steps to prepare themselves for that task and had read all that they should have read in order to produce work that would give satisfaction. Anyone interested in the law of treaties had only to refer to the Commission's *Yearbooks*, and in any case would certainly be in possession of the works of McNair, Lauterpacht and other authorities. There was therefore no necessity, either from its own point of view or from that of States, for the Commission to set out the works it had consulted, or describe in footnotes the technical ground which it had had to cover.

8. Mr. ROSENNE said that, in the final report, references to purely scientific material should be reduced to an absolute minimum and confined to universally recognized authorities. Another reason, not yet mentioned by other speakers, was that citations by the Commission in its reports could give rise to misunderstandings. He had noticed in a recent book review that the reviewer had given as a reason for praising the book the fact that it had been cited several times in one of the Commission's reports. The various reports submitted by the Special Rapporteur, as well as the Commission's own reports for 1962, 1963 and 1964, were exceptionally well documented and had attracted much favourable comment, but there was no need to repeat in the Commission's final report the abundant references contained in those earlier reports.

9. It was necessary not to confuse the Commission's justification for its commentaries with any bibliography which might be prepared by the Secretariat for the diplomatic conference, if such a conference were convened to deal with the law of treaties.

10. Mr. JIMÉNÉZ de ARÉCHAGA said he agreed that reference to literature should be kept to a minimum, but too rigid a rule would have the effect of excluding essential material that did not constitute official publications. He was thinking of such publications as the *Harvard Draft* and McNair's *Law of Treaties*. On the other hand, it would be appropriate for the Commission to decide to drop entirely any reference to works by its own members. Thus, while the final report should be sparing in its references to the literature, the Special Rapporteur should be allowed some latitude in the matter. It would be difficult to draw up an intelligible commentary on, for instance, article 31 without any references to legal writings.

11. The CHAIRMAN, speaking as a member of the Commission, said that the Commission was not producing a scientific work: it was submitting an official draft to an official organ of the United Nations. The responsibility was the Commission's. Where the Commission had adopted a particular solution, it had done so because that had been its wish. It would not be advisable for it to insert references to technical works on international law; if it did so, it might be accused of discimination in favour of publications from one part of the world rather than from another. It should therefore avoid any reference to law writers and cite only official works.

12. Sir Humphrey WALDOCK, Special Rapporteur, said he had introduced the subject in a neutral way, but was himself strongly of the view that the Commission's final report should not give any indication of being based on one legal system more than another; it should constitute a purely international work. For his own reports as Special Rapporteur, he had of course consulted the literature in those languages familiar to him, but had relied on the other members of the Commission to fill any gaps in his knowledge, each member naturally basing his views on the training he had received in his own system. At the present final stage of the Commission's work, the report was the Commission's own responsibility and should be based only on official documents, including of course the reports of earlier Special Rapporteurs. There should be no references to legal literature, however admirable in quality. It was significant that, throughout the present session's discussions, he himself had not had occasion to consult the leading doctrinal works on the law of treaties: the whole emphasis had been on the views which the Commission itself had reached.

13. He would suggest that, wherever the need arose in commentaries to refer to doctrinal views, the term used should be " some jurists " rather than " some writers ", with the appropriate reference to the Commission's earlier reports, or those of the Special Rapporteur where the doctrinal material was mentioned.

14. Mr. AGO said he fully supported the views of the Special Rapporteur.

15. Mr. RUDA said he also agreed in principle with the Special Rapporteur. As he understood the position, the footnote to paragraph (2) of the commentary to article 31, for example, would contain an appropriate cross-reference to the footnote in the Special Rapporteur's report that gave full details of the doctrinal material in question.

16. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to follow the course suggested by the Special Rapporteur.

It was so agreed.

17. Mr. TSURUOKA said that Mr. Rosenne had raised another question which he (Mr. Tsuruoka) regarded as important. Although he fully approved the decision which had been reached, he felt it was desirable that the Secretariat should fill the gap which would be

caused by the absence of any references of the kind which had been under discussion, by preparing a detailed bibliography for each article.

18. Mr. BAGUINIAN (Secretary to the Commission) said that a bibliography would be prepared for the diplomatic conference, if a conference were convened.

19. Mr. AGO said that the preparation of the kind of bibliography requested by Mr. Tsuruoka would mean a great deal of work and require a thorough knowledge of the legal literature of every country. He was not convinced that it was really necessary to undertake such a task.

20. The CHAIRMAN suggested that the Commission draw the Secretariat's attention to the point, without committing itself and without saying whether it considered it necessary or desirable to undertake such a task.

It was so agreed.

CHAPTER III: LAW OF TREATIES

PART II: INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION I: GENERAL RULES (A/CN.4/L.116/Add.1)

COMMENTARY TO ARTICLE 30 (Validity and continuance in force of treaties) [39]

21. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to follow the same procedure as at previous sessions and to consider each commentary paragraph by paragraph.

It was so agreed.

22. The CHAIRMAN invited the Commission to consider the commentary to article 30.

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Mr. Briggs, First Vice-Chairman, took the Chair.

Paragraph (4)

23. Sir Humphrey WALDOCK, Special Rapporteur, explained that the references in paragraph (4) to the text of article 30 would be corrected in accordance with the final text of the article.

Paragraph (4) was approved.

Paragraph (5)

24. Sir Humphrey WALDOCK, Special Rapporteur, said that the last two sentences of paragraph (5) referred only to the effect of a change in the legal personality of a party upon a bilateral treaty. He therefore suggested that the penultimate sentence be amended to state that a change of that kind could in certain circumstances be a factual cause of the termination of a bilateral treaty, or of the disappearance of a party to a multilateral treaty, and that the last sentence be amended to state that a bilateral treaty, lacking one of the parties, would simply cease to exist, while a multilateral treaty would just lose a party and, if it terminated, would do so under article 39 (*bis*).

25. Mr. JIMÉNEZ de ARÉCHAGA said that those two sentences, particularly if amended in the manner suggested by the Special Rapporteur, would prejudge the question of the effects of State succession on the termination of treaties. In his opinion, the whole question of the effects of State succession on the termination of treaties should be reserved.

26. Sir Humphrey WALDOCK, Special Rapporteur, said that a change in the legal personality of a party could be a factual cause of termination but did not constitute a legal ground of termination. An explanation on that point would have to be included in the commentary, because article 30 stated categorically that the only grounds of invalidity and termination were those exhaustively listed in the articles.

27. Mr. JIMÉNEZ de ARÉCHAGA said that the saving clause relating to succession of States should be kept in broad general terms. If it were couched in specific terms, it might give the impression that forms of State succession other than those resulting from a change of personality of the State could never constitute grounds of termination of a treaty.

28. Sir Humphrey WALDOCK, Special Rapporteur, said that unless the commentary contained some reference to the exclusion of the factual causes of termination arising from succession of States and from hostilities, the Commission would be criticized for the categorical terms in which both paragraphs of article 30 were drafted.

29. Mr. ROSENNE said that the discussion had revealed the existence of two different problems. The first was the general problem of the scope of the articles, and the second was the problem of the meaning of article 30. In order to make that meaning clear, it was essential to include the last two sentences of paragraph (5) of the commentary, as proposed by the Special Rapporteur.

30. Mr. AGO said the statement that " In the Commission's view, cases of obsolescence or desuetude are covered by article 38, paragraph (*b*), under which a treaty may be terminated at any time by consent of all the parties ", seemed too strong. It should be toned down so as to state that such cases " may be considered as covered by article 38, paragraph (*b*) ".

31. Sir Humphrey WALDOCK, Special Rapporteur, said he would be prepared to accept that change of language, although the meaning would be the same.

32. Mr. LACHS said he would prefer that the exceptions relating to the effects of State succession and responsibility on treaties should be stated in a special article, either at the beginning or at the end of the draft, since they applied throughout the draft articles.

33. Sir Humphrey WALDOCK, Special Rapporteur, said that the introduction to the final report would refer to the various decisions of the Commission regarding the limitation of the scope of the draft articles. Bearing in mind, however, that the draft articles were intended to become a convention, it was not possible to rely on saving clauses in the introduction. The Commission should be certain of the meaning of the draft articles themselves.

34. The question of the effects of war on treaties was very close to that of the effects of State succession. The Commission had deliberately set aside that question

because the draft articles were intended to deal with the law of treaties in normal times, just as the four Geneva Conventions of 1958 dealt with the law of the sea in time of peace only.

35. The CHAIRMAN, speaking as a member of the Commission, pointed out that the second sentence of paragraph 2 of article 30 read " The same rule applies to suspension of the operation of a treaty ". Since hostilities undoubtedly suspended the operation of certain treaties, paragraph (5) of the commentary should include a reservation on that point, similar to the one proposed by the Special Rapporteur regarding the effects of State succession.

36. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that it was desirable to include a sentence in paragraph (5) to cover that point.

37. Mr. AGO said he thought that there should be a reference to hostilities in the commentary, particularly in order to reserve the Commission's position on the matter.

38. On the other hand, he was in some doubt as to whether it should be stated that the draft articles referred only to normal times, in other words, to peace time. It had to be remembered there were treaties which had been expressly concluded to deal with a state of war and such treaties should not be excluded from the scope of the articles.

39. Mr. JIMÉNEZ de ARÉCHAGA suggested that the Commission defer its decision on paragraph (5) until it had dealt with the introduction to the draft report. Since that introduction would deal with the exclusion of certain matters from the scope of the draft articles, a cross-reference to that introduction would perhaps suffice in paragraph (5) of the commentary to article 30.

40. Mr. ROSENNE said that article 0, which limited the scope of the draft articles to treaties between States, was rather a long way away from article 30. The last sentence of paragraph (5) should therefore refer to a bilateral treaty concluded between States. In at least one case—the Judgment of 1962 on the preliminary objections in the *South-West Africa Cases*[1]—the International Court of Justice had ruled that the disappearance of one of the parties, the League of Nations, had not terminated the treaty.

41. Sir Humphrey WALDOCK, Special Rapporteur, said that members must make up their minds about the content of article 30 and decide whether or not the Commission had been justified in framing paragraphs 1 and 2 in their present strict and negative form, which was the outcome of very careful consideration at various stages. If the answer were in the negative, the text of the article itself would have to be modified.

42. When drafting the commentary, he had felt bound, as Special Rapporteur, to examine whether or not something had been left out of the article that called for a general reservation to the effect that the provisions of the article were without prejudice to questions of State succession or of the effect on treaties of the outbreak of hostilities. A general reservation of that kind in the introduction to the draft articles was no solution because they were intended for incorporation in a draft convention and the articles must therefore stand on their own feet.

43. Mr. JIMÉNEZ de ARÉCHAGA said that he must have more time to reflect on the serious issues at stake.

44. Mr. AGO said it seemed to him that the Commission was paying too much attention to such matters as hostilities and State succession. In fact, article 30, even in its paragraph 2, which was the one which caused most of the difficulty, stated that a treaty might be terminated or denounced or withdrawn from only as a result of the application " of the present articles ". But war, although it might be the indirect cause of the termination or suspension of a treaty, was not a ground on which a treaty could be terminated. Similarly, State succession was a fact which had consequences where a treaty was concerned, but it was not a ground on which a treaty could be terminated.

45. In his view, the article was absolutely accurate; there was no reason why the Commission, by an ill-advised commentary, should create doubts which would not otherwise have arisen.

46. Mr. ROSENNE said that a reference could be made in the commentary to the explanations given by the Chairman of the Drafting Committee at the 862nd meeting, when the new text of article 30 had been approved.

47. Sir Humphrey WALDOCK, Special Rapporteur, said that that would not suffice. He agreed with Mr. Ago that a cause should not be confused with a ground of termination in the sense attributed to the latter phrase in the draft articles. The same was true of the effect of the outbreak of hostilities on treaty relations. The Commission must be ready with an answer to the kind of criticism any lawyer was likely to advance, particularly against paragraph 2.

48. Mr. TUNKIN said it was obviously important not to prejudice any conclusions on a particular issue that might have to be considered under the topic of State succession, and that it could be inferred from the text of the article that succession was not a ground for withdrawal from a treaty. He doubted whether such a proposition was tenable and the Special Rapporteur seemed to share his doubt.

49. Paragraph 2 of the article was undoubtedly too stringent in respect of State succession, and possibly in respect of the outbreak of hostilities. State succession might lead not to factual but to other causes that could constitute a separate ground for withdrawal from a treaty that was not covered in the draft articles.

50. Sir Humphrey WALDOCK, Special Rapporteur, said that the verb " to terminate " in English was not free of ambiguity. Termination could be a fact or an act of putting an end to something. For example, the expression " termination by agreement of the parties " was not altogether satisfactory because it described not exactly a ground of termination but rather a method of achieving termination. The difficulty had been overcome in the French text now that the word " *terminaison* " had been abandoned.

[1] *I.C.J. Reports 1962*, p. 319.

51. Mr. JIMÉNEZ de ARÉCHAGA said that the problem lay in paragraph 2 of the article. Either the word " only " would have to be dropped or some safeguard would have to be inserted.

52. Mr. AGO said that the English text of paragraph 2 could not be misconstrued because of the words " by a party " in the first sentence.

53. As for Mr. Tunkin's point, there should be no problem because a new State would probably not be regarded as " a party ".

54. Sir Humphrey WALDOCK, Special Rapporteur, said that a new State could not plead State succession as a ground for terminating a treaty, but it might be able to claim that the treaty had disappeared or that it was not a party to it.

55. Mr. TUNKIN said that that might be true in some cases but not necessarily always. The whole problem of State succession had been extensively analysed in the works of certain Soviet Union lawyers, more particularly the situation of a new State emerging as a result of a socialist revolution, which was entirely different from its predecessor in social structure and which pursued an entirely different foreign policy. Views might differ on the question of whether such a State was entitled to withdraw from old treaties that it regarded as incompatible with its foreign policy, but it was impossible at that stage for the Commission to pronounce on such general problems without a very full study of the subject.

56. Mr. JIMÉNEZ de ARÉCHAGA said that the practice of new States varied widely. Some claimed that they had the option of choosing which treaties they wished to remain bound by, possibly for a certain time, and which they wished to withdraw from.

57. Mr. AGO said that logical reasoning led to a certain conclusion. If there had only been a change of government, it was not a case of State succession: the State was a party to the treaty and it was bound by the treaty. But if it was a true case of State succession, including the cases which Mr. Tunkin had mentioned where there had been a revolution, it was obvious that the new State was not a party to the treaty. In such circumstances, that State put forward a request to be admitted as a party to the treaty to which the previous State had been a party. The question was not one of the termination of the treaty but of the new State becoming a party to a particular treaty.

58. Members of the Commission were making the problem more complicated than it need be. If their apprehensions were really so lively, the only course would be to delete paragraph 2, which, in the light of other aspects of the matter, would be most unfortunate.

59. Mr. JIMÉNEZ de ARÉCHAGA said that the difficulty to which paragraph 2 had given rise was not as simple as appeared at first sight and certainly called for further thought. Many of the new States considered themselves " parties " to treaties applied or extended to them by the former metropolitan power and any argument based on a strict interpretation of the word " party" begged the question.

60. Mr. TUNKIN said that the decision whether or not to retain paragraph 2 in article 30 could be postponed until the next meeting.

61. Sir Humphrey WALDOCK, Special Rapporteur, said he would advise very strongly against dropping paragraph 2 if paragraph 1 were kept. It would be most disappointing if article 30 disappeared altogether, because it was of real value as an introduction to the whole of part II. It would be preferable, even at that late stage, to make one further effort to devise a safeguard for inclusion in paragraph 2 to meet the objections raised during the discussion. In the circumstances, further consideration of the commentary to paragraph (5) should be adjourned.

It was so agreed.[2]

COMMENTARY TO ARTICLE 30 (*bis*) (Obligations under other rules of international law) [40]

62. Sir Humphrey WALDOCK, Special Rapporteur, said that there was a grammatical mistake in the third sentence of the English text; the words " it was also subjected " should be replaced by the words " they were also subject ".

63. Mr. AGO suggested that the opening words of the French text of the article be amended to read " *La nullité d'un traité, le fait d'y mettre fin ou de le dénoncer . . .* ". That wording would bring out the active sense of the English word " termination ".

It was so agreed.

64. Mr. de LUNA said that, as the word " *terminación* " was perfectly correct in Spanish, the Spanish text could continue to be based on the English.

65. Sir Humphrey WALDOCK, Special Rapporteur, said that no change was necessary in the English text.

The commentary to article 30 (bis), *as thus amended, was approved.*

COMMENTARY TO ARTICLE 31 (Provisions of internal law regarding competency to conclude a treaty) [43]

Paragraph (1)

66. Mr. de LUNA said that he was not very satisfied with the French text of part of the second sentence, the words " *d'autres enfin renferment des lois fondamentales* ".

67. Mr. AGO suggested that the passage be amended to read " *dans d'autres enfin, il y a des lois fondamentales* ".

It was so agreed.

Paragraph (1), as thus amended, was approved.

Paragraph (2)

68. Mr. de LUNA said that the second sentence was not clear in the French text.

69. Mr. AGO said that it would be better to say " *devraient être considérées* " than " *doivent être considérées* ".

It was so agreed.

Paragraph (2), as thus amended, was approved.

Paragraph (3)

70. Mr. ROSENNE suggested that, in the interests of precision, it would be as well to insert the words " At that time " at the beginning of the second sentence.

[2] For resumption of discussion, see 889th meeting, paras. 1-37.

71. Sir Humphrey WALDOCK, Special Rapporteur, said that such a change was unacceptable as it would imply that certain members did not remain strongly critical of the thesis that constitutional limitations were incorporated in international law, and that was certainly not the case.

72. Mr. ROSENNE said he considered that the insertion would have been harmless because it was clear that paragraph (3) summarized a discussion that had taken place in 1951.

73. Mr. TUNKIN said that the third sentence was perhaps not very satisfactorily drafted.

74. Mr. AGO suggested that the sentence be amended to read " During the discussion at that session it was said that the Commission's decision had been based less on legal principles than on a belief that States would not accept any other rule ".

75. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that that was a clearer wording.

Paragraph (3), as thus amended, was approved.

Paragraph (4)

76. Mr. AGO suggested the deletion of the words " or could easily be ascertained by inquiry ", at the end of the paragraph.

77. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Ago's amendment was acceptable.

Paragraph (4), as thus amended, was approved.

Paragraph (5)

78. Mr. RUDA said that, since the Commission had to all intents and purposes adopted the theory on which it commented in the paragraph, it might be that, by referring to a " ' notorious ' limitation ", it was going rather too far in criticizing the very theory which it had adopted.

79. Sir Humphrey WALDOCK, Special Rapporteur, said that he could not admit that the Commission as a whole had accepted the theory discussed in paragraph (5). The commentary to article 31 must be read as a whole; he had been at great pains to summarize the views expressed at different stages in the elaboration of the article.

80. Mr. RUDA said that, as he had not voted for article 31, he had no preference as between the words " notorious " and " manifest ". If it saw fit to do so, the Commission could leave the text as it was; but it seemed to him that the criticism it was making might equally well apply to the article which it had adopted.

81. Mr. AGO said that it would suffice to tone down paragraph (5), which seemed too critical of an opinion which was not the Commission's own.

82. Sir Humphrey WALDOCK, Special Rapporteur, said that in paragraph (5) he had tried to formulate the Commission's comment on the theory of a " notorious " limitation. The Commission had accepted the view that it could not provide a firm basis for the rule in article 31. To take the obvious example of United States constitutional provisions, the practice of executive agreements made it impossible to rely on such provisions. The Commission had therefore turned to a more delicately balanced solution that took into account manifest violations of constitutional provisions in a particular case.

83. Mr. AGO suggested that it might be preferable to transfer the content of paragraphs (5) and (6) to a later position in the commentary to article 31.

84. Mr. JIMÉNEZ de ARÉCHAGA said he agreed with the views of the Special Rapporteur; he saw no contradiction between the content of paragraphs (5) and (6) and the text of the article itself because the article required, rather than notoriety in the violated provision of the national constitution, a different element, namely, that a particular breach of a constitutional provision was a manifest violation. The requirement of notoriety referred to the concrete violation and not to the constitutional provision. Furthermore, the Commission took as an initial hypothesis that of the validity, and not the invalidity, of a treaty approved despite lack of compliance with constitutional provisions.

85. The CHAIRMAN proposed that further consideration of paragraph (5) be adjourned.

It was so agreed.[3]

The meeting rose at 1 p.m.

[3] For resumption of discussion, see 889th meeting, paras. 44-53.

889th MEETING

Wednesday, 13 July 1966, at 10 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Draft report of the Commission on the work of its eighteenth session

(A/CN.4/L.116 and Addenda)

(continued)

CHAPTER II: LAW OF TREATIES

(continued)

ARTICLE 30 (Validity and continuance in force of treaties) *(resumed from the 862nd meeting)*

" 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. "