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Summary record of the 893rd meeting

Topic:
Other topics

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a reservation to a treaty required acceptance by States which were not themselves bound by the treaty. If so, without being bound by the provisions of an international instrument, a State could prevent other States from becoming parties to it. He agreed with the Special Rapporteur that the words “by all the parties” should be retained.

104. Mr. AGO said that it was absolutely essential to retain the word “parties”, since it was a matter of the application of a treaty and a treaty could be applied only between the parties. The negotiating States, at a given moment, had given their consent to the application of the treaty as between all the parties, but when the treaty came to be applied, there were only “the parties”.

105. Mr. TSURUOKA said that, as in practice both expressions amounted to the same thing, he would support the majority view. There was no problem where ten States had drafted a treaty and all intended to ratify it; but supposing the treaty came into force after three States had ratified it, would those three then be able to accept the reservation, and thereby prevent the other States from entering into treaty relations? That was the special case that occasioned him some doubt.

106. Mr. AGO suggested that, in paragraph 2, the words “by the treaty” be inserted after the words “to be bound”.

It was so agreed.

Paragraph 2, as thus amended, was adopted.

Paragraphs 3-5

Paragraphs 3-5 were adopted without comment.

Article 19, as amended, was adopted.

ARTICLE 20 (Procedure regarding reservations) [18]

Article 20 was adopted without comment.

ARTICLE 21 (Legal effects of reservations) [19]

Article 21 was adopted without comment.

ARTICLE 22 (Withdrawal of reservations) [20]

Article 22 was adopted without comment.

SECTION 3 — ENTRY INTO FORCE

ARTICLE 23 (Entry into force of a treaty) [21]

107. Mr. AGO said that it would be better to transpose the title of the article, “Entry into force of a treaty”, and the title of section 3, “Entry into force”.

108. Mr. TSURUOKA pointed out that the French and English versions of the title did not correspond exactly; the English referred to “a treaty”, but the French to “*des traités*”.

109. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the titles in question be amended to read:

“Section 3 — Entry into force of treaties”; and
“Article 23 — Entry into force”.

The Special Rapporteur's amendment was adopted.

Article 23 as thus amended was adopted.

ARTICLE 24 (Entry into force of a treaty provisionally) [22]

110. Mr. AGO said that, as in article 23, the words “of a treaty” in the title should be omitted.

Mr. Ago's amendment was adopted.

Article 24, as amended, was adopted.

The meeting rose at 1 p.m.

893rd MEETING

Monday, 18 July 1966, at 3 p.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. 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)*

FINAL TEXT OF ARTICLES (A/CN.4/L.117 and Add.1)
(continued)

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION I — OBSERVANCE OF TREATIES

1. The CHAIRMAN invited the Commission to continue its consideration of the final text of the draft articles (A/CN.4/L.117 and Add.1).

ARTICLE 55 (*Pacta sunt servanda*) [23]

Article 55 was adopted without comment.

SECTION 2 — APPLICATION OF TREATIES

ARTICLE 56 (Non-retroactivity of treaties) [24]

2. Mr. BRIGGS said that by an oversight the words “its provisions do not bind” had been left out of the English text. They should be inserted after the word “established, . . .”.

Article 56 was adopted.

ARTICLE 57 (Application of treaties to territory) [25]

Article 57 was adopted without comment.

ARTICLE 63 (Application of successive treaties relating to the same subject-matter) [26]

3. Mr. CASTRÉN proposed the deletion of paragraph 5. Now that the Commission had adopted a special article Y (A/CN.4/L.117/Add.1) which reserved the question of the international responsibility of States, the paragraph was no longer necessary.

4. Mr. JIMÉNEZ de ARÉCHAGA said that paragraph 5 should be retained, because the reservation it contained concerning cases of breach was useful.

5. Sir Humphrey WALDOCK, Special Rapporteur, said that paragraph 5 was necessary in order to obviate any misunderstanding about the rule laid down in paragraph 4 (c), which might be interpreted as sanctioning the conclusion of a later treaty incompatible with an earlier one. Members would recollect the discussions on "interdependent" treaties.¹

6. The CHAIRMAN, speaking as a member of the Commission, said he saw no objection to retaining the paragraph, which could even be useful in a particular case.

Article 63 was adopted.

SECTION 3—INTERPRETATION OF TREATIES

ARTICLE 69 (General rule of interpretation) [27]

7. Mr. PESSOU asked what was the meaning of the word "their" in the expression "in their context" in paragraph 1. Which noun did it refer to?

8. The CHAIRMAN said he agreed with Mr. Pessou that one could not use the expression "in their context" in French.

9. Mr. BARTOŠ said that he understood the expression to mean "in the context of the treaty", not "in the context of the terms of the treaty".

10. The CHAIRMAN said it was important to get the matter right and he would call on the Special Rapporteur to explain the position.

11. Sir Humphrey WALDOCK, Special Rapporteur, said that as far as the English text was concerned, the meaning of paragraph 1 was clear. Of course the wording he had originally put forward in his third report, in what had then been article 70, had been more explicit. It had read: "The terms of a treaty shall be interpreted in good faith in accordance with the natural and ordinary meaning to be given to each term in its context in the treaty and in the context of the treaty as a whole."²

12. Mr. BRIGGS said that the Special Rapporteur's 1964 text had made it plain that the terms of a treaty must be interpreted in their context in a particular clause and also in the context of the treaty as a whole, but during the present session the Commission had decided to express those two elements in a single phrase. The only question was whether the French translation of paragraph 1 was accurate.

13. Mr. BARTOŠ pointed out that paragraph 2 consisted of an explanation of the meaning of the expression "the context of the treaty".

14. Mr. JIMÉNEZ de ARÉCHAGA said that paragraph 1 as it stood could very well be construed in the sense indicated by Mr. Pessou, Mr. Bartoš and the Chairman.

15. Sir Humphrey WALDOCK, Special Rapporteur, said that the Commission had decided that the words "in the light of the object and purpose of the treaty" would to a large extent cover the idea of the context of

the treaty as a whole, and for that reason the text had been abbreviated. Certainly in English, if no reference were made to the object and purpose of the treaty, the natural way of expressing the idea would be to use language of the kind he had suggested in 1964.

16. Mr. PESSOU said that his inquiry had been prompted only by concern over the drafting. He was anxious to see all possible sources of ambiguity removed, since it was on ambiguous wording that the abuse of treaties was generally founded.

17. The CHAIRMAN, speaking as a member of the Commission, said that in his opinion, the expression "the context of the treaty" naturally included the context of the articles, the context of the terms of the treaty. But "the context of the terms of the treaty" did not include the context of the treaty. If the Commission spoke of "the context of the treaty", that would be much more comprehensive and much more accurate.

18. Mr. BRIGGS said that if that were the case, it might be better to revert to the Special Rapporteur's original formulation, which would include both ideas.

19. Mr. BARTOŠ said that, since the reference was to the context of the treaty, and the terms of the treaty were an integral part of the treaty, he would suggest that the words "in their context" be replaced by the words "in its context".

20. Mr. JIMÉNEZ de ARÉCHAGA said he preferred the 1964 formula, "the context of the treaty".

21. Sir Humphrey WALDOCK, Special Rapporteur, said that he had found it difficult to accept the wording approved by the Commission at its sixteenth session, and when the matter had been discussed at the present session, Mr. Reuter had criticized the phrase on the grounds that in French it was quite meaningless; even in English the words "the context of the treaty" were not free of ambiguity, because the phrase might be understood to mean more than the text of the treaty itself and to include other elements.

22. Mr. TUNKIN said the Commission should leave the text unchanged, as it had been elaborated only after long and careful discussion of the point at issue.

23. Mr. AGO said that the words "in their context" meant "in the context of the terms of the treaty" and not "in the context of the treaty". The confusion in the Commission had arisen from the use in the French text of paragraph 2 of the faulty expression "*contexte du traité*" and that confusion could only be removed by deleting the words "*du traité*" and thereby bringing the French text into line with the English.

24. Mr. JIMÉNEZ de ARÉCHAGA said that paragraph 1 as now worded was restrictive, and seemed to suggest that the process of interpretation must be carried out by reference to the context of a particular provision rather than of the treaty as a whole. The 1964 text had been satisfactory and had provoked no serious objection from governments. The change introduced at the present session was unjustified.

25. Sir Humphrey WALDOCK, Special Rapporteur, said it was unfortunate that Mr. Jiménez de Aréchaga had not been present when the problem had been re-examined by the Commission. The introductory

¹ See 857th and 858th meetings.

² *Yearbook of the International Law Commission, 1964*, vol. II, p. 52.

phrase to paragraph 2, reading "The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes" could not be more clear, nor could it be misconstrued in the narrow sense attributed to paragraph 1 by Mr. Jiménez de Aréchaga.

26. Mr. LACHS said that the words "the terms of the treaty in their context" could not be misunderstood, particularly as the word "terms" was in the plural. The wording finally arrived at in paragraph 1 had been carefully weighed, and any change introduced at that stage would probably be for the worse.

27. The CHAIRMAN, speaking as a member of the Commission, said that the Commission must have the assurance that interpretation would be in the light of the treaty as a whole and not of a particular article or passage.

28. Sir Humphrey WALDOCK, Special Rapporteur, said that it was essential to delete the words "*du traité*" in the French text of the introductory phrase of paragraph 2; otherwise it would not correspond with the English text.

29. Mr. TSURUOKA said that, with the text as it stood, he understood paragraph 1 as interpreted by the Chairman.

30. Mr. AMADO said he believed that the confusion arose from the way the word "context" was used by journalists and even occasionally by serious writers. Some of them went so far as to talk about "the context of the circumstances", treating "context" as the equivalent of "group". Although he was as anxious as any of his colleagues to adopt a solid, substantial text, he thought that in the case of paragraph 1 the best course was to adopt the text as it stood.

31. Mr. JIMÉNEZ de ARÉCHAGA said that he could accept the present text of paragraph 1, as interpreted by the Chairman.

32. The CHAIRMAN, speaking as a member of the Commission, said that, on the substance, he understood Mr. Amado to share the views of those who opposed the expression "in their context"; the terms of the treaty should be interpreted in the light of the treaty as a whole and not of a single article. The only difference of opinion between him and the other members related to the question whether that idea should be expressed in the text, or whether it should be agreed that it was already implicit in the text.

33. Mr. BARTOŠ said that the question was one of major importance. Any interpretation of the terms of a treaty must be made in the whole context in which those terms were placed: otherwise they would lose all meaning.

34. Mr. CASTRÉN said he must point out that the text now being criticized had been adopted by sixteen votes to none, with no abstentions. He saw no difficulty in that text, which was clear when all the paragraphs were read, but he subscribed to the interpretation given by the Chairman.

Article 69 was adopted without amendment.

ARTICLE 70 (Supplementary means of interpretation) [28]

Article 70 was adopted without comment.

ARTICLE 72 (Interpretation of treaties expressed in two or more languages) [29]

35. Mr. PESSOU proposed that the word "expressed", both in the title and in paragraph 2, be replaced by the word "established".

36. Mr. AGO, supporting Mr. Pessou's proposal, said that it applied to both the French and the English texts.

37. Sir Humphrey WALDOCK, Special Rapporteur, said that the word "established" would not be appropriate in paragraph 2 because it might convey the impression that the version of the treaty referred to was that of the text negotiated and adopted, the one in which the agreement had originally been established. To modify paragraph 2 in that way would be restrictive because there could be other authenticated versions of the treaty. The words "drawn up" would also be unsuitable for paragraph 2 because it was common for the original agreement to be drawn up in one language and for another authentic text to be drawn up in another language.

38. Mr. JIMÉNEZ de ARÉCHAGA suggested that the word "expressed" was unnecessary in paragraph 2.

39. Mr. AGO said that the problem dealt with in the article as a whole was that of the interpretation of a treaty authenticated in several languages. It was for that reason that the word "established" or "authenticated" should be used in the title.

40. Mr. TSURUOKA said he supported Mr. Jiménez de Aréchaga's suggestion simply to delete the word "expressed" in paragraph 2.

41. Mr. BARTOŠ said he agreed with Mr. Ago's interpretation that article 72 stated two completely different ideas. In the case dealt with in paragraph 1, the texts in several languages were all authentic, like the instruments adopted by big diplomatic conferences, or certain instruments adopted by the General Assembly of the United Nations. In the case dealt with in paragraph 2, one or two language versions were authoritative. The paragraph concerned official translations, versions which were not generally considered authentic and only became authentic if the parties agreed. That was why different terms must be used in paragraph 1 and paragraph 2. If paragraph 1 used the term "authenticated", then paragraph 2 should speak of a version which had been "drawn up", because it dealt with a translation of an authentic text.

42. Mr. AGO suggested that paragraph 2 be amended to open with the words "A version of the treaty in a language" and that the title of the article be amended to read "Interpretation of treaties established in two or more languages".

43. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the word "established"—"*établi*" in the French—be substituted for the word "expressed" in the title of the article and that the word "expressed" be deleted in paragraph 2.

It was so agreed.

Article 72, as thus amended, was adopted.

SECTION 4—TREATIES AND THIRD STATES

ARTICLE 58 (General rule regarding third States) [30]

Article 58 was adopted without comment.

ARTICLE 59 (Treaties providing for obligations for third States) [31]

Article 59 was adopted without comment.

ARTICLE 60 (Treaties providing for rights for third States) [32]

Paragraph 1

44. Mr. PESSOU said that he could accept paragraph 1, though it was hard to understand how, for example, two riparian States could meet for the purpose of according a right to two other riparian States, without having invited them to the meeting to determine the legal status of the river of which all were riparian States. The paragraph was not altogether realistic, as he had already had occasion to point out in 1964 during the discussion of the original article 62.³

Article 60 was adopted.

ARTICLE 61 (Revocation or modification of obligations or rights of third States) [33]

Article 61 was adopted without comment.

ARTICLE 62 (Rules in a treaty becoming binding through international custom) [34]

Article 62 was adopted without comment.

PART IV. AMENDMENT AND MODIFICATION OF TREATIES

ARTICLE 65 (General rule regarding the amendment of treaties) [35]

45. The CHAIRMAN, speaking as a member of the Commission, said that it would perhaps be more correct to use the words "modification" and "modified" instead of "amendment" and "amended".

46. Sir Humphrey WALDOCK, Special Rapporteur, said that he failed to understand why the Chairman should have difficulty in accepting the wording used in the titles and texts of the four articles in part IV when, after long discussion, the Commission had agreed to make a distinction between amendment and modification.

47. Mr. de LUNA recalled that the Commission had discussed the question at length and that it had been finally agreed to speak not of "revision" but of "modification" and "amendment", and to draw a clear distinction between the latter two terms.

48. Mr. BARTOŠ said that, as a member of the Commission which had drawn up the rules of procedure of the General Assembly, he remembered that the question of "amendment" had been the subject of a discussion in which French jurists had participated and which had led to the adoption of rule 131. The term "to amend" had been accepted as describing a certain kind of action, but the result of that action was not an amendment: it could be an addition, a deletion or a modification. When an amendment had been adopted, a vote was taken on the proposal as "modified" by the "amendment".

49. Mr. AGO suggested that the last sentence of the French text be brought into line with the English by replacing the words "*cet accord*" by "*un tel accord*" so as to show clearly that the reference was to the assent

mentioned in the first sentence and not to the treaty itself.

50. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Ago's amendment to the French text was acceptable.

51. Mr. BRIGGS pointed out that the second sentence in article 65 would have to be corrected, as it was the rules laid down in part II and not those in part I that applied, following the re-arrangement now approved by the Commission.

52. Mr. ROSENNE suggested that reference should also be made to the rules in part VII.

53. Sir Humphrey WALDOCK, Special Rapporteur, said that it would suffice to refer to the general rules in part II.

It was so agreed.

Article 65, as amended, was adopted.

ARTICLE 66 (Amendment of multilateral treaties) [36]

Article 66 was adopted without comment.

ARTICLE 67 (Agreements to modify multilateral treaties between certain of the parties only) [37]

54. Mr. de LUNA suggested that, in paragraph 1 (b) (ii), the words "the objects and purposes" be replaced by the words "the object and purpose".

55. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that the phrase "objects and purposes", in paragraph 1 (b) (ii), should be in the singular.

Article 67, as thus amended, was adopted.

ARTICLE 68 (Modification of treaties by subsequent practice) [38]

Article 68 was adopted without comment.

PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES
SECTION 1—GENERAL PROVISIONS

ARTICLE 30 (Validity and continuance on force of treaties) [39]

56. Mr. AGO suggested that, in the French version of the title of Part V and of the text of paragraph 1 of article 30, the words "*défaut de validité*" be replaced by the word "*nullité*".

57. Mr. PESSOU pointed out that the second sentence of paragraph 1 would then read somewhat strangely: "*Un traité dont la nullité est établie en vertu des présents articles est nul*".

58. Mr. AGO suggested that the difficulty might be overcome by rearranging the sentence to read: "*Est nul un traité dont la nullité est établie en vertu des présents articles*".

It was so agreed.

Article 30, as amended in the French text only, was adopted.

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

59. Mr. AGO suggested that, in the second line of the French text, the word "*ni*" be replaced by the word "*ou*".

It was so agreed.

³ *Yearbook of the International Law Commission, 1964, vol. I, p. 94, para. 74.*

Article 30 (bis), as amended in the French text only, was adopted.

ARTICLE 46 (Separability of treaty provisions) [41]

60. Mr. TSURUOKA asked why the word "clauses" was used in paragraph 3, when the Commission had always referred to "provisions".

61. Sir Humphrey WALDOCK, Special Rapporteur, said that, in view of the frequency with which the word "provide" was used in the article, it had been thought that to use the word "provisions" would be inelegant.

62. Mr. ROSENNE said that use of the word "provisions" would also involve a change of substance. The intention was to refer to clauses as units, not to the provisions of the treaty as a whole.

63. Mr. BARTOŠ said that there was a distinction between the two terms. A provision was a contractual rule which could have several separate clauses. A "clause" was intermediate between a rule and a condition, and offered the possibility in certain cases of taking advantage of, or obtaining protection from, certain situations.

64. Mr. TSURUOKA said that he would not discuss that distinction but must point out that there was a discrepancy between the title and the text of the article.

65. Sir Humphrey WALDOCK, Special Rapporteur, said he thought it was perfectly legitimate to speak of treaty provisions in the title. It would be best to leave the text as it was.

66. Mr. AGO said that, in order to bring the French text into line with the English, it would be necessary to insert, before the words "*de ses clauses particulières*" in paragraph 4, the word "*seulement*".

It was so agreed.

67. Mr. JIMÉNEZ de ARÉCHAGA said that, in accordance with the Commission's decision at the 891st meeting, the words "Subject to paragraph 3" should be inserted at the beginning of paragraph 4.⁴

It was so agreed.

Article 46, as amended, was adopted.

ARTICLE 47 (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty) [42]

Article 47 was adopted without comment.

SECTION 2—INVALIDITY OF TREATIES

68. Mr. AGO said that, in the French text of the title, the words "*défaut de validité*" should be replaced by the word "*nullité*".

It was so agreed.

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

69. The CHAIRMAN, speaking as a member of the Commission, said that, according to his information, the correct translation in French of 'competence to conclude' was "*compétence pour conclure*".

70. Mr. AGO said that the third line of the French text should read "*ne peut être invoqué*" instead of "*ne peut pas être invoqué*".

It was so agreed.

⁴ 891st meeting, para. 67.

Article 31, as amended in the French text only, was adopted.

ARTICLE 32 (Specific restrictions on authority to express the consent of the State) [44]

Article 32 was adopted without comment.

ARTICLE 34 (Error) [45]

71. Mr. AGO said that the second sentence of paragraph 2 had been inaccurately translated into French. The words "*les circonstances ont été telles que cet Etat avait été averti de la possibilité d'une erreur*" should be replaced by "*les circonstances étaient de nature à avertir cet Etat de la possibilité d'une erreur*", thereby bringing the French into line with the English.

72. Mr. JIMÉNEZ de ARÉCHAGA said that the wording of paragraph 2 was taken from a judgment of the International Court of Justice;⁵ the French version of the paragraph should therefore be checked against the French text of the judgment of the Court.

73. Mr. AGO said that, whatever the source of the French text, it did not mean the same thing as the English and should be corrected.

It was so agreed.

Article 34, as amended in the French text only, was adopted.

ARTICLE 33 (Fraud) [46]

Article 33 was adopted without comment.

ARTICLE 34 (bis) (Corruption of a representative of the State) [47]

74. Mr. AGO said that, for reasons of euphony, the words "*par la corruption*", in the second line of the French text, should be replaced by the words "*au moyen de la corruption*".

It was so agreed.

Article 34 (bis), as amended in the French text only, was adopted.

ARTICLE 35 (Coercion of a representative of a State) [48]

Article 35 was adopted without comment.

ARTICLE 36 (Coercion of a State by the threat or use of force) [49]

Article 36 was adopted without comment.

ARTICLE 37 (Treaties conflicting with a peremptory norm of general international law (*ius cogens*)) [50]

Article 37 was adopted without comment.

SECTION 3—TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

75. The CHAIRMAN, speaking as a member of the Commission, said that the word "*Fin*" in the title of section 3 referred to the treaty, not to its operation; the title in French should therefore be amended to read "*Fin des traités et suspension de leur application*".

It was so agreed.

76. Sir Humphrey WALDOCK, Special Rapporteur, said that no change was required in the English text; the same juxtaposition occurred elsewhere.

⁵ *Case concerning the Temple of Preah Vihear, Judgment of 15 June 1962, I.C.J. Reports 1962, p. 26.*

ARTICLE 38 (Termination of or withdrawal from a treaty by consent of the parties) [51]

Article 38 was adopted without comment.

ARTICLE 39 (*bis*) (Reduction of the parties to a multi-lateral treaty below the number necessary for its entry into force) [52]

77. Mr. TSURUOKA said he noted that, in the title, the word "necessary" had been translated into French by the words "*spécifié dans le traité*".

78. Mr. AGO proposed that, in the French text, it be replaced by the word "*exigé*".

It was so agreed.

Article 39 (bis), as amended in the French text only, was adopted.

ARTICLE 39 (Denunciation of a treaty containing no provision regarding termination) [53]

79. Mr. AGO said that, as it was a question of denunciation, the word "*fin*" in the title and first line of the French text should be replaced by the word "*extinction*".

It was so agreed.

Article 39, as amended in the French text only, was adopted.

ARTICLE 40 (Suspension of the operation of a treaty by consent of the parties) [54]

80. Mr. AGO said that, in sub-paragraph (*b*) of the French text, the words "*en tout moment*" should be replaced by the words "*à tout moment*".

It was so agreed.

Article 40, as amended in the French text only, was adopted.

ARTICLE 40 (*bis*) (Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only) [55]

81. Sir Humphrey WALDOCK, Special Rapporteur, said that, in accordance with the Commission's previous decision, the expression "objects and purposes" in sub-paragraph (*b*) should be in the singular.

It was so agreed.

82. Mr. AGO proposed the deletion of the word "*prises*" in sub-paragraph (*b*) of the French text.

It was so agreed.

Article 40 (bis), as amended, was adopted.

ARTICLE 41 (Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty) [56]

Article 41 was adopted without comment.

ARTICLE 42 (Termination or suspension of the operation of a treaty as a consequence of its breach) [57]

83. The CHAIRMAN, speaking as a member of the Commission, proposed that the French version of the title be altered to read "*Fin d'un traité ou suspension de son application comme conséquence de sa violation*".

It was so agreed.

84. Mr. AGO suggested that, in the French text of paragraph 2, "*l'Etat en défaut*" would be preferable to "*l'Etat fautif*", "*lésée*" to "*affectée*" and "*situation*" to "*position*".

85. Mr. TSURUOKA said that wherever possible the English verb "to affect" in its various forms should be translated by the same French word throughout the draft articles.

86. Mr. AMADO proposed that, in the French text, the word "*affectée*" be replaced by the word "*atteinte*".

It was so agreed.

87. Mr. AGO said that some other word than "*répudiation*" should be used in paragraph 3 (*a*) of the French text for the English word "repudiation".

88. The CHAIRMAN, speaking as a member of the Commission, proposed that it be replaced by the word "*rejet*".

It was so agreed.

89. Mr. de LUNA said that he was in some doubt as to whether the expression "objects or purposes" in paragraph 3 (*b*) should be in the singular or in the plural.

90. Mr. JIMÉNEZ de ARÉCHAGA said that, if the expression "objects and purposes" were put in the singular, the sense would be altered.

91. Sir Humphrey WALDOCK, Special Rapporteur, said that it was possible to use the singular; it would of course be necessary to delete the words "any of".

It was so agreed.

Article 42, as amended, was adopted.

ARTICLE 43 (Supervening impossibility of performance) [58]

Article 43 was adopted without comment.

ARTICLE 44 (Fundamental change of circumstances) [59]

92. Mr. AGO suggested that, in the French text, the words "*pour s'en retirer*" be replaced by the words "*pour se retirer d'un tel traité*".

It was so agreed.

Article 44, as amended in the French text only, was adopted.

ARTICLE 64 (Severance of diplomatic relations) [60]

93. Mr. JIMÉNEZ de ARÉCHAGA said he thought it had been understood that article 64 should be placed after article 43, not after article 44.

94. Sir Humphrey WALDOCK, Special Rapporteur, said that the decision to place it after article 44 was deliberate. Articles 43 and 44 were closely related; some cases of subsequent impossibility of performance could equally well be held to be cases of fundamental change of circumstances. Severance of diplomatic relations was a different matter and the article dealing with it should therefore follow article 44.

Article 64 was adopted.

ARTICLE 45 (Establishment of a new peremptory norm of general international law) [61]

95. The CHAIRMAN said there was an error in the English text of the title of article 45: the word "Establishment" should read "Emergence".

96. Mr. AGO suggested that, in both the English and the French texts, the words “in conflict with”—in French, “*qui est en conflit avec*”—should be used instead of “incompatible”.

It was so agreed.

Article 45, as amended, was adopted.

SECTION 4 — PROCEDURE

ARTICLE 51 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) [62]

Paragraph 1

97. Mr. AGO, referring to the French text, suggested that, since the Commission had always used the expression “*alléguer un motif*”, rather than “*alléguer une cause*”, to render the English “allege a ground”, it should continue to do so.

It was so agreed.

98. Sir Humphrey WALDOCK, Special Rapporteur, referring to the use of the word “party” in the article, said that it would have been clumsy to add anything to the word “party” to indicate the slightly different sense in which it was used in article 51 as compared with the ordinary sense of a party to a treaty in force. It seemed best to explain the matter in the commentary to the article on definitions and he had accordingly done so.

Paragraph 2

99. Mr. TSURUOKA said that, when the Commission was approving article 29 (*bis*), he had stated that article 51 would have to be altered accordingly.⁶ So far as the time limit was concerned, it seemed desirable that article 51, paragraph 2, should be brought into line with article 19, paragraph 5.

100. Sir Humphrey WALDOCK, Special Rapporteur, suggested that in that case, the beginning of paragraph 2 be altered to read “If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months from the receipt of the notification by the other party . . .” or “the other parties”, as in paragraph 1.

101. Mr. JIMÉNEZ de ARÉCHAGA said that the interpolation seemed scarcely necessary, since article 29 (*bis*) covered the point.

102. Mr. TUNKIN said that there would be difficulties in practice. How, for example, would the State sending the notification know when each State had received it?

103. Mr. TSURUOKA said that Mr. Tunkin’s remark was perfectly true where practice was concerned, but what was at issue in the article was the protection of the interests of both sides. The party receiving the notification had to be aware of its contents before it could make its objection; if three months had elapsed without that party taking any action, then it was responsible and must accept the consequences of the measure taken by the other party.

104. The CHAIRMAN, speaking as a member of the Commission, said that by inserting a reference to article 29 (*bis*), the notification could be required to be express.

105. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the best solution would be to omit the words “by the other party” altogether. The opening passage would then read “If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification”.

It was so agreed.

106. Mr. AGO proposed that the French text read: “*Si après un délai qui, sauf en cas d’urgence particulière, ne saurait être inférieur à trois mois dès la réception de la notification, . . .*”.

It was so agreed.

107. Mr. ROSENNE said that, in article 29 (*bis*), the words “receipt” and “received” were used in the sense of receipt by the depositary and by the State. The word “receipt” in article 51, paragraph 2, would therefore be ambiguous.

108. Sir Humphrey WALDOCK, Special Rapporteur, said that there was no ambiguity if paragraph 1 was read in conjunction with paragraph 2.

Article 51, as amended, was adopted.

ARTICLE 50 (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty) [63]

Article 50 was adopted without comment.

ARTICLE 50 (*bis*) (Revocation of notifications and instruments provided for in articles 51 and 50) [64]

109. Mr. AGO proposed that the French text be brought in line with the English text by using the wording “*Une notification ou un instrument*”.

It was so agreed.

Article 50 (bis), as amended in the French text only, was adopted.

SECTION 5 — CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

110. Mr. AGO proposed that the words “*la fin*” in the French text of the title of section 5 and of the titles of articles 53 and 53 (*bis*) be replaced by the words “*l’extinction*”.

It was so agreed.

ARTICLE 52 (Consequences of the invalidity of a treaty) [65]

111. The CHAIRMAN pointed out that the number “34 (*bis*)” should be inserted after the number “33” in paragraph 3.

Article 52, as thus amended, was adopted.

ARTICLE 53 (Consequences of the termination of a treaty) [66]

112. The CHAIRMAN said that, in view of the amendment adopted at the 891st meeting, the beginning of paragraph 1 (*b*) should be amended to read: “does not affect any right, obligation or legal situation of the parties . . .”.

Article 53, as thus amended, was adopted.

⁶ 887th meeting, para. 15.

ARTICLE 53 (*bis*) (Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law) [67]

113. Sir Humphrey WALDOCK, Special Rapporteur, said that the same change would have to be made to the beginning of paragraph 2 (*b*) as had just been made to paragraph 1 (*b*) of article 53.

114. Mr. AGO said he was not sure whether the term "nullity" used in the English text was the correct term.

115. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee had decided that "nullity" was the proper term.

Article 53 (bis), as amended, was adopted.

ARTICLE 54 (Consequences of the suspension of the operation of a treaty) [68]

116. Mr. WATTLES (Deputy Secretary to the Commission) said that, in accordance with the Commission's decision at the 891st meeting, the words "between the parties" should be inserted after the words "legal relations" in paragraph 1 (*b*).

117. Mr. AGO said that, in paragraph 2, the word "calculated" should be replaced by the word "tending".

It was so agreed.

Article 54, as amended, was adopted.

PART VI. CASE OF AN AGGRESSOR STATE

118. Sir Humphrey WALDOCK, Special Rapporteur, said that the title of part VI should be changed to "Miscellaneous Provisions", since the part now contained two articles, Y and Z.

ARTICLE Y (Cases of State succession and State responsibility) (A/CN.4/L.117/Add.1) [69]

Article Y was adopted without comment.

ARTICLE Z (Special provision regarding an aggressor State) [70]

119. Sir Humphrey WALDOCK, Special Rapporteur, said that the title of article Z should now read "Case of an aggressor State".

Article Z as thus amended was adopted.

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

ARTICLE 28 (Depositaries of treaties) [71]

Article 28 was adopted without comment.

ARTICLE 29 (Functions of depositaries) [72]

Article 29 was adopted without comment.

ARTICLE 29 (*bis*) (Notifications and communications) [73]

Article 29 (bis) was adopted without comment.

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

120. Mr. AGO asked whether the reference in paragraph 4 to "the negotiating States" was correct; paragraph 3, in the French text at any rate, referred to the agreement of the contracting States.

121. Sir Humphrey WALDOCK, Special Rapporteur, said that there were really two situations. In one, a correction might be made very soon after the conclusion of the treaty, in which case the reference would be to the "negotiating States"; in the other, the error might not be discovered till some time later, in which case the reference might well be to the "contracting States".

122. Mr. WATTLES (Deputy Secretary to the Commission) said he had been informed that, for the purposes of the French text, it was necessary to specify in paragraph 3 whose agreement was required, whence the apparent difference between the English and French texts.

123. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the last phrase in paragraph 3 be amended to read "which the negotiating States agree should be corrected".

124. Mr. JIMÉNEZ de ARÉCHAGA said that, in that case, if a contracting State agreed that there was an error and a negotiating State did not agree, the proposed procedure would be inapplicable.

125. Mr. LACHS said that paragraph 5 was more a matter for the parties than for the negotiating States.

126. Mr. ROSENNE said that certified copies of treaties were usually in the hands of States, whereas the original remained in the hands of the depositary. He therefore did not understand what paragraph 5 was intended to convey.

127. Sir Humphrey WALDOCK, Special Rapporteur, said that the situation was surely quite simple. A certified copy was issued by a depositary for the use of the States concerned. If a depositary discovered an error, he had to notify every State to which the certified copy had been issued.

128. The question of "negotiating" and "contracting" States was a difficult one because whichever expression was used would seem to exclude States in the other situation. If the error was discovered immediately the text had been drawn up, the reference was obviously to "negotiating States". But to use the expression "negotiating States" might appear to be giving those States a right of veto. If the error was discovered much later it might be a matter for "contracting States", but that term might exclude States from participating in the correction which were entitled to do so.

129. Mr. TUNKIN said that he could see no difficulty in paragraph 5; it referred to the copy made by the depositary, which would, of course, send corrections to all the negotiating States.

130. In paragraph 4, however, the problem was more serious, since the corrected text replaced the defective text *ab initio*, and a question of substance might be involved. It was therefore important to know to whom it was sent. The answer was that, before the treaty was in force, it was sent to the "negotiating States"; after the treaty was in force, it was sent to all the parties.

131. Sir Humphrey WALDOCK, Special Rapporteur, said that "contracting States" would perhaps be the best expression in paragraphs 3 and 4.

132. Mr. JIMÉNEZ de ARÉCHAGA said that it would also have to be used in paragraphs 1 and 2 (*c*).

133. Mr. TUNKIN said that "contracting States" would be inappropriate in paragraph 4, since it could happen that, at the time the error was discovered, there were no contracting States in the sense of States which had given their final consent to be bound by the treaty.

134. Mr. BARTOŠ said that he agreed with Mr. Tunkin. It was essential to know the result of the negotiations, for it was on the result of the negotiations that the participation of the States that were entitled to participate as contracting parties depended. If they discovered an error, they could change their attitude and decide to participate. That, at all events, was the argument that had been put forward on several occasions at major international conferences. Until the treaty came into force, the rights all belonged to the States which had been invited to participate, and which had participated.

135. Mr. JIMÉNEZ de ARÉCHAGA suggested that the Special Rapporteur be asked to prepare a new draft, in consultation with the Drafting Committee.

136. Sir Humphrey WALDOCK, Special Rapporteur, said that the best course seemed to be to leave the text as it stood; whatever change was made one situation was bound to be excluded.

137. Mr. AGO said that it might be better to use the same expression, "the negotiating States" throughout, even in paragraph 3, so as to avoid any inconsistency with paragraphs 1 and 2.

Article 26 was adopted without amendment.

ARTICLE 25 (Registration and publication of treaties) [75]

Article 25 was adopted without comment

138. The CHAIRMAN said that the Commission had concluded its final reading of the draft articles. He invited the Commission to vote on the draft articles as a whole.

The draft articles on the law of treaties, as a whole, were adopted unanimously.

139. The CHAIRMAN said the Commission was to be congratulated on its achievement, which was certainly an epoch-making event in its history and had only been made possible by the untiring work of the Special Rapporteur.

DRAFT RESOLUTION PROPOSED BY MR. AMADO

140. Mr. AMADO proposed that the Commission adopt the following draft resolution:

"The International Law Commission

"Having adopted the draft articles on the law of treaties,

"Desires to express to the Special Rapporteur, Sir Humphrey Waldock, its deep appreciation of the invaluable contribution he has made to the preparation of the draft throughout these past years by his tireless devotion and incessant labour, which have enabled the Commission to bring this task to a successful conclusion."

The resolution was adopted by acclamation.

141. Mr. AMADO said that he would not dwell on the Special Rapporteur's, Sir Humphrey Waldock's, all-embracing knowledge of the law, of the sources of law, of doctrine and practice, or on his respect for legal precedent. Among the outstanding features of his character was a total freedom from any doctrinaire or

partisan approach. His primary concern had always been the stability of the law, but at the same time he realized that the law was subject to change: he held that the law was the law as it was and as it could be, not the law as dreamers thought it ought to be. As a result of his objectivity, the Commission had never had to wrestle with any disputes other than those occasioned by its anxiety to serve the interests of States even better. The Commission did not give lessons in law; it tried to help States to derive the maximum benefit from their contacts within the international community.

142. Another of Sir Humphrey's distinguishing characteristics was his complete lack of vanity and his unflinching modesty, which was especially noticeable in the respect which he showed for the opinions of others.

143. For him (Mr. Amado), it had been an outstanding cultural experience to watch a scholar who was so sure of what he believed to be right, yet so ready to listen to what others believed to be right, and to follow the evolution of his thinking, in the face of counter-arguments, through to his conclusions. On very many occasions indeed, Sir Humphrey had proved to be right and the Commission had agreed with him in the end. He also wished to pay a tribute to Sir Humphrey's kindness, even temper, equanimity and infinite patience.

144. The name of Sir Humphrey Waldock would thenceforward be associated with a work that would remain as a landmark in history, a milestone in the march of the law. Members of the Commission were honoured to have collaborated with him in the achievement of such outstanding success, and proud that a little of his fame should be reflected on them.

145. Sir Humphrey WALDOCK, Special Rapporteur, said that he had been deeply touched by the resolution and by the extremely generous terms in which Mr. Amado had referred to him. It was clear that every member of the Commission considered it to be a great occasion and that fact in itself gave him all the satisfaction he could ever have desired.

The meeting rose at 6.15 p.m.

894th MEETING

Tuesday, 19 July 1966, at 9 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. 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)

(resumed from the previous meeting)

CHAPTER II: LAW OF TREATIES (*continued*)

COMMENTARY TO ARTICLE 65 (General rule regarding the amendment of treaties) AND TO ARTICLE 66 (Amend-