

# **United Nations Conference on the Law of Treaties**

Vienna, Austria

First and Second sessions

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## **Proposals and Amendments submitted to the Plenary Conference**

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions (Documents of the Conference)*

## E.—PROPOSALS AND AMENDMENTS SUBMITTED TO THE PLENARY CONFERENCE<sup>1</sup>

DOCUMENT A/CONF.39/L.3

**Union of Soviet Socialist Republics:  
amendment to article 17<sup>2</sup>**

[Original: Russian]  
[9 April 1969]

EXPLANATORY MEMORANDUM ON THE QUESTION OF RESERVATIONS TO MULTILATERAL TREATIES

At the second session of the United Nations Conference on the Law of Treaties, the problem of reservations to multilateral treaties will have an important place. At its first session, the Conference did not succeed in finding a solution to this problem which would reflect an international treaty practice duly consonant with the interests of developing co-operation among all States.

The provisions provisionally adopted by the Drafting Committee at the first session for article 17 of the draft convention on the law of international treaties are unwarranted and out of keeping with the task of the codification and progressive development of the law of treaties.

The article is based on the erroneous idea that a reservation made to an international treaty by one of the parties to that treaty requires "acceptance" by the other parties to the treaty. This idea finds no confirmation in contemporary international law.

The formulation of a reservation is an act of State sovereignty and does not require acceptance by other States. When the right to formulate a reservation is exercised, all that is required is that the reservation should not conflict with the object and purpose of the treaty. The right of reservation makes it possible for States to become parties to a treaty when they accept the basic provisions, object and purpose of the treaty but, for various reasons, cannot agree to individual, often secondary, provisions of that treaty. In the same way, the right of reservation helps to widen the circle of participants in the treaty, and this in its turn leads to wider application of the treaty. This is precisely the conclusion reached, in particular, by the International Court of Justice in its advisory opinion of 28 May 1951 on the question of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>3</sup>

Alongside the right of States to make reservations, there exists in equal measure the sovereign right of States to raise objections to the reservations made by other States.

However, a question arises concerning the legal consequences of objections to the reservations formulated. Unfortunately this important question was not properly settled in article 17, paragraph 4, sub-paragraph (b), of the draft convention on the law of treaties provisionally adopted by the Drafting Committee at the first session of the Conference. This sub-paragraph provides that:

"an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State". However, the International Court of Justice, in its advisory opinion of 28 May 1951, came to the conclusion that, if a party to the Convention objects to a reservation, "*it can in fact consider* that the reserving State is not a party to the Convention".<sup>4</sup> The Court thus confirmed the principle that the fact of objection to a reservation does not signify that an international treaty automatically ceases to be in force in relations between the reserving State and the State objecting to the reservation. Consequently the objecting State, and that State alone, guided by the specific circumstances of each case, takes the decision concerning the legal consequences of its objection to the reservation.

The Secretary-General of the United Nations, as depositary of a great many multilateral conventions, is guided in his practice by the aforementioned conclusion of the International Court of Justice and by the General Assembly resolution 598 (VI) of 12 January 1952. When reservations are made and objections are raised to them, the question whether the convention is in force between the States concerned in a form modified by the reservation or is not in force at all is decided by the objecting State.

In their treaty practice, as a rule, States *in fact consider* that the silence of a State with regard to the legal consequences of its objection to a reservation presupposes consent to the retention of the treaty in force in relations with the reserving State (with the exception of those provisions of the treaty to which the reservation is made). For example, the Federal Republic of Germany objected to the Soviet Union reservation to the Vienna Convention on Diplomatic Relations of 1961. Nevertheless, both the Federal Republic of Germany and the USSR take it for granted that the Convention is in force in relations between them. Such examples could be taken from the treaty practice of other countries as well. In the few cases where a State objecting to a reservation does not consider itself bound by an agreement with the reserving State, it makes a direct communication to that effect.

This practice has helped to increase the number of States bound to one another by a multilateral treaty and,

<sup>1</sup> The texts of proposals and amendments submitted in the Committee of the Whole will be found in the reports of that Committee (A/CONF.39/14 and A/CONF.39/15) under the article concerned.

<sup>2</sup> For the text of article 17 to which this amendment refers, see A/CONF.39/11/Add.1, 10th plenary meeting.

<sup>3</sup> *I.C.J. Reports 1951*, p. 15.

<sup>4</sup> *Ibid.*, p. 29.

consequently, to further the cause of the universal application of a treaty and the consolidation of international co-operation. In contrast, the application of article 17, paragraph 4, sub-paragraph (b), in the form proposed by the Drafting Committee at the first session of the Conference may lead to a completely anomalous situation in which, by virtue of the mere fact of objection to a reservation, the objecting State may, against its real intentions, find that it is not bound by a treaty with the reserving State.

The solution provisionally adopted at the first session of the Conference with regard to the legal consequences of objections to reservations marks a departure from international practice. That solution is not progressive development of the law of international treaties, but a patent step backward, a retrogression. It will not only hamper any increase in the number of States bound to one another by future multilateral treaties, but may cast doubt on relations under treaties already in force.

The provisions of article 17, paragraphs 4 and 5 as a whole, in the form in which they were provisionally adopted at the first session of the Conference, if finally approved, may lead to chaos in the practical application of multilateral treaties, which are now assigned such an important role in the development of international relations.

On the basis of the foregoing considerations, the USSR delegation feels bound to propose that article 17, paragraph 4, sub-paragraph (b), should be amended to read as follows:

“an objection by another contracting State to a reservation does *not* preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is *definitely* expressed by the objecting State”.

#### DOCUMENT A/CONF.39/L.6

#### **Brazil, Guyana and Liechtenstein: proposal concerning the custody of the Final Act**

[Original: English]  
[25 April 1969]

That the original of the Final Act be deposited in the archives of the Federal Ministry of Foreign Affairs of the Republic of Austria.

#### DOCUMENT A/CONF.39/L.7

#### **Ghana: amendment to article 6<sup>5</sup>**

[Original: English]  
[28 April 1969]

Redraft paragraph 1(b) to read:

<sup>5</sup> The text of article 6, paragraph 1 (b), as adopted by the Committee of the Whole and reviewed by the Drafting Committee, read: “it appears from the practice of the States concerned or from other circumstances that their intention was not to require representatives to produce full powers”.

“it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers”.

#### DOCUMENT A/CONF.39/L.8

#### **Belgium: amendment to article 2<sup>6</sup>**

[Original: French]  
[28 April 1969]

Replace article 2, paragraph 2, by the following text:

“The provisions of paragraph 1 regarding the use of terms in the present Convention do not affect the use of those terms or the meanings which may be given to them in the internal law of any State”.

#### DOCUMENT A/CONF.39/L.9

#### **Romania: amendment to article 4<sup>7</sup>**

[Original: French]  
[28 April 1969]

Redraft article 4 to read as follows:

“The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within such organization without prejudice to any of the relevant rules of the organization”.

#### DOCUMENT A/CONF.39/L.10

#### **Romania: amendment to article 7<sup>8</sup>**

[Original: French]  
[28 April 1969]

Insert the words “*the competent authority of*” between the words “confirmed by” and the words “that State”.

#### DOCUMENT A/CONF.39/L.11

#### **United Republic of Tanzania: amendment to article 9<sup>9</sup>**

[Original: English]  
[28 April 1969]

Replace the text of article 9 by the following:

The text of a treaty is established as authentic and definitive:

“(a) by the signature, signature *ad referendum* or initialling by the representatives of the States parti-

<sup>6</sup> For the text of article 2 to which this amendment refers, see A/CONF.39/11/Add.1, 7th plenary meeting.

<sup>7</sup> For the text of article 4 to which this amendment refers, see A/CONF.39/11/Add.1, 7th plenary meeting.

<sup>8</sup> For the text of article 7 to which this amendment refers, see A/CONF.39/11/Add.1, 8th plenary meeting.

<sup>9</sup> For the text of article 9 to which this amendment refers, see A/CONF.39/11/Add.1, 9th plenary meeting.

icipating in the drawing up of the text, of the treaty or of the Final Act of the Conference incorporating the text, or

“(b) by such procedures as may be provided in the text or agreed upon by those States.”

DOCUMENT A/CONF.39/L.12

**Mexico and the United Kingdom of Great Britain and Northern Ireland: amendment to article 8<sup>10</sup>**

[Original: English]  
[28 April 1969]

In paragraph 2, replace the word “participating” by the words “present and voting”.

DOCUMENT A/CONF.39/L.13

**Belgium: amendment to article 9bis<sup>11</sup>**

[Original: French]  
[29 April 1969]

Replace 9bis by the following:

“The consent of *States* to be bound by a treaty may be expressed by signature, exchange of *letters or notes* constituting *the treaty*, ratification, approval, acceptance or accession, or by any other *agreed method*.”

DOCUMENT A/CONF.39/L.14

**Belgium: amendment to article 10bis<sup>12</sup>**

[Original: French]  
[29 April 1969]

Replace article 10bis by the following:

“The consent of *States* to be bound by a treaty concluded by an exchange of *letters or notes* is expressed by that exchange when:

- “(a) *the letters or notes so provide*;
- “(b) it is otherwise established that *the States* were agreed that the exchange should have that effect.”

DOCUMENT A/CONF.39/L.15

**Luxembourg: amendment to the articles approved by the Committee of the Whole**

[Original: French]  
[29 April 1969]

Add a new article 23bis reading as follows, the present article 23bis consequently becoming article 23ter:

<sup>10</sup> For the text of article 8 to which this amendment refers, see A/CONF.39/11/Add.1, 8th plenary meeting.

<sup>11</sup> For the text of article 9bis to which this amendment refers, see A/CONF.39/11/Add.1, 9th plenary meeting.

<sup>12</sup> For the text of article 10bis to which this amendment refers, see A/CONF.39/11/Add.1, 10th plenary meeting.

“The parties shall take any measures of internal law that may be necessary to ensure that treaties are fully applied.”

DOCUMENT A/CONF.39/L.16

**Poland: amendment to article 15<sup>13</sup>**

[Original: English]  
[29 April 1969]

In sub-paragraph (a), after the words “it has signed the treaty”, insert the following words: “or has exchanged instruments constituting the treaty”.

Sub-paragraph (a) would then read as follows:

“it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty”.

DOCUMENT A/CONF.39/L.17

**Hungary: amendment to article 20<sup>14</sup>**

[Original: English]  
[29 April 1969]

In paragraph 1 insert the words “in writing” after the words “a reservation may be withdrawn”.

The text would then read:

“... a reservation may be withdrawn in writing at any time ...”

DOCUMENT A/CONF.39/L.18

**Hungary: amendment to article 20<sup>15</sup>**

[Original: English]  
[29 April 1969]

1. Add a new paragraph 2 reading as follows:

“Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time and the consent of the State which has formulated the reservation concerned is not required for the withdrawal of the objection.”

2. Renumber the present paragraph 2 as paragraph 3 and amend it as follows:

“3. Unless the treaty otherwise provides, or it is otherwise agreed:

- “(a) the withdrawal of a reservation becomes operative only when notice of it has been received by the other contracting States;
- “(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which has formulated the reservation concerned.”

<sup>13</sup> For the text of article 15 to which this amendment refers, see A/CONF.39/11/Add.1, 10th plenary meeting.

<sup>14</sup> For the text of article 20 to which this amendment refers, see A/CONF.39/11/Add.1, 11th plenary meeting.

<sup>15</sup> *Idem*.

## DOCUMENT A/CONF.39/L.19

**United Kingdom of Great Britain and Northern Ireland:  
amendment to article 45<sup>16</sup>**

[Original: English]  
[30 April 1969]

In paragraph 1 of article 45, after the words "an error in", insert the words "or concerning". Paragraph 1 would then read:

"A State may invoke an error in *or concerning* a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty."

## DOCUMENT A/CONF.39/L.20

**Mongolia: amendment to article 34<sup>17</sup>**

[Original: Russian]  
[6 May 1969]

After the words "a general principle of", insert the word "international".

## DOCUMENT A/CONF.39/L.21

**Yugoslavia: amendment to article 23<sup>18</sup>**

[Original: English]  
[6 May 1969]

Insert between the words: "in force" and "is binding" the following words: "and a treaty partly or in whole provisionally applied". Article 23 would then read as follows:

"Every treaty in force and a treaty partly or in whole provisionally applied is binding upon the parties to it and must be performed by them in good faith."

## DOCUMENT A/CONF.39/L.22

**Hungary and the Union of Soviet Socialist Republics:  
amendment to article 32<sup>19</sup>**

[Original: Russian]  
[6 May 1969]

After paragraph 1, insert the following paragraph:

"2. The provisions of paragraph 1 shall not affect the rights of States which enjoy most-favoured-nation treatment."

Renumber the existing paragraph 2 as paragraph 3.

<sup>16</sup> For the text of article 45 to which this amendment refers, see A/CONF.39/11/Add.1, 18th plenary meeting.

<sup>17</sup> For the text of article 34 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

<sup>18</sup> For the text of article 23 to which this amendment refers, see A/CONF.39/11/Add. 1, 12th plenary meeting.

<sup>19</sup> For the text of article 32 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

## DOCUMENT A/CONF.39/L.23

**United Kingdom of Great Britain and Northern Ireland:  
amendment to article 34<sup>20</sup>**

[Original: English]  
[6 May 1969]

Amend article 34 to read as follows:

"Nothing in articles 30 to 33 precludes a rule set forth in a treaty from becoming binding upon a third State *so far as that rule would be binding upon it, in accordance with international law, independently of the treaty.*"

## DOCUMENT A/CONF.39/L.24

**Yugoslavia: amendment to the articles approved by the  
Committee of the Whole**

[Original: English]  
[6 May 1969]

After article 23 add a new article 23*bis* reading as follows:

"Every treaty applied provisionally in whole or in part is binding on the contracting States and must be performed in good faith."

## DOCUMENT A/CONF.39/L.25

**Republic of Viet-Nam: amendment to article 31<sup>21</sup>**

[Original: French]  
[6 May 1969]

After the words "that obligation", add the words "in writing".

## DOCUMENT A/CONF.39/L.26

**Spain: amendment to article 44<sup>22</sup>**

[Original: Spanish]  
[6 May 1969]

Replace the text of the draft article by the following:

"The omission by a representative expressing the consent of his State to be bound by a treaty to observe a specific restriction imposed by his State on the authority granted to him for that purpose may not be invoked as invalidating the consent unless the restriction was notified to the other negotiating States prior to his expressing such consent."

<sup>20</sup> For the text of article 34 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

<sup>21</sup> For the text of article 31 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

<sup>22</sup> For the text of article 44 to which this amendment refers, see A/CONF.39/11/Add.1, 18th plenary meeting.

## DOCUMENT A/CONF.39/L.27

**Nepal: amendment to article 34**<sup>23</sup>

[Original: English]  
[7 May 1969]

Delete the words: "or a general principle of law, recognized as such".

## DOCUMENT A/CONF.39/L.29

**United Kingdom of Great Britain and Northern Ireland: amendment to article 57**<sup>24</sup>

[Original: English]  
[7 May 1969]

1. Amend the opening phrase of paragraph 2(a) of article 57 to read as follows:

"(a) the other parties by unanimous agreement to invoke the breach as a ground for suspending the operation of the treaty in whole or in part or for terminating it either:"

2. Amend paragraph 2(c) of article 57 to read as follows:

"(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty."

## DOCUMENT A/CONF.39/L.30

**Hungary: amendment to article 54**<sup>25</sup>

[Original: English]  
[8 May 1969]

Amend sub-paragraph (b) of article 54 to read as follows:

"at any time by consent of all the parties after consultation with the other contracting States."

## DOCUMENT A/CONF.39/L.31

**Switzerland: amendment to article 57**<sup>26</sup>

[Original: French]  
[9 May 1969]

Add a new paragraph 5 reading as follows:

"The foregoing paragraphs do not apply to provisions relating to the protection of the human person

contained in conventions and agreements of a humanitarian character, in particular, to rules prohibiting any form of reprisals against protected persons."

## DOCUMENT A/CONF.39/L.32/Rev.1

**Afghanistan: draft resolution**

[Original: English]  
[12 May 1969]

*The United Nations Conference on the Law of Treaties, Having adopted the declaration on the "Prohibition of the threat or use of military, economic or political coercion in concluding a treaty" as part of the Final Act of the Conference,*

1. *Requests* the Secretary-General of the United Nations to bring the declaration to the attention of all Member States as well as the organs of the United Nations,

2. *Requests* Member States to give to the declaration the widest possible publicity and dissemination.

## DOCUMENT A/CONF.39/L.33

**Switzerland: amendment to the articles approved by the Committee of the Whole**

[Original: French]  
[12 May 1969]

After article 75 of the draft convention, add a new article 76 reading as follows:

"1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

"2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

"3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application."

<sup>23</sup> For the text of article 34 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

<sup>24</sup> For the text of article 57 to which this amendment refers, see A/CONF.39/11/Add.1, 21st plenary meeting.

<sup>25</sup> For the text of article 54 to which this amendment refers, see A/CONF.39/11/Add.1, 21st plenary meeting.

<sup>26</sup> For the text of article 57 to which this amendment refers, see A/CONF.39/11/Add.1, 21st plenary meeting.

## DOCUMENT A/CONF.39/L.34 \*

**Chile: amendment to article 61**<sup>27</sup>

[Original: Spanish]  
[12 May 1969]

Amend the text of article 61 approved by the Committee of the Whole as follows:

Replace the words "any existing treaty" by the words "any treaty existing at that time";

Replace the words "becomes void and terminates" by the words "may be objected to with a view to its termination".

Article 61 would then read:

"If a new peremptory norm of general international law emerges, any treaty existing at that time which is in conflict with that norm may be objected to with a view to its termination."

## DOCUMENT A/CONF.39/L.35

**Iran: amendment to article 53**<sup>28</sup>

[Original: French]  
[13 May 1969]

At the end of sub-paragraph (b) of paragraph 1, add the following:

"or by all the circumstances involved".

## DOCUMENT A/CONF.39/L.36 and Add.1

**Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Hungary, India, Mongolia, Nepal, Poland, Romania, Sierra Leone, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia: amendment to the articles approved by the Committee of the Whole**

[Original: English]  
[13 May 1969]

Insert the following new article in the convention:

"Every State has the right to participate in a multilateral treaty which codifies or progressively develops norms of general international law or the object and purpose of which are of interest to the international community of States as a whole."

\* Incorporating A/CONF.39/L.34/Corr.1.

<sup>27</sup> For the text of article 61 to which this amendment refers, see A/CONF.39/11/Add.1, 22nd plenary meeting.

<sup>28</sup> For the text of article 53 to which this amendment refers, see A/CONF.39/11/Add.1, 20th plenary meeting.

## DOCUMENT A/CONF.39/L.37

**Federal Republic of Germany: amendment to article 63**<sup>29</sup>

[Original: English]  
[14 May 1969]

1. Insert new paragraph 1:

"1. The notification provided for under article 62, paragraph 1, has to be made in writing."

2. Combine the present paragraphs 1 and 2 of article 63 to read:

"2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers."

## DOCUMENT A/CONF.39/L.38

**Spain: draft resolution**

[Original: Spanish]  
[14 May 1969]

*The United Nations Conference on the Law of Treaties,*

*Convinced* that multilateral treaties effectively serve the needs of co-operation between States, both at the universal and at the regional level, on the basis of the principle of the sovereign equality of States and irrespective of their political, economic and social systems,

*Considering* that all States should be able to participate in multilateral treaties which codify or progressively develop norms of general international law or the object and purpose of which are of interest to the international community of States as a whole,

1. *Recommends* to the General Assembly of the United Nations that it consider periodically the advisability of inviting States which are not parties to multilateral treaties of interest to the international community of States as a whole to participate in such treaties;

2. *Decides* that the present declaration form part of the Final Act of the Conference on the Law of Treaties.

## DOCUMENT A/CONF.39/L.39

**Spain: amendment to the articles approved by the Committee of the Whole (final provisions)**<sup>30</sup>

[Original: Spanish]  
[14 May 1969]

Add a new article to read as follows:

<sup>29</sup> For the text of article 63 to which this amendment refers, see A/CONF.39/11/Add.1, 28th plenary meeting.

<sup>30</sup> For the text of the final provisions to which this amendment refers, see A/CONF.39/11/Add.1, 34th plenary meeting.

*Article Cbis*

1. Except as provided in paragraph 2 of this article, no reservation is permitted to Part V of the present Convention.

2. At the time of signing, ratifying or acceding to the Convention, any State may declare that it does not consider itself bound by the provisions of paragraphs 6 to 10 inclusive of Annex I to the Convention with respect to the following categories of disputes:

- (a) any dispute arising out of acts antecedent to the entry into force of the Convention with regard to all the parties to the said dispute; or
- (b) any dispute concerning treaties relating to the defence and external security of the State or to territorial questions; or
- (c) any dispute with a State with which, at the time when the procedure laid down in article 62 is set in motion, it has no diplomatic relations.

## DOCUMENT A/CONF.39/L.41

**Hungary, Poland, Romania, Union of Soviet Socialist Republics, United Republic of Tanzania and Zambia: amendment to draft final provisions**<sup>31</sup>

[Original: Russian]  
[15 May 1969]

*Article A*

Replace by the following text:

“The present Convention shall be open for signature by all States until 30 November 1969 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.”

*Article C*

Replace by the following text:

“Any State may accede to the present Convention by depositing an instrument of accession with the Secretary-General of the United Nations.”

## DOCUMENT A/CONF.39/L.42 and Add.1

**Costa Rica and the Netherlands: amendment to the text of the preamble submitted by the Drafting Committee**<sup>32</sup>

[Original: English]  
[19 May 1969]

Delete [at the end of] the sixth preambular paragraph the word “and” between “States” and “of the prohibition”, etc. and add after “the threat or use of force” [the words] “and of universal respect for, and observance of, human rights and fundamental freedoms for all”.

<sup>31</sup> *Ibid.*

<sup>32</sup> For this text, see A/CONF.39/11/Add.1, 31st plenary meeting.

## DOCUMENT A/CONF.39/L.43

**Sweden: amendment to the text of the preamble submitted by the Drafting Committee**<sup>33</sup>

[Original: English]  
[19 May 1969]

Add to paragraph 4 of the draft preamble the following: “and in conformity with the principles of justice and international law”.

The paragraph will read as follows: “*Affirming* that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law.”.

## DOCUMENT A/CONF.39/L.44

**Ecuador: amendment to the text of the preamble submitted by the Drafting Committee**<sup>34</sup>

[Original: Spanish]  
[19 May 1969]

In the third paragraph, replace the word “principle” by the words “principles of free consent and”. The paragraph would then read:

“*Noting* that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized.”

## DOCUMENT A/CONF.39/L.45

**Switzerland: amendment to the text of the preamble submitted by the Drafting Committee**<sup>35</sup>

[Original: French]  
[19 May 1969]

Insert the following wording as the last paragraph of the preamble:

“*Affirming* that the rules of customary law will continue to govern questions which have not been expressly regulated by the provisions of the present Convention.”

## DOCUMENT A/CONF.39/L.46

**Sweden: amendment to the draft resolution relating to article 1 recommended by the Committee of the Whole**<sup>36</sup>

[Original: English]  
[20 May 1969]

Add, after the third preambular paragraph:

*Cognizant* of the varied practices of international organizations in this respect, and

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> See A/CONF.39/14, para. 32.



*Desirous* of assuring that the extensive experience of international organizations in this field be utilized to the best advantage,

*Add*, in the operative paragraph, after the word "study":  
 " , in close consultation with the principal international organizations,".

DOCUMENT A/CONF.39/L.47 and Rev.1

**Ghana, Ivory Coast, Kenya, Kuwait, Lebanon, Morocco, Nigeria, Sudan, Tunisia and the United Republic of Tanzania: draft declaration, proposed new article and draft resolution**

[Original: English]  
 [20 May 1969]

DRAFT DECLARATION ON UNIVERSAL PARTICIPATION IN AND ACCESSION TO THE CONVENTION ON THE LAW OF TREATIES

*The United Nations Conference on the Law of Treaties,*

*Convinced* that multilateral treaties which deal with the codification and progressive development of international law or the object and purposes of which are of interest to the international community as a whole, should be open to universal participation;

*Aware* of the fact that article . . . of the Convention on the Law of Treaties authorizes the General Assembly to issue special invitations to States not members of the United Nations, the specialized agencies or parties to the Statute of the International Court of Justice to accede to the present Convention;

*Invites* the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations so as to ensure the widest possible participation in the Convention on the Law of Treaties;

*Expresses the hope* that the States Members of the United Nations will endeavour to achieve the object of this declaration;

*Requests* the Secretary-General of the United Nations to bring the present declaration to the notice of the General Assembly;

*Decides* that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties.

PROPOSED NEW ARTICLE

*Procedures for Adjudication, Arbitration and Conciliation*

If, under paragraph 3 of article 62, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

1. Any one of the parties to a dispute concerning the application or the interpretation of article 50 or 61 may, by application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration.

2. Any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the convention may set in motion the procedure specified in Annex I to the present convention by submitting a request to that effect to the Secretary-General of the United Nations.

*Annex I*

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article . . . . ., the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

- (a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and
- (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The report and conclusions of the Commission shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

DRAFT RESOLUTION

*The United Nations Conference on the Law of Treaties,*  
*Considering* that the provisions in article . . . concerning the settlement of disputes arising under Part V of the

Convention on the Law of Treaties, lays down that the expenses of any conciliation commission that may be set up under article . . . shall be borne by the United Nations,

*Requests* the General Assembly of the United Nations to take note of and approve the provisions of paragraph 7 of the annex to . . .

DOCUMENT A/CONF.39/L.48 and Add.1

**Afghanistan, Ghana, India, Ivory Coast, Kuwait, Lebanon, Nigeria, Senegal, Syria and the United Republic of Tanzania: amendment to draft final provisions (article D)**<sup>37</sup>

[Original: English]  
[20 May 1969]

It is recommended that the number of ratifications or accessions necessary to bring the present Convention into force should be 35.

DOCUMENT A/CONF.39/L.49

**India, Japan, Netherlands and the Union of Soviet Socialist Republics: amendment to article 21 (formerly article 19)**<sup>38</sup>

[Original: English]  
[20 May 1969]

A. *Paragraph 3*

Replace, in paragraph 3. the words "the reservation has the effects provided for in paragraphs 1 and 2" by

<sup>37</sup> For the text of the final provisions to which this amendment refers, see A/CONF.39/11/Add.1, 34th plenary meeting.

<sup>38</sup> For the text of the article to which this amendment refers, see A/CONF.39/11/Add.1, 11th plenary meeting.

the words originally used in the draft of the International Law Commission: "the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation".

The text would then read as follows:

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."

B. *Title*

Change the title of the article, which would then read: "Legal effects of reservations and of objections to reservations".

DOCUMENT A/CONF.39/L.50

**Afghanistan, Nigeria, Poland, United Kingdom of Great Britain and Northern Ireland and Venezuela: draft resolution**

[Original: English]  
[22 May 1969]

TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

*The United Nations Conference on the Law of Treaties, Having adopted* the Vienna Convention on the Law of Treaties on the basis of the draft articles prepared by the International Law Commission,

*Resolves* to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and development of the law of treaties.