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International Bank had referred to more than thirty. It therefore seemed preferable to make further efforts to draft a clear general provision.

76. Mr. BINDSCHEDLER (Switzerland) said that originally the Commission had contemplated not a binding convention but a code on the law of treaties. Undoubtedly the convention should not be *jus cogens* but *jus dispositivum* in character. Moreover, his delegation did not consider that *jus cogens* existed in international law. Thus States could derogate from the convention and adopt other provisions necessary to promote the progressive development of international law. Consequently the proviso about a contrary convention between the parties was superfluous from the legal point of view because States were always free to depart by mutual agreement from the rules laid down in the convention. The Swiss delegation would therefore have no strong objection to the adoption of the Swedish and Philippine proposal to delete the article, and supported the Swedish suggestion to include a general provision concerning the nature of the convention.

77. Nevertheless, it would still be advisable to include a clause along the lines of article 4 for practical and policy reasons, in order to provide guidance to States in the procedures of treaty-making. The Swiss delegation agreed in principle with the International Law Commission's text, and considered that it had been wise to exclude treaties concluded under the auspices of international organizations, since those agreements did not differ essentially from other multilateral treaties. The role of the organizations in such cases was purely technical, and he was therefore unable to support the Spanish amendment (A/CONF.39/C.1/L.35/Rev. 1).

78. Perhaps the limitation in respect of constituent instruments was unnecessary, since the organization would not yet exist when its constituent instrument was adopted, and the provision would therefore apply only to revisions of the instrument. On the other hand, treaties adopted within international organizations should be subject to special rules. The question whether the exception should be restricted to adoption could not be settled until the definition of the adoption of the text of a treaty had been finally formulated.

79. The Swiss delegation could not support the United States amendment (A/CONF.39/C.1/L.21), since there was always a danger that the enumeration would be incomplete.

80. On the question of the drafting of the general clause, he could support the Peruvian text (A/CONF.39/C.1/L.58), which stressed the general rule and subordinated the exception, whereas the Commission's text laid greater emphasis on the exception than on the rule. If the Peruvian amendment was not adopted, however, his delegation would be in favour of a combination of the Ukrainian and French amendments (A/CONF.39/C.1/L.12 and L.55), both of which restricted the scope of the article.

81. Finally, he considered that a decision on the article should be taken in the Committee of the Whole, not in the Drafting Committee, since questions of substance were involved.

The meeting rose at 6.10 p.m.

TENTH MEETING

Wednesday, 3 April 1968, at 11.5 a.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 *(continued)*

Article 4 (Treaties which are constituent instruments of international organizations or which are adopted within international organizations *(continued)* [1]

1. Mr. DENIS (Belgium) said that the amendment by Sweden and the Philippines (A/CONF.39/C.1/L.52 and Add.1) and the comments which had accompanied its introduction raised an important question of principle. Did the draft articles constitute rules from which States could derogate or would they be binding on States unless they provided expressly for derogations? The nature of each article from that point of view should be established by the Conference and specified in an appropriate formula, either in the text of each article or in an article of general application.

2. With regard to the purpose of article 4 itself, the Belgian delegation thought that the convention should allow for the fact that an increasing number of treaties were drawn up within international organizations. Clearly, treaties should not be exempted without good reason from the operation of the uniform régime established by the convention, but it was also important that the convention should not abolish the special régimes governing the activities of numerous international organizations with regard to the framing of treaties between States. The convention should therefore contain express provisions to that effect. Owing to the difficulty of an exhaustive enumeration of the articles open to derogation, the Belgian delegation favoured a provision of general application.

3. For the designation of treaties to be accorded the right to a special régime, the difficulty would be to decide whether or not a treaty had been adopted " within an international organization ". The Peruvian amendment (A/CONF.39/C.1/L.58) referred to treaties adopted " within the competence of an international organization "; the French amendment (A/CONF.39/C.1/L.55) spoke of agreements concluded in virtue of a treaty which was the constitutent instrument of an international organization. Those two amendments had the advantage of introducing an element of law which was essential for the application of the exception, whereas the phrase " adopted within an international organization " referred to a *de facto* situation which might not necessarily be legally justified by the rules of the organization in question.

4. Mr. DIOP (Senegal) said that his delegation favoured the codification of international relations in principle but had to point out that the codification of principles hitherto derived from customary law should not entail the establishment of excessively rigid criteria which might paralyse the development of regional law. Inter-

[1] For the list of the amendments submitted, see 8th meeting, footnote 1.

African law was a case in point. That being said, the Senegalese delegation might be expected to accept article 4, which restricted the application of the convention with respect to the constituent instruments of international organizations and treaties adopted within such organizations. It was evident, however, that the restriction was calculated to some extent to impair the application of article 8, which provided that the adoption of a treaty at an international conference should take place by a majority of two-thirds. A provision of that kind might offer more drawbacks than advantages. The observer for the United International Bureaux for the Protection of Intellectual Property had already drawn attention to the procedural difficulties it might cause.

5. The Senegalese delegation would not go so far as to ask for the deletion of article 4 altogether. Nor would it support the United States amendment, which called for the deletion of the article subject to the insertion in certain other articles of exceptions in favour of the rules of international organizations. The Ceylonese amendment (A/CONF.39/C.1/L.53) came nearest to reflecting the wishes of the Senegalese delegation. If the Committee took a different view, the Senegalese delegation could accept the French amendment (A/CONF.39/C.1/L.55), which drew a distinction between treaties which were constituent instruments and agreements concluded in virtue of such treaties.

6. Mr. REGALA (Philippines) said that all delegations were agreed that the rights enjoyed by international organizations by virtue of their statutes should not be impaired. The International Law Commission itself had stated in paragraph (4) of its commentary to article 1 that the elimination of the references to treaties of " other subjects of international law " and of " international organizations " was not to be understood as implying any change of opinion on its part as to the legal nature of those forms of international agreement. It was precisely that point that was the basis of the Swedish and Philippine delegations' proposal (A/CONF.39/C.1/L.52 and Add.1) for the deletion of article 4. If article 4 were adopted, there would be a danger of impairing the present legal situation or the practice whereby certain specialized agencies of the United Nations were empowered to lay down rules concerning a whole range of treaties relating to their work. The number of international agreements was continually increasing. If article 4 was to be retained, it should be drafted in fairly broad terms that would take due account of the existing legal situation with regard to the treaties and constituent instruments of international organizations. In his comments on article 4 (A/CONF.39/5), the United Nations Secretary-General had said: " If draft article 4 becomes part of a convention, what is the effect of that convention, once it is brought into force, on the future applicability of those rules, on the one hand, in respect of States parties to the new convention, and, on the other, in respect of non-parties? ". That was the situation which needed clarifying.

7. In view of the foregoing observations, the amendment submitted by the United Kingdom delegation (A/CONF.39/C.1/L.39) would be satisfactory to the Philippine delegation.

8. Mr. BOLINTINEANU (Romania) said that the constituent instruments of an international organization and treaties adopted within international organizations were also treaties between States, in that they possessed the same legal character as the latter. As it had been decided that the convention applied to treaties between States, it might be asked whether it was necessary to specify that a whole category of treaties might be subject to exceptions to the general provisions of the convention. In any event, such treaties should not derogate from the peremptory norms of the convention, but in view of the large number of residuary rules contained in the convention, there was nothing to prevent States, when adopting the statutes of an organization or agreements concluded within an organization, from introducing provisions permitting derogations, just as with any other treaty.

9. It was also true, on the other hand, that the scope of the special rules which had come into being within the framework of the international organizations should not be under-estimated. It would seem that opinion in the Committee was crystallizing in favour of the retention of article 4. The Romanian delegation would, therefore, also vote for its retention, while urging that the article should be so drafted as to express the true relationship between the law as codified by the convention and the rules laid down in the constituent instruments of international organizations or in treaties adopted within an international organization. A general rule in a convention could not be made subject to a rule contained in a constituent instrument of an international organization or in a treaty adopted within such an organization. The wording of the Peruvian (A/CONF.39/L.58) and the Ukrainian amendments (A/CONF.39/L.12) deserved careful consideration.

10. Mr. MAKAREWICZ (Poland) said that, in his view, the convention should contain a reservation concerning the applicability of its provisions to treaties which were constituent intruments of an international organization or were adopted within an international organization. That reservation should be placed in a general clause in the introductory part of the convention. His delegation did not regard the present wording of the article as satisfactory, but the article as such was necessary and should be retained.

11. Mr. JAGOTA (India) said he doubted whether there was any need for articles 3 and 4, once the scope of the convention had been limited to treaties concluded between States. His delegation had already stated its position on article 3. Article 4 limited the convention's scope with respect to treaties between States which were either constituent instruments of an international organization or adopted within such an organization. Those were not treaties concluded by the international organizations themselves, but only multilateral treaties establishing an international organization or adopted within one. That was a class of treaties between States to which the whole of the convention would apply. Why, in that case, should reservations be made concerning a certain category of multilateral treaties? Nevertheless, the need to make such reservations, either in a general clause or in various articles, had been emphasized.

12. The Indian delegation was in favour of retaining article 4, but as it dealt with derogations from the applic-

ability of the convention to certain classes of multilateral treaty, it should not be too restrictive. The restrictions should not apply to treaties concluded under the auspices of an organization or to treaties for which the organization was the depositary. Indeed, the rules of the convention should apply to all multilateral treaties without exception. An exception was justified only in order to establish a link between the principles stated in the convention and practices already established by international organizations. In order to ensure the uniform application of the convention to all agreements, it would be better to add, at the end of article 4, the words " unless the treaty otherwise provides ", taken from article 17, paragraph 3. Those words would enable any party to such agreements to refrain from taking advantage of the freedom afforded the parties, in which case the restriction would apply and to that extent the interests of the organization would be protected.

13. The Indian delegation was therefore in favour of retaining article 4 and did not support the amendments deleting it. It was not in favour of reducing the exceptions, as was advocated in documents A/CONF.39/C.1/L.53 and L.75 or, of broadening the restrictions to include treaties concluded under the auspices of an organization or deposited with an organization. It could support the United Kingdom amendment (A/CONF.39/C.1/L.39) adding the words " and established practices ", on the understanding that those practices would have the legal status of a rule. The purely drafting amendments submitted by the delegations of the Ukrainian SSR, Gabon, France and Peru (A/CONF.39/C.1/L.12, L.42, L.55, and L.58) should be referred to the Drafting Committee.

14. Mr. ABED (Tunisia) said he was in favour of retaining article 4, as its deletion would leave a serious gap. The French amendment (A/CONF.39/C.1/L.55) reflected the position of his own delegation; but the article would gain by more precise and better drafting. The French amendment could serve as the basis for a new text.

15. Mr. MARESCA (Italy) said that his delegation's position was dictated by legal considerations. Article 4 was necessary to the general balance of the convention; for it was impossible to disregard the fact that treaties which were the constituent instruments of an international organization or were adopted within an international organization were also sources of law. Each organization had its own rules, which constituted a special international legal order. The relations between international law and the special international law of certain organizations could not be regarded as relations of subordination. Cantonal law could be considered to be subordinate to federal law, but the rules of law codified by the Conference could not be subordinate to the rules of any international organization, however important. The Italian delegation therefore believed that it would be dangerous to delete article 4, but that a better formula should be found in order to avoid using the word " subject ". The Peruvian delegation had found a satisfactory formula in its amendment (A/CONF.39/C.1/L.58), which ensured the necessary balance between general international law and special international law. The amendments submitted by the United Kingdom and the French delegations involved certain dangers, as their wording was open to arbitrary interpretation. The various amendments could be referred to the Drafting Committee.

16. Mr. RAZAFINDRALAMBO (Madagascar) said that his delegation was opposed to amendments such as those of Sweden and the Philippines, and of the Congo (Brazzaville), which deleted article 4 entirely. That would impair the actual stability of international organizations, for if the convention as a whole was to have a peremptory character, the provisions governing each organization would have to be amended to take account of its articles. It was true that the Conference's task was to codify the law of treaties, but it should nevertheless be realistic and not run the risk of disturbing the activities of international organizations.

17. The delegation of Madagascar was also opposed to amendments which would modify article 4 in part, by excluding from it treaties adopted within international organizations. If it was agreed that treaties which were the constituent instruments of international organizations should be excluded from the scope of the convention, there was all the more reason to exclude agreements concluded within the framework of such treaties.

18. His delegation was in favour of the French amendment (A/CONF.39/C.1/L.55), but would prefer the term " constituent instrument " to be in the plural in order to bring the text into conformity with the title of article 4 and the text of article 3. The phrase " subject to any relevant rules of the organization " should be retained. In addition, the phrase " and established practices " should be added at the end of article 4, as the United Kingdom delegation proposed. That addition was by no means superfluous, since the words " relevant rules ", in the International Law Commission's draft, if interpreted in the context of the Commission's work, seemed only to refer to rules in written form.

19. Mr. RICHARDS (Trinidad and Tobago) said that since there were only minor differences between the joint amendment submitted by his delegation and that of Jamaica (A/CONF.39/C.1/L.75) and the amendments of Ceylon (A/CONF.39/C.1/L.53) and France (A/CONF.39/C.1/L.55), he thought the three amendments could usefully be referred to the Drafting Committee, which could prepare a text taking the ideas expressed in them into account.

20. Mr. OWUSU (Ghana) said that the delegation of Ghana was opposed to the deletion of article 4 because it thought it necessary to stipulate that the convention applied to treaties which were constituent instruments of an international organization or were adopted within an international organization. The basic problem was to define precisely the scope of the reservation in article 4, so as to preserve both the integrity of the convention and certain special rules and practices of international organizations regarding the drafting, ratification, amendment and interpretation of agreements concerning them. The Ghanaian delegation was opposed to the amendments which would enlarge the scope of the reservation. It approved of the existing wording of article 4, which was drafted in clear and precise terms, and merely wished the expression " and established practices " to be added, as proposed by the United Kingdom representative.

21. His delegation was opposed to the amendments of the United States (A/CONF.39/C.1/L.21), Ceylon (A/CONF.39/C.1/L.53), Gabon (A/CONF.39/C.1/L.42), Jamaica and Trinidad and Tobago (A/CONF.39/C.1/L.75), Sweden and the Philippines (A/CONF.39/C.1/L.52 and Add.1), the Congo (Brazzaville) (A/CONF.39/C.1/L.76) and Spain (A/CONF.39/C.1/L.35/Rev.1).

22. The amendments of Peru (A/CONF.39/C.1/L.58) and the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.12) were mainly concerned with drafting and should be referred to the Drafting Committee.

23. His delegation disapproved of the growing practice of referring articles and amendments to the Drafting Committee before the Committee of the Whole had taken a decision on them. In regard to article 4, there seemed to be wide differences in the positions of various delegations, and the Committee should pronounce on the various amendments submitted to it before referring them to the Drafting Committee.

24. Mr. DE CASTRO (Spain) said he thought that a decision should be taken on the order of precedence of the norms applicable. Should the convention apply or should the rules of the organization take precedence in so far as they did not conflict with the mandatory provisions of the convention? The Committee of the Whole should decide whether to retain or to delete article 4 and settle the question of precedence of the norms of the future convention.

25. The expression " subject to " might give rise to misunderstanding.

26. He therefore supported the amendments of Peru (A/CONF.39/C.1/L.58) and the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.12) on the understanding that they referred to valid and relevant rules.

27. Mr. STREZOV (Bulgaria) said his delegation accepted the idea expressed in article 4 that the articles of the future convention should not apply absolutely to the constituent instruments of international organizations or to agreements adopted within such organizations.

28. The Bulgarian delegation nevertheless shared the opinion of those Governments which had maintained, when the articles were being drafted, that steps should be taken to prevent the rules of international organizations from restricting the freedom of negotiating States, except where the conclusion of the treaty formed part of the organization's activities and it was drawn up within the framework of the organization for reasons other than a mere desire to use the organization's conference services.

29. He supported the Ukrainian amendment, which improved the wording of article 4.

30. Mr. AMADO (Brazil) said that the statement made by the Argentine representative at the previous meeting had exactly expressed the position of Brazil. He merely wished to emphasize that the proliferation of international organizations was a fact, and that the International Law Commission, being extremely scrupulous, could not have ignored such an important aspect of contemporary life. The Brazilian delegation agreed that the amendments of Peru, France, the Ukrainian Soviet Socialist Republic and the United Kingdom should be referred to the Drafting Committee. It was sure that the members of the Drafting Committee would be wise enough to refer back to the Committee of the Whole anything they considered to be a question of substance requiring a decision of principle.

31. Mr. VIGNES (Observer for the World Health Organization), speaking at the invitation of the Chairman, said he would not repeat the arguments put forward by the observers for several international organizations, but must stress the need to retain at least the principle of article 4. It would also be useful for the text of the article to refer to the " established practices " of international organizations. Certain rules of organizations which corresponded to their particular functions should be allowed to apply. For instance, it was not possible for a health organization such as WHO to apply the traditional principle of reciprocity, for in health matters, reciprocity was not always possible; sometimes it was even unacceptable.

32. Mr. STAVROPOULOS (Representative of the Secretary-General) pointed out that the Secretary-General of the United Nations had expressed his opinion on article 4 in document A/6827/Add.1.[2] He had stressed that article 4 contained a provision which should be incorporated in the convention in a form covering treaties concluded under the auspices of international organizations or deposited with them. For it was not possible to change the existing legal situation in regard to treaties in respect of which established practice authorized the organization to lay down rules.

33. The representative of Spain had asked him to comment on the amendment submitted by the Spanish delegation (A/CONF.39/C.1/L.35/Rev.1). He recognized the value of that amendment, which reconciled the needs of international organizations with the fundamental principles of the draft convention, and which, in particular, extended the scope of article 4 to treaties adopted under the auspices of, or deposited with, an organization. However, to apply articles 5 to 15, which related to the conclusion of treaties, to the constituent instruments of international organizations, did not seem satisfactory. It should be possible for such constituent instruments freely to establish the conditions on which States could become members of the organization. The Spanish amendment made several other articles mandatory with respect to constituent instruments. The future might perhaps show that it was not desirable to eliminate the necessary flexibility with regard to those articles. As to the other treaties, the second paragraph of the Spanish amendment listed certain articles from which organizations could derogate, all the other provisions being applicable to them. There again, sufficient flexibility might not have been allowed. The General Assembly, for example, in laying down rules relating to the League of Nations treaties deposited with the Secretary-General, had not confined itself to the subject-matter of articles 71 to 75 of the draft. The Spanish amendment was certainly constructive, but it had not entirely succeeded in solving the problems that arose.

34. Sir Humphrey WALDOCK, Expert Consultant, observed that some representatives had interpreted article 4 as though the International Law Commission had intended to make a general reservation in favour of international organizations and relegate the provisions

[2] Reproduced in document A/CONF.39/5.

of the convention to the background. That had not been the intention of the Commission, which, on the contrary, had proceeded on the assumption that the provisions of the convention would be generally applicable to all treaties. The wording of article 4 as it appeared in the draft was the logical outcome of stating an exception. At least part of the Peruvian amendment might provide a satisfactory solution to the problem raised by the use of the words " shall be subject." In any case, the point was obviously one of drafting.

35. The Swedish representative had asked him to give an opinion on the residuary nature of the provisions of the draft convention. Many of the rules, particularly in Part I, authorized States to make arrangements other than those provided for in those rules. The draft convention was a codification of general rules of law. Many other rules of international law from which States were free to derogate were not, for that reason, described as residuary. It did not appear necessary, in that connexion, to include in the draft convention a general provision relating to the possibility of derogating from the rules stated in the convention.

36. Similarly, he did not see the necessity for drawing a distinction, with regard to the provisions of article 4, between constituent instruments and treaties adopted within an international organization. The fact that States were free to derogate from many of the rules of the present convention would mean that they could do so with regard to the constituent treaty of an organization as well. Moreover, the words " any relevant rules of the organization " gave the text the necessary flexibility by referring only to the rules which were appropriate in the particular circumstances.

37. He thought that the inclusion in a general article of the provision contained in article 4 was the safest method. The fact that particular exceptions had appeared in earlier drafts was not significant; it must not be forgotten that the various parts of the convention had been examined several times during the different sessions of the International Law Commission.

38. With regard to the extension of article 4 to other classes of treaty, he pointed out that the International Law Commission had decided against including treaties concluded under the auspices of an organization, because it had realized, when examining the other articles, particularly those on the termination of treaties, that the concept of treaties concluded under the auspices of an international organization was too broad. The formula "an agreement concluded in virtue of such a treaty", proposed by France, seemed more ambiguous than the Commission's wording. It could be interpreted too narrowly if it was taken to refer to treaties resulting directly from provisions of a constituent instrument calling specifically for the conclusion of particular treaties, and too widely if it was taken to refer to any treaty falling within the general competence of international organizations.

39. He had reservations regarding the extension of the scope of article 4 requested by the Secretary-General of the United Nations. The problems raised in that connexion had a different legal explanation and should not be dealt with in connexion with article 4.

40. With regard to the established practices of international organizations, the International Law Commission had considered that the words " any relevant rules " covered that aspect of the matter. That phrase was intended to include both rules laid down in the constituent instrument and rules established in the practice of the organization as binding. In any case, that was a question of drafting.

41. The CHAIRMAN put to the vote the amendments of the United States (A/CONF.39/C.1/L.21), Sweden and the Philippines (A/CONF.39/C.1/L.52 and Add. 1) and the Congo (Brazzaville) (A/CONF.39/C.1/L.76) proposing the deletion of article 4.

At the request of the representative of the United Kingdom, the vote was taken by roll-call.

Yugoslavia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Australia, Congo (Brazzaville), Federal Republic of Germany, Japan, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Sweden, United States of America.

Against: Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Ceylon, Chile, Colombia, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mexico, Monaco, Mongolia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Spain, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela.

Abstentions: China, Switzerland.

The amendments by the United States, Sweden and Congo (Brazzaville) were rejected by 84 votes to 10, with 2 abstentions.

42. Mr. HARRY (Australia), explaining his delegation's vote, said that in voting for the amendment submitted by the United States, the Australian delegation had not been seeking the outright deletion of article 4, but its replacement by special provisions to be inserted in the relevant articles.

43. The CHAIRMAN suggested that the Committee should vote on the amendments in document A/CONF. 39/C.1/L.53 and L.75, proposing that article 4 should refer only to the constituent instruments of international organizations.

44. Mr. FRANCIS (Jamaica), speaking on a point of order, proposed that the Committee should first vote on the other amendments. The vote taken could be considered, under rule 41 of the rules of procedure, as implying the adoption or the rejection, as the case might

be, of the joint amendment sponsored by his delegation and that of Trinidad and Tobago (A/CONF.39/C.1/L.75).

45. The CHAIRMAN asked the sponsors of the joint amendment to say whether they would agree to their amendment being referred to the Drafting Committee without any express decision on it being taken by the Committee of the Whole.

46. Mr. FRANCIS (Jamaica) said that, when introducing the amendment, he had indicated that the sponsors wished it to be referred to the Drafting Committee. In any case, they did not desire the amendment to be put to the vote, and therefore withdrew it.

47. Sir Francis VALLAT (United Kingdom) said that the amendment in document A/CONF.39/C.1/L.53 raised a problem of substance which required a decision by the Committee of the Whole before it was referred to the Drafting Committee.

48. The CHAIRMAN said that he too thought it preferable that the Committee should take a decision on the amendment, which he then put to the vote.

The amendment by Ceylon (A/CONF.39/C.1/L.53) was rejected by 70 votes to 5, with 5 abstentions.

49. Mr. DE CASTRO (Spain) said that he withdrew his amendment (A/CONF.39/C.1/L.35/Rev.1).

50. The CHAIRMAN observed that the amendments in documents A/CONF.39/C.1/L.12, L.39, L.42, L.55 and L.58 were still before the Committee. Those amendments seemed to him to be of a drafting character, so that they should be referred to the Drafting Committee without any previous vote on them by the Committee of the Whole.

51. Mr. MERON (Israel) said he thought the amendment submitted by the Ukrainian SSR (A/CONF.39/C.1/L.12) raised a question of substance, inasmuch as it would make the provisions of the convention take precedence over any other provisions. The Committee of the Whole should therefore take a decision on that amendment.

52. Sir Lalita RAJAPAKSE (Ceylon) said that the amendment submitted by France (A/CONF.39/C.1/L.55) also raised a question of substance which called for a decision by the Committee of the Whole.

53. Mr. VIRALLY (France) said that he was not asking for a vote on his delegation's amendment, but if the Committee wished to vote on it he would not, of course, object.

54. The CHAIRMAN put to the vote the amendment submitted by the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.12).

The amendment was rejected by 42 votes to 26, with 19 abstentions.

55. Mr. KRISHNA RAO (India), speaking on a point of order, reminded the Committee that the Chairman had first decided that the remaining amendments were drafting amendments and would not be voted on. If any representatives challenged the Chairman's decision, a vote should be taken on that decision itself.

56. The CHAIRMAN said he had changed his decision in order to avoid difficulties in the Drafting Committee's work.

57. Mr. BINDSCHEDLER (Switzerland) observed that if there was to be voting on all the amendments, it should, in accordance with the rules of procedure, begin with that furthest removed from the text submitted to the Committee, namely, the Peruvian amendment (A/CONF. 39/C.1/L.58).

58. Mr. VIRALLY (France) supported the Swiss representative with regard to the order of the amendments. He also supported the Indian representative: the Chairman's decision to refer the remaining amendments to the Drafting Committee should be put to the vote if it was challenged by some representatives.

59. The CHAIRMAN said he would put his decision to the vote if it was challenged. He then proposed that the Committee of the Whole should refer all the remaining amendments (A/CONF.39/C.1/L.39, L.42, L.55 and L.58) to the Drafting Committee.

It was so decided.[3]

The meeting rose at 1.35 p.m.

[3] For resumption of the discussion on article 4, see 28th meeting.

ELEVENTH MEETING

Wednesday, 3 April 1968, at 3.15 p.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 (*continued*)

Texts proposed by the Drafting Committee

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts proposed by his Committee.

Article 1 (The scope of the present convention) [1]

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had examined the various amendments to article 1, and had reached agreement on the following text (A/CONF.39/C.1/1):

"*The scope of the present Convention*

" The present Convention applies to treaties concluded between States."

3. That text differed from the International Law Commission's draft in that the words " The present articles " had been replaced by the words " The present Convention " as proposed in the amendment by Congo (Brazzaville) (A/CONF.39/C.1/L.32), both in the title and in the article itself; that change was in line with the practice of codification conferences. The words " relate to " had also been changed to " applies." The Drafting Committee had deemed it useful to retain the term " concluded " and had not accepted the wording " which are concluded " for reasons of style, although it wished to emphasize that the draft covered both treaties which had been concluded in the past and treaties which might be concluded in the future. It had rejected the proposal to delete the article because it considered that article necessary for the purpose of defining the scope of the convention at the outset.

[1] For earlier discussion of article 1, see 2nd and 3rd meetings.