United Nations Conference on the Law of Treaties

Vienna, Austria
First session
26 March – 24 May 1968

Document:-
A/CONF.39/C.1/SR.15

15th meeting of the Committee of the Whole

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

remained, however, two points to be cleared up in the International Law Commission's draft. First, the question of the time when the confirmed act was operative. He agreed with the Bulgarian representative that it would normally operate *ex tunc*, whether confirmation was express or implied. If a State, when expressly confirming the act performed, stipulated that the effective date should be the date of confirmation, that would amount to a new act. Presumably, the other party to a bilateral treaty or any party to a multilateral treaty could withdraw its consent if it was established that the person claiming authority did not in fact have authority to perform the act in question. Secondly, the Australian delegation considered that confirmation should be possible by clear implication as well as by an express act, and that the article should make it clearer that confirmation could be implied. The Malaysian amendment covered that point, though the word " necessary " was not needed.

50. Mr. BEVANS (United States of America) said that he would not ask for a vote on the second part of his delegation's amendment (A/CONF.39/C.1/L.56) which proposed the addition of the words " subject to the provisions of article 42."

51. The CHAIRMAN put the first part of the United States amendment to the vote.

The amendment was rejected by 54 votes to 18, with 16 abstentions.

52. The CHAIRMAN put the Venezuelan amendment (A/CONF.39/C.1/L.69) to the vote.

The amendment was rejected by 51 votes to 22, with 13 abstentions.

53. The CHAIRMAN put to the vote the amendment submitted by Malaysia (A/CONF.39/C.1/L.99).

The amendment was rejected by 38 votes to 16, with 34 abstentions.

54. The CHAIRMAN suggested that all the amendments relating to drafting should be referred to the Drafting Committee.

It was so decided.[2]

The meeting rose at 1.10 p.m.

[2] For resumption of the discussion on article 7, see 34th meeting.

FIFTEENTH MEETING

Friday, 5 April 1968, at 3.20 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)*

Article 8 (Adoption of the text)

1. The CHAIRMAN invited the Committee to consider article 8 of the International Law Commission's draft.[1]

2. Mr. VIRALLY (France), introducing his delegation's amendment to article 8 (A/CONF.39/C.1/L.30), said that it seemed to him to be necessary to refer specifically to restricted multilateral treaties because of the very special nature of that type of agreement. Restricted multilateral treaties represented a special category of regional treaties, in that they established between the participating States obligations and advantages which were so balanced that any change in the contribution of a party, or a party's failure to ratify the treaty, would upset the whole structure of the instrument. The International Law Commission had taken the case of such treaties into account in its drafting of article 17, paragraph 2, on the acceptance of reservations. The two-thirds majority rule applicable to treaties adopted at an international conference could not apply to restricted treaties, where the unanimity rule must prevail.

3. It might be argued that the amendment was unnecessary because article 8, paragraph 2 left a conference free to apply a different rule, but such an argument overlooked the fact that article 8 did not apply only to the drawing up of a new treaty; under article 35 it also applied in principle to the amendment of an existing treaty. Accordingly, if for some reason a restricted treaty contained no amendment procedure, and a two-thirds majority rule applied to restricted multilateral treaties under article 8, paragraph 2, a majority of the parties could impose on a minority conditions that were contrary to their interests. The French amendment was designed to cover such an eventuality.

4. Mr. PINTO (Ceylon) said that his delegation had originally proposed its amendment to article 8 (A/CONF.39/C.1/L.43) in consequence of the deletion from article 4 of the reference to treaties adopted within international organizations. When Ceylon's amendment to article 4 (A/CONF.39/C.1/L.53) had been rejected, his delegation had considered withdrawing its amendment to article 8, but had decided to maintain it in order to make the enumeration of methods of adoption of a treaty more nearly complete. Since the amendment merely clarified an idea which was already implicit in article 4, it could be regarded essentially as a drafting point.

5. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that his delegation had no comments to make on paragraph 1, and in general approved of the International Law Commission's text. It had submitted its amendment to paragraph 2 (A/CONF.39/C.1/L.51), however, to indicate what type of treaty was adopted at international conferences. Since the French amendment (A/CONF.39/C.1/L.30) was very close to the Ukrainian amendment in meaning, he suggested that his delegation's text might be altered to read: " The adoption of the text of a general or other multilateral treaty, with the exception of limited multilateral treaties, at an international conference takes place by the vote of two-thirds of the States... ".[2] That text might be referred to the Drafting Committee.

[1] The following amendments had been submitted: France, A/CONF.39/C.1/L.30; Ceylon, A/CONF.39/C.1/L.43; Ukrainian Soviet Socialist Republic, A/CONF.39/C.1/L.51; Peru, A/CONF.39/C.1/L.101 and Corr.1; United Republic of Tanzania, A/CONF.39/C.1/L.103. A sub-amendment to the French amendment was submitted by Czechoslovakia (A/CONF.39/C.1/L.102), and the Ukrainian Soviet Socialist Republic submitted a revised version of its proposal (A/CONF.39/C.1/L.51/Rev.1).

[2] This amendment was circulated as document A/CONF.39/C.1/L.51/Rev.1.

6. Mr. MYSLIL (Czechoslovakia), introducing his delegation's sub-amendment (A/CONF.39/C.1/L.102) to the French amendment (A/CONF.39/C.1/L.30), said that it was very similar to the revised amendment just proposed by the Ukrainian representative. It was true that the two-thirds majority rule could not apply to restricted multilateral treaties, but that rule was applicable to such general multilateral treaties as the Genocide Convention, the Geneva Conventions for the Protection of War Victims and the International Covenants on Human Rights, as well as the treaties which were neither general nor restricted.

7. Mr. SEATON (United Republic of Tanzania) said that his delegation's amendment to paragraph 2 (A/CONF.39/C.1/L.103) was based on the reasoning in the written comments of Governments and international organizations. Its purpose was to stress that the international conference adopting the text of a treaty was competent to decide to apply a rule other than that of the two-thirds majority.

8. Mr. MARCHAND STENS (Peru) said that his delegation had submitted its amendment (A/CONF.39/C.1/L.101 and Corr.1) in order to clarify the legal purport of the article. Thus, it had provided in paragraph 1 that unanimous consent was required, unless otherwise decided by the parties, when the number of States participating in drawing up the treaty was limited or restricted. Similarly, it had proposed the insertion of the words " at which the number of States participating is substantial", after "general international conference" in paragraph 2, in order to make the provision more flexible by covering as many types of international conference as possible.

9. Mr. BRIGGS (United States of America) said that his delegation supported the International Law Commission's text of article 8. Paragraph 1 laid down the basic unanimity rule which applied to bilateral treaties, and had traditionally applied also to multilateral treaties, whereas paragraph 2 recognized the more recent trend towards the adoption of multilateral treaties at international conferences, where the two-thirds majority rule was applied, unless the conference decided, also by a two-thirds majority, to adopt a different rule.

10. The French amendment (A/CONF.39/C.1/L.30) did not seem to be strictly necessary, since under paragraph 2 of article 8 the conference adopting the treaty could decide by a two-thirds majority to apply the unanimity rule, as it would undoubtedly do in the case of restricted multilateral treaties; that proviso refuted the French representative's argument in connexion with the amendment of treaties, since article 35 provided that the rules laid down in part II applied to agreements to amend a treaty except in so far as the treaty might otherwise provide. Adoption of the French and Ukrainian amendments would have the effect of creating three categories of multilateral treaties to which different rules would be applicable, and that would adversely affect State practice, particularly in the absence of clear definitions of general and restricted multilateral treaties.

11. The International Law Commission had deliberately refrained from defining general and restricted multilateral treaties, for the criterion of a general multilateral treaty as one concerned with general international law and dealing with matters of interest to all States was far too vague, and any attempt to force the wide variety of multilateral treaties into a few rigid categories was obviously unworkable and arbitrary; the same applied to restricted multilateral treaties, of which there were also many categories. The United States delegation therefore could not support the amendments submitted by the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.51), France (A/CONF.39/C.1/L.30) and Czechoslovakia (A/CONF.39/C.1/L.102).

12. Mr. ZEMANEK (Austria) said that, although the commentary to article 8 clearly delimited the scope of paragraph 1, which applied primarily to bilateral agreements and treaties concluded between a few States, no criterion qualifying an international conference emerged from the commentary to paragraph 2. Some such qualification seemed to be essential, however, since States invited to a treaty-making conference automatically abandoned the unanimity rule by accepting the invitation.

13. The amendments submitted by France (A/CONF.39/C.1/L.30), the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.51), and Czechoslovakia (A/CONF.39/C.1/L.102) did not solve the problem, because the terms used in them were too vague; those amendments should be referred to the Drafting Committee. On the other hand, the Austrian delegation could support the Ceylonese amendment (A/CONF.39/C.1/L.43), provided it was made clear that the new paragraph referred to the adoption of a treaty within, not by, an international organization; the existing text implied that the treaties in question were those to which international organizations were parties, and that category of treaties had been expressly excluded from the scope of the convention. Finally, the Tanzanian amendment (A/CONF.39/C.1/L.103) seemed to be unacceptable, because it implied that an international conference could decide by a simple majority to adopt the text of a treaty by a simple majority.

14. Sir Francis VALLAT (United Kingdom) said that he had little to add to the comments made by the United States and Austrian representatives. The International Law Commission's text of article 8 was well designed to meet all needs and was adequately explained in paragraph (2) of the commentary. Unanimity remained the general rule for bilateral treaties and treaties drawn up by a small number of States. It was undesirable to alter the text in order to cover special classes of cases, and amendments put forward with political considerations in mind should be rejected. He preferred the simplicity of the Commission's text.

15. The amendments submitted by France, the Ukrainian Soviet Socialist Republic and Czechoslovakia would cause technical complications. He had not been able to follow the French representative's argument that articles 35 and 36 made the French amendment necessary.

16. The amendments to article 8 could be left pending and a decision reached at a later stage.

17. Mr. KRAMER (Netherlands) said that on the whole he was satisfied with the Commission's text. In the absence of any other rule, treaties should be adopted by the unanimous consent of the parties, and he therefore supported the wording of paragraph 1, but its force was largely diminished by the rule concerning a two-thirds majority in paragraph 2. The wording of the proviso in paragraph 2 was open to improvement and there was some danger in leaving the rule to be decided upon in an *ad hoc* manner.

18. Mr. BINDSCHEDLER (Switzerland) said he supported article 8 but thought that paragraph 2 might be drafted in bolder terms. A two-thirds majority rule opened the way to blocking the adoption of a treaty by a minority and he would have thought that a simple majority would be more practical, but evidently the international community was not ready for such a rule.

19. He was in favour of the French amendment which was in conformity with the idea expressed in paragraph (2) of the commentary, but he could not support the amendment of Ceylon, which seemed to go outside the scope of the draft by dealing with treaties adopted by an international organization. The Tanzanian amendment also was not acceptable.

20. Mr. THIERFELDER (Federal Republic of Germany) said he favoured the International Law Commission's text which was clear and met the requirements of international practice. The Commission had rightly pointed out in paragraph (5) of its commentary that paragraph 2 established a basis upon which the procedural questions could be speedily and fairly resolved.

21. He did not think it feasible to adopt the Ukrainian amendment and thereby introduce the question of general multilateral treaties, and it would certainly give rise to difficulties of application. The two-thirds majority rule should be followed for any kind of treaty, unless the conference decided otherwise, as the present draft article 8 provided. There was no need for the French amendment and he could not support the Czechoslovak amendment.

22. Mr. MARESCA (Italy) said that unanimity must be the rule for the adoption of bilateral treaties and could also be convenient for treaties with a large number of parties, but of course a unanimity rule would confer upon each party a right of veto. The Commission had not referred specifically to general multilateral treaties and had made no distinction between bilateral treaties and those concluded at an international conference. He hoped the Commission's text would be retained.

23. Mr. PINTO (Ceylon) said that all his delegation had had in mind in proposing its amendment was to refer to treaties adopted within an international organization.

24. Mr. KOUTIKOV (Bulgaria) said that despite the United Kingdom representative's opinion that the article should be adopted without change, greater flexibility would be achieved by the incorporation of such amendments as those put forward by France, the Ukrainian Soviet Socialist Republic and Czechoslovakia. They could usefully be considered by the Drafting Committee.

25. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that there had been some misunderstanding about his delegation's amendment which, contrary to what was thought by the United States representative, adhered to the two-thirds rule. The amendment should be considered by the Drafting Committee.

26. Mr. VIRALLY (France) said that his arguments had not been understood and the French amendment should be referred to the Drafting Committee for examination.

27. Mr. YASSEEN (Iraq) said that the general rule set out in paragraph 1 should certainly be retained. Paragraph 2 contained a rule which represented progressive development of international law and was based on international practice, but it might need to be redrafted so that it would accurately reflect that practice, which did not exist in the case of certain types of treaty or of conference; it was in fact followed only at major conferences and it would therefore be desirable to insert the word " general " before the words " international conference ".

28. Mr. KEITA (Guinea) said he supported the rule in paragraph 1, which dealt with conventions of the nature of *intuitu personae*. Paragraph 2 dealt with " *conventions d'adhésion* ". It should be possible to achieve a compromise on the basis of the Czechoslovak amendment.

29. Mr. AMADO (Brazil) said that he would vote in favour of the French and Ukrainian amendments, but if they were rejected he would support the International Law Commission's text.

30. Mr. RUDA (Argentina) said that the statement of the general rule under existing international law, the traditional unanimity rule, contained in paragraph 1, was acceptable.

31. The provisions of paragraph 2, on the other hand, did not constitute a rule of positive international law. They represented progressive development, and were therefore of very great importance and were well suited to multilateral treaties adopted by what the representative of Iraq had appropriately called " general international conferences ".

32. However, there was a whole range of treaties which were neither multilateral treaties concluded in a general international conference nor treaties to which paragraph 1 applied. As was explained in paragraph (3) of the commentary to article 8, the rule in paragraph 1 applied primarily " to bilateral treaties and to treaties drawn up between only a few States ". That intermediate group consisted of treaties drawn up at a conference of a limited number of States, regional or otherwise. Where such a conference was convened by an international organization, it would be covered by article 4; for treaties drawn up at other limited conferences, however, the unanimity rule must be upheld and he accordingly suggested that they should be excluded from the operation of paragraph 2. He consequently favoured the idea embodied in the French amendment (A/CONF.39/C.1/L.30), although not the wording of the amendment. The emphasis should be placed not on the restricted number of parties to the treaty but on the small number of participants in the conference which drew up the treaty.

33. Similarly, he saw no reason to introduce into article 8 the concept of a general multilateral treaty and shared the doubts already expressed on the imprecision of that concept. Moreover, even if it were possible to differ-

entiate between general multilateral treaties and other multilateral treaties, the distinction would be irrelevant to the purposes of article 8 since the rule in paragraph 2 would apply to all multilateral treaties.

34. The concept of a general multilateral treaty was based on a value judgment regarding the importance of the contents of the treaty, whereas the concept of a restricted multilateral treaty was based on the small number of parties to the treaty. It was therefore inappropriate to try to cover both concepts in a single formula and he accordingly could not support the amendments by the Ukrainian SSR (A/CONF.39/C.1/L.51) and Czechoslovakia (A/CONF.39/C.1/L.102).

35. The wording proposed by Peru (A/CONF.39/C.1/L.101 and Corr.1), offered a useful basis for discussion, provided the concluding proviso of paragraph 1 was deleted.

36. Mr. MAGNIN (United International Bureaux for the Protection of Intellectual Property), speaking at the invitation of the Chairman, confirmed in relation to article 8 what he had said about article 4.[3] Since it had been explained to the Conference that the draft convention was a codification of the rules in use for the conclusion of treaties, it was essential to take into consideration the rules in use in the international Unions for the protection of intellectual property, which were administered by BIRPI. Those rules were applied by the States themselves in the Unions, and had been tried and tested over a long period. The Acts of the Unions, in particular, were adopted unanimously. If the States members of the Unions so desired, they were at liberty to adopt a different rule, such as the two-thirds rule laid down in article 8; but they would have to do so unanimously. That was the opposite of draft article 8. He asked the Expert Consultant to confirm that the provisions of that article did not possess the character of *jus cogens* and that they left intact the written or unwritten rules adopted by the States in the international Unions in question.

37. Sir Humphrey WALDOCK (Expert Consultant) said that he could state, in very general terms, that in article 8 the International Law Commission had intended to leave complete freedom to States at conferences to fix their own voting rules.

38. The purpose of article 8 was to set forth a general residuary rule for cases where the States concerned had not agreed on a voting rule before the conference. It was convenient to have such a residuary rule in order to enable the conference to get under way without having to argue on the voting rule to be applied for the purpose of deciding what the voting rules of the conference would be. The Commission had discussed at great length the possibility of subdividing multilateral treaties into two or more categories. Both he himself, as the Commission's Special Rapporteur on the law of treaties, and his predecessor, Sir Gerald Fitzmaurice, had included the concept of a " plurilateral " treaty in some of their drafts, but owing to the very great difficulty experienced in trying to arrive at a definition, the Commission had finally abandoned its efforts to draw any distinction between multilateral treaties.

[3] See 9th meeting, paras. 25-27.

39. The question, however, did not have any great practical bearing on article 8. The case on which attention had been focused in the debate was that of a conference of a small number of States. But if one of the States invited to attend did not approve of the voting rule proposed by the others it could always refuse to participate in the conference. Since the whole purpose of such a conference would be to attract the support of all of the small number of States invited, the objecting State would be in a strong position to influence the choice of voting rules.

40. The CHAIRMAN noted that none of the sponsors of the various amendments had requested a vote and that all of them wished to have their amendments considered by the Drafting Committee. If there were no further comments, he would take it that the Committee agreed to refer article 8 to the Drafting Committee, together with the amendments thereto and the suggestions made during the discussion.

It was so agreed.[4]

Article 9 (Authentication of the text)

41. The CHAIRMAN said that, since no amendments had been submitted to article 9, he assumed that the Committee approved it and desired it to be referred to the Drafting Committee.

It was so agreed.[5]

Proposed new article 9 bis
(Consent to be bound by a treaty)

42. The CHAIRMAN said that Poland and the United States had proposed a new article 9 *bis*, which read:

" *Consent to be bound by a treaty*

" The consent of a State to be bound by a treaty may be expressed by the signature, exchange of instruments constituting a treaty, ratification, approval, acceptance or accession or by any other means if so agreed." (A/CONF.39/C.1/L.88 and Add.1.)

43. Mr. BEVANS (United States of America) said that the new article 9 *bis* recognized that articles 10, 11 and 12, which covered signature, ratification, acceptance, approval and accession did not exhaust the list of means whereby a State could express its consent to be bound by a treaty. In fact, States sometimes resorted to other means of expressing their consent. For instance, many of the bilateral co-operation treaties on the peaceful uses of atomic energy specified that they would become binding on the date of receipt of notification of compliance with all the statutory and constitutional requirements by the States parties. A treaty relating to a large loan usually stated that it would become binding only when the necessary funds had been appropriated by legislation. Examples of that type showed the need to include a provision such as article 9 *bis* in order to cover all possible means of expressing the consent of a State to be bound by a treaty.

[4] At the 80th meeting, the Committee decided to defer consideration of all amendments relating to " general multilateral treaties " and to " restricted multilateral treaties " until the second session of the Conference. Further consideration of article 8 was therefore postponed.

[5] No change was made by the Drafting Committee, and the Committee of the Whole adopted article 9 at the 59th meeting.

44. Mr. NAHLIK (Poland) said that it was desirable to have an introductory article to the whole group of articles 10 to 15. The new article would also serve to indicate that it was possible for States to employ means other than those stated in articles 10 to 12 for the purpose of expressing their consent.

45. Side by side with the traditional procedure of ratification, international law had known for a long time the less formal method of signature without ratification as a means of expressing State consent. In due course, still other informal means had been introduced in response to the practical needs of inter-State relations. In its articles 10 to 12, the International Law Commission, without entering into doctrinal issues, had listed a number of those means, which could be divided into two categories, The first covered those by which a State participated in the treaty-making process from the outset; they were mentioned in articles 10 and 11. The second category comprised accession, whereby a State became party to a treaty originally concluded between other States (article 12). The first category could be further sub-divided into simple or single-stage procedures—signature and initialling—and complex procedures involving two stages, as mentioned in article 11.

46. Those provisions, however, did not cover the whole field. Consent to be bound was often expressed by an exchange of notes. Where those notes were signed, the situation might be covered by article 10. There was, on the other hand, no provision to cover the case of an exchange of *notes verbales*, notes which were not signed or even initialled. Such an exchange had substantially the same legal effect as an exchange of signed notes; it constituted a " treaty " within the meaning of paragraph 1 (*a*) of article 2, being " in written form " and " in two or more related instruments." In order to deal with that case, which was quite common in practice, his delegation had proposed a new article 10 *bis* entitled " Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty " (A/CONF.39/C.1/L.89).

47. But even with that addition, articles 10 to 12 would not exhaust the enumeration of the means employed by States to express their consent. An interesting example of a different method was the 1955 agreement on the permanent neutrality of Austria, resulting from the adoption by Austria of a provision of constitutional law on the subject and the subsequent notification of that constitutional act to other States, which had noted it. Some writers had characterized that procedure as a " *sui generis* " agreement that could be legally construed as an offer followed by several acts of acceptance.

48. Because of the existence of such other methods, and the possibility that State practice might devise yet others in the future, it was desirable to include article 9 *bis*, with its concluding proviso " or by any other means if so agreed ".

49. Mr. JIMENEZ DE ARECHAGA (Uruguay) said that the interesting proposal for a new introductory article 9 *bis* should be referred to the Drafting Committee for consideration when it had completed its work on the series of articles dealing with the various modes of expressing consent to a treaty.

50. He noted that, in connexion with articles 10 and 11, a number of amendments had been submitted which dealt in effect with the question of the residuary rule to be applied where the States concerned had not chosen the mode of expression of their consent to be bound by a treaty. In their amendment to article 10, Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2) proposed that in such cases, consent should be deemed to be expressed by signature. On the other hand, the Venezuelan amendment to article 11 (A/CONF.39/C.1/L.71) and the proposal by Switzerland for a new article 11 *bis* (A/CONF.39/C.1/L.87) embodied a totally different solution, namely, that such consent should be deemed to be expressed by ratification.

51. In reality, the choice lay simply between two alternative presumptions—one in favour of signature and the other in favour of ratification. He accordingly suggested that all those amendments should be considered together, instead of taking them up piecemeal in the course of a discussion article by article. That would be a simpler and speedier procedure.

52. Sir Francis VALLAT (United Kingdom) said he would like to ask the Expert Consultant whether the International Law Commission had had any reason for not including an introductory article, such as the proposed article 9 *bis*, which would seem to establish a useful link between the series of articles on the modes of expressing consent and the articles immediately preceding them.

53. Sir Humphrey WALDOCK (Expert Consultant) said that at an early stage in the Commission's work, there had been a proposal for an introductory article. The Commission had also given much thought to the possibility of formulating a residuary rule to the effect that ratification would be necessary to express consent where no other mode of expression was chosen by the States concerned. It had decided, however, not to include any residuary rule and to be content with the statement in articles 10 to 12 of the law on the various modes of expressing consent. In fact, the rules on signature and ratification gave ample scope to the intention of States in the use of one or other of the modes of expression of consent and it was highly unlikely that any case would fall between the rules stated in those articles.

54. In so far as the new article 9 *bis* would serve to state that consent could be expressed in any other manner than in the forms set forth in articles 10 to 12, it would be better placed after those articles. If it were framed as an introductory article in the proposed form, the group of articles as a whole would become inelegant: the same rules on the expression of consent by signature, ratification, approval, acceptance and accession would be stated twice—in the introductory article and again in articles 10 to 12.

55. Mr. WERSHOF (Canada) proposed that consideration of article 9 *bis* be deferred until the end of the discussion of the whole group of articles on expression of consent to be bound, but that the Committee itself consider it before referring it to the Drafting Committee.

56. The CHAIRMAN said that, if there were no further comments, he would take it that the Committee agreed

to postpone consideration of the proposed new article 9 *bis* until it had disposed of articles 10 to 12, and, if need be, of article 13.

It was so agreed.[6]

The meeting rose at 5.40 p.m.

[6] For resumption of discussion, see 18th meeting.

SIXTEENTH MEETING

Monday, 8 April 1968, at 10.50 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 10 (Consent to be bound by a treaty expressed by signature),[1]

Article 11 (Consent to be bound by a treaty expressed by ratification, acceptance or approval) [2] and

Proposed new article 11 bis [3]

Question of a residuary rule in favour of signature or of ratification

1. The CHAIRMAN observed that several of the amendments before the Committee raised the question whether, when a treaty was silent on the matter, the consent of a State to be bound was expressed by signature (A/CONF. 39/C.1/L.38 and Add.1 and 2) or by ratification (A/ CONF.39/C.1/L.71, L.87, L.105). He therefore invited the Committee to discuss that question before going on to consider the text of articles 10 and 11.

2. Mr. SMEJKAL (Czechoslovakia), introducing his delegation's amendment to article 10 (A/CONF.39/C.1/ L.38 and Add.1 and 2), said that he supported the International Law Commission's endeavour to leave States free to choose between signature and ratification as the means of expressing consent to be bound by a treaty. The text adopted by the Commission would, however, have certain disadvantages in view of existing treaty practice, for owing to the development of relations between States, many treaties were concluded in simplified form and contained no provisions on entry into force. That gap could be filled by the Swiss amendment (A/CONF.39/C.1/L.87) or by the joint amendment submitted by a group of Latin American countries (A/CONF.39/C.1/L.105), but the adoption of those amendments would complicate the procedure in the case of treaties for which ratification was not customary. His delegation therefore considered that as a general rule the consent of a State to be bound by a treaty should be expressed by signature.

3. Mr. CARMONA (Venezuela) reminded the Committee that the International Law Commission had considered it preferable not to include a clause specifying a choice between signature and ratification as the procedure for expressing the consent of a State to be bound by a treaty.

4. After consulting the delegations of the other Latin American countries, the Venezuelan delegation had decided to withdraw its amendment (A/CONF.39/C.1/ L.71) in favour of the joint amendment (A/CONF.39/ C.1/L.105). In the Latin American countries, as in most African and Asian States, ratification was required by internal law.

5. If any other principle was adopted, those countries would not be able to accept a convention based on the rule that ratification was only the exception.

6. Mr. BINDSCHEDLER (Switzerland) said he understood the reasons why the Czechoslovak delegation had submitted its amendment. The object was to fill a gap. the existence of which the International Law Commission had itself acknowledged in paragraph (4) of its commentary on article 11. The Commission had, however, considered that, as the cases where the conditions under which a State consented to be bound by a treaty could not be established were very rare, the drafting of articles 10 and 11 could be simplified by not stating a residuary rule. However, if the Conference intended to codify the law of treaties, it must fill that gap. It should incorporate in the convention a rule which would apply when a treaty was silent about entry into force or when its provisions on that subject were ambiguous or open to contradictory interpretations.

7. The question was how to fill the gap. The Czechoslovak delegation had come out in favour of signature, a principle which took account of the present practice of many States. But it was also necessary to consider the constitutional difficulties to which the Venezuelan representative had drawn attention. The best course would be to opt for a more cautious solution, which would leave some latitude to the States parties to an agreement, in other words to adopt the principle of ratification. The doubtful cases would be very few and would have no influence on practice. Furthermore, that principle would give States a certain amount of time for reflection in case of doubt.

8. Mr. ALVAREZ (Uruguay) said that the object of the nine-country amendment (A/CONF.39/C.1/L.105) to article 11 was to introduce into the convention a general rule to the effect that, where States did not specify in a treaty the act by which they would consent to be bound, the act required was ratification. The amendment was really a return to the standpoint adopted by the International Law Commission in its 1962 draft, which some members had regarded as a compromise. The 1962 formula had been abandoned by the Commission at its seventeenth session in favour of non-committal wording

[1] The following amendments had been submitted to article 10: Czechoslovakia, Sweden and Poland, A/CONF.39/C.1/L.38 and Add.1 and 2; Venezuela A/CONF.39/C.1/L.70; Italy, A/CONF. 39/C.1/L.81; Belgium, A/CONF.39/C.1/L.100; Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru and Venezuela, A/CONF.39/C.1/L.107; Spain, A/CONF. 39/C.1/L.108.

[2] The following amendments had been submitted to article 11: Finland, A/CONF.39/C.1/L.60; Venezuela, A/CONF.39/C.1/L.71; Bolivia, Colombia, Chile, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela, A/CONF.39/C.1/L.105; Spain, A/CONF. 39/C.1/L.109.

[3] Switzerland had proposed a new article 11 *bis* (A/CONF.39/ C.1/L.87) reading as follows:

" When the method of expressing consent to be bound cannot be established in accordance with the preceding articles, consent shall be expressed by ratification."