United Nations Conference on the Law of Treaties

Vienna, Austria
First session
26 March – 24 May 1968

Document:-
A/CONF.39/C.1/SR.19

19th 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)*

States in that respect. The amendment could be referred to the Drafting Committee.

39. The CHAIRMAN observed that the two amendments to article 13 related to drafting and proposed that they be examined by the Drafting Committee.

It was so decided.

Article 14 (Consent relating to a part of a treaty and choice of differing provisions)

Article 14 was approved and referred to the Drafting Committee.[12]

The meeting rose at 12 noon.

[12] For the Drafting Committee's report, see 61st meeting.

NINETEENTH MEETING

Tuesday, 9 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)*

Article 15 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force)

1. The CHAIRMAN invited the Committee to consider article 15 of the International Law Commission's draft.[1]

2. Mr. GUSTAFSSON (Finland) said that the purpose of the amendment in document A/CONF.39/C.1/L.61 and Add.1-4 was to confine the obligation of good faith to cases where the rule *pacta sunt servanda* might have wider application. The difficulty created by sub-paragraph (*a*) was that it called for the use of subjective criteria to determine what acts would tend to frustrate the object of a treaty. The provision was too far-reaching and ought to be dropped. Until the content of a treaty was known, it would be too early to allege that an action to frustrate it was possible.

3. If, however, sub-paragraph (*a*) were retained, it should be laid down that a State which had agreed to enter into negotiations could be released from its obligations if it withdrew from the negotiations. It would be contrary to the interests of negotiating States if the obligation laid down in article 15 were binding on a State when the other party was unwilling to continue.

4. Mr. CARMONA (Venezuela) said that sub-paragraph (*a*) laid down a new principle of international law. It was impossible to anticipate what the results of negotiations would be, and the freedom of States to reach agreement must not be fettered. Acceptance of sub-paragraph (*a*) might inhibit negotiations and act as a deterrent.

5. Mr. BINDSCHEDLER (Switzerland) said that sub-paragraph (*b*) and (*c*) of the International Law Commission's text were acceptable and conformed to general rules of international law, but the rule in sub-paragraph (*a*) was new and seemed to go beyond the scope of codification. It would undoubtedly restrict the freedom of States and might render them less inclined to enter into negotiations. The rule ought to be rendered more flexible and that was the purpose of the Swiss amendment (A/CONF.39/C.1/L.112) which added the condition " and the principle of good faith so requires." He hoped that that modification might render it more acceptable to the majority.

6. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that article 15 was well balanced and his delegation had no desire to alter it in a radical way. The purpose of its amendment (A/CONF.39/C.1/L.114) was to facilitate the practical application of the article and to cover the situation when a Government decided not to continue negotiations. From that moment it would be released from its obligations.

7. Mr. ARIFF (Malaysia) said his delegation fully appreciated that while negotiating States must be restrained from frustrating the object of a treaty prior to its entry into force, it felt that there must be some limit to the imposition of such restraint. To impose on a State an obligation to refrain from acts tending to frustrate the object of a treaty, while the treaty was still in the making and while negotiation was still in progress, was asking too much. The terms of sub-paragraph (*a*) were too rigorous and might tie the hands of parties to negotiations. He was therefore in favour of dropping that sub-paragraph and clarifying the meaning of the article in a recast sub-paragraph (*a*), as was done in his delegation's amendment (A/CONF.39/C.1/L.122).

8. Mr. PHAN-VAN-THINH (Republic of Viet-Nam) said it was necessary to stipulate that States were under an obligation not to frustrate, distort or restrict the object of a treaty prior to its entry into force. That was the sense of his delegation's amendment (A/CONF.39/C.1/L.124).

9. Sir Francis VALLAT (United Kingdom) said his delegation's amendment (A/CONF.39/C.1/L.135) proposed the deletion of the whole article because, though it agreed with the underlying principle that States in their treaty relations and in negotiations should act in good faith, the principle was difficult to formulate and there was little State practice to offer guidance. He fully agreed with the criticism brought against sub-paragraph (*a*), since it would be difficult to determine what acts tended to frustrate the object of a treaty and the provision would be virtually impossible to apply in practice. To require that a State which had entered into negotiations or signed a treaty should not take any step contrary to the text of the treaty would severely curtail the sovereign rights of that State. There seemed, moreover, to be some inconsistency between sub-paragraphs (*a*) and (*b*) inasmuch as, once the negotiations had been

[1] The following amendments had been submitted: Belgium, Federal Republic of Germany, Finland, Guinea and Japan, A/CONF.39/C.1/L.61 and Add.1-4; Greece and Venezuela, A/CONF.39/C.1/L.72 and Add.1; Switzerland, A/CONF.39/C.1/L.112; Byelorussian Soviet Socialist Republic, A/CONF.39/C.1/L.114; Malaysia, A/CONF.39/C.1/L.122; Republic of Viet-Nam, A/CONF.39/C.1/L.124; Australia, A/CONF.39/C.1/L.129; United Republic of Tanzania, A/CONF.39/C.1/L.130; Argentina, Ecuador and Uruguay, A/CONF.39/C.1/L.131 and Add.1; United States of America, A/CONF.39/C.1/L.134; United Kingdom of Great Britain and Northern Ireland, A/CONF.39/C.1/L.135; Congo (Brazzaville), A/CONF.39/C.1/L.145.

concluded and the treaty had not yet been signed, States were free to act as they chose.

10. Mr. HARRY (Australia) said he shared the doubts about article 15 expressed by the United Kingdom representative. Of course States should act in good faith at all stages of the treaty-making process, but it would not be clear to what classes of acts article 15 was meant to apply until the character and content of the treaty were known and its text had been authenticated. Because of the difficulty of interpreting the word " tending ", his delegation had proposed (A/CONF.39/C.1/L.129) that the phrase " which would frustrate " be substituted for the phrase " tending to frustrate ".

11. Mr. BISHOTA (United Republic of Tanzania) said that under the terms of draft article 15(*c*) a State which had expressed its consent to be bound by a treaty was exempt from the obligation laid down in article 15 if the entry into force of the treaty was unduly delayed. His delegation's amendment (A/CONF.39/C.1/L.130) would give at least the same exemption. It had to be borne in mind that many treaties took a long time to come into force and sometimes never did.

12. Mr. DE LA GUARDIA (Argentina) said that the purpose of the joint amendment submitted by Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1) was to make the text of sub-paragraph (*c*) more precise; it also took account of the provision contained in article 17, paragraph 5.

13. Mr. KEARNEY (United States of America) said that his delegation's amendment (A/CONF.39/C.1/L.134) was more or less the same as that of the Australian delegation. The element of intent was not sufficiently brought out in the words " tending to." In that respect, the 1965 draft approved by the Commission, which contained the words " calculated to frustrate," had been superior.

14. He was in favour of the deletion of sub-paragraph (*a*).

15. Mr. CRISPIS (Greece) said that the purpose of article 15 was to establish an obligation, even if the treaty did not come into existence. Such an obligation, being a prior effect of the treaty, was rather a strange concept, especially in the case of sub-paragraph (*a*), and the consequences of derogation from article 15, i.e. in principle, international responsibility, seemed to be too severe.

16. While sub-paragraphs (*b*) and (*c*) could be regarded, though with some hesitation, as progressive development of international law, the rule in sub-paragraph (*a*) might be termed a sweeping development of international law. Sub-paragraph (*a*) contained a far-reaching rule which it would be difficult to incorporate into modern international law, and might create serious problems, such as, for example, how to determine when negotiations in fact started and ended, or whether a "dialogue of the deaf" or "talks about talks"—in other words preliminary discussions as to whether and how to negotiate—were negotiations under article 15. It could make States wary of entering into negotiations at all. He was therefore in favour of deleting sub-paragraph (*a*), as was proposed in document A/CONF.39/C.1/L.72. He viewed with sympathy the Swiss amendment (A/CONF.39/C.1/L.112) and the Australian and United States amendments (A/CONF.39/C.1/L.129 and L.134), which were similar in character.

17. Mr. JAGOTA (India) said he was in favour of keeping sub-paragraphs (*b*) and (*c*) in the form proposed by the International Law Commission; they imposed obligations on States to act in good faith even when a treaty was not in force, because the treaty had acquired a provisional status by virtue of negotiations having been concluded, and the States concerned had taken steps either to authenticate the text of the treaty or to express their consent to be bound by its provisions. The principle of interim good faith in those matters was an accepted one, both in doctrine and in practice.

18. The rule contained in sub-paragraph (*a*) was, however, a new one and did not derive from doctrine, case law or practice and the Committee needed to exercise great caution. It would mean that a State had to assume an obligation not to frustrate the object of a treaty during the negotiating stage. The wording of the rule was too vague and might result in hindering rather than promoting successful negotiations.

19. If sub-paragraph (*b*) were accepted it would have to be brought into line with articles 9 *bis* and 12 *bis* and redrafted to read " It has signed the treaty but has not yet expressed its consent to be bound by it, until it shall have made its intention clear not to become a party to the treaty ".

20. Mr. FUJISAKI (Japan) said that his delegation was not indifferent to the reasoning and the motives behind article 15. However, his delegation was of the view that the article was controversial and difficult to apply; that was especially true of sub-paragraph (*a*). For those reasons, his delegation was prepared to support the United Kingdom amendment to delete the whole article (A/CONF.39/C.1/L.135).

21. Mr. IRA PLANA (Philippines) said that it was necessary to take into account the fact that, in the circumstances envisaged in sub-paragraph (*c*), a State could properly withdraw from the treaty, which was not yet in force. A State which had expressed its consent to be bound by the treaty could change its mind pending the entry into force of the treaty.

22. Mr. DADZIE (Ghana) said that his delegation could support sub-paragraphs (*b*) and (*c*).

23. With regard to the period before the adoption of the text and the entry into force of the treaty, however, the provisions of sub-paragraph (*a*) ran counter to the sovereign rights of the negotiating States during the period of negotiations. The commentary contained no adequate explanation in support of that sub-paragraph. If the expression " object of a proposed treaty " referred to the *res* or physical subject-matter of the treaty, the purpose of the provision would be clear; the " object " would then be something that was already in existence before the negotiations had begun. But as he still had doubts, he would like to ask the Expert Consultant to clarify the Commission's intention in introducing sub-paragraph (*a*) and, if possible, to cite authorities in support of its formulation; the Expert Consultant might also help to explain the meaning of the term " frustration " in connexion with sub-paragraph (*a*).

24. Subject to the Expert Consultant's explanations, he suggested that the Drafting Committee be asked to consider using, in the introductory phrase, the expression " likely to frustrate " instead of " tending to frustrate."

25. Mr. KEITA (Guinea) said that he supported the underlying purpose of article 15, which was to ensure that fair dealing and good faith prevailed in inter-State relations. He could not support, however, the retention of sub-paragraph (*a*), because it was a rule of international law that, until consent to be bound was duly expressed, a negotiating State retained its complete freedom. Moreover, it was difficult to see what the object of the agreement could be at a time when negotiations were only beginning. It was not customary for mere negotiations to give rise to legal obligations. The novel solution embodied in sub-paragraph (*a*) could lead to abuses even greater than those which it was intended to remove. He failed to see how it was possible to lay down sanctions against the negotiating States and make provision for their responsibility, in respect of an object which they had not yet defined. In the circumstances, it would be almost impossible to apply the provisions of sub-paragraph (*a*), since there would be no means of establishing the fraudulent intention of a State with regard to an object still undefined.

26. On practical grounds, therefore, as well as for reasons of principle, he favoured sub-paragraphs (*b*) and (*c*) but supported the proposal to delete sub-paragraph (*a*).

27. Mr. MARESCA (Italy) said that the provisions of article 15 constituted a commendable effort to introduce an element of ethics and diplomatic fair dealing into inter-State relations. Sub-paragraphs (*b*) and (*c*) stated rules of law. Sub-paragraph (*a*), on the other hand, laid down what might be called a useful rule of social behaviour which went beyond strict questions of law. He accordingly opposed the United Kingdom amendment to delete article 15 and the various proposals to delete sub-paragraph (*a*), but supported the amendments by Switzerland (A/CONF.39/C.1/L.112) and the Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.114) to improve the wording of that sub-paragraph so as to make it less rigid.

28. Miss RUSAD (Indonesia) said she supported the proposals to delete sub-paragraph (*a*), which did not take into account the freedom of States to change their intentions regarding a proposed treaty in the course of the negotiations.

29. She had serious misgivings regarding sub-paragraph (*b*). A treaty which was subject to ratification but which was not yet ratified had no legal force; she therefore failed to see how its terms could be enforced against one of the signatories in the manner set forth in that sub-paragraph.

30. As for sub-paragraph (*c*), its wording was vague, especially the concluding words " not unduly delayed." An effort had been made by Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1) to clarify the meaning by laying down a specific period of twelve months, though it was difficult to see why a period of twelve months should be chosen rather than any other.

31. She accordingly supported the United Kingdom amendment to delete the whole of article 15, but if that amendment were rejected, she would request that separate votes be taken on the three sub-paragraphs (*a*), (*b*) and (*c*).

32. Mr. RIPHAGEN (Netherlands) said he strongly opposed the proposals to delete sub-paragraph (*a*) and still more the proposal to delete the whole article. It was a matter of some importance that the future convention on the law of treaties should stress the principle of good faith, which was a principle of law, accepted and recognized throughout the world. That principle implied obligations which arose from the very contact of States before any treaty relations were established.

33. He noted that there was no general objection to the provisions of sub-paragraphs (*b*) and (*c*), which were concerned with the later stages of the treaty-making process. However, the principle of good faith was just as valid and necessary at the negotiating stage. If it was accepted that a treaty which was not yet in force could have some effects, there was no reason why those effects should begin only at the time of signature. Where the negotiating States had a common object in mind, the act of one of them which frustrated that object was contrary to the principle of good faith.

34. If, in the course of the negotiations, it became clear to one of the negotiating States that there was no possibility of arriving at an agreement, that State was, in good faith, under an obligation to bring the negotiations to an end if it wished to regain its freedom of action with regard to the object of the proposed treaty.

35. The text of article 15 expressed all those ideas fully. The only point which remained to be clarified was that all the obligations set forth in article 15 were governed by the principle of good faith, both as regards the circumstances under which they came into being and as regards the extent of the obligations. That clarification could be made by inserting in the first line, after the words " A State is obliged " the words " under the principle of good faith." The purpose of the Swiss amendment (A/CONF.39/C.1/L.112) was precisely to introduce a reference to that principle, but it did so only with respect to sub-paragraph (*a*), whereas the principle governed all the provisions of article 15, the wording of which should reflect that fact.

36. With regard to the various amendments that had been proposed, his delegation considered that the Byelorussian amendment (A/CONF.39/C.1/L.114) unduly widened the obligations under article 15(*a*) by not requiring that the States should have agreed to seek regulation by a negotiated treaty. The first part of the Australian amendment (A/CONF.39/C.1/L.129) did not improve the text, since it would remove the reference to intention, which was an essential element with regard to good faith. The United States amendment (A/CONF. 39/C.1/L.134) was open to the same objection.

37. He did not favour the Tanzanian amendment (A/CONF.39/C.1/L.130) to add at the end of sub-paragraph (*a*), the words " unless such negotiations are unduly protracted "; the unamended text was preferable. Negotiations could be ended by a State unilaterally if it felt that they were not leading to an agreement.

38. Lastly, he did not favour the proposal (A/CONF. 39/C.1/L.131) to specify a period of twelve months in sub-paragraph (*c*). It was not possible to formalize the

principle of good faith by specifying a definite time-limit; everything would depend on the circumstances of each case.

39. Mr LUKASHUK (Ukrainian Soviet Socialist Republic) said that, although a number of speakers in the debate regarded the rule proposed by the International Law Commission in sub-paragraph (*a*) as an interesting innovation, the majority did not seem prepared to accept it in the form in which it was drafted. The Commission itself had recognized that there was no general rule on the subject and that the obligation in question did not arise from participation in negotiations or from agreement on the text of the treaty; sub-paragraph (*a*) could therefore be regarded as progressive development of international law.

40. His delegation could support the Byelorussian amendment (A/CONF.39/C.1/L.114), which would improve the text of sub-paragraph (*a*). Incidentally, the Drafting Committee should note that the wording of the title of article 15 differed considerably in the official languages of the Conference; in his opinion, the categorical wording in Russian, which carried the connotation of the extinction of the object of a treaty, was the most satisfactory.

41. Finally, his delegation could not support the United Kingdom proposal (A/CONF.39/C.1/L.135) to delete the article, since sub-paragraphs (*b*) and (*c*) had a perfectly sound basis in positive international law. Moreover, no provision of the article was prejudicial to the sovereign right of a State to withdraw from the treaty at any time before it finally became binding.

42. Mr. NAHLIK (Poland) said it was most important to maintain the substance of article 15, in which the International Law Commission expressed the idea that the principle of good faith should guide States at every stage of the treaty-making process. His delegation therefore could not support the United Kingdom proposal (A/CONF.39/C.1/L.135) to delete the article or any of the proposals to delete sub-paragraph (*a*). On the other hand, it could support the Byelorussian amendment (A/CONF.39/C.1/L.114) because it clearly delimited the scope of sub-paragraph (*a*). Sub-paragraph (*c*) did not clarify the position of States which had expressed their consent to be bound by the treaty in cases where the requisite number of ratifications or accessions had not been reached. But the amendment by Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1 and 2) to fix a time-limit of twelve months seemed too rigid; the matter should be pondered further, perhaps in the Drafting Committee.

43. Mr. DE BRESSON (France) said that, although his delegation sympathized with the International Law Commission's wish to stress that the principle of good faith should preside over treaty relations, it had some reservations concerning all the paragraphs of article 15.

44. With regard to sub-paragraph (*a*), the extent to which the object of the treaty was known before negotiations were completed was legally disputable, and the obligations to which the States should subscribe at that stage were therefore questionable. From the practical point of view, too, the provision was inexpedient, for if freedom of action was restricted right from the point of entering into negotiations, States might hesitate to take such a step, thus hampering international treaty relations.

45. Sub-paragraph (*b*) seemed to be contradictory, since the most obvious way for a State to make clear its intention not to become a party to the treaty was for it to frustrate the object of the treaty.

46. Although his delegation had no objection to the principle set out in sub-paragraph (*c*), to introduce the notion of undue delay would make the paragraph very difficult to apply. The amendment by Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1), which fixed a specific time limit, illustrated the problem rather than solved it. Consequently, the French delegation tended to agree with the United Kingdom delegation that the best solution would be to delete the article; if that course seemed to be too radical for the majority of the Committee, only sub-paragraph (*c*) should be retained, subject to drafting changes to facilitate its application.

47. Mr. GÖR (Turkey) said that, since cases where a State frustrated the object of a treaty prior to its entry into force occurred as a result of lack of good faith, it was appropriate to include a reference to the principle of good faith somewhere in the convention, perhaps in article 23 (*Pacta sunt servanda*).

48. Sub-paragraph (*a*) of article 15 imposed certain restrictions on the negotiating States. Negotiations were usually entered into with the intention of accommodating mutual interests through the diplomatic process, but the paragraph restricted the freedom essential to that process by establishing a rule which went beyond the codification of the law of treaties. It also implied a retroactive extension of consent to be bound by a treaty, which extended the scope of articles 10, 11 and 12. The Turkish delegation therefore supported the proposals to delete sub-paragraph (*a*).

49. Sub-paragraph (*b*), which contained two distinct time elements, was extremely vague, and would enable a State to delay the final conclusion of a treaty indefinitely, thus frustrating the interests of the other parties, and sub-paragraph (*c*) was inappropriate for similar reasons. Accordingly, if the Committee could not accept the deletion of the whole article, sub-paragraph (*a*) should be deleted and sub-paragraphs (*b*) and (*c*) should be referred to the Drafting Committee for improvement.

50. Mr. ZEMANEK (Austria) said that, although his delegation upheld the ideas underlying sub-paragraphs (*b*) and (*c*), it considered that sub-paragraph (*a*) went far beyond existing rules of international law. In the few international cases where frustration of the object of a treaty had been determined, the obligation not to frustrate the object had been upheld only at the stage between signature and ratification; those were the results reached by the respective tribunals in the cases of *Ignacio Torres* v. *The United States*[2] and *Megalidis* v. *Turkey*,[3] and in the *Case concerning Certain German Interests in Polish*

[2] Moore, *Arbitrations*, iv, pp. 3798-3803.

[3] *Recueil des décisions des tribunaux arbitraux mixtes*, pp. 386-398; 1927-8, No. 272.

Upper Silesia [4] by the Permanent Court of International Justice. It might be argued that imposing the obligation at an earlier stage might be desirable from the point of view of the progressive development of international law, but it should be borne in mind that, after entering into negotiations, a State might be prevented from taking measures which another negotiating State wanted to avoid, merely because the latter refused in bad faith to bring the negotiations to an end. The Austrian delegation therefore supported the proposals to delete sub-paragraph (*a*) and, if they were rejected, would support the Swiss amendment (A/CONF.39/C.1/L.112), which at least introduced a reference to good faith into sub-paragraph (*a*). Lastly, his delegation could support the amendments submitted by Australia (A/CONF.39/C.1/L.129) and the United States (A/CONF.39/C.1/L.134) which introduced some necessary clarifications into the article.

51. Mr. FATTAL (Lebanon) said his delegation considered it undesirable to retain article 15, for five reasons. First, the Expert Consultant had said that the convention should not refer to negotiations, because they fell outside the scope of the law of treaties; and yet negotiations were mentioned in sub-paragraph (*a*). Secondly, sub-paragraph (*a*) established an *a priori* obligation for States entering into negotiations, which might cause States to hesitate to enter into negotiations in the settlement of disputes. Thirdly, article 69 stated that the provisions of the convention were without prejudice to any question that might arise in regard to a treaty from the international responsibility of a State, and yet the problem of State responsibility was raised in article 15. Fourthly, sub-paragraph (*b*) was contradictory, as a number of speakers had already pointed out. Finally, the wording of sub-paragraph (*c*) was so vague as to render it inapplicable in practice.

52. The purpose of article 15 seemed to be to codify the rules set out in sub-paragraphs (*b*) and (*c*), and to extend international law through sub-paragraph (*a*); but such codification could not be carried out without destroying the whole system of the draft. If it was considered necessary to formulate the principle of good faith, that should be done in article 23.

53. Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation had become a co-sponsor of the Finnish proposal (A/CONF.39/C.1/L.61 and Add.1-4) to delete sub-paragraph (*a*) which, as drafted by the International Law Commission, had no support in international law or practice and was hardly advisable from the point of view of progressive development of international law. It was to be feared that a general provision on the obligation not to frustrate the object of a treaty during negotiations would diminish the willingness of States to enter into negotiations. At the present stage, the obligation should be left to special agreement between the negotiating States.

54. The difficulties which many delegations experienced with the wording of sub-paragraphs (*b*) and (*c*) seemed to lie in the fact that those paragraphs codified principles of good faith rather than strictly legal obligations, and that their application might therefore give rise to difficulties. His delegation's final position on those sub-paragraphs would depend on the success of attempts to improve the wording.

55. Mr. CHANG CHOON LEE (Republic of Korea) said that his delegation could support the United Kingdom proposal (A/CONF.39/C.1/L.135) to delete article 15, an article which was liable to give rise to unnecessary controversies in international relations. For example, the legal effect of sub-paragraph (*b*) was so uncertain that its application would be extremely difficult.

56. His delegation would appreciate an explanation from the Expert Consultant of the exact legal obligation of States under article 15, particularly in view of the provisions of article 69 concerning State responsibility.

57. Mr. DENIS (Belgium) said that, although the legal obligation entailed under sub-paragraph (*b*) might be based on the retroactive effect of an obligation which had come into force, that could not apply to the obligation created by sub-paragraph (*a*), for it was based solely on negotiations, which might not lead to a result.

58. That basis was different from the former and was less solid. Moreover, it contained some dangerous ambiguities, since, by definition, if negotiations led to no result, the reason was that each of the parties had wanted something different, and it was indeed questionable to what kind of obligation sub-paragraph (*a*) would be applicable. The Belgian delegation could therefore support the proposal to delete sub-paragraph (*a*); if that proposal were rejected, it would support the Swiss amendment (A/CONF.39/C.1/L.112).

59. Mr. MATINE-DAFTARY (Iran) said that the International Law Commission's proposed innovation, which sought to introduce a reference to the principle of good faith in international relations, not only exceeded the scope of the convention, but was neither practical nor realistic. From the practical point of view, if a Government opened negotiations for the conclusion of a treaty, but public opinion was mobilized against the treaty, it was doubtful whether the Government could be held responsible for frustrating the object of the treaty. Similarly, if a Government fell during the negotiations, and the succeeding Government did not wish to conclude the treaty, could the State be held responsible for frustrating the object of the treaty? His delegation could not, therefore, support the retention of sub-paragraph (*a*).

60. Sub-paragraph (*b*) seemed to be unnecessary, since a State which had signed a treaty subject to ratification could at any time express its intention not to become a party, and it seemed superfluous to refer to frustration of the object of the treaty in that connexion.

61. With regard to sub-paragraph (*c*), it should be remembered that a number of multilateral treaties adopted in the General Assembly of the United Nations had been signed by the requisite number of States, but that years had passed before they had been ratified. The best course would be to delete the whole article.

62. Mr. KOUTIKOV (Bulgaria) said that article 15 obviously had a useful place in the convention and that his delegation could not therefore agree to its deletion. It considered, however, that the Byelorussian amendment (A/CONF.39/C.1/L.114) considerably improved the wording of sub-paragraph (*a*), and should

[4] *P.C.I.J.* (1926), Series A, No. 7.

be referred to the Drafting Committee. Although the intentions of the Swiss amendment (A/CONF.39/C.1/L.112) were praiseworthy, it might be preferable to omit an express reference to the principle of good faith, which should be presumed in international relations, subject to proof to the contrary. The Tanzanian amendment (A/CONF.39/C.1/L.130) had the disadvantage of introducing an element of uncertainty concerning the concept of undue delay, whereas the Argentine, Ecuadorian and Uruguayan amendment (A/CONF.39/C.1/L.131 and Add.1) had the shortcoming of undue rigidity. The best course would be to refer all the amendments to sub-paragraphs (*b*) and (*c*) to the Drafting Committee.

63. Mr. YAPOBI (Ivory Coast) said he could not agree with those speakers who had advocated the deletion of sub-paragraph (*a*). Although the principle of good faith in treaty relations had not been formulated before, it was implicit in all treaty-making, for no international agreement had any value without underlying good faith. The International Law Commission was therefore to be commended for proposing a bold new rule in the progressive development of international law.

64. Nor could he agree with the argument that the object of the treaty was not known at the stage of negotiation, for the parties always undertook to negotiate with a specific purpose in mind. Furthermore, he could not understand how it could be argued that a State's sovereignty would be in any way infringed by a statement of the principle of good faith; on the contrary, if that concept prevailed, none of the abuses to which speakers had referred would arise. His delegation considered that the amendments designed to clarify the text should be referred to the Drafting Committee, but that proposals to delete sub-paragraph (*a*) or the article as a whole should be rejected.

65. Mr. USTOR (Hungary) said his delegation was in favour of retaining all the provisions of article 15, which stated the basic requirement of good faith in treaty relations. That was a fundamental principle of positive international law, which was violated by a State acting in bad faith. The International Law Commission's wording of the article merely drew the necessary conclusions from the basic principle. The freedom of the negotiating State had been invoked in connexion with sub-paragraph (*a*), and it had been argued that States were not bound by a treaty before it had entered into force; but while it was true that a State was free to discontinue negotiations, it had no right fraudulently to undermine the success of negotiations. His delegation could support the Byelorussian amendment (A/CONF.39/C.1/L.114) and had sympathy with the amendments submitted by Switzerland (A/CONF.39/C.1/L.112) and the United States (A/CONF.39/C.1/L.134), which might be referred to the Drafting Committee, together with other amendments designed to improve the Commission's text; it could not, however, support any of the amendments which proposed the deletion either of the article or of sub-paragraph (*a*), and did not consider that the Argentine, Ecuadorian and Uruguayan amendment (A/CONF.39/C.1/L.131 and Add.1) provided a solution of the difficult problem of the time element in sub-paragraph (*c*).

The meeting rose at 6.5 p.m.

TWENTIETH MEETING

Wednesday, 10 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 15 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force) *(continued)* [1]

1. Mr. ALVAREZ (Uruguay) said that he well understood the intention of the International Law Commission, which had wished to establish in article 15 the principle of good faith in international relations—a principle stated in Article 2 (2) of the United Nations Charter.

2. The task of the Conference on the Law of Treaties was to prepare a draft convention acceptable to the great majority of States, so it must eliminate controversial points as far as possible. The participants were not only jurists, but also political representatives of States, whose task was to formulate acceptable solutions of a general nature. In that connexion, political considerations were no less important than legal solutions.

3. Article 15 of the draft gave rise to numerous objections and created many more problems than it could solve. That had been the opinion of some members of the International Law Commission as early as 1965. From a general standpoint, the article entered a field in which there was no general norm of international law, and it placed multilateral and bilateral treaties on an equal footing. To assimilate them in that way could not be regarded as correct, if only because of the nature and scope of such treaties, which could call for different treatment according to which category they were in.

4. Moreover, the text of the article contained a number of controversial expressions which were susceptible of various subjective interpretations and could lead to many disputes. What, for instance, was the scope of the expression " acts tending to frustrate the object of a proposed treaty " ? Would it apply both to legislative acts adopted in accordance with a State's constitution and to acts executing judicial decisions based on positive legal rules? Article 15 might also mean that when the executive power was negotiating, the other powers of the State would be restricted in their action, contrary to constitutional provisions for, in order not to involve the international responsibility of the State, those organs would have to refrain from legislating or passing judgement on questions under negotiation by the executive. Again, the words " until it shall have made its intention clear not to become a party to the treaty " in sub-paragraph (*b*) might lead to misunderstanding, for they did not state whether the intention could be manifested tacitly or by implication. In addition, the expression " provided that such entry into force is not unduly delayed " could be interpreted according to the situation and the interests of the parties; a delay could be regarded as undue not only in view of the

[1] For a list of the amendments submitted, see 19th meeting, footnote 1.