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most of the negotiating States, and the resulting treaty was usually an amalgam of conflicting interests and views. In principle, therefore, there was considerable force in the view that reservations introduced after such complex procedures should require the acceptance of all the contracting parties before the reserving State could be regarded as a party to the treaty.

72. The United Kingdom recognized that the traditional unanimity rule might in modern times be a counsel of perfection, since it had been rendered less practicable by the great expansion of the membership of the international community in recent years. Furthermore, the system applied by the Secretary-General of the United Nations since 1952 for new multilateral treaties deposited with him was much more flexible, as the International Law Commission had pointed out in paragraph (8) of its commentary. The practical effect of that system was that a State which had deposited an instrument of ratification or accession accompanied by reservations was considered to be a party to the treaty at least by the majority of States which did not object to the reservations. But even that more flexible system fell far short of the asserted sovereign right to make unlimited reservations, which the USSR representative had advocated. The United Kingdom delegation believed that no State possessed such an unlimited right and consequently would oppose the proposal to delete sub-paragraph (*a*) of article 16 and could not support the proposal to delete sub-paragraph (*b*). The parties were always entitled to agree among themselves that no reservations should be permitted to a particular treaty or that only specified reservations should be accepted.

73. Although the ideal solution to the problem of reservations was to ensure that the treaty itself dealt with the question, practical experience showed that, more often than not, the treaty was silent on the matter, not necessarily because the negotiating States had ignored the question of reservations, but usually because they had been unable to reach an agreed solution. The content of a reservations article would undoubtedly raise precisely those questions of substance and of principle which had been disputed during the negotiations leading to the adoption of the text: State A might wish to ensure that reservations were permissible to articles X and Y, State B might insist that reservations should be admitted to articles K and Z, whereas State C might object strongly to the admissibility of reservations to some or all of those articles. As a result, the negotiating States might reluctantly decide to dispense with a reservations article, so as not to disturb the delicate balance of interests they had reached in formulating the treaty. That was why the Conference was obliged to legislate for situations where a treaty made no positive provision with respect to reservations.

74. With regard to the Commission's text of articles 16 and 17, he wished to draw particular attention to the combined effect of article 16, sub-paragraph (*c*), and article 17. Sub-paragraph (*c*) provided that, in cases where the treaty was silent with regard to reservations, a reservation might be formulated unless it was incompatible with the object and purpose of the treaty. That compatibility test reflected the Advisory Opinion of the International Court of Justice in the Genocide Convention case, but the mere statement of the test raised questions which were not fully answered in the Commission's proposals. At first sight, the compatibility test seemed to be objective, but it might be asked whether a reservation which was objectively incompatible with a treaty could be accepted by another contracting State under sub-paragraph 4(*a*) of article 17; if so, the effect of the compatibility test in sub-paragraph (*c*) of article 16 might be nullified. It was to be presumed that a State which was prepared to accept another State's reservation considered that reservation to be compatible with the treaty, even though the majority of the other contracting States disagreed with that assessment. If that was a correct interpretation of the combined effect of sub-paragraph (*c*) of article 16 and paragraph 4 of article 17, then clearly the compatibility test might prove in practice to be devoid of any real substance.

75. The International Law Commission's proposals seemed to give too much latitude to the formulation of reservations which could have the effect of destroying the integrity of the treaty. Paragraph (21) of the commentary appeared to confirm the assumption that, under sub-paragraph 4(*b*) of article 17, an objection could be made to a reservation on grounds other than the incompatibility of the reservation with the object and purpose of the treaty. It would therefore be desirable to clarify the text on that point.

76. The United Kingdom delegation considered that those issues should be thoroughly explored and, in particular, that some real content must be given to the compatibility test in sub-paragraph (*c*) of article 16. There was an obvious need for some kind of machinery to ensure that the test was applied objectively, either by some outside body or through the establishment of a collegiate system for dealing with reservations which a large group of interested States considered to be incompatible with the object and purpose of the treaty. His delegation had not so far submitted any specific proposals on the topic but hoped that its suggestion for controlling machinery to ensure that the test was properly applied would be borne in mind during subsequent debates. It would be helpful if the Committee were to concentrate first on questions of principle arising out of the draft articles and the various amendments submitted; the topic was so complex that any hasty decision would be inadvisable.

The meeting rose at 6 p.m.

TWENTY-SECOND MEETING

Thursday, 11 April 1968, at 11 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 16 (Formulation of reservations) and *Article 17* (Acceptance of and objection to reservations) *(continued)* [1]

1. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) stressed the importance of reservations, which made it

[1] For a list of the amendments submitted to articles 16 and 17, see 21st meeting, footnote 1.

possible for a large number of States to participate in a treaty and at the same time made it possible for their interests to be taken into account. Reservations could be defined as declarations by which States accepted a treaty as a whole, but specified certain provisions by which they would not be bound. The principle involved was that of the sovereign equality of States, without which there could be no real negotiations; for the majority tended to prevail over the minority and, in order to re-establish equality between the parties, the minority must be granted the right to make reservations. Hence reservations played an important part in the development of international co-operation. In its Advisory Opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice had held that a State had the right to formulate and maintain a reservation; that such action did not mean that the State was no longer a party to the Convention; and that in the event of an objection to a reservation, the Convention nevertheless entered into force.[2] Article 17 of the draft, however, provided that if a State objected to a reservation, the treaty would not enter into force as between the objecting and reserving States. In that provision, the draft did not take account of the principle of the progressive development of international law or of contemporary practice. The delegation of the Ukrainian SSR therefore supported the amendment submitted by the USSR (A/CONF.39/C.1/L.115), which would undoubtedly help to strengthen, through multilateral agreements, the links between States having different economic and social systems.

2. The United States amendment to article 16 (A/CONF. 39/C.1/L.126) showed certain deficiencies and contradictions. The word " character " was too vague. The notion of " object and purpose ", which had been mentioned by the International Court of Justice, should be retained.

3. The United Kingdom representative had argued that too many reservations destroyed the integrity of a treaty; but that argument should be rejected, for the fact that there were many reservations would not have any untoward consequence provided they were not contrary to the object and purpose of the treaty. An example was provided by the 1907 Convention respecting the Rights and Duties of Neutral Powers in Maritime War:[3] the numerous reservations to that Convention had led to the institution of fifteen different systems of agreements, but the object of the Convention had been respected and it had been able to play a positive role. The same could be said of the International Telecommunication Convention of 1959,[4] to which there had been twenty-nine reservations. The United Kingdom representative had also raised the question who would decide whether a reservation was incompatible with the object and purpose of a treaty or not. On that point, it was only necessary to refer to current practice; experience had shown that no authority was competent to take such a decision, which lay within the exclusive competence of States.

4. The amendments in documents A/CONF.39/C.1/L.31, L.84, L.97 and L.113 were interesting and should be examined by the Drafting Committee.

5. The Ukrainian delegation supported the Czechoslovak and Syrian amendments (A/CONF.39/C.1/L.85 and L.94), which were very similar.

6. Mr. BOLINTINEANU (Romania) thought that in drafting articles 16 and 17 the International Law Commission had set out from a realistic concept based on the practice of States and capable of contributing to its development in accordance with the requirements of contemporary international relations. The modern community of nations needed the contributions of all its members and the wide range of international relations posited the principle of co-operation as governing the rights and obligations of all States. That principle was reflected in the growth and diversification of the forms of international co-operation, among which multilateral treaties were assuming increasing importance.

7. The purpose of the institution of reservations was to facilitate the application of such treaties by enabling States to become parties to them even if they could not accept some of their provisions. It would be advisable to adopt a flexible system, which had already crystallized in State practice; it was a system of that kind which the International Law Commission had recommended and which the Committee's discussions had, on the whole, endorsed.

8. In the Romanian delegation's opinion, States had, in principle, the right to make reservations to a multilateral treaty, and the right to accept reservations or object to them. On the basis of those principles, which followed from the sovereignty of States, the idea of some machinery or system of control which would replace the discretion of States could not be entertained. Nor would such machinery meet practical needs, since the reservations formulated were not, as a general rule, prejudicial to the object and purpose of the treaty. For a State which did not agree with the object and purpose of a treaty did not consent to be bound by it. For similar reasons, his delegation could not accept the idea that a majority of the States parties to a treaty could invalidate the consent of a reserving State to become a party.

9. The Romanian delegation was in favour of the suggestions for improving the drafting of articles 16 and 17. Its view was that, where no contrary intention was expressly stated, an objection to a reservation should be understood to mean only that as between the reserving State and the objecting State the provisions of the treaty to which the reservation referred would apply only to the extent provided by the reservation and that, consequently, the remainder of the treaty would enter into force as between those States. In other words, the mere fact that an objection was raised should not create a presumption that the objecting State intended to prevent the whole treaty from entering into force as between it and the reserving State. If the objection were intended to prevent the entry into force of the treaty as a whole, a presumption should be ruled out by the express statement of a contrary intention by the objecting State. In view of those considerations, the

[2] *I.C.J. Reports, 1951*, pp. 29 and 30.

[3] *British and Foreign State Papers*, vol. 100, pp. 448-454.

[4] Geneva: International Telecommunication Union.

Romanian delegation supported the proposals to that effect submitted in several amendments.

10. Article 17, paragraph 3, raised the question whether the rules governing reservations should include a provision on treaties which were the constituent instruments of international organizations; where such treaties were concerned, the right to pronounce on a reservation would no longer be vested in each State party to the treaty, but in the competent organ of the organization, whose decision might sometimes take the form of a vote by a simple majority of its member States or even of an act by the Director-General without participation by the member States. That problem would require a thorough study, which could not be undertaken by the Committee of the Whole. The best course would be to delete article 17, paragraph 3.

11. Mr. VIRALLY (France) said that in view of the extreme complexity and technical nature of the problem of reservations, the French delegation would be guided by three considerations, which it believed to be absolutely decisive, namely: flexibility, because it was necessary to meet all the needs that arose in practice; simplicity, because practice must be given clear and firm guidance; and respect for the will of States and their sovereign equality. Those were the considerations which had led the French delegation to submit jointly with the Tunisian delegation the amendments to article 17 in document A/CONF.39/C.1/L.113. The same considerations also led it to endorse the system adopted by the International Law Commission in its draft, though it had some reservations regarding the wording of the articles concerned. The system seemed good precisely because it introduced into the machinery of reservations a high degree of flexibility, which met the needs of contemporary practice and was well adapted to the historic development of treaty law and, in particular, of multilateral treaties. The system had been very carefully worked out. Perhaps, however, the International Law Commission had produced too scientific and subtle a text, which might confuse rather than guide States wishing to know how they should proceed.

12. It was for that reason that the French delegation was greatly attracted by the idea put forward by the USSR delegation and taken up by other speakers who wished to combine articles 16 and 17 in a single article. The division into two articles was a source of confusion, as was shown by the Committee's decision to discuss the two articles together. The two articles should therefore be combined in a single article which, in the French delegation's opinion, should deal with the two points constituting the two aspects of the problem: the situation of a State seeking to become a party to a treaty while formulating a reservation and the situation of the States already parties to the treaty vis-à-vis that approach.

13. As to the first point, the French delegation was prepared to recognize the right of any State which fulfilled the necessary requirements for becoming a party to a treaty to formulate reservations. But that right must be exercised subject to respect for the rights and the will of the States which had drawn up the treaty during negotiations that were often long and difficult. It should not be possible to use the right to make a reservation in order to distort a treaty or to destroy the balance of the concessions it granted. A reservation incompatible with the object and purpose of a treaty was inadmissible, and that was equally true of reservations prohibited by a treaty. Moreover, in that matter the convention could not prevail over the provisions of a treaty establishing such a prohibition.

14. As to the second point, that was to say the attitude of the other contracting States, the French delegation wished to stress at the outset that acceptance and objection were the obverse and reverse sides of the same idea. A State which accepted a reservation thereby surrendered the right to object to it; a State which raised an objection thereby expressed its refusal to accept a reservation.

15. There were only three situations to be considered. The first was that in which the reservation was expressly authorized by the treaty. It was unnecessary to state that such a reservation did not require acceptance, but it should be stated that it could not be the subject of an objection. There should be no doubt on the matter, however, and the reservation should be expressly authorized by the treaty. The second situation was that in which the provisions of a treaty formed a single whole, to be accepted or rejected in its entirety. That was the case of restricted multilateral treaties and bilateral treaties. As the joint French and Tunisian amendment showed, that second situation could be dealt with in a couple of lines. The third situation covered all reservations which did not fall into either of the first two categories. The right to formulate a reservation was symmetrically balanced by the right to raise an objection. That right must, however, be exercised within a certain period to be specified in the convention.

16. Nothing more need be added to the article. In particular, no special provision need be made for the constituent instruments of international organizations, since that case was dealt with in article 4 and in the special rules of each organization relating to the admission of members.

17. Lastly, there remained the question of the effects of an objection, which was dealt with in article 17, paragraph 4(*b*). In the French delegation's opinion, that question had nothing to do with the article, which dealt only with the exercise of the right to make reservations or to raise objections to them. The question of the effects of an objection should be considered together with that of the legal effects of reservations, which were dealt with in article 19. It was, in fact, already taken up in paragraph 3 of that article. He would therefore say no more on the subject at that stage.

18. Mr. ALCIVAR-CASTILLO (Ecuador) said he would confine himself to a few remarks on the amendments relating to the question of reservations.

19. The Peruvian amendment (A/CONF.39/C.1/L.132) had been prompted by the concern of the Latin American countries, which had had bitter experience in that matter. The code of private international law known as the Bustamante Code had been ratified by Governments subject to its not being incompatible with internal law. But it had been impossible to apply it in practice. The Ecuadorian delegation would therefore vote for the Peruvian amendment.

20. The Czechoslovak and Syrian amendments (A/CONF. 39/C.1/L.85 and L.94) provided that an objection should not prevent a treaty from entering into force as between the objecting State and the reserving State unless the objecting State explicitly expressed that intention. The Ecuadorian delegation was in favour of that idea, which seemed more logical than the idea expressed in the original text.

21. He also considered that a reservation should not be incompatible with the object and purpose of a treaty, but the question arose who should decide whether it was incompatible. That task could hardly be entrusted to an international body: it was for States themselves to take the decision. In that respect, the amendment by Japan, the Philippines and the Republic of Korea (A/CONF.39/C.1/L.133 and Add.1 and 2) seemed to fill a gap, and the Ecuadorian delegation would support it.

22. Mr. AL-RAWI (Iraq) said that the principle of unanimous acceptance of reservations could not apply to general multilateral treaties owing to the large number of States that were parties to them.

23. States were free to choose the other parties to a treaty and to determine the scope of its provisions. A State could only assume contractual obligations which it had freely accepted. By virtue of the principle of reciprocity of obligations, the obligations of the party with respect to which the reservation was made were reduced to the same extent as those of the reserving State; that was the effect of article 19, paragraph 1(*b*).

24. The admissibility of reservations was an essential rule which counter-balanced the two-thirds majority rule laid down in article 8, paragraph 2.

25. The Iraqi delegation understood article 16, sub-paragraph (*c*) to mean that the reservation must not conflict with the object and purpose of the treaty, and consequently must not be contrary to its fundamental principles.

26. He was in favour of retaining articles 16 and 17 as they stood, subject to a few drafting changes.

27. Mr. BLIX (Sweden) observed that several delegations had proposed fairly similar changes and it was therefore desirable that they should submit joint amendments.

28. He did not think that articles 16 and 17 should be combined in a single article. The arrangement adopted by the International Law Commission was perfectly logical, for article 16 stated the cases in which reservations were prohibited and article 17 those in which they were authorized.

29. He was not sure whether the rule in article 16, sub-paragraph (*b*), had been borne out by practice. Consequently, since States were free to rule out explicitly reservations other than those authorized by the treaty, he supported the amendments submitted by the USSR (A/CONF.39/C.1/L.115), the United States of America and Colombia (A/CONF.39/C.1/L.126 and Add.1), Spain (A/CONF.39/C.1/L.147) and the Federal Republic of Germany (A/CONF.39/C.1/L.128) deleting that sub-paragraph.

30. Article 17, paragraph 2, contained the remains of the old unanimity rule. The disintegration of that rule was not a matter to be deplored. It could only apply in a community where the number of States parties to a treaty was relatively small. Nevertheless, there were still cases in which the rule was indispensable. The criterion adopted in paragraph 2 for applying the rule was too inflexible, and it might be asked whether a single concrete case could be found that satisfied all the prescribed conditions. The Swedish delegation considered that in the absence of express provisions to the contrary, the mere fact that a small number of States had participated in the negotiations should be regarded as a sufficient reason for applying the unanimity rule. It therefore supported the amendment to article 17, paragraph 2, submitted by the United States of America (A/CONF.39/C.1/L.127).

31. He was opposed to the amendments submitted by Switzerland (A/CONF.39/C.1/L.97) and the USSR (A/CONF.39/C.1/L.115), which would simply delete article 17, paragraph 3, because the present wording had certain advantages. The Austrian amendment to that paragraph (A/CONF.39/C.1/L.3) should be referred to the Drafting Committee.

32. The procedure laid down in article 17, paragraph 4, for authorized reservations should not apply to prohibited reservations. Article 16 provided no machinery for determining whether a reservation was prohibited by a treaty or was incompatible with its object and purpose, and that omission might be a source of disputes. A State could object to a reservation on the ground either that it was expressly prohibited by the treaty or that it was inadmissible because it was incompatible with the object and purpose of the treaty. But the application of the compatibility rule might cause difficulties. In his opinion, the International Law Commission's solution was hardly satisfactory. The Swedish delegation therefore supported the United Kingdom representative's oral proposal at the previous meeting that the Conference should examine the possibility of setting up some machinery for determining whether or not a reservation was compatible with the object and purpose of a treaty. The system proposed by Japan was no more than an attempt at solving the problem.

33. The United States amendment (A/CONF.39/C.1/L.127) had the merit of making it clear that the procedure for acceptance of admissible reservations prescribed in article 17, paragraph 4(*c*), did not apply to reservations prohibited under article 16.

34. He supported the amendments submitted by Switzerland (A/CONF.39/C.1/L.97), France and Tunisia (A/CONF.39/C.1/L.113) and Thailand (A/CONF.39/C.1/L.150), which would delete the words " or impliedly " in article 17, paragraph 1.

35. Under the terms of article 17, paragraph 4(*b*), an objecting State might inadvertently prevent a treaty from entering into force between a reserving State and itself. That would be regrettable, but it would be possible to remedy the situation subsequently. On the other hand, if the amendments proposed by Czechoslovakia (A/CONF.39/C.1/L.85), Syria (A/CCNF.39/C.1/L.94) and Thailand (A/CONF.39/C.1/L.150) were adopted, an objecting State might inadvertently allow a treaty to enter into force between a reserving State and itself, and it would then no longer be possible to remedy the situation. Moreover, the International Law Commission's

formula might have the advantage of dissuading States from formulating reservations.

36. As the other Czechoslovak amendment (A/CONF. 39/C.1/L.84) referred to " a general multilateral treaty or other multilateral treaty " it obviously did not exclude any multilateral treaty of any kind. It would be preferable, however, to refer only to a " multilateral treaty ", especially as a concept of a " general multilateral treaty " was difficult to define.

37. Lastly, the reference to a " restricted multilateral treaty " in the French and Tunisian amendment (A/CONF.39/C.1/L.113) did not seem calculated to make the application of article 17, paragraph 2, any easier than would the expression " limited number of the negotiating States " in the International Law Commission's text.

38. Mr. OSIECKI (Poland) noted with satisfaction that the International Law Commission's draft recognized the principle of reservations and was based largely on the Advisory Opinion of the International Court of Justice regarding the reservations to the Genocide Convention.

39. The institution of reservations was of great importance for contemporary international relations, which were characterized by the co-existence of States with different socio-economic and political systems. The viewpoints of those States were not always the same, and it was essential that, when an agreement on principle had been reached, it should be possible to conclude the proposed treaty and make its scope as wide as possible.

40. The Polish delegation therefore supported those amendments which would make the system of reservations less rigid; in particular, it supported the amendment of the USSR (A/CONF.39/C.1/L.115), which had the great advantage of simplifying and clarifying the provisions on reservations by combining articles 16 and 17 in a single article.

41. His delegation was opposed to the amendment by the United States and Colombia to article 16 (A/CONF. 39/C.1/L.126 and Add.1) and to the United States amendment to article 17 (A/CONF.39/C.1/L.127), which would replace the criterion of " object " by that of " character ", because it saw no reason to depart from the International Law Commission's text.

42. In principle, he was in favour of deleting article 16, sub-paragraph (*b*), which he found too inflexible, and accordingly supported the amendments submitted by the USSR (A/CONF.39/C.1/L.115), the United States and Colombia (A/CONF.39/C.1/L.126 and Add.1) and the Federal Republic of Germany (A/CONF.39/C.1/L.128). If that sub-paragraph were retained, however, it should be improved on the lines proposed in the Polish amendment (A/CONF.39/C.1/L.136).

43. The USSR amendment did not cover the case of treaties which prohibited all reservations. That situation was very rare, and was already partly covered by paragraph 4 of the amendment, which excluded reservations to treaties whose object and purpose did not admit of any reservation and to treaties concluded between a limited number of States. On the latter point, the USSR amendment was in accord with the amendment to article 17 proposed by France and Tunisia (A/CONF. 39/C.1/L.113). However, he did not see the point of the reference, in the latter amendment, to a " bilateral treaty ", to which the institution of reservations could not apply in any case. On the other hand, his delegation was in favour of deleting article 17, paragraph 3, and therefore supported that part of the French and Tunisian amendment, for the case of international organizations was adequately covered by article 4.

44. The Polish delegation considered that the presumption should be in favour, first of the acceptance of reservations, and secondly, of the establishment of a contractual relationship between the reserving State and the objecting State. It therefore supported all the amendments which would produce that result, in particular those by Czechoslovakia (A/CONF.39/C.1/L.85) and Syria (A/CONF. 39/C.1/L.94), the wording of which might fit in better with article 19.

45. On the other hand, his delegation could not support paragraph 2 of the amendment by Japan, the Philippines and the Republic of Korea (A/CONF.39/C.1/L.133 and Add.1 and 2). In the system of reservations adopted by the International Law Commission, every State was free to decide whether it accepted a reservation and, consequently, whether it wished to enter into relations with the reserving State. That decision was a matter for the State alone; it could not depend on a majority decision, for that would be contrary to the principle of the sovereign equality of States.

46. Some of the amendments raised drafting points and should be referred to the Drafting Committee.

47. Mr. HARRY (Australia) said that all States had the right to formulate reservations which they would like the parties to the treaty to accept. However, States which were parties to a treaty and had therefore accepted the obligations stipulated in it had the right, individually or collectively, to defend the treaty against reservations which they considered incompatible with it or simply undesirable.

48. The unanimity rule was in fact the expression of the sovereign right of States to choose whether or not they would be bound to other States by a treaty—whether or not they would be parties to a treaty under which the obligations of the parties differed. The Australian delegation believed that the unanimity rule should not lightly be abandoned or even modified.

49. It supported the United States proposal to substitute the word " character " for the word " object " in article 16, sub-paragraph (*c*). If article 16 was to include a class of reservations which were prohibited by implication, his delegation would support the Polish proposal to insert the word " only " between the words " authorizes " and " specified " in article 16, sub-paragraph (*b*). The convention should nevertheless make it absolutely clear that the purported reservations of the class referred to in article 16(*c*) were not susceptible of being accepted by the parties.

50. Article 17, paragraph 1, referred to a second class of reservations, namely, those expressly or impliedly authorized by a treaty. The Australian delegation considered that it would be better to deal separately with reservations which were expressly permitted and therefore needed no acceptance.

51. With regard to reservations impliedly authorized by a treaty, namely, those which were not incompatible

with the character or purpose of the treaty and were neither expressly prohibited nor expressly permitted, no difficulty arose if all the parties accepted those reservations or objected to them.

52. The case of bilateral treaties raised no problem, because either party could accept or object to a reservation.

53. The Australian delegation supported the United States amendment to article 17, paragraph 2 (A/CONF. 39/C.1/L.127), since it considered that in the case of a " restricted " multilateral treaty, a reservation should require acceptance by all the parties.

54. His delegation recognized that for some general multilateral treaties the unanimity rule was not required, and reservations in moderation might not be contrary to the character or purpose of the treaty. For that class of treaty, a simple rule and a control mechanism were still necessary. Generally speaking, the Australian delegation did not regard reservations as a virtue in a treaty. In small doses, they might not do any great harm, but over-indulgence should be avoided.

55. The Japanese delegation had proposed a not unreasonable test for determining whether or not a reservation was compatible with the character or purpose of a treaty. Something on those lines might be of value.

56. Lastly, his delegation considered that a reserving State should not be able to become a party to a treaty unless two-thirds of the contracting States expressly or impliedly accepted the reservation or stated when objecting to it that the other provisions of the treaty should enter into force for the reserving State.

57. Mr. MARTYANOV (Byelorussian Soviet Socialist Republic) thought that the provisions of Part II, Section 2 of the draft articles, on reservations, would contribute to international co-operation by enabling the greatest possible number of States with different economic and social systems to become parties to treaties. The possibility of formulating reservations facilitated the accession of States to treaties by introducing greater flexibility in international relations, as the contemporary practice of States confirmed. For instance, thanks to reservations, many young Asian and African States were able to defend their political and economic interests, and hence their sovereignty. That problem arose, for example, in connexion with the compulsory jurisdiction of the International Court of Justice.

58. In that context, the provisions drafted by the International Law Commission were not sufficiently flexible, particularly the wording of article 16, sub-paragraph (*a*). Some of the proposed amendments would mitigate that disadvantage. That was the merit of the amendment submitted by the USSR (A/CONF.39/C.1/L.115), which also simplified and clarified the provisions relating to reservations. For example, under article 17 of the draft, an objection to a reservation prevented the entry into force of the treaty. Paragraph 2 of the USSR amendment did not have that effect, and his delegation would therefore vote in favour of it.

59. On the other hand, his delegation, which favoured more contractual relationships between States, could not accept the view supported, in particular, by the representatives of the United Kingdom and Australia, that reservations should be controlled by a majority.

60. Mr. DADZIE (Ghana) said that the question of reservations was one of the most controversial. It was a complex and uncertain part of treaty law, which had so far been treated pragmatically, both in the text-books and in State practice. Codification should aim primarily at bringing certainty into the law, but great caution was needed.

61. There had been fundamental disagreements in various international political bodies including the General Assembly of the United Nations. The topic had even been referred to the International Court of Justice. Those disagreements had permeated the work of the International Law Commission on the articles concerned.

62. The Commission had tried, in those articles, to achieve a compromise based on the flexibility of the reservations system. The Ghanaian delegation approved of the draft articles, though it recognized that there was room for improvement.

63. The interrelationship of the provisions of articles 16 and 17 justified combining them in a single article, for the legal effect of a reservation depended largely on its acceptance or rejection by other States.

64. His delegation considered that the amendments submitted by the Republic of Viet-Nam (A/CONF.39/C.1/L.125) and Poland (A/CONF.39/C.1/L.136) and the part of the United States amendment (A/CONF.39/C.1/L.127) relating to article 17, sub-paragraph 4(*a*) were drafting amendments which could be referred to the Drafting Committee.

65. Turning to the amendments which he regarded as substantive, he said he had not been convinced by the arguments of the representative of the Federal Republic of Germany for deleting article 16, sub-paragraph (*b*). It was true that at first sight the International Law Commission seemed to have inserted that provision in article 16 *ex abundanti cautela*, but State practice showed that the sub-paragraph served a purpose. More often than not, multilateral treaties, and even some bilateral treaties, contained articles to which the parties were not permitted to formulate reservations. Conversely, such treaties might authorize reservations to specified articles. One example was the 1966 Protocol to the 1951 Convention relating to the Status of Refugees.[5] The Ghanaian delegation thought that article 16, sub-paragraph (*b*) introduced the requisite certainty by strengthening the provisions which operated against undue freedom in the matter of reservations.

66. The United States proposal to substitute the words " character or " for " object and " in article 16, sub-paragraph (*c*) would make the text ambiguous. The character of a treaty might arise from its purpose, but it might also arise from mere formal characteristics. The Ghanaian delegation was keeping an open mind on that amendment, however. The amendments submitted by Switzerland (A/CONF.39/C.1/L.97) and by France and Tunisia (A/CONF.39/C.1/L.113) would delete the words " or impliedly " in article 17, paragraph 1. That might remove an apparent inconsistency between articles 16 and 17.

[5] For the text of this Protocol, see *Official Records of the General Assembly, Twenty-first Session, Supplement No. 11A* (A/6311/Rev.1/Add.1), part one, para. 2.

67. The Czechoslovak amendment to article 16, paragraph 1 (A/CONF.39/C.1/L.84) was consequent on the proposal to insert in the draft convention an article 5 *bis* on the right of all States to become parties to treaties (A/CONF.39/C.1/L.74).

68. The solution proposed in the Syrian amendment (A/CONF.39/C.1/L.94) would create a complex situation with regard to the application of treaties. In the past, reservations had been valid only if they were accepted unanimously. If they were not, the reserving State could not become a party to the treaty. The modern rule was more flexible, and a reserving State could become a party, but an objecting State could not be forced to enter into relations with the reserving State and it could terminate the treaty with respect to the reserving State.

69. Although the second Czechoslovak amendment (A/CONF.39/C.1/L.85) had the advantage of introducing an element of certainty into treaty relations, it created an obligation which was probably too onerous for an objecting State, which must declare not only that it objected, but also that it did not wish the treaty to enter into force between it and the reserving State. The delegation of Ghana preferred the International Law Commission's solution.

70. He supported the principle that reservations must be compatible with the object and purpose of the treaty. The Commission had not, however, provided any mechanism for determining the compatibility or incompatibility of a reservation with the object of a treaty. He agreed with the United Kingdom representative that the test should be an objective one; to leave the matter to the caprice of States might lead to abuses. The reservations made by some States to Article 2(7) of the United Nations Charter—the domestic jurisidiction clause—had practically voided that article of its substance. To set up an independent body to determine compatibility or to entrust the task to an existing body such as the International Court of Justice was not an effective solution either, for that body would be able to intervene only when the matter had become justiciable.

71. The Ghanaian delegation was therefore in favour of a collegiate system, under which the reserving State would only become a party if the reservation was accepted by a given proportion of the other States concerned.

72. For the same reasons, his delegation thought that the amendment by Japan, the Philippines and the Republic of Korea (A/CONF.39/C.1/L.133 and Add.1 and 2) was worthy of consideration and should form the basis for a working paper which might get the Committee out of its present impasse. In that connexion, he would study the proposal just made by the Australian representative.

73. Mr. SPERDUTI (Italy) said that his delegation was, in principle, in favour of articles 16 and 17 as drafted by the International Law Commission. With regard to article 16, the Italian delegation supported some of the drafting amendments before the Committee. It was in favour of the Polish amendment (A/CONF.39/C.1/L.136), because it brought out clearly that where a treaty authorized only specified reservations, a State could not formulate reservations which did not fall within that category. The Italian delegation was accordingly opposed to the amendments which would delete article 16, sub-paragraph (*b*).

74. He was against the amendment by the Republic of Viet-Nam (A/CONF.39/C.1/L.125) deleting from article 16, sub-paragraph (*c*) the words " In cases where the treaty contains no provisions regarding reservations ". For where a treaty did contain provisions regarding reservations, the case of incompatible reservations was already settled by those provisions, since such reservations were in the category of prohibited reservations. Hence sub-paragraph (*c*) was justified only in cases where the treaty contained no provisions regarding reservations.

75. The Italian delegation did not support the Ceylonese amendment (A/CONF.39/C.1/L.139) because it limited the possibility of making reservations. It supported the substance of the Peruvian amendment (A/CONF.39/C.1/L.132), but considered it unnecessary to state that case expressly, since it was a case of reservations incompatible with the object of the treaty. It was not in favour of the USSR amendment (A/CONF.39/C.1/L.115), which would give States an unconditional right to formulate any reservation whatsoever, with the sole exception of reservations incompatible with the object of the treaty.

76. Article 17, paragraph 2 might give rise to difficulties of interpretation, for lack of precise criteria. The International Law Commission had adopted the idea of a limited number of States, combining it with that of the object and purpose of the treaty. The Italian delegation did not think that a solely quantitative criterion could be adopted, as the French and Tunisian delegations proposed. The United States amendment (A/CONF.39/C.1/L.127) added to the International Law Commission's two criteria the further criterion of the character of a treaty; but whereas the Commission's two criteria were cumulative, the United States amendment proposed alternative criteria. The Italian delegation preferred the Commission's solution. Of the other suggestions in the United States amendment, he found item E acceptable.

77. Since several delegations had proposed it, he would support the deletion of article 17, paragraph 3—on reservations to treaties which were the constituent instruments of international organizations. That question should be given further study later, with a view to separate regulation. If the paragraph was deleted, it should be specified in article 17 that the provisions of Section 2 were not applicable to such treaties. If the paragraph was retained, it should at least be supplemented as suggested in the Austrian amendment (A/CONF.39/C.1/L.3).

78. Several of the amendments were designed to reverse the formulation of article 17, paragraph 4(*b*) in one way or another. The Italian delegation considered the International Law Commission's formula more consistent with the requirements of logic and equity, in particular in the case of reservations which the objecting State considered incompatible with the object of the treaty.

79. The determination of incompatibility was the most serious problem raised by the articles. The amendment in document A/CONF.39/C.1/L.133 and Add.1 and 2 was an attempt to solve it. The United Kingdom representative had proposed a study of machinery for determining the compatibility or incompatibility of a reservation with the object of a treaty. The Italian delegation hoped that very serious efforts would be made in that direction.

The meeting rose at 1 p.m.