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## 25th meeting of the Committee of the Whole

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C.1/L.127) consistent with the intention of the International Law Commission regarding incompatible reservations?

The meeting rose at 1.10 p.m.

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## TWENTY-FIFTH MEETING

*Tuesday, 16 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 16* (Formulation of reservations) and *Article 17* (Acceptance of and objection to reservations) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of articles 16 and 17 of the International Law Commission's draft.[1]

2. Sir Humphrey WALDOCK (Expert Consultant), replying to the questions put by the Canadian representative at the previous meeting, said his answer to the first question was that a contracting State could not purport, under article 17, to accept a reservation prohibited under article 16, paragraph (*a*) or paragraph (*b*), because, by prohibiting the reservation, the contracting States would expressly have excluded such acceptance.

3. The second question was, where a reservation had not been expressly authorized, and at the same time was not one prohibited under article 16, paragraph (*c*), could a contracting State lodge an objection other than that of incompatibility with the object and purpose of the treaty? The answer was surely Yes. Each contracting State remained completely free to decide for itself, in accordance with its own interests, whether or not it would accept the reservation.

4. The third question was, would the addition of the words " and unless the reservation is prohibited by virtue of article 16 " to the opening words of article 17, paragraph 4, as proposed in the United States amendment (A/CONF.39/C.1/L.127), be consistent with the Commission's intention? The answer was again Yes, since it would in effect restate the rule already laid down in article 16. It would not however carry the solution of the reservation problem any further and would still leave unsettled the question of who would decide whether a reservation was or was not incompatible with the object and purpose of the treaty.

5. Mr. VIRALLY (France), introducing the French amendment to articles 16 and 17 (A/CONF.39/C.1/L.169 and Corr.1), which would combine the two into one article, said that its main purpose was to simplify and clarify the text. His delegation approved of the system of reservations devised by the International Law Commission, but thought it was too complicated and involved; it needed to be made more easily applicable.

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

6. The question of the legal effects of reservations was not dealt with in the amendment, since that was a matter which properly belonged to article 19; the amendment was accordingly confined to the formulation and acceptance of or objection to reservations. Account had been taken in paragraph 3 of certain amendments concerning reservations to bilateral or restricted multilateral treaties, but without giving any definition of the latter since that should be placed in article 2. In fact his delegation had submitted an amendment to that effect (A/CONF.39/C.1/L.24). It would have no objection to using the phrase " plurilateral treaty " if the phrase " restricted multilateral treaty " were found unacceptable.

7. Mr. CUENDET (Switzerland) said that his delegation had submitted an amendment (A/CONF.39/C.1/L.97) which, in its opinion, went to the heart of the problem; he would confine his remarks to its two crucial aspects. The first was the question of the right to make a reservation, as formulated in the USSR amendment (A/CONF.39/C.1/L.115). In his view, the express formulation of that right introduced no change whatsoever into the working of the system proposed by the International Law Commission; it was merely a question of drafting. The Expert Consultant had explained the nature of the compromise worked out by the Commission and the importance of reconciling the difference between the upholders of the unilateral right to make reservations and the proponents of the consensual concept, whereby the validity of a reservation would depend on agreement between the contracting States. His delegation accepted the neutral formula as worked out by the Commission, first, because it represented a compromise between the two schools of thought, and secondly and principally, because it offered legal security and enabled the parties to know exactly where they stood.

8. It was from that standpoint that his delegation had examined the amendments relating to the second aspect, that of the procedure for the acceptance of reservations. There were two theses: one defended by the Swedish delegation, that reservations incompatible with the object and purpose of a treaty could not be accepted by the other States, and the other, which was the position of his own delegation, that such incompatibility could not be determined in practice except by a subjective procedure, in other words, that each State must itself apply its own criterion of incompatibility. It was not an entirely satisfactory solution, but in the absence of any form of collegiate machinery, it was the only one which enabled the legal consequences of a reservation to be established with perfect certainty.

9. The Japanese delegation, with those of the Philippines and the Republic of Korea, had proposed (A/CONF.39/C.1/L.133/Rev.1) a system for providing an objective definition of compatibility, and his delegation could accept some machinery of that type. The difficulty of that system, however, was that the reservation was to be accepted only by the States which were parties to the convention at the time when the reservation was made. States which became parties later would have to accept those decisions, even if they were much more numerous. The system proposed by Australia (A/CONF.39/C.1/L.166) presented a similar drawback, that of entrusting the examination of reservations to States which might possibly never become parties to the convention. His

delegation certainly supported the idea of some collegiate machinery, but felt that some other solution must be found than that put forward in the Japanese and Australian amendments.

10. With regard to the amendment submitted by France, his delegation must make a reservation with regard to reservations prohibited by the treaty.

11. Mr. KEBRETH (Ethiopia) said that during the past few years the general conception of reservations had become much less rigid, and indeed since 1962 the trend had been towards the adoption of a flexible system such as that reflected in the International Law Commission's draft of articles 16 and 17, which took account of all interests and rejected both an unlimited freedom to make reservations and the requirement of unanimous consent for the maintenance of the integrity of treaty provisions.

12. Two general propositions had now gained currency. The first was the presumption that a reservation might be formulated if it was not prohibited by the treaty and was not incompatible with its object and purpose. The second was that contracting States might accept any reservation to a general multilateral treaty, even if it were prohibited or incompatible with the object of a treaty, so that acceptance by individual contracting States rather than admissibility seemed to be the criterion in article 17, paragraph 4. Reservations could be objected to on grounds other than incompatibility.

13. The Soviet Union amendment (A/CONF.39/C.1/L.115) departed considerably from the underlying idea of the Commission's text and was not acceptable. It took no cognizance of the idea of a prohibited reservation, which was the point of departure of the flexible system, and reversed the presumption that an objection precluded the entry into force of a treaty between the objecting and the reserving State. That would tip the balance in favour of unlimited freedom to make reservations. Similarly, he could not accept the Syrian amendment (A/CONF.39/C.1/L.94).

14. The United States amendment (A/CONF.39/C.1/L.127) usefully sought to establish a link between articles 16 and 17, and to eliminate the contradictions between them, but the amendment to paragraph 4 needed clarification as it did not specify whether the prohibition was that set out in both sub-paragraph (*a*) and (*b*) of article 16, and whether the compatibility test was excluded.

15. Perhaps it would be advisable to adopt the Swiss amendment if the provision concerning the compatibility test were left out. He fully appreciated the reasons why the delegation of the Federal Republic of Germany advocated the omission of sub-paragraph (*b*) in article 16 because of the lack of State practice and the latent contradiction between articles 16 and 17, but that could in some measure be eliminated by deleting the words " or impliedly " in article 17, paragraph 1.

16. The presumption that if a treaty permitted certain types of reservation, others were not permitted, was a good rule, but the Polish amendment (A/CONF.39/C.1/L.136) was not acceptable, because it sought to reverse that presumption.

17. He could not support the amendments by Japan, the Philippines and the Republic of Korea (A/CONF.39/C.1/L.133/Rev.1) and Australia (A/CONF.39/C.1/L.166) because they represented an effort to return to the rigid system of the unanimity rule. It was puzzling that, although the Australian representative claimed that his amendment was complementary to that of Japan, it made no mention of the compatibility test. That would presumably mean that objections on grounds other than incompatibility could be raised, which would have the consequence of requiring a two-thirds majority for the acceptance of reservations and allowing objections on broader grounds than incompatibility.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that it would greatly simplify matters if tacit assent could be allowed as a method of accepting reservations. He would have thought it consistent with practice and in the interests of the stability of treaties to maintain the presumption that, in the absence of an expressed intention to the contrary, a treaty was in force between the objecting and reserving State. Reservations were usually made on individual articles of a secondary nature, which did not affect the integrity of the treaty as a whole. Of course, it was always open to the objecting State which believed that a reservation was incompatible with object of the treaty to declare that it was not bound by the whole instrument. If it were presumed that a treaty was not in force between the objecting and the reserving State, that would create much undesirable uncertainty.

19. He had been surprised at the Japanese and Australian amendments, which would have the consequence of enabling half the contracting States to a treaty to decide whether or not it was in force between all the contracting States. Such a system was illogical and at variance with recognized principles of international law. He was strongly opposed to giving a limited group such powers.

20. He could support the French and Tunisian amendments (A/CONF.39/C.1/L.113) to paragraphs 2 and 3 of article 17, but not the United States amendment (A/CONF.39/C.1/L.127) to paragraph 2, since the concept of " the character " of a treaty was far too vague.

21. Mr. ALVAREZ (Uruguay) said that the International Law Commission had produced a remarkable piece of work in articles 16 and 17, and a successful compromise between different systems and views that was very well suited to the needs of the international community. He was in substantial agreement with that text and would be against any amendments that sought to change it radically. He viewed with sympathy certain drafting amendments such as those submitted by Poland and by France and Tunisia, but they could be referred direct to the Drafting Committee.

22. He feared that the real merits of the Peruvian amendment to article 16 (A/CONF.39/C.1/L.132) had not been understood. It was a frequent practice among Latin American States to formulate reservations in very general terms, regarding any provisions of a treaty which might directly or indirectly conflict with the constitution or internal law. Such reservations were inadmissible because of the uncertainty they created, which made it impossible to determine which treaty provisions were binding on the reserving State. In the last resort, they made that State at all times the sole and absolute judge of what were its international obligations. The Peruvian amendment would put an end

to that practice, which was based on an obsolete conception of sovereignty. Contrary to what had been said by some representatives, it did not aim at introducing domestic provisions into the draft articles, but at excluding them and he would accordingly vote in favour of it.

23. The CHAIRMAN said he would first put to the vote the proposals of substance relating to article 16, beginning with the amendments for the deletion of sub-paragraph (*a*) and (*b*) of the article.

*The USSR amendment (A/CONF.39/C.1/L.115) to delete sub-paragraph* (a) *was rejected by 70 votes to 10, with 3 abstentions.*

*The USSR amendment (A/CONF.39/C.1/L.115), the United States and Colombian amendment (A/CONF.39/C.1/L.126 and Add.1) and the amendment by the Federal Republic of Germany (A/CONF.39/C.1/L.128) to delete sub-paragraph* (b) *were rejected by 53 votes to 23, with 12 abstentions.*

24. The CHAIRMAN said that the amendments by Poland (A/CONF.39/C.1/L.136) and Malaysia (A/CONF.39/C.1/L.163) to sub-paragraph (*b*) would be referred to the Drafting Committee. He would now put to the vote paragraph 2 of the amendment by Japan, the Philippines and the Republic of Korea (A/CONF.39/C.1/L.133/Rev.1), for a new paragraph 2 to article 16 incorporating sub-paragraph (*c*) and establishing a collegiate system for the acceptance of reservations.

*The amendment (A/CONF.39/C.1/L.133/Rev.1, para. 2) was rejected by 48 votes to 14, with 25 abstentions.*

25. Mr. BEVANS (United States of America), explaining his vote, said that, although his delegation favoured the collegiate system, he had abstained because he did not favour the formulation proposed in document A/CONF.39/C.1/L.133/Rev.1, especially the concluding words, " shall be without legal effect ".

26. The CHAIRMAN said he would now put to the vote the amendments by the Republic of Viet-Nam and Peru.

*The amendment by the Republic of Viet-Nam (A/CONF.39/C.1/L.125) was rejected by 54 votes to 7, with 16 abstentions.*

*The amendment by Peru (A/CONF.39/C.1/L.132) was rejected by 44 votes to 16, with 26 abstentions.*

27. The CHAIRMAN said that the drafting amendments to sub-paragraph (*c*) by the United States and Colombia (A/CONF.39/C.1/L.126 and Add.1), Spain (A/CONF.39/C.1/L.147) and Malaysia (A/CONF.39/C.1/L.163), together with the amendment by China to the introductory phrase (A/CONF.39/C.1/L.161) would be referred to the Drafting Committee.

28. Mr. ZEMANEK (Austria) pointed out that paragraph 1(*b*) of the amendment by Spain (A/CONF.39/C.1/L.147) involved a point of substance.

29. Mr. MARTINEZ CARO (Spain) said he would withdraw that part of his amendment.

30. The CHAIRMAN said he would now put to the vote the amendments of substance relating to article 17.

*Paragraph 1*

*The amendment to delete the words " or impliedly " in paragraph 1, proposed 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) was adopted by 55 votes to 18, with 12 abstentions.*

31. The CHAIRMAN said that the drafting amendments to paragraph 1 submitted by Czechoslovakia (A/CONF.39/C.1/L.84) and Spain (A/CONF.39/C.1/L.148, para. 1) would be referred to the Drafting Committee.

*Paragraph 2*

*The amendment by Spain to delete paragraph 2 (A/CONF.39/C1/L.148) was rejected by 79 votes to 2, with 5 abstentions.*

32. The CHAIRMAN said that the amendments to paragraph 2 submitted by France and Tunisia (A/CONF.39/C.1/L.113) and the United States (A/CONF.39/C.1/L.127, part A) would be referred to the Drafting Committee.

*Paragraph 3*

*The amendments to delete paragraph 3 proposed by Switzerland (A/CONF.39/C.1/L.97) and France and Tunisia (A/CONF.39/C.1/L.113) were rejected by 50 votes to 26, with 11 abstentions.*

*The United States amendment to paragraph (A/CONF.39/C.1/L.127, part B) was adopted by 33 votes to 22, with 29 abstentions.*

33. The CHAIRMAN said that the amendments to paragraph 3 submitted by Austria (A/CONF.39/C.1/L.3), Spain (A/CONF.39/C.1/L.148) and China (A/CONF.39/C.1/L.162) would be referred to the Drafting Committee.

*Paragraph 4*

34. Mr. HARRY (Australia) said that, in view of the vote against the collegiate system in connexion with article 16, he would withdraw his amendment to article 17 (A/CONF.39/C.1/L.166).

35. The CHAIRMAN said he would now invite the Committee to vote on the principle that the treaty entered into force between the reserving State and the objecting State unless the objecting State expressly declared to the contrary; that was the principle involved in amendments by Czechoslovakia (A/CONF.39/C.1/L.85), Syria (A/CONF.39/C.1/L.94) and the USSR (A/CONF.39/C.1/L.115).

36. Mr. KHLESTOV (Union of Soviet Socialist Republics) said it should be clearly understood that the vote would be taken not on the actual wording of any of those amendments, but on the principle of the reversal of the presumption embodied in paragraph 4(*b*) of article 17.

*The principle was rejected by 48 votes to 28, with 8 abstentions.*

37. Mr. VIRALLY (France) explained that he had taken part in the vote on the amendments to paragraph 4, despite the fact that, in document A/CONF.39/C.1/L.169 and Corr.1, his delegation had proposed the deletion of paragraph 4, because as he had explained, its proposal to transfer the provisions of that paragraph to article 19 was only a matter of drafting.

38. The CHAIRMAN said that the drafting amendments to paragraph 4 by Switzerland (A/CONF.39/C.1/L.97), the United States (A/CONF.39/C.1/L.127, parts C and D), Spain (A/CONF.39/C.1/L.148, para. 2) and Thailand

(A/CONF.39/C.1/L.150), would be referred to the Drafting Committee.

*Paragraph 5*

39. The CHAIRMAN said that the drafting amendments to paragraph 5 by the United States (A/CONF.39/C.1/L.127, part E), Spain (A/CONF.39/C.1/L.148) and Thailand (A/CONF.39/C.1/L.150) would be referred to the Drafting Committee.

40. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his proposal to combine articles 16 and 17 (A/CONF.39/C.1/L.115) should also be referred to the Drafting Committee.

41. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to refer articles 16 and 17 to the Drafting Committee together with all amendments, to either article or both, which had not been either rejected or withdrawn.

*It was so agreed.*

*Article 19* (Legal effects of reservations) [2]

42. Mr. SMEJKAL (Czechoslovakia) said that since his amendment to article 19 (A/CONF.39/C.1/L.86) was connected with his amendment to paragraph 4(*b*) of article 17 (A/CONF.39/C.1/L.85), there was no necessity for him to explain it.

43. Mr. NACHABE (Syria) said that his delegation's amendment to paragraph 3 of article 19 (A/CONF.39/C.1/L.95) had been submitted for the same reasons as its amendment to paragraph 4(*b*) of article 17 (A/CONF.39/C.1/L.94). Its effect would be to carry even further the progress marked by the International Law Commission's paragraph 3 over the earlier version of that same provision, namely paragraph 2(*b*) of the former article 20 of the 1962 draft.[3]

44. Mr. KHLESTOV (Union of Soviet Socialist Republics) said there was no necessity for him to introduce his amendment to paragraph 3 of article 19 (A/CONF.39/C.1/L.117), since it was connected with his delegation's proposal relating to articles 16 and 17 (A/CONF.39/C.1/L.113).

45. The CHAIRMAN said the three amendments by Czechoslovakia (A/CONF.39/C.1/L.86), Syria (A/CONF.39/C.1/L.95) and the USSR (A/CONF.39/C.1/L.117) must be regarded as withdrawn, in view of the rejection by the Committee of the main proposals to which they were related.

46. Sir Lalita RAJAPAKSE (Ceylon), introducing his amendment to insert a new paragraph 4 in article 19 (A/CONF.39/C.1/L.152), said that the purpose of the new provision was to remove doubts which had been raised from time to time on the question whether a ratification subject to a reservation could be counted towards the number of ratifications required for entry into force of the treaty.

47. The question was of a formal rather than of a substantive character. It was necessary to lay down some rule in order to fill a gap in the present draft. His proposal was that a ratification subject to reservation should serve for the limited purpose of counting the number of consents required for entry into force. If the majority of the Committee, however, held the opposite view, the contrary rule could be adopted. It was not of any great importance which of those two positions was taken but it was essential to decide the point which had arisen. Whatever decision was taken would be without prejudice to any judgement regarding the validity of a reservation or the relationships which might flow, after the treaty entered into force, from a ratification subject to reservation.

48. Mr. SAULESCU (Romania), introducing the amendment submitted by his delegation and those of Bulgaria and Sweden (A/CONF.39/C.1/L.157 and Add.1), said that its purpose was to reformulate paragraph 1 of article 19 in more precise terms. The present wording adopted an analytical approach and dealt separately with the effects of a reservation in relation to the reserving State and those in relation to the other parties to the treaty. The amendment would eliminate the unnecessary repetition in the present wording, and replace it by more concise language; it would also make the provisions of paragraph 1 more precise by replacing the words "established with regard to another party" by "established with regard to any other party". That wording received support from the third sentence of paragraph (1) of the commentary to article 19 which said, "A reservation operates reciprocally between the reserving State and any other party, so that it modifies the treaty for both of them in their mutual relations to the extent of the reserved provisions".

49. Mr. WERSHOF (Canada) said that the purpose of his delegation's amendment (A/CONF.39/C.1/L.159) was to remove an ambiguous phrase which might lead to misinterpretation. The notification procedure in article 18 would obviously not be carried out by the reserving State itself; the reservation, and acceptances or objections to it would be communicated by the depositary to the States entitled to become parties to the treaty. It was clear that all the States thus entitled should receive the communication, but in cases where the depositary might erroneously fail to send the notification to a State, it was surely not the intention of the article to invalidate the reservation in respect of all the States which had received the communication. The Canadian amendment was designed to obviate that difficulty and could be referred to the Drafting Committee.

50. Mr. VIRALLY (France) said that his delegation's amendment (A/CONF.39/C.1/L.170) was a logical consequence of its proposal to amalgamate articles 16 and 17 (A/CONF.39/C.1/L.169), and was designed to amplify the International Law Commission's article 19 in two respects. In the first place, the French delegation considered that the legal effects of the distinct categories of reservations referred to in the Commission's article 17, paragraphs 1, 2 and 4 should also be specified in article 19. Secondly, it seemed logical to incorporate the substance

[2] The following amendments had been submitted: Czechoslovakia, A/CONF.39/C.1/L.86; Syria, A/CONF.39/C.1/L.95; Union of Soviet Socialist Republics, A/CONF.39/C.1/L.117; Ceylon, A/CONF.39/C.1/L.152; Bulgaria, Romania and Sweden, A/CONF.39/C.1/L.157 and Add.1; Canada, A/CONF.39/C.1/L.159; France, A/CONF.39/C.1/L.170; China, A/CONF.39/C.1/L.172; Hungary, A/CONF.39/C.1/L.177.

[3] *Yearbook of the International Law Commission, 1962*, vol. II, p. 176.

of article 17, paragraph 4, in article 19, in order to specify the legal effects of acceptance of and objections to reservations. The amendment was not substantive, and could be referred to the Drafting Committee; in any case, its fate depended on that body's decision with regard to the French proposal to combine articles 16 and 17 (A/CONF.39/C.1/L.169).

51. Mr. HU (China) said that his delegation considered the International Law Commission's text generally acceptable; its amendments (A/CONF.39/C.1/L.172) were consequently purely formal and could be referred to the Drafting Committee. It had proposed the deletion of the phrase " with regard to another party " from the opening sentence because that sentence should cover sub-paragraphs (*a*) and (*b*), whereas sub-paragraph (*a*) concerned only the reserving State. It had also proposed replacing, in sub-paragraph (*b*), the words " for such other party " by the words " for the accepting State " because that clause applied only to the relationship between the reserving State and the accepting State.

52. Mr. USTOR (Hungary) said that his delegation had been prompted to submit its amendment to paragraphs 1 and 2 (A/CONF.39/C.1/L.177) by the favourable comments that a number of delegations had made on its amendment to article 2, paragraph 1(*d*) (A/CONF.39/L.23). At the 6th meeting, the Austrian representative had proposed an oral sub-amendment to that text, which had been accepted, and the joint text was now being considered by the Drafting Committee. One or two delegations had criticized the Hungarian proposal on the ground that, according to the commentary to article 2, the International Law Commission wished to consider interpretative declarations as reservations only if such declarations purported to exclude or to vary the legal effect of certain provisions in their application to a particular State. The Expert Consultant had admitted that the question required thorough examination, but had recommended caution in the matter.

53. The Hungarian delegation hoped that acceptance of its amendment to article 19 would clarify situations which sometimes arose in connexion with interpretative declarations. It fully agreed with the principle that a reservation was a statement which purported to exclude or to vary the legal effect of certain provisions of a treaty, but did not regard that principle as an objective test: an interpretative declaration might be regarded by one State as rendering the true meaning of a treaty and by another as distorting that meaning. It would therefore be useful to assimilate those declarations to other kinds of reservations and to extend to them the provisions of the draft convention. Since the Hungarian amendment to article 2 was before the Drafting Committee, its amendments to article 19 might also be referred to that body.

54. Mr. EEK (Sweden) said that his delegation had become a co-sponsor of the Bulgarian and Romanian amendment (A/CONF.39/C.1/L.157 and Add.1) because it improved the text of article 19 without altering its substance. The Canadian proposal (A/CONF.39/C.1/L.159) seemed compatible with the three-State amendment.

55. Mr. STREZOV (Bulgaria) said that the main purpose of the three-State amendment was to stress the bilateral bond that the reservation machinery created between the reserving and the accepting State. That had been done by amalgamating sub-paragraphs (*a*) and (*b*) of paragraph 1.

56. Sir Humphrey WALDOCK (Expert Consultant), referring to the Hungarian representative's statement, said he could confirm that he had issued a warning against the dangers of the addition of interpretative declarations to the concept of reservations. In practice, a State making an interpretative declaration usually did so because it did not want to become enmeshed in the network of the law on reservations; for example, article 12 of the Convention on the Continental Shelf [4] contained an indirect prohibition of reservations to its first three articles, and certain States had made interpretative declarations in respect of those provisions. He would therefore appeal to the Drafting Committee to bear the delicacy of the question in mind and not to regard the assimilation of interpretative declarations to reservations as an easy matter.

57. Mr. MALITI (United Republic of Tanzania) said that, although the Ceylonese amendment (A/CONF.39/C.1/L.152) mentioned matters relating to article 19, it might be more appropriately placed in article 21, since it dealt with entry into force.

58. Mr. SPERDUTI (Italy) said he endorsed that view.

59. Mr. SINCLAIR (United Kingdom) said he thought that the Ceylonese amendment was a useful clarification, although its content might be implicit in article 17. His delegation had no strong views on whether the clause, if accepted, should be added to article 19, or to article 21; it would appreciate the Expert Consultant's views on the proposal.

60. With regard to the Hungarian amendment (A/CONF.39/C.1/L.177), the United Kingdom delegation had already expressed its serious doubts concerning the advisability of including a reference to interpretative declarations when discussing article 2.

61. Mr. ROSENNE (Israel) said that he too would like to hear the Expert Consultant's opinion on the Ceylonese proposal; he thought that the new paragraph, if accepted, should appear in Section II of the draft, though not necessarily in article 19. He regarded the three-State amendment (A/CONF.39/C.1/L.157 and Add.1) as an improvement on the Commission's text.

62. Sir Humphrey WALDOCK (Expert Consultant) said that the point raised by the Ceylonese delegation had been considered in the International Law Commission, but that no corresponding provision had been included in article 19, because it had been thought that the idea was implicit in the wording of the article: the use of the words " A reservation established with regard to another party " made it clear that if the reservation was accepted, the reserving State was a party to the treaty for general purposes. The Drafting Committee might, however, consider whether an additional clarification might not be useful.

63. The CHAIRMAN suggested that article 19 and the amendments thereto be referred to the Drafting Committee.

*It was so agreed.* [5]

[4] United Nations, *Treaty Series*, vol. 499, p. 318.

[5] For resumption of discussion, see 70th meeting.

*Article 20* (Withdrawal of reservations) [6]

64. Mr. ZEMANEK (Austria) said that his delegation, together with that of Finland, had submitted its amendments (A/CONF.39/C.1/L.4 and Add.1) in the belief that, since article 18 provided that a reservation must be made in writing, the same requirement should apply to withdrawal of the reservation. That formality would no doubt add to the security of treaty relations. The proposal for a new paragraph was designed to dispel possible doubts concerning the withdrawal of reservations; when a treaty had not entered into force between two States because one of them had objected to a reservation made by the other, and had not indicated that the treaty should nevertheless enter into force between them, there should be no obstacle to the entry into force of the treaty between the States in question once the reason for the objection had been removed.

65. Mr. CUENDET (Switzerland) said that his delegation's amendment (A/CONF.39/C.1/L.119) could be referred to the Drafting Committee, since it merely entailed the deletion of the superfluous phrase " or it is otherwise agreed " from paragraph 2. The provision in that paragraph, that a reservation could be withdrawn only when notice of it had been received, should not be further qualified than by stating the exception " unless the treaty otherwise provides ". Indeed, in the last sentence of paragraph (2) of its commentary, the International Law Commission allowed some latitude for States requiring a short interval of time in which to bring their internal law into conformity with the situation resulting from the withdrawal of a reservation. The amendment might relate to provisions other than article 20, and the Drafting Committee might consider other cases where it would apply.

66. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation had submitted its sub-amendment (A/CONF.39/C.1/L.167) to the Austrian and Finnish amendment (A/CONF.39/C.1/L.4 and Add.1) in order to reflect a minor point on which the USSR delegation disagreed with the Austrian and Finnish text. It wished to make clear that, if a State believed that a reservation was contrary to the object and purpose of the treaty and declared that it did not wish to be bound vis-à-vis the reserving State, the treaty would not be operative between those two States. That sub-amendment could, of course, be referred to the Drafting Committee.

67. Mr. BEVANS (United States of America) said that his delegation's amendment (A/CONF.39/C.1/L.171) merely raised two drafting points. Where paragraph 1 was concerned, States other than the accepting State might object to the withdrawal of reservations, and his delegation had therefore proposed a reference to " other States ". It had also proposed the insertion of the word " written " before the word " notice " in paragraph 2 on the understanding that, for example, a telegram would be counted as written notice.

68. Mr. USTOR (Hungary) said that the Hungarian amendment (A/CONF.39/C.1/L.178) was self-explanatory and was identical with the first part of the Austrian and Finnish amendment.

69. Mr. WERSHOF (Canada) pointed out that, although under article 18 a reservation, an acceptance of a reservation and an objection to a reservation must be communicated to " the other States entitled to become parties to the treaty ", under article 20, the withdrawal of a reservation became operative only when notice of it had been received by " the other contracting States ". Perhaps the Expert Consultant could explain whether there was any reason why the wording of the two articles should be entirely different.

70. Sir Humprey WALDOCK (Expert Consultant) said that article 20, paragraph 2, referred to the time when the withdrawal became operative. At that stage, the reservation would have been operative only in respect of the contracting States, and that would naturally apply to its withdrawal. The point raised by the Canadian representative might become pertinent if the article ultimately contained a general provision on the communication of withdrawal of reservations.

71. Mr. KRISPIS (Greece) said he thought that article 20 should provide for the communication of notice of withdrawal to all the States entitled to become parties to the treaty. Since, under article 18, reservations would be communicated to all such States, it was natural, and indeed essential, that the withdrawal of reservations should also be brought to their knowledge.

72. The CHAIRMAN suggested that article 20 and the amendments thereto be referred to the Drafting Committee.

*It was so agreed.* [7]

The meeting rose at 5.55 p.m.

[6] The following amendments had been submitted: Austria and Finland, A/CONF.39/C.1/L.4 and Add.1; Switzerland, A/CONF.39/C.1/L.119; United States of America, A/CONF.39/C.1/L.171; Hungary, A/CONF.39/C.1/L.178. The Union of Soviet Socialist Republics submitted a sub-amendment (A/CONF.39/C.1/L.167) to the amendment by Austria and Finland.

[7] For resumption of discussion, see 70th meeting.

## TWENTY-SIXTH MEETING

*Wednesday, 17 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 21* (Entry into force) [1]

1. Mr. WERSHOF (Canada), introducing the Canadian amendment to article 21 (A/CONF.39/C.1/L.123), reminded the Committee that the reasons for it had already been explained [2] during the discussion of his delegation's amendment to article 13 (A/CONF.39/C.1/L.110), namely that a State might sign an instrument of accession or

[1] The following amendments had been submitted: Canada, A/CONF.39/C.1/L.123; Republic of Viet-Nam, A/CONF.39/C.1/L.175; United Kingdom of Great Britain and Northern Ireland, A/CONF.39/C.1/L.186; Congo (Brazzaville), A/CONF.39/C.1/L.188; Chile, A/CONF.39/C.1/L.190.

[2] See 18th meeting, para. 38.