United Nations Conference on the Law of Treaties

Vienna, Austria
First session
26 March – 24 May 1968

Document:-
A/CONF.39/C.1/SR.26

26th 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)*

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 The provision in that paragraph, that a reservation could be withdrawn only when notice of it had been received, should not be further qualified than by stating the exception " unless the treaty otherwise provides ".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.

acceptance on a given date, stipulating, however, that its consent would become effective at a later date. Although the amendment was not merely a question of drafting, the Canadian delegation would agree that it should be referred to the Drafting Committee after discussion by the Committee of the Whole.

2. Mr. PHAN-VAN-THINH (Republic of Viet-Nam), introducing his delegation's amendment (A/CONF.39/C.1/L.175), observed that to bind a State as early as the negotiation stage might entail some dangers. That appeared to have been the view of the Committee of the Whole in deciding, at its 20th meeting, to delete article 15, sub-paragraph (*a*). The text of article 21 should therefore be brought into line with the new text of article 15.

3. Mr. VARGAS (Chile) said that his delegation's amendment (A/CONF.39/C.1/L.190) was only of relative importance, since normally the treaty itself provided for the manner of its entry into force. The text of article 21, paragraph 2, might create serious difficulties, because it required the unanimous consent of the negotiating States, and if only one of those States subsequently failed to give its consent to be bound by the treaty, that would be enough to prevent the treaty from coming into force. The situation would be even more serious if the treaty was subject to ratification. What would become of a treaty negotiated or even signed by several States which was not subsequently ratified by all those States? If the treaty did not contain any provision relating to its entry into force, and if the present text of article 21, paragraph 2, was adopted, the treaty would not be able to enter into force.

4. Inter-American conferences had concluded almost a hundred multilateral treaties, but only three of them had been ratified by all the signatory States. Yet many of those treaties were in force because no rule as strict as that in article 21, paragraph 2, had been applied to them. The two-thirds rule had been held to be adequate in many international conventions. In any event, that rule could not cause any difficulty, because, under article 21, paragraph 3, the treaty would enter into force for negotiating States which had not yet declared their consent to be bound by it, only after the date when their consent had been established.

5. Mr. SINCLAIR (United Kingdom) said that the only purpose of his delegation's amendment (A/CONF.39/C.1/L.186) was to make the International Law Commission's text clearer. It was generally accepted that when the text of a treaty was adopted, certain provisions had legal effects which were impliedly accepted by the countries concerned even if the treaty was not formally in force. The provisions were those dealing with the processes of ratification, accession, acceptance, approval, the functions of the depositary and reservations. Sir Gerald Fitzmaurice had included a clause to that effect in his first report,[3] and it was reproduced in roughly similar terms in the United Kingdom amendment. The existing text might be interpreted too rigidly to suit certain States.

6. Mr. MOUDILENO (Congo, Brazzaville) drew attention to the fact that the text of his delegation's amendment (A/CONF.39/C.1/L.188) should be altered; his delegation was not requesting that article 21, paragraph 1, should be deleted, but merely that its wording should be changed. The present text of paragraph 1 stated in a single sentence that a treaty should contain provisions on the manner and the date of entry into force and that a treaty should enter into force on that date and in that manner. But priority should be given either to the fact that the treaty should enter into force as laid down by the parties or that the contracting parties should prescribe the manner and date of entry into force. Those conditions should be prescribed in the treaty, since if they were clearly stipulated, entry into force would result directly from them.

7. Mr. ROSENNE (Israel) said that his delegation supported the United Kingdom amendment (A/CONF.39/C.1/L.186) listing certain elements in the process of concluding treaties. It would, however, be desirable also to mention the question of reservations. If the Committee of the Whole decided to adopt the principle in the amendment, the Drafting Committee would then have to decide whether its substance should be incorporated in article 21 or in a separate article.

8. Mr. BEVANS (United States of America) said he supported the United Kingdom amendment and the Israel representative's suggestion.

9. Mr. RUEGGER (Switzerland) said he approved the principle underlying the United Kingdom amendment. The importance of the point had already been brought out during the preparatory work by Sir Gerald Fitzmaurice. He would however like to ask the Expert Consultant whether the use of the words " legal effect " in the penultimate line of the amendment was possible. He himself considered that the legal effects of any clause in a convention could come into being only after ratification, and so he would prefer the words " shall be observed " to be substituted for the words " have legal effect ".

10. Mr. KRISPIS (Greece) said he supported the United Kingdom amendment, but regretted that he could not support the Chilean amendment, as he considered that if the parties really wished the treaty to enter into force as soon as consent to be bound by it had been established for two-thirds of the negotiating States, they would be able to state that expressly in the treaty and it would then enter into force in accordance with article 21, paragraph 1.

11. Mr. VIRALLY (France) said that the United Kingdom amendment usefully supplemented the text of article 21 and should be adopted. Its wording, however, raised some difficulties. He would like to hear the Expert Consultant's reply to the question asked by the Swiss representative before deciding whether the new paragraph should be referred to the Drafting Committee.

12. The authors of a treaty often failed to define the conditions for its entry into force and, in that case, their silence should be construed as meaning that acceptance by all the negotiating States was necessary. If any other rule was to be applied, it should be stated expressly in the treaty and would, therefore, come under article 21, paragraph 1. The French delegation was therefore opposed to the Chilean amendment.

13. Mr. CASTRÉN (Finland) said he supported the United Kingdom amendment and considered that the

[3] *Yearbook of the International Law Commission, 1956*, vol. II, p. 113, article 30.

Committee of the Whole should discuss the Canadian amendment.

14. The Finnish delegation was in favour of paragraph 2 of the amendment by the Republic of Viet-Nam (A/CONF.39/C.1/L.175), but could not support paragraph 1, since it referred to the States parties to the treaty, whereas, to be consistent with the terminology used in the draft, that expression could not be employed before the treaty entered into force.

15. Mr. BADEN-SEMPER (Trinidad and Tobago) said he was in favour of the United Kingdom amendment but considered that the Committee of the Whole should accept the principle of that amendment and then refer the text to the Drafting Committee for redrafting. The Drafting Committee should consider whether signature should be a pre-condition for the existence of legal effects of certain provisions of a treaty, and whether the various procedural elements which produced legal effects before ratification should be enumerated.

16. Sir Humphrey WALDOCK (Expert Consultant) explained that on several occasions he had raised in the International Law Commission the question he had been asked by the Swiss representative. In his view, the source of the legal validity of the final clauses lay not in the treaty itself, but in the consent given when the text of the treaty was adopted. If the Committee adopted the principle embodied in the United Kingdom amendment, the Drafting Committee would have to find a satisfactory wording.

17. Mr. YASSEEN (Iraq) observed that the United Kingdom amendment was the expression of an existing rule of international law. That rule was entirely logical, because without it, the final clauses concerning the ratification or the entry into force of a treaty could not be applied. The basis for the rule was to be found in international custom.

18. The amendment would be improved by redrafting and there he supported the Swiss representative's suggestion. The new paragraph 4 proposed in the amendment stated that certain provisions had legal effect prior to the entry into force of the treaty, but it did not specify when they became effective, whether at the time the treaty was adopted or at the time of signature. That should be made clear, so that delegations could take a definite stand on the amendment.

19. The CHAIRMAN put to the vote the first proposal in the amendment in document A/CONF.39/C.1/L.188, namely to delete article 21, paragraph 1.

That proposal was rejected by 75 votes to 1, with 12 abstentions.

20. Mr. MOUDILENO (Congo, Brazzaville) said that the second part of his delegation's amendment was of a purely drafting nature. It was merely an attempt to adopt the most logical order. He believed that the emphasis should be placed first on the principle whereby the manner of entry into force of a treaty was provided for in the treaty itself. The Drafting Committee might therefore be left to find the best way to express it, if need be.

It was so decided.

21. The CHAIRMAN put the Chilean amendment to the vote.

The Chilean amendment (A/CONF.39/C.1/L.190) was rejected by 64 votes to 9, with 15 abstentions.

22. The CHAIRMAN said he took it that the Committee approved of the principle stated in the amendment submitted by the United Kingdom (A/CONF.39/C.1/L.186), subject to any changes to be made in the wording of the new paragraph. He proposed, therefore, that the amendment should be referred to the Drafting Committee, together with the amendments by Canada (A/CONF.39/C.1/L.123) and the Republic of Viet-Nam (A/CONF.39/C.1/L.175).

It was so decided.

Article 22 (Entry into force provisionally) [4]

23. Mr. BEVANS (United States of America) said that his delegation had proposed (A/CONF.39/C.1/L.154 and Add.1) the deletion of article 22 for three reasons. First, article 22 merely affirmed a procedure which was possible in the absence of the article. Article 21, paragraph 1, already provided that a treaty entered into force " in such manner " as the negotiating States might agree. Secondly, article 22 failed to define the legal effects of provisional entry into force and could give rise to difficulties of interpretation with respect to other articles of the convention, notably those on observance and termination of treaties. Thirdly, it left unanswered the question how provisional force might be terminated. The article was therefore neither necessary nor desirable.

24. If, however, article 22 was to be retained, the United States delegation would wish to have it amended as follows: first, the words " be applied " should be substituted for " enter into force " in the introductory clause of paragraph 1, the words " shall be applied " for " shall enter into force " in paragraph 1, sub-paragraph (*a*), and " application " for " entry into force " in paragraph 2. Secondly, a paragraph on the termination of the provisional application of the treaty should be added along the following lines:

> " Provisional application of a treaty or part of a treaty may terminate as agreed by the States concerned or upon notification by one of those States to the other State or States that it does not intend to become definitively bound by the treaty. "

25. Mr. REGALA (Philippines), introducing his delegation's amendment (A/CONF.39/C.1/L.165), said that the change suggested in it was simple and of no great importance. Paragraph 2 could be deleted, because if the treaty as a whole could be applied provisionally by virtue of paragraph 1, *a fortiori* only a part of the treaty could be applied provisionally. His delegation's amendment might be referred to the Drafting Committee. He did not support the proposal to delete the whole of article 22.

26. Mr. PHAN-VAN-THINH (Republic of Viet-Nam) said that the usefulness of article 22 had still to be proved,

[4] The following amendments had been submitted: United States of America, Republic of Korea and Republic of Viet-Nam, A/CONF.39/C.1/L.154 and Add.1; Philippines, A/CONF.39/C.1/L.165; Republic of Viet-Nam, A/CONF.39/C.1/L.176; Yugoslavia and Czechoslovakia, A/CONF.39/C.1/L.185 and Add.1; Greece, A/CONF.39/C.1/L.192; India, A/CONF.39/C.1/L.193. Amendments were subsequently submitted by Belgium, A/CONF.39/C.1/L.194; Bulgaria and Romania, A/CONF.39/C.1/L.195; Hungary and Poland, A/CONF.39/C.1/L.198.

whereas its disadvantages were obvious. States might commit themselves hastily under the pressure of circumstances without weighing all the difficulties that the subsequent ratification of their commitments might encounter. In the case of commitments of national and international importance, it would be better to avoid provisional application. The result would be greater certainty and security. If the Committee could not accept the deletion of article 22, however, it should at least alter the wording as suggested in the amendment submitted by his delegation (A/CONF.39/C.1/L.176). Further, the expression " in some other manner " in paragraph 1, sub-paragraph (*b*), should be changed because it was too broad.

27. Mr. TODORIC (Yugoslavia), introducing the amendment by his delegation and that of Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1), said that he too thought it would be better to speak of provisional application rather than entry into force provisionally. Further, it was essential to provide how that situation should end, according to whether the definitive entry into force took place or not. Lastly, the situation differed in the case of bilateral and multilateral treaties.

28. If the Committee agreed to make a distinction between the provisional application of a treaty and its entry into force, the title of the article would also have to be changed and would become: "Application provisionally ", and the article might be transferred to Part III, Section 2. In any event, the article should be retained, as it was in conformity with international practice and was useful legally, as implied in paragraph (3) of the International Law Commission's commentary.

29. Mr. CARMONA (Venezuela) said that he was not in favour of deleting article 22. He was not overlooking the fact that treaties must go through a ratification procedure, but he thought that entry into force provisionally corresponded to a widespread practice based upon the urgency of certain agreements. A recent example was the Agreement of 1960 establishing the Organization of Petroleum Exporting Countries.[5] The States concerned had decided to apply provisionally the treaty signed at Baghdad. Provisional application had not caused the least difficulty and the treaty had subsequently entered into force.

30. As the United States delegation itself appeared to think, the probable difficulties were of two kinds. First, Governments hesitated to commit themselves without complying with the procedure prescribed by internal law unless they were certain that ratification would not give rise to any political difficulty. Secondly, on the international plane, it was necessary to provide for the express consent of States to the provisional application of a treaty.

31. In any case, it would be regrettable if the convention represented a retrograde step in relation to present practice, since provisional application met real needs in international relations. Article 22 should therefore be retained. The use States made of that procedure would depend on circumstances and upon their internal laws. That possibility was provided for in the Venezuelan Constitution, for example.

[5] United Nations, *Treaty Series*, vol. 443, p. 247.

32. Sir Lalita RAJAPAKSE (Ceylon) observed that although circumstances might require the application of a treaty provisionally, attention should also be given to limiting the period of provisional application. After a specified date, provisional application would cease until ratification. Article 22 did not contain any provision in that regard nor with respect to the effects of acts performed during the provisional application.

33. The Ceylonese delegation supported the amendment by Yugoslavia and Czechoslovakia (A/CONF.30/C.1/L.185 and Add.1) as it considered it better, from the formal point of view, to combine the two paragraphs into a single paragraph.

34. There was no great difference between the terms " be applied " and " enter into force ". The latter had no doubt been used because the article had been placed in Section 3, relating to the entry into force of treaties.

35. In any event, he endorsed the use of the term " be applied ". The amendment in document A/CONF.39/C.1/L.185 and Add.1, as well as his own delegation's suggestion that the scope of the provisions of article 22 should be defined, were matters of drafting and might be referred to the Drafting Committee. Lastly, he did not support the deletion of article 22 proposed by the United States delegation.

36. Mr. MYSLIL (Czechoslovakia) said he did not wish to make a formal proposal, but he thought the Drafting Committee's attention should be drawn to the need to distinguish between the entry into force and entry into operation of a treaty. Although the dates of those two events often coincided, entry into operation sometimes took place later, for example, one month or three months after the exchange or deposit of the instruments of ratification or accession. A date of entry into operation subsequent to the date of entry into force was more often specified in multilateral treaties. Such postponement of entry into operation had legal consequences: whereas a State might be considered to be free to renounce its obligations between the date of entry into force and the date of entry into operation of the treaty, after the entry into operation of the treaty it could only do so in accordance with the provisions of the treaty or the rules of international law.

37. The Yugoslav amendment (A/CONF.39/C.1/L.185) indicated a possible solution. The Czechoslovak delegation had co-sponsored that amendment with the agreement of the Yugoslav delegation. The term used should be " provisional application ", and not " entry into force provisionally ", because there could hardly be two entries into force.

38. Lastly, the Czechoslovak delegation did not agree to the deletion of article 22, because it would leave an unsatisfactory gap in the convention.

39. Mr. TSURUOKA (Japan) said he supported the United States amendment to delete article 22.

40. The legal nature of provisional entry into force was not sufficiently clear. In practice, provisions of a treaty were sometimes applied before the entry into force of the treaty. The Japanese delegation doubted, however, whether the practice could be sanctioned as a distinct legal institution. In most cases, what really took place was that the executives of the contracting States assumed

parallel undertakings to apply the provisions of the treaty within the limits of their respective competences. Hence it might not be proper to classify the practice as a variant of entry into force.

41. In any case, whatever the legal nature of such practices, the Japanese delegation regarded them as already covered by article 21, paragraph 1.

42. Mr. DENIS (Belgium) said that there was a gap to be filled in article 22, which did not explain how provisional entry into force was terminated when a State knew that it would not ratify the treaty. There was no question in that case of applying the provisions of article 53 of the draft relating to denunciation of treaties, because a State could not denounce a treaty to which it was not yet party. It should therefore suffice to terminate provisional application if the State concerned manifested its wish not to become a party to the treaty. That was the purport of the amendment submitted by the Belgian delegation (A/CONF.39/C.1/L.194). The Committee would note that the wording used in the amendment was based on terms employed in draft article 15, which had already been approved by the Committee in principle.

43. Mr. MARESCA (Italy) said he supported the amendment by Yugoslavia and Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1), which considerably improved the original wording, in that confusion should be avoided between mere application, which was a question of practice, and entry into force, which was a formal legal notion. Mere physical application did not involve entry into force. The deletion of paragraph 2 therefore followed logically from the formula proposed in paragraph 1. The Italian delegation also approved of the Belgian amendment (A/CONF.39/C.1/L.194), which was a logical consequence of a particular situation and had the advantage of using a formula already employed in a previous article.

44. Mr. ROSENNE (Israel) said he was tempted at first sight to agree to the deletion of article 22, which raised many difficulties. But, although deletion seemed the simplest solution, it did not solve the problem, because the deletion of the article would fail to take account of existing practice, which had its merits. If the Committee decided to delete the article, it should state in its report to the plenary Conference that the deletion did not affect established practice. If the article was retained, the proposal by Yugoslavia and Czechoslovakia would form a satisfactory basis for its wording, because it was really the application of the treaty rather than its entry into force which was concerned. The word " provisionally " introduced a time element, and unless emphasis was placed on application rather than entry into force, it would be necessary to specify that the word " provisionally " referred to time and not to legal effects. That would complicate the drafting of the article. If the Committee decided in favour of the notion of application, the question would arise as to the place at which article 22 should appear in the convention. In short, his delegation favoured the retention of the article, which should be referred to the Drafting Committee. It could not yet express its view on the Belgian amendment (A/CONF.39/C.1/L.194) because the text had not yet been circulated.

45. Mr. VIRALLY (France) thought that the existence of a well-established practice, the value of which had been fully demonstrated, made it necessary for the convention to safeguard the freedom of States to agree that the treaty could enter into force provisionally until such time as they were able to give final confirmation. The deletion of article 22 might therefore raise more problems than it would solve, and it would be preferable to retain it. Its existing wording nevertheless created difficulties, in that the notion of provisional entry into force was difficult to define legally. It would be preferable to recognize existing practice rather than adopt a particular position on the point. In that respect, the amendment by Yugoslavia and Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1) seemed satisfactory, but its adoption would raise the question of whether it was possible to wait indefinitely for States to express their final consent to the treaty. Provision should be made for States to withdraw as soon as they had decided against participation in the treaty. The French delegation therefore supported the Belgian amendment (A/CONF.39/C.1/L.194).

46 Mr RUEGGER (Switzerland) said he understood the doubts expressed by delegations as to whether article 22 should really appear in the convention. On reflection, however, the Swiss delegation had decided that contemporary practice necessitated the presence of such an article, since a practice which had become current in several spheres, and particularly in that of trade agreements, could not be overlooked. But the question was an awkward one, because it cut across the dividing line between international law and internal law. There was also the question of the limits to the power of a Government and that of the power of individuals to bind a State provisionally.

47. His delegation thought a distinction should be made between provisional application and provisional entry into force. It would therefore support the amendment by Yugoslavia and Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1), which could however be extended to include the words " in whole or in part " after the word " applied ". If the Yugoslav and Czechoslovak amendment was rejected, his delegation could accept the wording proposed by the International Law Commission. At first sight the Belgian amendment (A/CONF.39/C.1/L.194) seemed acceptable, but his delegation could not give its opinion until the text had been circulated.

48. Mr. SINCLAIR (United Kingdom) said that the wording and content of article 22 had caused difficulty during the discussion. The United Kingdom delegation itself saw no particular reason not to delete it, but it should be recognized that article 22 represented the existing practice of States in many spheres. It would therefore be preferable to retain it, provided that the difficulties in question were solved.

49. The Yugoslav and Czechoslovak amendment seemed justified, because it was the application rather than the entry into force of the treaty that was contemplated. In principle, the United Kingdom delegation could support the Belgian amendment, but it would not commit itself until it had studied the text.

50. With regard to the expression " have in some other manner so agreed ", it might be more correct to say " have otherwise so agreed ", since States might have agreed in the treaty itself that it would enter into force or be applied provisionally when a particular event took

place or when it had been ratified by only a few contracting States, and not when it had been ratified by all the contracting States.

51. Mr. BEVANS (United States of America) said he did not think the retention or deletion of article 22 would make the slightest difference to existing practice, although the retention of the article might cause confusion in foreign affairs departments. For example, some countries regarded treaties, and even international law, as forming part of their internal law, and the inclusion of article 22 would introduce a new element into international law which would override their internal practice. Such difficulties could perhaps be solved by a disclaimer such as " Nothing in the present provisions shall prevent the provisional application of treaties ".

52. Mr. YASSEEN (Iraq) said he favoured the retention of article 22. He preferred the wording of the amendment by Yugoslavia and Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1) because it was clearer and would result in the deletion of a paragraph which did not seem essential. He could not, however, agree to the replacement of the words " may enter into force provisionally " by the words " may be applied provisionally ". From the legal point of view, the situation was the same as when the treaty entered into force. The only difference was in the time factor. In article 22, entry into force was provisional.

53. The Indian amendment (A/CONF.39/C.1/L.193) improved the wording of paragraph 1.

54. Mr. KRISPIS (Greece) explained that the object of the amendment submitted by his delegation (A/CONF.39/C.1/L.192) was to combine paragraphs 1 and 2 of article 22 so as to state the rule in more precise form, and to combine sub-paragraphs (*a*) and (*b*) of paragraph 1 in order to bring the drafting of the paragraph into line with that of paragraph 1 of article 21.

55. The Greek delegation approved of the change proposed by the Yugoslav and Czechoslovak amendment (A/CONF.39/C.1/L.185 and Add.1), which preserved the idea of provisional application. It might be advisable to add some words in an appropriate place in the article about the duration of the provisional application, as had been rightly suggested during the discussion.

56. With regard to the deletion of article 22, his delegation thought that its presence in, or absence from, the convention would in no way alter existing practice. It would therefore abstain in the vote on the deletion. If the article was retained, it would like its amendment to be referred to the Drafting Committee.

57. Mrs. THAKORE (India) explained that her delegation's amendment (A/CONF.39/C.1/L.193) concerned matters of drafting and could therefore be referred to the Drafting Committee. The first change seemed necessary if articles 9 *bis* and 12 *bis* were adopted. The reason for the second change was that, in view of the definition of the term " contracting State " given in article 2, paragraph 1(*f*), it was preferable not to use the words " contracting States " in the context in question, because pending ratification a State was not a contracting State. Those words might be replaced by the words " States concerned " which were also to be found in the International Law Commission's commentary to article 22.

58. The Indian delegation supported the Yugoslav and Czechoslovak amendment (A/CONF.39/C.1/L.185 and Add.1).

59. Mr. KOUTIKOV (Bulgaria) said that article 22 contained the essentials for solving a situation which seldom arose. He could vote in favour of it. It gave the impression, however, that its authors had intended to distinguish between provisional entry into force as provided in the treaty and provisional entry into force as otherwise provided. That impression was confirmed by the following sentence in paragraph (1) of the International Law Commission's commentary to the article: " Whether in these cases the treaty is to be considered as entering into force in virtue of the treaty or of a subsidiary agreement concluded between the States concerned in adopting the text may be a question ". Possibly the article merely gave that impression, but it was better to be precise. The Bulgarian delegation, jointly with the Romanian delegation, would submit an amendment [6] on that point to make it clear that the will of States was a decisive factor, whether entry into force was provided for in the treaty or elsewhere. That amendment would only relate to paragraph 1 and could be referred to the Drafting Committee.

60. The amendment by Yugoslavia and Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1) offered a version of the article as seen from a different standpoint, both practically and theoretically. That amendment and the Indian amendment (A/CONF.39/C.1/L.193) could be considered by the Drafting Committee.

The meeting rose at 1 p.m.

[6] See document A/CONF.39/C.1/L.195.

TWENTY-SEVENTH MEETING

Wednesday, 17 April 1968, at 5.30 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 22 (Entry into force provisionally) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 22 of the International Law Commission's draft.[1]

2. Mr. CASTRÉN (Finland) said that his delegation was in favour of retaining article 22 in its entirety, and was opposed to the deletion of paragraph 2. It could support the amendments submitted by Yugoslavia and Czechoslovakia (A/CONF.39/C.1/L.185 and Add.1), Belgium (A/CONF.39/C.1/L.194) and India (A/CONF.39/C.1/L.193). On the other hand, it could not support the amendment by the Republic of Viet-Nam (A/CONF.39/C.1/L.176), for the same reasons as it had advanced at

[1] For a list of the amendments submitted, see 26th meeting, footnote 4.