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3rd meeting of the Committee of the Whole

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submitted to the Conference was certainly a convention. It would therefore be correct to say: "The present convention relates to treaties concluded between States". That point could be referred to the Drafting Committee.

28. With regard to the United States amendment (A/CONF.39/C.1/L.15), the Tanzanian delegation thought it might be unrealistic to limit the application of the convention to treaties concluded between States at a time when the role of international organizations was assuming increasing importance. Moreover, it did not seem possible to draw a clear distinction between treaties concluded by those organizations and treaties concluded between States. International organizations were subject to the normal rules of international law, especially when a treaty had entered into force. Hence the question raised by the United States amendment was of great importance and needed careful consideration. In particular, it might not be possible to adopt the precise text proposed by the United States, which was susceptible of different interpretations. For instance, the meaning of the words "other subjects of international law" needed to be defined. In order not to delay the work of the Conference, it would probably be preferable not to attempt any far-reaching amendment of article 1 at that stage.

29. Mr. HARRY (Australia) stressed the importance his delegation attached to the codification and progressive development of the law of treaties. All countries were vitally concerned in upholding the principle *pacta sunt servanda*. Moreover, the small and middle-ranking States had a particular interest in a soundly-based system of international treaty law. Of course, the more powerful States were also interested, but the smaller ones, being in a weaker position to secure redress, were more dependent on the sanctity of treaties and liable to suffer from anything prejudicial to orderly international relations. Where treaties were not observed, justice was on the side of the big battalions.

30. The work of the Conference would be to discuss the International Law Commission's proposals by article or group of articles and to take decisions article by article. The Conference should nevertheless bear in mind the suggestion made by the Secretary-General in paragraph 15 of document A/CONF.39/3 that where the Committee encountered a portion of the draft presenting particular difficulties it should hold a debate on that portion as a whole and then refer it to a sub-committee or working group for consideration and report. The Secretary General had rightly suggested that treatment for part V of the draft articles.

31. With regard to article 1, the Australian delegation regretted that the International Law Commission had been obliged to limit its proposals to treaties between States. By so doing, it had excluded a class of treaties of increasing significance in international relations, namely treaties between States and international organizations. The Commission might also have excluded the type of treaty known as a "trilateral" treaty—a treaty to which State A, State B and international organization C were parties. The position in regard to those treaties was not completely clear. Should the draft articles not cover an agreement between States because an international organization was also party to it? Again, the Com-

mission had omitted other important aspects of treaty law from its proposals; for example, the effect of the outbreak of hostilities, succession of States in relation to treaties, State responsibility, and the most-favoured-nation clause.

32. The Australian delegation understood the reasons which had prompted the International Law Commission to deal only with certain aspects of the law of treaties. But that course had disadvantages. It would be difficult for the participants in the Conference to bear in mind the implications for other fields of treaty law of the proposals submitted to it. The Conference would nevertheless have to take care that its decisions did not have undesirable implications for areas of treaty law not substantially before it.

33. It was too late to change completely the approach adopted by the Commission. Nevertheless, in the view of the Australian delegation, the Conference should seriously consider removing the limitation of the draft articles to treaties between States. The draft should be reworded so that treaties involving international organizations were in fact covered. Such a change would require a review of several articles, which it would certainly be difficult for the Committee of the Whole to undertake. The Australian delegation therefore favoured the setting-up of a working group to consider the matter and report to the Committee whether it would be feasible to extend the scope of the draft articles to include international organizations (and other subjects of international law); and, if so, to state what changes would be required in the draft articles.

The meeting rose at 1 p.m.

THIRD MEETING

Thursday, 28 March 1968, at 3.20 p.m.

Chairman: Mr. ELIAS (Nigeria)

Tribute to the memory of Colonel Yuri Gagarin, Soviet astronaut

1. The CHAIRMAN said he had just been informed that Colonel Yuri Gagarin, the first man to fly in space, had been killed in a training flight accident. His death was a tragic loss not only to the Soviet Union but to the whole world, and he invited the Committee to observe a minute's silence in his memory.

The Committee observed a minute's silence.

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 (resumed from the previous meeting)

Article 1 (The scope of the present articles) (continued) ¹

2. The CHAIRMAN invited the Committee to continue its consideration of article 1.

¹ For the list of the amendments submitted, see the summary record of the 2nd meeting, footnote 1.

3. Mr. WERSHOF (Canada) said that his delegation would have no objection to referring the United States amendment (A/CONF.39/C.1/L.15) either to a working group or back to the International Law Commission, if that was feasible.
4. In the meantime he wished to draw attention to an ambiguity in the wording of article 1, which would be eliminated if the United States amendment were adopted, but should be clarified if the text were retained in its existing form. It was not clear whether the International Law Commission had intended the applicability of the draft articles to extend to the treaty relationship *inter se* between States parties to a treaty to which one or more international organizations were also parties. Treaties of that kind were increasing in number, and the question had already been raised by the Food and Agriculture Organization of the United Nations in its observations (A/CONF.39/5). His delegation hoped that the draft articles would cover the treaty relationship between States parties to such treaties.
5. Mr. BLIX (Sweden), referring to the United States amendment, said that it would be difficult, if not impossible during the current Conference, to extend the draft to cover treaties made by international organizations, let alone other subjects of international law. A more practical course of action would be for the Conference to adopt a special resolution urging the International Law Commission to prepare a complement to the draft, specifying which of its rules and what additional rules might be applicable to such treaties.
6. His delegation believed that the limitation of the applicability of the draft to treaties between States was a shortcoming, and agreed with the Canadian delegation that problems might arise in connexion with treaties to which both States and international organizations were parties; it was convinced, however, that it was too late to remedy that shortcoming during the present Conference. Of course, to the extent that the draft articles expressed existing customary international law, they would be relevant to treaties made by subjects of international law other than States, and those treaties would also benefit from the consequent clarification of many rules of international law.
7. The establishment of a working group would hardly promote an immediate solution, and it was to be hoped that the United States would not press that part of its proposal. A special resolution by the Conference seemed to be in line with the thinking of other delegations.
8. Mr. RICHARDS (Trinidad and Tobago) said that, although his delegation would not oppose a majority decision to set up a working group as proposed by the United States, it believed that it would be wiser to request the International Law Commission to draft a convention or series of conventions on treaties concluded by subjects of international law other than States.
9. With regard to the ambiguity mentioned by the Canadian representative, the article might be clarified by the insertion of the word "exclusively" after "relate"; that might also make articles 3 and 4 unnecessary. Perhaps the definition of "treaty" in article 2, paragraph 1 (a), might be improved by some reference to the intention of States to create binding obligations.
10. Mr. de BRESSON (France), referring to the United States amendment, observed that, since the expression "other subjects of international law" which it employed obviously meant international organizations, that should be specified in the proposal. The anxiety of a number of delegations that the applicability of the draft articles should not be limited only to States was understandable, since international organizations had acquired a status of their own and concluded agreements with States, whence the fear that subjecting treaties concluded by those organizations to a different régime from that governing treaties concluded by States *inter se* might create delicate legal situations. On the other hand, there was general awareness of the fact that that problem could not be solved by amending just a single article, and it was important to avoid any procedure which would hamper the complete and rapid success of the Conference.
11. Perhaps the best way of dealing with the question would be to appoint a small working group, consisting of the members of the International Law Commission attending the Conference, to study the implications of the United States amendment on the draft as a whole. If the findings of that group showed that adoption of the United States proposal would entail a complete revision of the draft articles, as the USSR representative had suggested, the United States delegation might withdraw its amendment, or the Swedish representative's suggestion might be followed.
12. Mr. JIMENEZ DE ARECHAGA (Uruguay) said that it would not be appropriate to try to enlarge the scope of the draft convention to cover subjects of international law other than States by setting up a working group of the Conference. The International Law Commission had been quite right to limit the first convention on the law of treaties to instruments concluded between States; indeed, the present Conference had been convened on that understanding. It was extremely difficult to decide on the extent to which the draft articles applied to treaties concluded by international organizations, which had very limited practice. Codification was a slow process which must proceed by stages. Moreover, there was the practical difficulty that the Conference was attended by plenipotentiary representatives of States, whereas the international organizations were represented by observers only; the resulting convention would be signed and ratified only by States, and the role that the international organizations should play in the preparation, conclusion and entry into force of an instrument relating to treaties entered into by them presented a difficult problem. Uruguay, therefore, unequivocally supported the Swedish delegation's suggestion.
13. Sir Francis VALLAT (United Kingdom) said that any differences of opinion between delegations and the International Law Commission in no way implied criticism of the Commission, but merely indicated the special importance which Governments attached to certain matters relating to the provisions of the draft. For example, the United Kingdom attached great importance to treaties to which international organizations were parties, and regretted that the draft articles did not apply to such treaties. Accordingly, it was in favour of the United States proposal, and considered that a working group on the subject of treaties made by international

organizations would not necessarily hold up the work of the Conference. On the other hand, his delegation could support the Swedish proposal. The relevant resolution might be prepared by the Drafting Committee.

14. If treaties entered into by international organizations were not covered by article 1, that should be stated specifically, and his delegation, therefore, could not support the Hungarian proposal to delete the article.

15. Mr SECARIN (Romania) said that adoption of the United States amendment would complicate the work of the Conference, since it entailed a fundamental change in the entire concept of the draft convention. The problem of treaties entered into by international organizations was a vast subject, and its study without the necessary preparation would deflect the Conference from its basic objective. Romania was therefore in favour of the original article 1, which took into account the realities of international treaty relations. That attitude, however, did not in any way rule out the possibility of further studies of treaties entered into by subjects of international law other than States.

16. Mr. SMEJKAL (Czechoslovakia) said that the Swedish and Hungarian amendments (A/CONF.39/C.1/L.10 and L.18) might well be referred to the Drafting Committee, as the sponsors themselves had pointed out. The Hungarian amendment had considerable merit, since the scope of the draft articles was stated in more explicit terms in article 2, paragraph 1(a), than in article 1, and it was evident from the commentary to article 1 that the clause was not substantive.

17. With regard to the United States amendment, all participants in the Conference, as well as the International Law Commission, were aware of the importance of the problem of treaties concluded by international organizations. Nevertheless, the Commission had stated in the second sentence of paragraph (2) of the commentary to article 1 that an attempt to include the relevant provisions would have unduly complicated and delayed the drafting of the articles. The United States representative himself had drawn attention to the objections that might be raised to his delegation's proposal.

18. The Czechoslovak delegation considered that the United States amendment was unacceptable for a number of reasons. First, the legal principles governing treaties between States had been established by long practice, whereas treaties made by international organizations had a number of special characteristics, and were likely to give rise to delicate problems. Secondly, a limited number of organizations had been invited to submit observations on the draft convention, and the Conference consisted of plenipotentiary representatives of States, with observers from some of the international organizations concerned. Thirdly, the United States recognized, in its rationale for the amendment, that a number of changes throughout the articles would be required if the amendment were accepted, but did not set out any specific changes; all the organizations concerned should be consulted on a matter of such great interest to them. Fourthly, many delegations did not have the necessary instructions from their Governments to agree to such an enlargement of the scope of the draft articles. Finally, adoption of the United States amend-

ment would entail a radical departure from the entire framework of the Commission's draft in the form in which it had been presented as a basis for the work of the Conference. He therefore appealed to the United States delegation to withdraw its amendment, on the understanding that the discussion in the Committee would be reflected in the relevant reports.

19. Mr. MERON (Israel) said that, in view of the comprehensive nature of the subject of the law of treaties, the current Conference must endeavour to be cautious and moderate in its decisions. The applicability of the articles to subjects of international law other than States had been exhaustively considered by the International Law Commission, which had referred to such subjects of international law in its 1962 draft. The reason for the Commission's decision to exclude treaties made by those subjects of international law was explained in its commentary: the Commission considered that more detailed studies should be carried out before the subject would be ready for codification. His delegation would not object to setting up a working group on the subject if the majority of the Conference was in favour of that solution; otherwise, it would support the Swedish suggestion.

20. It was doubtful whether three articles were necessary to cover the matters dealt with in them. The proposed scope of the codification should be made clearer. A possible solution might be to amalgamate article 1 and 3, in order to bring out their interrelationship more clearly. The word "relate" in the original article 1 was ambiguous. The Drafting Committee might consider rewording article 1 to read "Treaties concluded between States and governed by the present articles".

21. Mr. OWUSU (Ghana) said that his delegation regretted the omission of rules governing treaty relations between States and international organizations and between international organizations *inter se*. There was an obvious need for codification and clear restatement of the law on those subjects, but it would be expedient for them to be examined by the International Law Commission as a separate topic in the near future. Ghana could not support the United States amendment if its purpose was to have that vast subject examined during the current Conference.

22. The reasons for Ghana's attitude were that the question was already under consideration by the International Law Commission; that its consideration would delay attainment of the ultimate objectives of the Conference; that no satisfactory result could be achieved without detailed examination of the implications; that in referring to "other subjects of international law", the United States amendment was not confined to international organizations, since the "other subjects" were not so defined; that the international organizations all had their own rules and structures and that, in any case, article 3 took those rules and structures into consideration; that the draft articles had been discussed in detail for a number of years, and that it was too late to incorporate in them the far-reaching changes entailed by the United States amendment; that the observations of Governments indicated a majority in favour of retaining the original article 1; that the fact that international organizations had relations with States, *inter se*, with private and public companies and with individuals made

it necessary for those relations to be the subject of a separate study; and, finally, that when a similar problem had been raised with regard to special missions during the Conference on Consular Relations, it had been decided not to incorporate additional articles in the convention, with the result that special missions had become a separate topic for consideration by the International Law Commission. His delegation therefore supported the Swedish suggestion.

23. Mr. YASSEEN (Iraq) said that he would not comment on the Hungarian and Swedish amendments, which were of a drafting character.

24. He was unable to support the United States amendment, because the Conference was not competent to consider such a far-reaching extension of its work, when the International Law Commission had expressly excluded from the application of its draft treaties concluded between international organizations or between international organizations and States, and when operative paragraph 7 of General Assembly resolution 2166 (XXI) laid down that the Commission's draft was to be used as the basic document at the Conference. Moreover, from the practical point of view, a draft convention should first be established on treaties between States, after which it would be easier to tackle the question of treaties of between international organizations or between States and international organizations.

25. Mr. RUDA (Argentina) said that the Swedish amendment should be referred to the Drafting Committee. It was important to realize that deletion of the word "concluded" would create linguistic problems in some languages.

26. The United States proposal to substitute the word "apply" for the word "relate" was an improvement and more appropriate in a legal text, but its proposal to insert the words "two or more" was unnecessary and might lead to confusion.

27. It was useful to have discussed the problem of treaties between international organizations and international organizations and States, but he was unable to support the United States proposal in that regard, which would involve a formidable amount of work. And in any case the subject was already being dealt with by the Commission. The question of what were subjects of international law was highly controversial, as had been indicated by Sir Humphrey Waldock in the Sixth Committee. For example, would such entities as insurgent movements come within the scope of the draft convention?

28. Although in a sense the content of article 1 also appeared in article 2, it did serve a useful purpose and should be retained. Possibly the Drafting Committee might consider changing the words "the present articles" to the words "the present convention".

29. Mr. TABIBI (Afghanistan) said that the arguments in favour of the United States amendment had not been convincing and he agreed with the representative of Iraq that the Conference was not competent to extend the scope of the draft convention in the manner suggested. The character of treaties concluded between international organizations or between international organizations and States was different, as was the process by which they

were drawn up, from what it was in the case of treaties concluded between States. Any attempt to enlarge the scope of the draft would complicate the Conference's work and would have far-reaching effects on the rest of the articles. The Commission had explained in detail in the commentary its reasons for confining the application of the articles to treaties between States.

30. Mr. OSIECKI (Poland) said he agreed with the Commission's decision, which was a realistic one. It had not overlooked the importance of treaties concluded between international organizations and between international organizations and States. But the latter category possessed certain special features, because the capacity of international organizations to conclude treaties was circumscribed by the terms of their constituent instruments. He opposed the United States amendment, consideration of which would only delay the Conference's work.

31. Mr. FATTAL (Lebanon) said he supported the Swedish proposal.

32. Mr. COLE (Sierra Leone) said that the United States delegation had drawn attention to a very important matter of particular interest to developing countries and he hoped it would be discussed in the near future, but as the Conference had been convened by the General Assembly and given a very precisely defined task in resolution 2166 (XXI), it was not at liberty to extend the scope of the draft articles. Furthermore, in resolution 2167 (XXI), paragraph 4(b) the General Assembly had asked the Commission to continue its work on, *inter alia*, relations between States and inter-governmental organizations. The General Assembly was aware of the Commission's decision not to include provisions on treaties between international organizations or between international organizations and States, and evidently approved of it. The United States amendment would not conform to the General Assembly resolutions and was outside the competence of the Conference.

33. Mr. AMADO (Brazil) said that he had taken part in drafting the Statute of the International Law Commission in pursuance of Article 13 (1) of the Charter. The Commission's principal task was to codify rules of international law to be found in custom and practice. The task of discerning those rules was a difficult one because State practice was so diverse. Another of the Commission's tasks was to foster the progressive development of international law. Academic lawyers were prone to pursue the ideal and what the law ought to be, but States held fast to their interests which they defended militantly.

34. For the first time an international conference was engaged on drafting rules governing the conduct of States. The question of the relations between international organizations and States had been considered in the report of the Commission's first Special Rapporteur on the law of treaties, but it had immediately come up against serious difficulties because State practice was not sufficiently abundant to provide a foundation. A kindred topic was also being studied by Mr. El-Erian, who had been chosen by the Commission as Special Rapporteur on the relations between States and international organizations.

35. So far the only occasion when States had formulated rules on a subject not really ripe for codification had been that of the Convention on the Continental Shelf² which had been drawn up at the first Conference on the Law of the Sea at a time when the interests at stake had been so great that action had become imperative. There had been little to go on, apart from the 1945 Truman Declaration and some others by States which had followed suit.

36. Important though the treaties concluded by international organizations were, the Conference must get to grips with the vast subject before it and seek to devise rules that would unite States and would meet practical requirements. It was not the moment to undertake such an extension of the application of the draft as envisaged in the United States amendment and he therefore supported the Swedish proposal.

37. Mr CASTRÉN (Finland) said that he was in favour of retaining article 1, but agreed with the Swedish proposal to delete the word "concluded".

38. He was not opposed to setting up a working party to examine the United States' amendment but feared that, in the time available, not much would be accomplished. There were many differences between treaties concluded between States and those to which international organizations were parties. By referring to "other subjects of international law", the United States amendment introduced difficult and controversial issues.

39. The Swedish proposal that the Commission consider the subject deserved careful attention.

40. Mr. BINDSCHIEDLER (Switzerland) said that it was not possible to delete article 1, as proposed by Hungary (A/CONF.39/C.1/L.18). The article was necessary to define the scope of the future convention; if it were deleted, it might later be argued that the convention could apply to subjects of international law other than States, with all the difficulties which such a proposition would involve. The proposal to delete article 1 raised an issue of substance, not one of mere drafting, and therefore could not be simply referred to the Drafting Committee.

41. As for the United States amendment (A/CONF.39/C.1/L.15), its sponsor himself had recognized that its adoption would necessitate a review of the whole draft, especially of the articles on the conclusion of treaties. From a procedural point of view, the Committee could therefore not take a decision on that amendment until all its implications had been examined and reported on by a working group.

42. The discussion had so far centred on the problem of treaties concluded by and with international organizations. The text of the United States amendment, however, was much wider since it referred to treaties concluded between States "or other subjects of international law". That broad formula not only covered such entities as belligerents, insurgent movements and parties to certain armistice agreements, but might even cover commercial firms which concluded agreements with States and were held by some writers to be subjects of international law.

If the intention of the United States was to cover the treaties of international organizations, the wording of the amendment should be altered so as to limit it exclusively to those organizations.

43. His delegation acknowledged the usefulness of codifying the rules governing the treaties of international organizations, but the task was a difficult one, partly because of the structural differences between the organizations themselves. Codification would also raise the problem of the corporate existence or juridical personality of those organizations, which was invariably of a limited character, where it existed at all. The competence of an organization and its treaty-making power were strictly confined to its purpose and functions; the whole standing in international law of an organization depended on its purpose and functions as set out in its constituent instrument.

44. In view of those difficulties, the International Law Commission had done well to defer the study of the issue and the Conference would be acting wisely if it endorsed that stand. The Swiss delegation would accordingly favour a resolution which would have the effect of calling upon the International Law Commission to study the topic of treaties concluded between, or by, international organizations, and to give priority to it. The topic was one of great interest to his country because Switzerland was host to a great many international organizations.

45. It was essential that the draft to be prepared on that topic by the International Law Commission should be submitted to a conference of plenipotentiaries to which all States Parties to the Statute of the International Court of Justice and all States members of the specialized agencies would be invited, in other words, to a codification conference such as the 1958 and 1960 Geneva Conferences on the Law of the Sea and the 1961, 1963 and 1968 Vienna Conferences. That procedure for codification enabled Switzerland—although not a member of the United Nations itself—to participate in the codification of international law on matters affecting it. His Government had been very disappointed at the procedure adopted to deal with the International Law Commission's draft on special missions, a procedure that had excluded Switzerland from the work of codification on that topic—one which was of vital interest to his country which daily acted as host to international meetings and thus to numerous special missions.

46. He would therefore urge that any future draft on the treaties of international organizations be referred to a conference of plenipotentiaries; only such a conference was suited to the task of preparing an instrument to codify rules that would bind all States.

47. Mr. BREWER (Liberia) said that at the twenty-first session of the General Assembly, his delegation had expressed the view in the Sixth Committee that the draft should cover the treaties of international organizations and that the present Conference should not be convened until the International Law Commission had been able to deal with that question.³

48. He therefore supported the United States proposal to make the future convention more comprehensive in

² United Nations, *Treaty Series*, vol. 499, p. 311.

³ *Official Records of the General Assembly, Twenty-first session, Sixth Committee, 912th meeting, para. 2.*

its scope and favoured the suggestion to refer that proposal to a working group which would report to the Committee on the appropriate action to be taken.

49. The CHAIRMAN announced that the delegation of the Republic of Viet-Nam had withdrawn its amendment to article 1 (A/CONF.39/C.1/L.27).

50. Mr. KOUTIKOV (Bulgaria) said that his delegation endorsed the view of the International Law Commission that the draft should be confined to treaties between States. In a note verbale of 17 August 1967, the Bulgarian Government had stated that "at the present stage, the codification of the law of treaties should relate to treaties concluded between States, and [it] notes that the draft convention has been drawn up on those lines" (A/CONF.39/5), and it saw no reason to modify that position.

51. On the question of drafting, he favoured the retention of the present wording of article 1, which left no room for ambiguity regarding the scope of application of the draft.

52. Mr. MIRAS (Turkey) said that the provisions of article 1, of article 2, paragraph 1 (a) and of article 3, sub-paragraph (a), unduly restricted the scope of the draft by relating it exclusively to treaties between States. The future convention should also cover treaties entered into by international organizations. Those organizations were comparatively new and were experiencing difficulties in applying the rules of customary international law in the matter of treaties. Codification of those rules was therefore even more important for them than for States.

53. In his delegation's view, the subject should be considered without delay, preferably by the Conference itself, which had all the necessary resources for the purpose. His delegation would, however, not be opposed to the subject being examined by the International Law Commission.

54. Mr. YANG SOO YU (Republic of Korea) said that the scope of the draft articles should be made more comprehensive so as to cover treaties concluded by subjects of international law other than States. He was in favour of setting up a working party to deal with the matter.

55. Mr. THIERFELDER (Federal Republic of Germany) said that since the role and importance of international organizations were bound to continue to increase, every effort should be made to cover the treaties of those organizations. For that purpose, a working group should be set up, with instructions to report at the end of the first session of the Conference or even at the second session; that solution would not unduly hamper the progress of the Conference's work.

56. Sir Francis VALLAT (United Kingdom) said he must reject the contention by the representative of Iraq that it would be *ultra vires* for the Conference to consider the United States amendment. That approach, which would put the Conference into a straitjacket, did not augur well for the future work of the Conference. The issue raised by the United States amendment was one which the International Law Commission itself had considered for many years as part of its work on the law of treaties, and had only decided to leave outside the draft in 1962, at its fourteenth session.

57. The fact that, under operative paragraph 7 of General Assembly resolution 2166 (XXI), the draft articles adopted by the Commission at its eighteenth session had been referred to the Conference as the "basic proposal" for its consideration did not in any way debar the Conference from considering any amendment to that draft. The essential provision of that resolution was its operative paragraph 2, by which the Assembly had decided "that an international conference of plenipotentiaries shall be convened to consider the law of treaties". The Conference had therefore unquestioned authority to examine a proposal on the law of treaties dealing with a matter which was part of that law.

58. Mr. YASSEEN (Iraq) said that in accordance with the codification procedure followed by the United Nations, the present Conference, like the previous codification conference, had been convened following long and thorough preparatory work. It followed that such a Conference could not itself initiate a codification without preparatory work.

59. The International Law Commission had fully explored the issue now under discussion and had arrived at the conclusion that it should not be covered in the draft. The Commission had considered that the draft should be confined to the essential issues, leaving outside its scope not only the question of the treaties of international organizations, but also such matters as State succession in relation to treaties, State responsibility for treaty violations and international agreements not in written form.

60. That approach, which limited the scope of the draft, had been endorsed by the General Assembly year after year since 1962 and had been confirmed by resolution 2166 (XXI); operative paragraph 2 of that resolution, quoted by the United Kingdom representative, must be read together with operative paragraph 7, which laid down that the Commission's draft articles constituted the "basic proposal for consideration by the Conference". That provision did not of course mean that the draft was sacrosanct; the articles could be supplemented and amended, but it was not possible to change the whole structure of the draft which the Assembly had referred to the Conference as the basis for its work.

61. For those reasons, he continued to believe that the United States amendment conflicted not merely with the spirit of General Assembly resolution 2166 (XXI), but also with the letter of operative paragraph 7 of that resolution.

62. Mr. TSURUOKA (Japan) said that two incontestable factors constituted a premise for the discussion of the problem before the Conference, namely, the increasing importance in international affairs of treaties concluded by international organizations, on the one hand, and the fluidity of the rules of customary law and the practice on the subject, which were still in full process of development, on the other. There were two possible courses open to the Conference in dealing with the problem. One was to refer it to a working group, which should be asked to examine, if not the whole problem in all its complexity, at least the question whether the rules governing such treaties lent themselves to codification at the present stage of their development; if the answer was in the affirmative,

the group should recommend the most suitable procedure for that purpose.

63. Another possibility was that the Conference should adopt a resolution, the effect of which would be to call upon the International Law Commission to study the issue. In the light of the discussion which had taken place, that was the course his delegation favoured.

64. Mr. KEARNEY (United States of America) said that many delegations agreed that the problem of treaties concluded between international organizations or international organizations and States was an important one and must be tackled as soon as possible. The United States amendment would not present as much difficulty as some had suggested and a working group, with the help of observers for the international organizations represented at the Conference, would have been able to devise requisite adjustments to the draft. However, because of the concern expressed about the possibility of the amendment delaying the Conference's work, his delegation would withdraw it.

65. He certainly could not agree that the amendment was outside the competence of the Conference, and if Mr. Yasseen's argument were true, then the Conference would be unable to introduce any improvements whatsoever in the Commission's draft.

66. Mr. BLIX (Sweden) after thanking the United States delegation for withdrawing its amendment, said the discussion had usefully focused attention on a category of treaties which was of growing importance. He proposed that the Drafting Committee be asked to prepare the text of a draft resolution recommending to the General Assembly that it request the International Law Commission to study the question of treaties concluded between States and international organizations or between two or more international organizations.

67. Mr. YASSEEN (Iraq) said he supported the Swedish proposal because it was essential to formulate rules on the subject in order to complete the law of treaties.

68. Mr. COLE (Sierra Leone) said he wondered whether the Swedish proposal was necessary, in view of the recommendation contained in General Assembly resolution 2167 (XXI), operative paragraph 4.

69. Mr. OWUSU (Ghana) said he too supported the Swedish proposal.

70. Mr. REGALA (Philippines) said he supported the Swedish proposal, which was much more precise than General Assembly resolution 2167 (XXI).

71. He did not agree with the argument that the United States amendment was outside the competence of the Conference; more far-reaching amendments had been considered by the Conference on the Law of the Sea and the Conference on Diplomatic Intercourse and Immunities.

72. Mr. JAGOTA (India) said he thanked the United States delegation for withdrawing its amendment, which would have delayed the work of the Conference and would have meant important changes in the structure of the draft articles. The International Law Commission had for good reasons limited the scope of the draft. He supported the Swedish proposal.

73. Mr. EL-ERIAN (United Arab Republic), commenting on the point made by the representative of Sierra Leone, said that the General Assembly resolution which directed the International Law Commission to continue its work on relations between States and inter-governmental organizations must be interpreted in the light of the International Law Commission's decision in 1964 that for the purpose of its immediate study the question of diplomatic law in its application to relations between States and inter-governmental organizations should receive priority.

74. He therefore thought that the Swedish proposal was useful.

75. The CHAIRMAN said that, if there were no objection, he would take it that the Committee accepted the Swedish proposal.

*It was so agreed.*⁴

76. The CHAIRMAN suggested that article 1 be referred to the Drafting Committee, together with the amendments submitted by the Congo (Brazzaville), Hungary and Sweden.

*It was so agreed.*⁵

77. Sir Humphrey WALDOCK, Expert Consultant, said that as his function was not defined anywhere he wished to say that he regarded himself as the servant of the Conference in the same way that he had served the Commission in his capacity as Special Rapporteur on the law of treaties. He was anxious to help in formulating the best possible draft convention and should not be thought of as someone who was attending the Conference simply to defend the Commission's work.

78. Replying to the point made by the Canadian representative, he said that the Commission's intention had been to confine the rules in its draft to treaties concluded between States for the reasons given in the commentary, and in rather greater length in its report on the first part of the seventeenth session.⁶ The Commission had decided that the task of framing the fundamental law governing treaties was so heavy in itself that in the interests of clarity it would be preferable to restrict the articles to treaties between States, and that was made clear in the text of articles 1 and 2 and by implication in article 3. Thus the provisions did not apply to treaties between States and international organizations and it was clear from article 3(a) that the type of trilateral agreement mentioned by the Canadian representative was not covered.

79. Some comment had been made by speakers on the use of the word "relate" in article 1. The term had been chosen as being more neutral than the word "apply".

The meeting rose at 7 p.m.

⁴ A draft resolution was adopted at the 11th meeting of the Committee of the Whole. For text, see document A/CONF.39/C.1/2.

⁵ For resumption of discussion, see 11th meeting.

⁶ *Yearbook of the International Law Commission, 1965*, vol. II, p. 158, paras. 19-21.