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of a representative was therefore one step removed from the coercion of the State itself. In the circumstances, it was appropriate to make the treaty voidable rather than void. The State must be presumed to have retained its free will, if not at the time of the conclusion of the treaty, then at least at a later stage, and should therefore be able to decide then on the conclusions to be drawn from the act of coercion with regard to the validity of the treaty.

54. It was suggested in the commentary that the gravity of the means employed in the case envisaged in article 48 warranted declaring the treaty null and void. It was essential, however, to take into account not only the gravity of the means but also the effect which the use of those means had. In the case in point, the effect was neither direct nor immediate and perhaps not even continuous. That being so, the circumstances mentioned in article 48 should be a basis only for invalidating the consent of the State concerned.

55. Mr. DE BRESSON (France), introducing his delegation's redraft of article 48 (A/CONF.39/C.1/L.300), said that it did not purport to alter either the scope or the substance of the article. His delegation considered that, where consent had been obtained by the coercion of a representative, it was just and right that the treaty should be invalid.

56. Article 48 dealt with a defect of consent which was in essence similar to those mentioned in the previous articles. For that reason, his delegation's redraft (A/CONF.39/C.1/L.300) did not use the expression " shall be without any legal effect ", which did not appear in any of the articles 45 to 47 and which would introduce an element of uncertainty with regard to the exact scope and implementation of the provisions of article 48. He feared that, if those words were retained, they might be construed, in combination with the wording of the second sentence of paragraph 1 of article 39, as indicating that, in the circumstances envisaged in article 48, the treaty was null and void *de plano* without the need to have recourse to the procedures set forth in article 62. Since that interpretation had been repudiated by the majority of delegations and was not favoured by the Expert Consultant, his delegation felt that it was necessary to remove all ambiguity on the subject.

57. His delegation's amendment (A/CONF.39/C.1/L.300) also made it clear that it was for the injured State, and the injured State alone, to decide on the inference to be drawn from the circumstances in question with regard to the treaty. In view of the many possible degrees of coercion and the varying effects of such acts on the behaviour of the representative concerned, the injured State might well feel that it was in its interest not to question the validity of the treaty. In any case, it was a matter for that State to decide.

58. By thus proposing a redraft of article 48 which would bring its wording more into line with articles 45 to 47, the French delegation did not wish to prejudge the question of the effects of the nullity set forth in article 48, in particular that of determining whether the case was one of relative nullity or of nullity *ab initio*. In his delegation's view, that question did not arise with respect to article 45 and the following articles, all of which were intended to enumerate cases of invalidity of treaties. The issue should be settled by including suitable provisions on the subject in article 65, a matter to which his delegation would revert at the appropriate time.

The meeting rose at 12.55 p.m.

FORTY-EIGHTH MEETING

Thursday, 2 May 1968, at 3.10 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 48 (Coercion of a representative of the State) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 48 of the International Law Commission's draft.

2. Mr. SINCLAIR (United Kingdom) said that whereas the commentary to article 47 contained no reference to historical examples, that on article 48 pointed out that history provided a number of instances of the employment of coercion against a representative to induce him to sign, accept or approve a treaty. The idea underlying article 48 therefore had its source in customary international law.

3. The United Kingdom delegation agreed with the views put forward by the French and United States representatives. He saw no reason for providing for absolute invalidity when the consent of a State was procured by the coercion of its representative, and only relative invalidity when it was obtained by fraud or the corruption of the representative. Coercion was obviously serious, but was it so serious as to deprive the consent expressed of any legal effect?

4. He assumed that in the case of a multilateral treaty, only the consent of the State procured by the coercion of its representative would be vitiated and that the treaty should remain in force with regard to the other contracting States. He therefore supported the amendments submitted by the United States (A/CONF.39/C.1/L.277), France (A/CONF.39/C.1/L.300) and Australia (A/CONF.39/C.1/L.284).

5. Mr. MARESCA (Italy) said that article 48 was necessary for the general economy of the convention and should follow the terminology employed in the articles which preceded it. It should take due account of the interests of the State whose representative had been coerced. Like a series of other articles related to it, it required the application of an appropriate procedure, without which there would be a great risk of arbitrary action.

6. He supported the amendments submitted by the United States (A/CONF.39/C.1/L.277), France (A/CONF.39/C.1/L.300) and Australia (A/CONF.39/C.1/L.284), which made the article clearer.

7. Mr. LUKASHUK (Ukrainian Soviet Socialist Republic) said that article 48 played the same part in the

system of the convention as articles 45-47. His delegation supported paragraph 1 of the United States amendment (A/CONF.39/C.1/L.277), but not paragraph 2, which substituted relative for absolute invalidity, and if adopted would greatly impair the juridical value and moral force of article 48. His last remark also applied to the French amendment (A/CONF.39/C.1/L.300).

8. He agreed with Mr. Briggs that a State guilty of an act of coercion should not be allowed to benefit from article 48 by itself claiming that the treaty was invalid if it was in its interests to do so. However, that rule should not be laid down in article 48 but should be inferable from the general principles of international law.

9. He could not agree with the insertion of a procedural time-limit as proposed in the Australian amendment (A/CONF.39/C.1/L.284).

10. Mr. NAHLIK (Poland) said he was in favour of the existing wording of article 48. The coercion of a representative of a State was such a flagrant violation of the principles of law and morality that its consequences must be regarded as without any legal effect *ab initio*.

11. The Australian representative, when introducing his delegation's amendment (A/CONF.39/C.1/L.284), had mentioned that the Polish delegation, during the discussion of articles 46 and 47, had noted that articles 45-48 formed a homogeneous group. What the Polish delegation had had in mind had merely been the origin of the articles and certain features common to all of them; it had not meant to imply that they should all be modelled on the same pattern and lose their individual character.

12. Mr. BISHOTA (United Republic of Tanzania) said he fully agreed with the opinion expressed by the International Law Commission in paragraph (2) of the commentary to article 48.

13. Mr. HARRY (Australia) said he wished to modify his delegation's amendment (A/CONF.39/C.1/L.284) by deleting the words " and at the latest within (twelve) months " and adding the word " unreasonable " before the word " delay ".

14. The CHAIRMAN said he would put the Australian amendment (A/CONF.39/C.1/L.284), as modified, to the vote.

The Australian amendment was rejected by 56 votes to 17, with 13 abstentions.

15. The CHAIRMAN said that paragraph 1 of the United States amendment (A/CONF.39/C.1/L.277) would be referred to the Drafting Committee; he would put paragraph 2 to the vote.

Paragraph 2 of the United States amendment was rejected by 44 votes to 26, with 18 abstentions.

16. The CHAIRMAN put the French amendment (A/CONF.39/C.1/L.300) to the vote.

The French amendment was rejected by 42 votes to 33, with 10 abstentions.

17. The CHAIRMAN said that draft article 48, together with paragraph 1 of the United States amendment, would be referred to the Drafting Committee.

Article 49 (Coercion of a State by the threat or use of force)

18. The CHAIRMAN invited the Committee to consider article 49 of the International Law Commission's draft.[1]

19. Mr. MOUDILENO (Congo, Brazzaville) said he wished to point out that his delegation was not in fact a co-sponsor of the amendment circulated under symbol A/CONF.39/C.1/L.67/Rev.1.

20. Mr. TABIBI (Afghanistan) moved the suspension of the meeting, in accordance with rule 27 of the rules of procedure, to enable him to consult the co-sponsors of the amendment he wished to introduce (A/CONF.39/C.1/L.67/Rev.1).

The motion to suspend the meeting was adopted by 71 votes to none, with 9 abstentions.

The meeting was suspended at 3.45 p.m. and resumed at 4.10 p.m.

21. Mr. TABIBI (Afghanistan), introducing the joint amendment by nineteen States (A/CONF.39/C.1/L.67/Rev.1/Corr.1), said that according to paragraph 3 of its commentary to article 49, the International Law Commission had " decided to define coercion in terms of the ' threat or use of force in violation of the principles of the Charter' ", although some members had expressed the view that other forms of pressure, including economic pressure, ought to be mentioned in the article as falling within the concept of coercion.

22. The main distinction between the Covenant of the League of Nations and the Charter of the United Nations was that the latter recognized the role of economic force in the life of the nations. That was the reason for the growing importance of the economic organs of the United Nations. The economic plight of more than three-quarters of the world community was becoming steadily worse and causing ever more powerful reactions, and the legal relations and structure of the law of nations were affected by that socio-economic force, which was the real force of the present era.

23. Faced with that reality, the developing countries had held a number of meetings at which they had expressed their growing concern at the deterioration of their economic situation, and decided to strengthen their mutual relations at all levels, in particular at international conferences. It was in order to abide by the spirit of that decision that the representative of the developing countries had submitted their joint amendment to article 49 (A/CONF.39/C.1/L.67/Rev.1/Corr.1). Although it might appear odd to refer to economic facts at a conference on law such as the present one, it must be remembered that the very existence of States, in particular the smaller ones, was based on economic needs. The real force today was the economic force which, in view of the deplorable

[1] The following amendments had been submitted: Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (A/CONF.39/C.1/L.67/Rev.1/Corr.1); Peru (A/CONF.39/C.1/L.230); Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.289 and Add.1); Australia (A/CONF.39/C.1/L.296); Japan and Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1); China (A/CONF.39/C.1/L.301).

situation of a large number of countries, might play a vital role.

24. In paragraph 4 of Article 2 and in other provisions, the Charter of the United Nations prohibited the threat or use of force in international relations, but long before the Charter had been drafted, the Latin American countries had recognized in theory and applied in practice the rule prohibiting all recourse to force in any form. Articles 15 and 16 of the Charter of the Organization of American States [2] prohibited not only armed force but also any other form of interference or attempted threat against the personality of the State, including the use of coercive measures of an economic or political characer in order to force the sovereign will of another State, for economic and political pressure had frequently had far more harmful effects than armed intervention itself.

25. At Belgrade in 1961 and at Cairo in 1964, the Heads of State or Government of the non-aligned countries had adopted a declaration prohibiting the use of economic and political pressure in relations between States. That was a principle of law within the meaning of Article 38 of the Statute of the International Court of Justice and of articles 15 and 16 of the Charter of the Organization of American States, as well as of the Draft Declaration on Rights and Duties of States prepared by the International Law Commission. [3]

26. Economic and political pressure was contrary to the right of political and economic self-determination of nations and to the rule of equality of States recognized by the Charter and by numerous United Nations resolutions and declarations. Those were the grounds on which the joint proposal of the Latin American, African and Asian countries was based (A/CONF.39/C.1/L.67/Rev.1/Corr.1).

27. Mr. JAGOTA (India) said he entirely agreed with the remarks of the representative of Afghanistan. The purpose of the amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), of which his country was a co-sponsor, was to define the scope of article 49 and to stipulate that the expression " threat or use of force " included economic and political pressure. The additional explanation was necessary because history had proved that economic and political pressure had been used as much as the threat or use of armed force to enable strong nations to impose their will on weaker nations. In paragraph 3 of its commentary to article 49, the International Law Commission had expressed the view that the precise scope of a " threat or use of force in violation of the principles of the Charter " should be left to be determined in practice by interpretation of the relevant provisions of the Charter. But the Conference was quite competent to define the expressions used in the articles it considered and adopted.

28. The thesis that " the threat or use of force " included economic and political pressure had been widely accepted by statesmen, diplomatists and jurists and was supported by State practice. It had been recognized by the Asian-African Legal Consultative Committee when considering article 49 at its ninth session, held at New Delhi in December 1967 (A/CONF.39/7, p. 11). Moreover, the United Nations General Assembly had adopted various resolutions in favour of the abolition of economic and political pressure and coercion in inter-State relations, in particular resolutions 2131 (XX) and 1803 (XVII). The sovereignty of States over their natural wealth and resources was proclaimed in article 1 of each of the two International Covenants on human rights, namely, the Covenant on Economic, Social and Cultural Rights, on the one hand, and the Covenant on Civil and Political Rights, on the other.

29. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had been studying that question since 1964. At its 1967 session, a proposal had been submitted by ten countries which stated in substance that the expression " force " comprised, in particular, all forms of pressure, including those of a political and economic nature, that threatened the territorial integrity or political independence of a State.

30. Outside United Nations organizations, that principle had been affirmed in the practice of States. To cite but two examples, the Second Conference of Heads of State or Government of non-aligned Countries, held in 1964, and the tripartite meeting of October 1966, between President Tito, President Nasser and Prime Minister Mrs. Indira Ghandi, had singled out economic and political pressure as a form of force exercised by certain powers over the developing countries, and had condemned the use of economic and financial aid as an instrument of pressure. To fail to recognize that principle would be to contradict history and to refuse to establish a rule which would ensure the equality of States and freedom in the conclusion of treaties.

31. Mr. KEMPFF MERCADO (Bolivia) said that article 49 proclaimed the nullity *ab initio* of any treaty if its conclusion had been procured by a threat or use of force in violation of the principles of the Charter of the United Nations. His country, like many others, had repeatedly affirmed in the Sixth Committee of the United Nations General Assembly that the notion of the threat or use of force to procure the conclusion of international agreements included not only armed force, but also other forms of coercion that sought to bring pressure to bear on the sovereign will of a State and violated the fundamental principle of free consent. The amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) was intended to define the scope of article 49 in that respect.

32. Such forms of coercion might include economic pressure, blocking of communications and various other measures that seriously impaired the economy, development and free activity of a State. Precedents were not wanting in that field, and although the Commission had been right not to cite them in its commentary, so as to avoid controversy, it was nevertheless essential to affirm categorically the absolute invalidity of treaties imposed by coercion, in order to ensure respect for the principles of the United Nations Charter and the principle of justice on which contemporary international law was based.

33. Mr. BISHOTA (United Republic of Tanzania) said that his delegation supported article 49. It was not really an innovation, since Article 2, paragraph 4, of the United Nations Charter already proscribed the threat or use of force in relations between States. Although the use of armed force to procure the conclusion of a treaty was now unlikely, other means, including economic pres-

[2] *United Nations Treaty Series*, Vol. 119, p. 52.

[3] *Yearbook of the International Law Commission 1949*, p. 287.

sure, had been used and would be used again to procure consent. Such means included the withdrawal of aid or of promises of aid, the recall of economic experts and so on. The adoption of the nineteen-State amendment (A/CONF. 39/C.1/L.67/Rev.1/Corr.1) would help to strengthen the economic and political independence of poor countries.

34. It might be contended that the expression " economic pressure " was not clearly defined, but that was true of other expressions used in the draft articles and, as in their case, definition would result from practice. Moreover, the grounds of invalidity specified in Part V of the draft were exhaustive, and unless economic pressure was expressly mentioned in article 49, it would not be covered by that article. The Committee should therefore adopt the amendment.

35. Mr. ALVARADO (Peru), introducing his delegation's amendment (A/CONF.39/C.1/L.230), said that article 49 covered a specific case within the more general framework of articles 50 and 61. The latter articles dealt with the peremptory norms of *jus cogens* and with new peremptory norms which might emerge in general international law. The principles of the Charter referred to in article 49 came within the scope of article 50. Consequently, since on the one hand there was a general rule, article 50, and a specific rule, article 49, the latter should be expressed in concrete and precise terms. That was why the Peruvian delegation proposed to replace the word " principles " by the words " relevant norms ".

36. The other change proposed by his delegation, namely, the addition of the words " it is established that ", was designed to emphasize the connexion between articles 49 and 62, and was also based on the International Law Commission's commentary. It was essential to lay down legal safeguards and to stipulate the procedure that would govern disputes concerning the validity of a treaty, whatever the grounds involved. The existing wording of article 49 was not absolutely clear. It did not sufficiently stress the fact that cases of *ipso facto* invalidity were subject to the procedure contemplated in article 62.

37. His delegation therefore supported the retention of article 49 as amended in accordance with the changes it had proposed, which were technical and concerned procedure. The relevant norms in the United Nations Charter were a clear example of norms of international law which had acquired the character of *jus cogens* by virtue of the Charter, and his delegation agreed with the statement in paragraph (8) of the commentary that article 49 " by its formulation recognizes by implication that the rule which it lays down is applicable at any rate to all treaties concluded since the entry into force of the Charter ".

38. Mr. SMEJKAL (Czechoslovakia) said he fully agreed with the principle in article 49 that a treaty was void if its conclusion had been procured by the threat or use of force.

39. The main purpose of the amendment of which Czechoslovakia was a co-sponsor (A/CONF.39/C.1/L.289 and Add.1 and 2) was to specify the time-element for the effect of the prohibition of resort to the threat or use of force. The International Law Commission itself had said in paragraph (8) of its commentary to article 49 that " it would be illogical and unacceptable to formulate the rule as one applicable only from the date of the conclusion of a convention on the law of treaties ". In other words, it accepted the retroactive effect of the rule and the Czechoslovak delegation fully shared that opinion.

40. The text of the draft article seemed somewhat restrictive, however, and its effects appeared to contradict the views of the Commission. Though the United Nations Charter was the most peremptory declaration of the principles of modern customary law, it was neither the first nor the only instrument, as was clear from the Commission's commentary to article 49. Those principles had been expressed in other treaty instruments before and after the United Nations Charter, in Latin America in particular.

41. In preparing the joint amendment (A/CONF.39/ C.1/L.289 and Add.1 and 2), the sponsors had borne in mind the Commission's view that it was not part of its function, in codifying the modern law of treaties, to specify on what precise date an existing general rule in another branch of international law had come to be established as such, and it was for that reason that the amendment read " ... in violation of the principles of international law embodied in the Charter of the United Nations ". The wording of the amendment brought out better than the Commission's wording that the application of article 49 was not restricted to Members of the United Nations.

42. Mr. HARRY (Australia), introducing his delegation's amendment (A/CONF.39/C.1/L.296), said that it should be read with the related Australian amendment to article 65 (A/CONF.39/C.1/L.297). The Australian delegation accepted the fact that where the ground of invalidity referred to in article 49 was established under procedures to be laid down in the convention, the result was the voidance *ab initio* of the treaty. It could not agree, however, that the mere allegation by a State that when it had expressed its consent to be bound by a treaty it had been acting under coercion *ipso facto* entitled it to regard the treaty as void.

43. The word " void " in article 49 might be misleading as tending to obscure the fact that the ground of invalidity stated in article 49, as well as all the other grounds of invalidity in Part V, section 2, were subject to the procedures to be laid down in article 62. The Australian delegation was proposing that the word " invalid " used in the heading of Part V and in the introductory provision in article 39 should be substituted for the word " void ". The amendment was a technical one, in line with the Peruvian amendment (A/CONF.39/C.1/L.230). The Australian delegation was not asking for a vote on its amendment, but would like it to be referred to the Drafting Committee.

44. The nineteen-State amendment (A/CONF.39/C.1/ L.67/Rev.1/Corr.1) and the comments on it by the representatives of Afghanistan and the United Republic of Tanzania raised a fundamental question of interpretation of the United Nations Charter. If the canons of interpretation adopted in articles 27 and 28 of the draft were applied to Article 2 of the Charter, the thesis that the use of force meant anything other than armed force could only be rejected. That idea did not include economic pressure or political pressure today, any more than it had done in 1945. The Committee could not throw to the winds in Part V the rules of interpretation

it had adopted in Part III, and the amendment could not therefore be accepted. The Australian delegation agreed that economic or political pressure was morally reprehensible and politically undesirable, but it could not support a provision that such pressure must *ipso facto* make a treaty void and could certainly not agree that it was already *lex lata*.

45. Mr. FUJISAKI (Japan) said that in modern times a State threatened by the use of force would certainly bring the matter before a competent organ of the United Nations in the hope that the requisite steps would be taken to remove the threat; it would never simply succumb to the threat and conclude a treaty against its will. Similarly, it was hard to imagine that the aggressor country would nowadays be able to procure the conclusion of a treaty in its favour by the actual use of force and that nothing would happen until the victim of the aggression claimed that the treaty was void by alleging that its conclusion had been procured by the use of force. Article 49 gave the impression that whereas it recognized the existence of the United Nations Charter, it somehow overlooked the existence of the United Nations as the international organisation charged with the duty to maintain peace and security. The role of the United Nations should not be disregarded.

46. It seemed reasonable to require a State that was a victim of the threat or use of force to do its part to prevent the commission of such an international crime in the interest of the community of nations as well as in its own interest, before allowing it, by virtue of the present article, to declare a treaty void on the ground that it had been concluded as a result of the threat or use of force. Such were the considerations that had led the Japanese delegation to submit its amendment (A/CONF.39/C.1/L.298).

47. The Japanese delegation could not support the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), not because it considered that political and economic pressure was not reprehensible, but because the notion of " political and economic pressure " had not yet been adequately defined and established in law to be included in the convention as a ground for invalidating a treaty. The invalidation of a treaty was a very serious act in international law.

48. Mr. HU (China) said that his delegation attached very great importance to article 49, because for over a hundred years China had been bound by treaties procured by the threat or use of force. The necessary steps must now be taken to prevent the recurrence of such situations. His delegation therefore fully supported the article and was ready to approve it in its present form. That, however, did not mean that it could not be improved.

49. His delegation would vote in favour of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), which, by the addition of a few words, considerably strengthened the original text. The fourteen-State amendment (A/CONF.39/C.1/L.289), on the other hand, would limit the application of the principles of the Charter and weaken the article; his delegation could not accept it. It approved the Peruvian amendment (A/CONF.39/C.1/L.230) to add the words " if it is established that ". To allege that a State had had recourse to the threat or use of force was a serious accusation; a simple allegation should not be sufficient to secure the invalidation of the treaty.

50. It would seem that, in the draft, the word "void" had been used in different senses. His delegation had therefore proposed in its amendment (A/CONF.39/C.1/L./301) that the words " *ab initio* " be inserted immediately after the word " void " so as to remove all possible doubt. That addition would be still more necessary if the Peruvian amendment were adopted in its present form.

51. In the same amendment (A/CONF.39/C.I/L.301), his delegation had also proposed the addition of a new paragraph. Its proposal was based on the very simple idea that since the object of the convention was to ensure stability of contractual relations between States, it was better to prevent an evil than to remedy it. In other words, refusal to conclude a treaty imposed by coercion was preferable to terminating it at a later date. Of course, refusal might be difficult if the victim of coercion was a small State, but in that case it would be possible for such a State to have recourse to the competent United Nations organs. The question deserved serious consideration by the Committee.

52. Mr. AL-RAWI (Iraq) said that one of the most important tasks of the international community was to maintain peace and ensure respect for the sovereignty of all States, by enabling them to enter into treaties freely without being subject to the threat or use of force. Freedom of consent and equality were two elements of the sovereignty of States, which were very important for ensuring the stability of treaties and their performance in good faith. Consequently, if the conclusion of a treaty had been procured by the threat or use of force or any other form of economic or political pressure, the treaty must be void. Article 23, which had been approved by the Committee, stated that every treaty must be performed by the parties to it in good faith. But how could a treaty be performed in good faith if it had been imposed on the State by force?

53. The fundamental rights of all States must be respected. That principle had been recognized by the international community. The use of force had already been prohibited by the Covenant of the League of Nations and the Briand-Kellogg Pact; the idea of the invalidity of treaties procured by illegal means had already been studied and recognized in the practice of States. The Charter of the United Nations had subsequently proclaimed, in paragraph 4 of Article 2 and in other articles, the notion of the prohibition of force. In the nineteenth century, the threat and use of force had been considered a legitimate means of concluding treaties, but that was no longer the case because such methods were prohibited under the Charter.

54. Prohibition of recourse to the threat or use of force was today a principle of international law and the word " force " implied not only armed force, but all other forms of economic or political pressure. That was the opinion of the majority of nations as stated in General Assembly resolution 2131 (XX). The Conference of non-aligned Countries held in Cairo in 1964 had also condemned the application of political and economic pressure in the field of international relations. The threat or use of force, including economic and political pressure, must be condemned or prohibited if it was desired to ensure the stability of international relations.

55. It was difficult to reject that principle although certain authors and certain States refused to recognize its existence in international law in order to justify their illegal acts, safeguard their interests and ensure their supremacy. They criticized it in order to impose their will on weaker States or to maintain a situation created by illegal means and imposed by force or pressure. That involved a serious risk of instability that might lead to situations constituting a threat to security and peace. Thus treaties the conclusion of which had been procured by coercion should be considered void. The present text of article 49 did not correspond to the position adopted by the Iraqi delegation. For that reason his delegation would support the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1).

56. Mr. ALCIVAR-CASTILLO (Ecuador) said there was nothing new in article 49; it merely stated a rule of positive law which went back to the days of Cicero. But it was not until the First World War in 1914 had shown the dimensions which wars could assume that it was realized that a system of international security had to be found to prevent future wars; and so the League of Nations had been born. Its principles were expressed in its Covenant, which prohibited war as a means of settling disputes between States and prescribed their solution by peaceful means. It had been held that the Covenant prohibited recourse to war but not the use of force. That did not seem a serious argument. In the Covenant of the League of Nations the prohibition of recourse to war had become a norm of international law. To argue that the norm had repeatedly been violated was to regard such violations as a normal process of derogation from the law. It should also be remembered that the Charter of the United Nations had itself been violated on several occasions when it came to defending special interests of a political nature.

57. The Briand-Kellogg Pact represented a conclusive stage in the prohibition of the use of force. In that Pact, the contracting States renounced recourse to war as an instrument of national policy and agreed that the solution of all disputes and all international conflicts, of whatever nature or origin, should never be sought except by pacific means. The Pact prescribed an unconditional obligation to solve conflicts by peaceful means and prohibited war as a means of settling disputes, so that, once it entered into force, the use of force was absolutely unlawful and could not therefore create rights of any kind. From the Briand-Kellogg Pact onwards, the prohibition of the use of force had become a peremptory norm of international law admitting of no exception, and therefore partaking of the nature of *jus cogens*.

58. The Briand-Kellogg Pact had had considerable repercussions on the American continent. It was true that America had prohibited territorial conquest by force a century earlier. In 1829, Sucre, the disciple of Simon Bolívar, had proclaimed that victory conferred no rights. The principle of the prohibition of force had been strictly laid down in the various instruments drawn up at the Congress of Panama of 1826, the first Congress of Lima of 1847, the Pact of Washington of 1856 and the second Congress of Lima of 1864. The first Pan-American Conference, which met at Washington in 1889, had proclaimed that no territory in America was *res nullius*, that wars of conquest between American nations were injustifiable acts of violence, and that insecurity of territory would inevitably lead to the deplorable system of armed peace. It had been accepted that the principle of conquest was eliminated from American public law and that cessions of territory were null and void if obtained by the threat of war or the pressure of armed force.

59. The Seventh International Conference of American States, which had met at Montevideo in 1933, had drawn up the Convention on the Rights and Duties of States, article 11 of which laid down that the contracting States established as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages obtained by force. The territory of States was inviolable and could not be the subject of military occupation or other measures of force by another State.[4]

60. The Committee should particularly note the statement in the Declaration of Lima of 22 December 1938 in which the Eighth International Conference of American States reaffirmed as a fundamental principle of American public law that the occupation or acquisition of territories or any other frontier modification or settlement procured by conquest or by force or otherwise than by peaceful means would be deemed void and would have no legal effects. The undertaking not to recognise situations deriving from such facts was an obligation which could not be evaded either unilaterally or collectively.

61. A law obviously could not have retroactive effect, and to insist on that point in the articles in the convention was otiose. The rule stated in article 49 did not originate with the United Nations Charter; it was a legal norm coeval with the establishment of modern law, as the International Law Commission had noted. The fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1), of which Ecuador was a co-sponsor, did not introduce any new element into the text of the draft articles, but seemed more in conformity with legal thinking and the International Law Commission's intention.

62. Regionally, in Latin America, international agreements had been concluded prohibiting the use of force and territorial conquests by violence long before the emergence of instruments concluded on a world-wide scale. Such regional agreements too appeared to be subject to the *pacta sunt servanda* rule. There was reason, therefore, to think that those obligations, once assumed and translated into the legal norms which governed the American continent, must necessarily be taken into consideration in the interpretation and for the legal effects of the rule laid down in article 49, at least with respect to regional issues.

63. The purpose of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), of which also Ecuador was a co-sponsor, was to extend the scope of the notion of force to include economic and political pressure. The argument that at San Francisco the notion had been limited solely to armed force was well-known. The United Nations Charter was not, however, a historical monument, but a living instrument which continued to advance because of the dynamic movement of a progressive international society and that dynamism was even more marked when the aim was to achieve the prime objective of the United Nations, namely the maintenance of international peace and security.

The meeting rose at 5.55 p.m.

[4] *League of Nations Treaty Series*, Vol. 165, p. 27.