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50th meeting of the Committee of the Whole

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(A/CONF.39/C.1/L.301), he thought that, with the exception of paragraph 1 of the last-mentioned, they did not improve the present text. Paragraph 1 of the Chinese amendment, which proposed the addition of the words "*ab initio*" after the word "void" in the first line, represented a drafting improvement.

67. Mr. DE LA GUARDIA (Argentina) said that he had moderate views on article 49. He had no doubt that the principle was *lex lata* in international law and could therefore be included in the convention. On the other hand, the terms used by the International Law Commission showed a serious lack of precision. There were, in fact, cases where the use of force might be legitimate, for example, when it was used on behalf of the international community in conformity with the Charter of the United Nations. There was no definition of aggression in international law and therefore the application of the principle of the condemnation of the use of force was hazardous.

68. Moreover, the notion of force was itself badly defined. His delegation did not think that it could be extended to all types of economic and political pressure and did not favour proposals to that effect. Such an extension would only enlarge the area of imprecision. In his second report, Sir Humphrey Waldock had stated in paragraph 6 of his commentary to article 12 that "if 'coercion' were to be regarded as extending to other forms of pressure upon a State, to political or economic pressure for example, the door to the evasion of treaty obligations might be opened very wide".[1]

69. On the other hand, his delegation had carefully considered those amendments which sought to give juridical meaning to the formulation or application of that principle, for example, the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) and the Peruvian amendment (A/CONF.39/C.1/L.230). As for the arguments that certain delegations believed they could deduce from the juridical institutions of the inter-American system, he agreed with the reply given by the representative of Uruguay.

70. The area of application *ratione temporis* of article 49 was another matter requiring solution. His delegation approved of the view expressed in the International Law Commission's commentary, that the article should not be applicable to treaties the conclusion of which had been procured by the threat or use of force at a time when the prohibition of those methods had not yet been introduced into international law, for a juridical act should be interpreted in terms of the law of its time, but the text of article 49 did not express that criterion clearly and thus opened the door to interpretation and doubt. There was a choice between the date of entry into force of the Charter of the United Nations and that of the convention on the law of treaties as the point of departure for applying the principle of article 49. He did not propose to submit a formal proposal to that effect, so as not to complicate the debate, but his delegation was willing to co-operate with those delegations who shared the same concern, in order to find a solution.

The meeting rose at 10.35 p.m.

[1] *Yearbook of the International Law Commission 1963*, Vol. II, p. 52.

FIFTIETH MEETING

Friday, 3 May 1968, at 10.45 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 49 (Coercion of a State by the threat or use of force) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 49 of the International Law Commission's draft.

2. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that the provisions of article 49 were the outcome of the progressive development of international law during the past decade. The principle of the sovereign equality of States, which was at the basis of modern international law, involved a new approach to the problem of unequal treaties obtained by coercion and in violation of *jus cogens* rules of international law. In accordance with the principles of the Charter of the United Nations, a treaty procured by the threat or use of force in any form was void. Contrary to what had been suggested, the duty of States to "refrain in their international relations from the threat or use of force" set forth in Article 2 paragraph 4, of the Charter, applied to all forms of force and not merely to armed force. It included, in particular, economic and political pressure. The language of Article 2, paragraph 4, was quite different from that used in such provisions as Article 51, on the right of self-defence, where the reference was specifically to "armed attack", in other words, to the use of military force as distinct from other forms of force.

3. Of course, it was only the threat or use of force in a manner inconsistent with the principles and purposes of the United Nations which was illegal. The use of force was legal if it was resorted to in accordance with the United Nations Charter, whence article 70 of the draft dealing with obligations imposed on an aggressor State in consequence of measures taken in conformity with the Charter. A treaty imposed by the threat of force on an aggressor in such circumstances was valid and must be respected. The position was quite the reverse where a treaty had been procured by an aggressor and incorporated the results of the aggression. For example, the cession of territory to an aggressor by virtue of such an imposed treaty was null and void.

4. The text of article 49 was generally acceptable but could still be improved. His delegation had therefore joined those of thirteen other States in sponsoring an amendment (A/CONF.39/C.1/L.289 and Add.1) for that purpose. His delegation opposed amendments such as the one by Japan (A/CONF.39/C.1/L.298) which dealt essentially with matters of procedure, which fell within the competence of the Security Council.

5. Mr. WERSHOF (Canada) said that if his delegation were to vote in favour of some version of article 49, its vote would be subject to reconsideration by the Canadian Government on the basis of the outcome of the discussion on article 62, the present provisions of which were inadequate. Article 49, which was intended to give

expression to a sound and necessary principle, must not be adopted in a context that would in effect permit a State unilaterally to claim coercion and to insist on being judge and jury in its own claim.

6. He strongly opposed the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) because the reference in the Charter to " threat or use of force " referred to military force and nothing else; it was therefore wrong to say that it included " economic or political pressure ". Moreover, the proposed inclusion of the vague expression " economic or political pressure " would threaten to destroy the *pacta sunt servanda* rule. Except where a treaty was negotiated between two super-powers of equal enormous economic and political strength, or between two small States of equal weakness, the inclusion of that expression would be an invitation to States to invalidate treaties by using it as an excuse whenever a State party to a treaty decided later that it had made a bad bargain. The long-term interests of small and new States, and those of the world order as a whole, would not be served by the inclusion of the excessively broad language thus proposed.

7. Canada had always strongly opposed the use of pressure, whether military, economic or political, except in support of the United Nations or in accordance with the Charter provisions, but at the same time, it wished the future convention on the law of treaties to preserve respect for treaties.

8. Though it had been demonstrated, by the many technical assistance projects and peace-keeping operations they had financed and carried out, that States were capable of genuinely disinterested acts, nevertheless most treaty relations were based on self-interest of an economic or political nature. In the negotiation of treaties, States actively sought to further their own aims and, for that purpose, brought political and economic pressure to bear on each other. Treaties were contractual in nature and many of them were based on bargaining. In such bargaining, one of the weapons available to a State was to withhold its agreement. That alone constituted in a sense an act of pressure, either economic or political, depending on the nature of the treaty. It was unthinkable that such a treaty should in future be subject to the arbitrary will of the party which first became dissatisfied with it and chose to allege that it had entered into it because of illegitimate economic or political pressure.

9. Voting on article 49 should be postponed for the time being and some kind of working group should be established to try to reconcile the strongly divergent views expressed during the debate. That hope applied to several articles in Part V. If the controversial provisions in Part V were to be adopted at the second session of the Conference, even by a two-thirds majority, against the reasoned, deep and sincere opposition of an important minority, the future convention on the law of treaties would not express accepted doctrines of international law.

10. Mr. OSIECKI (Poland) said that, at the beginning of the discussion on Part V, misgivings had been expressed by some delegations that its provisions did not rest on as firm a basis of existing international law as other parts of the draft. The discussion on article 49 had shown that those misgivings were unfounded.

11. The International Law Commission had drafted article 49, like the other articles on invalidity, on the basis of principles of international law which were already in force, and in particular on the principle of the sovereign equality of States. The article set forth in clear terms the consequences in the law of treaties of the general principle that, in their mutual relations, States must refrain from the threat or use of force. Any treaty concluded in violation of that principle, which was set forth in the United Nations Charter, was null and void. In the last sentence of paragraph (1) of its commentary to article 49, the International Law Commission had stressed " that the invalidity of a treaty procured by the illegal threat or use of force is a principle which is *lex lata* in the international law of today ".

12. Article 49 had a very special role to play in preventing unequal treaties from being imposed on weak States by means of coercion in any of its many diverse forms, in violation of the United Nations Charter. His delegation was therefore satisfied generally with article 49, but at the same time would like to see certain improvements made to the text, such as that proposed in the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1), which would make the reference to the principles of the Charter of the United Nations clearer by amending the wording to read " principles of international law embodied in the Charter ". It was not only treaties which violated the Charter itself which were null and void, but also treaties concluded in a manner inconsistent with the principles of international law embodied in the Charter. The Charter had not been created *ex nihilo*; it represented the outcome of a long process of development of international law. The provisions of Article 2, paragraph 4, had their roots in the Covenant of the League of Nations of 1919 and the Pact of Paris of 1928. The prohibition of the use of force in international relations had thus been established as a rule of international law well before the drafting of the Charter, and had been endorsed in the judgments of the Allied military tribunals for the trial of the war criminals of the Second World War. The Charter was but one of many expressions, although of course the most important one, of an already existing principle of contemporary international law.

13. His delegation also supported the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), to introduce into article 49 an express reference to economic or political pressure. That amendment deserved close attention, because it reflected the true meaning to be given to the terms of article 49. The prohibition of the " threat or use of force " meant that a treaty procured by any form of coercion was null and void. There was no reason to confine the meaning of that expression to certain forms of force, thereby leaving outside the prohibition other types of coercion which were equally unlawful.

14. His delegation had serious misgivings regarding those amendments (A/CONF.39/C.1/L.230, L.298, and L.301) which diverged from the approach adopted by the International Law Commission in its formulation of Part V of the draft. The purpose of the various articles in Part V was to set forth the various grounds of invalidity and termination from the point of view of substance. It would serve

no useful purpose to introduce procedural provisions into any of those articles.

15. His delegation also opposed the Australian amendment (A/CONF.39/C.1/L.296), since it would detract from the capital importance of article 49 by removing the concept of absolute nullity which alone was appropriate to the legal and moral injury done to the international community by the violation of the principles of international law embodied in the United Nations Charter.

16. Mr. HARRY (Australia) said that he would like to begin by pointing out to the supporters of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) that it had been made abundantly clear in the Special Committee on Friendly Relations that the correct interpretation of the relevant Articles of the Charter was that the prohibition therein contained on the use of force referred to physical force, armed force of the type used by the aggressor powers in the war that was still raging when the Charter was drafted at the San Francisco Conference. The authors of the Charter had not dealt with economics or politics in that context. Their countries were still engaged in collective self-defence against an aggressive armed attack. Economic objectives were dealt with in other parts of the Charter and in other terms. That interpretation was confirmed by the preparatory work of the United Nations Conference on International Organization, at which a Brazilian amendment to add a reference to economic pressure in Article 2, paragraph 4, of the Charter had been rejected. The records of that Conference showed that the amendment had been proposed precisely because the text did not deal with economic pressure; it had been rejected because the United Nations had not wished to equate economic pressure with armed force.

17. The nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) had been introduced because its authors were fully aware that the International Law Commission, in referring to the " threat or use of force " had not intended to include economic or political pressure. The authors of the amendment hoped thereby at one and the same time to enlarge the meaning of the Commission's text and to put a gloss on the Charter.

18. Some of the supporters of the amendment contended that, although the Charter, at the time it was ratified, did not clearly prohibit economic pressure, a rule of prohibition had since become generally accepted, and in support of that contention, had referred to a number of resolutions of the General Assembly. But the Assembly was not a legislative body; if it had had law-making powers, the supporters of the amendment would not be relying on declarations of regional meetings or of the heads of a group of States in support of their contention.

19. Nor had it been seriously argued that a rule of customary law had developed, which prohibited economic pressure. Such a proposition could not be sustained, because a substantial section of the international community flatly denied the existence of any such rule.

20. The supporters of the amendment were thus asking the Conference to do what the Charter had not done, what the General Assembly could not do, and what the International Law Commission had not attempted to do, even *de lege ferenda*. The only question before the Conference was whether it would itself attempt to draft a rule which the International Law Commission had not recommended. If the sponsors of the nineteen-State amendment were prepared to put forward an independent draft article defining precisely the type and degree of economic and political pressure which, in their view, amounted to such a threat to the territorial integrity or political independence of a State as to have the same effect as armed force in coercing the State, the Australian delegation would be prepared to consider such a proposal. Any proposal on those lines could be examined in detail by the working group suggested by the Canadian delegation. Alternatively the Australian delegation would be prepared to try and formulate, in a working group, some kind of declaration on economic threats or attacks.

21. He supported the suggestion by the Swedish representative that, at some stage, the Committee should decide that the draft articles would apply only to treaties concluded after the entry into force of the future convention on the law of treaties. That proposition would conform with the general principle of non-retroactivity; it would not, of course, prejudice the application to earlier treaties of any rules that were already *lex lata* before the convention's entry into force. The point was particularly relevant to the subject-matter of article 49.

22. Mr. HARASZTI (Hungary) said that, in drafting article 49, which was one of the most important articles of the whole draft, the International Law Commission had drawn the necessary conclusions from the prohibition of the threat or use of force contained in Article 2, paragraph 4, of the Charter and had abandoned the out-of-date theory according to which coercion vitiated the consent given to a treaty only when it was directed against the representative of the State whose consent was expressed. His delegation therefore strongly supported article 49.

23. But the wording of the article could still be improved in order to remove ambiguities. In particular, the incorporation of the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) was fully in line with the purpose of the article. It would make it clear that, as indicated in paragraph (5) of the commentary to the article, the prohibition of the threat or use of force was " a rule of general international law " which was of " universal application " and " not... confined in its application to Members of the United Nations ". It was not simply a case of violation of the Charter, but an obvious example of a breach of a rule of general international law having the character of *jus cogens*.

24. His delegation also favoured the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), which would serve to remove all doubt regarding the meaning of the prohibition of the threat or use of force. On that point, there had been differences of interpretation. His delegation rejected the restrictive interpretation which would confine the prohibition to armed force, and strongly supported the broad interpretation, based on the terms of Article 2, paragraph 4, of the Charter, which clearly did not limit the concept of the use of force to armed attack, as did Article 51 on the right of self-defence. The inclusion of all forms of coercion would safeguard the interests of the large majority of States, particularly of the developing States, which were more exposed to political and economic pressure.

25. His delegation could not support the amendment submitted by Peru (A/CONF.39/C.1/L.230), which would limit considerably the application of article 49 and was not consistent with the provisions of article 62. It also opposed the amendment by Japan (A/CONF.39/C.1/L.298 and Add.1), which would introduce a preliminary requirement that was at variance with the concept of the absolute nullity of a treaty obtained by measures of coercion.

26. Mr. SINCLAIR (United Kingdom) said that, since article 49 clearly derived from the principle laid down in Article 2, paragraph 4, of the United Nations Charter, the Committee was concerned with, *inter alia*, a point of Charter interpretation. Although the consequences of the use of force in treaty law were perhaps not so clearly established as the general prohibition contained in the Charter, there was considerable authority for the view expressed by Lord McNair that, in modern circumstances, it would " be the duty of an international tribunal ... to decline to uphold [the treaty] in favour of a party which had secured another party's consent by means of the illegal use or threat of force ".[1] On the question of the precise meaning of the word " force " in that context, it was stated in paragraph (3) of the commentary that some members of the Commission had expressed the view that any other forms of pressure, such as a threat to strangle the economy of a country, ought to be stated in the article as falling within the concept of coercion; that approach was now expressed in the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1).

27. Since the Commission had decided to define coercion in terms of the " threat or use of force in violation of the principles of the Charter ", the Committee was bound to consider the question of Charter interpretation in the light of the general rule of interpretation set out in article 27 of the draft. If the interpretation left the meaning ambiguous or obscure, or led to a result which was manifestly absurd or unreasonable, recourse was permissible under article 28 to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.

28. Where the interpretation of the word " force " in Article 2, paragraph 4, of the Charter was concerned, it would be seen that the seventh preambular paragraph of the Charter expressed the determination of the peoples of the United Nations " to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest ". One of the principles referred to in that paragraph was clearly the one set out in Article 2, paragraph 4, and the methods whereby the principle was to be maintained were set out in Chapters VI and VII of the Charter.

29. Article 39 authorized the Security Council to determine the existence of any threat to the peace, breach of the peace or act of aggression, and in making such determination the Security Council clearly must have regard to the principle laid down in Article 2, paragraph 4. The collective response which the United Nations might make to any breach by a Member State of its fundamental obligation under Article 2, paragraph 4, involved the application of collective measures, which, under Article 41, might include measures not involving the use of armed force, such as complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication; if such measures proved inadequate, the Security Council might, under Article 42, take action by air, sea or land forces in accordance with special agreements to be negotiated under Article 43. It would be noted that Article 44 began with the words " When the Security Council has decided to use force ", and there could be no doubt that, in the context of that Article, the word " force " could only mean armed force. The whole structure of Chapter VII of the Charter was based on the proposition that collective measures which might ultimately involve the use of armed force in the common interest were the appropriate response to a breach of the fundamental obligation set out in Article 2, paragraph 4: in general, it was a breach of the individual obligation not to resort to the threat or use of force which provoked the collective response which lay at the discretion of the Security Council.

30. The interpretation of the term " force " as used in Article 2, paragraph 4, had given rise to heated controversy in the Special Committee on Friendly Relations. The United Kingdom delegation was convinced that the obligation to refrain from the threat or use of force under Article 2, paragraph 4, related to the threat or use of physical force. Any extended interpretation of that phrase went beyond the sphere of interpretation into the sphere of amendment or modification of the Charter. And the Committee would remember that it had recently decided to delete article 38 of the draft, providing for modification of treaties by subsequent practice.

31. The United Kingdom fully agreed that economic and political pressure might have disturbing consequences for the maintenance of friendly relations between States, but considered that the term " economic and political pressure " had no objective content. It might be unfortunate that there were considerable differences in the size, resources, productivity and wealth of the nations of the international community, but those differences did exist, and since they existed, it would be only too easy for any State to maintain that a particular treaty had been procured by the use of economic or political pressure. Of course, there might be cases where flagrant economic or political pressure amounting to coercion could justify condemnation of a treaty, but the principle *pacta sunt servanda* would be seriously jeopardized if such a vague concept as economic or political pressure were accepted as a ground for the voidance of treaties.

32. Although his delegation did not question the fact that there had unfortunately been cases in the past where treaties had been procured by the threat of force, and did not seek to uphold the continued validity of such treaties, it could not agree that the concept of the threat or use of force, as used in Article 2, paragraph 4, of the Charter, extended to so broad a concept as economic or political pressure. If it were maintained that the terms of the Charter were unclear in their reference to " force " or " armed force ", then the preparatory work of the Charter showed convincingly that Article 2, paragraph 4, was to be interpreted as referring only to physical force. The Australian representative had drawn attention to that point during the present debate. For all those reasons, the United Kingdom delegation strongly opposed the nineteen-State amendment, in the belief that the

[1] McNair, ***The Law of Treaties***, p. 210.

economic problems underlying that proposal by a number of developing countries would not be solved by the adoption of a text which must inevitably create a serious threat to the stability and security of treaty relations.

33. It would be seen from paragraphs (7) and (8) of the commentary that the temporal application of one of the rules laid down in the draft was raised for the first time in connexion with article 49. His delegation agreed with the Commission's statement in paragraph (8) of its commentary to the article that " the invalidity of a treaty procured by the threat or use of force was a *lex lata* principle, and that the great majority of international lawyers today unhesitatingly hold that Article 2, paragraph 4 ... authoritatively declares the modern customary law regarding the threat or use of force ". As the Swedish representative had pointed out at the previous meeting, the Committee was not discussing the general retroactivity of the draft articles, but merely the temporal application of the rule in article 49 against the background of the development of customary international law in the matter.

34. With regard to the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1), his delegation had some hesitation as to the date from which the modern law prohibiting the threat or use of force could be regarded as established. The Pact of Paris was certainly a landmark in the emergence of the law laid down in Article 2, paragraph 4, of the Charter, but it was difficult to agree on the exact date, and the fourteen-State amendment provided no guidance as to the temporal application of the customary rule set out in Article 49.

35. The United Kingdom delegation saw some merit in the amendments submitted by Peru (A/CONF.39/C.1/L.230) and by Japan and the Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1), and considered that the Australian amendment (A/CONF.39/C.1/L.296) clarified the Commission's text.

36. Before concluding, he would like to emphasize again the over-riding need for some kind of objective machinery to determine whether or not a treaty had been procured by the threat or use of force. A charge of coercion against another State was very serious, and could not be left simply to allegation and counter-allegation, for that would introduce an unacceptable element of uncertainty into the law of treaties. His delegation's position on article 49 would therefore be finally determined in the light of the decisions reached on the text of article 62, which in its present form was clearly inadequate and unsatisfactory; the United Kingdom was prepared to take part in any consultations which might be undertaken to revise article 62.

37. It wished to point out, however, that adoption of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) would seriously jeopardize the prospect of producing a convention which would command the support of many delegations. The purpose of the Conference was to produce a convention on the law of treaties which would be an historic landmark in the movement towards the progressive development and codification of international law; future jurists would judge the success of the Conference by the extent to which participants had been able to unite their endeavours. He therefore appealed to the supporters of the nineteen-State and fourteen-State amendments not to press their proposals to the vote, and hoped that some of the suggestions made by the Australian delegation would be further explored.

38. Mr. SAULESCU (Romania) said that the experience of centuries of human suffering and of untold destruction of material and spiritual values had demonstrated the great danger to civilization and progress of wars of aggression and of the use of force. It was therefore obvious that war and the use or threat of force should be outlawed as a means of settling disputes between States. That principle of general international law, proclaimed by a number of international instruments before the Second World War, had been reaffirmed with renewed vigour with the adoption of the United Nations Charter. The formal prohibition of recourse to the threat or use of force in Article 2, paragraph 4, of the Charter had crystallized the development of that law. Not only could force not create law, but any case of force as such constituted a negation of law; that was why some provisions of the Charter permitted recourse to force only in the exceptional circumstances of legitimate defence against armed attack or, under stipulated conditions, for the restoration of peace.

39. In connexion with article 49, the Romanian delegation subscribed to the view of the International Law Commission that the invalidity of a treaty procured by the threat or use of force was a *lex lata* principle, based on international custom and recognized in the many conventions and other international instruments referred to in the Commission's report on its 1966 sessions. His delegation considered that article 49 rendered void all treaties concluded in violation of the principle of international law embodied in the United Nations Charter and concerned all treaty relations, bilateral or multilateral, between States Members of the United Nations or other States. It was therefore in favour of the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1).

40. Invalidity should apply to any treaty which had been concluded by the threat or use of force " against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations ", to use the terms of Article 2, paragraph 4, of the Charter. In his delegation's opinion, under the system of the Charter, all forms of coercion which could be exercised against another State with a view to concluding a treaty, such as economic, political and other pressure, should entail invalidity of the treaty in question, and those forms of coercion should be stated specifically in article 49, as was proposed in the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1). The States which had submitted the amendment and a number of others had made similar representations in the United Nations General Assembly, in order to express more specifically an idea accepted by the international community when it had unanimously adopted General Assembly resolution 2131 (XX). That resolution had clearly proclaimed that no State might use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to receive from it advantages of any kind.

41. By including economic and political pressure among the forms of violation of the principle prohibiting the

use or threat of force, article 49 would gain in efficacy; its preventive force would be increased, and it would represent a sounder and more certain legal means of substituting the rule of law for the rule of force. Adoption of the rule in article 49, strengthened by the nineteen-State and fourteen-State amendments, would mark a crucial point in the progressive development of international law.

42. Miss LAURENS (Indonesia) said that, although the International Law Commission had shown itself to have an open mind for the realities of modern international relations by including article 49 in the draft convention, her delegation considered that the text could be further improved by an expansion of its scope which would render it even more in keeping with those realities. Indonesia therefore welcomed the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) in the belief that it complied fully with the last part of Article 4, paragraph 2, of the Charter.

43. According to paragraph (2) of the commentary to article 49, international jurists had expressed their fears on two points, namely, that to recognize the principle as a legal rule might open the door to the evasion of treaties by encouraging unfounded assertions of coercion, and that the rule would be ineffective, because the same threat or compulsion that had procured the conclusion of the treaty would also procure its execution. The Indonesian delegation did not believe that there were any valid grounds for those fears. First, article 23, recently approved by the Committee, provided an adequate safeguard and, in view of the strength of public opinion, a country would be unlikely to invoke a rule in article 49 without well-founded reasons, since it would otherwise lose its prestige in the eyes of the world. Secondly, a strongly and explicitly worded article 49 could serve as a deterrent against such conduct by a State contemplating the use of force, because its intended victim would have a strong legal basis for action.

44. With regard to the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1), her delegation did not feel so strongly about the need to include the words " of international law embodied in ", since that would seem to be implicit in the International Law Commission's text, and the commentary was clear on the point; it had, however, no objection to that amendment. It would vote on the remaining amendments in the light of the considerations she had just expressed.

45. Mr. VARGAS (Chile) said that his delegation strongly supported the principle set out in article 49. It was convinced of the importance of developing that rule in the convention as explicitly as possible, so as to preclude any possibility of subjective interpretation. So, although his delegation fully agreed with the substance of the International Law Commission's text, it considered that the provision might give rise to certain doubts which, although they could be dispelled by recourse to the interpretation procedure, should preferably be resolved clearly and unequivocally in the article itself.

46. The Commission's text gave rise to two main problems: the meaning of the concept of " force " and the date on which the rule set out in the article should come into effect. The purpose of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) was to settle the first problem by mentioning economic and political pressure as a ground for avoiding a treaty. Chile decisively rejected the use of economic and political pressure in international life because it was a reprehensible form of intervention, liable to involve the international responsibility of the State exercising it.

47. It was not sure, however, that the means proposed in the nineteen-State amendment was the best way of handling the problem, because the amended text would link the new provision with the principles of the Charter, thus implying that those principles, particularly that in Article 2, paragraph 4, contained a formal prohibition of economic and political pressure in the same terms as the prohibition of the threat or use of physical force. His delegation did not consider that that was the case, or that the contention could be proved by precedent. The Brazilian delegation to the 1945 San Francisco Conference had proposed the inclusion of an express reference to the prohibition of economic pressure, and its proposal had been rejected. Consequently, any reference to the principles of the Charter in that respect must be a reference to the kind of force which all the Member States had agreed to prohibit, namely, physical or armed force.

48. The Chilean delegation would be prepared to support any proposal which contained an accurate definition of economic pressure, but could not agree to the inclusion of the phrase proposed by the nineteen States in their amendment. Those considerations also applied to political pressure, for unless that term were described much more specifically, considerable difficulties of interpretation could arise: for example, severance of diplomatic relations might be regarded by some as a form of political pressure, whereas article 60 of the draft convention provided that severance of diplomatic relations between parties to a treaty did not in itself affect the legal relations established between them by the treaty.

49. The second main problem raised by the article was that of the date when the rule would enter into force. His delegation considered that, by and large, the rules on invalidity should not be retroactive, but that article 49 might be given exceptional treatment because it was concerned with a rule of *lex lata*. It accordingly considered that the date of entry into force of the rule should be the date when the international community had outlawed the threat or use of force, namely, 24 October 1945, the date of entry into force of the United Nations Charter. Although before that date the Covenant of the League of Nations and the Pact of Paris had marked progress over the traditional law in the matter, they had not laid down a broad and comprehensive prohibition binding on all States. That date would, moreover, stress the fact that article 49 of the Commission's draft was a corollary to Article 2, paragraph 4, of the Charter.

50. Although that date seemed to be implicit both in the discussions in the International Law Commission and in the commentary to article 49, the Chilean delegation would prefer to see it specified more explicitly and would therefore vote for the Peruvian amendment (A/CONF.39/C.1/L.230), which seemed to clarify the situation. On the other hand, it could not support the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1), which, although it implied that certain principles of international law in the matter had existed before the entry into force

of the Charter, did not state exactly when the rule had been recognized.

51. Nor could his delegation support the Chinese amendment (A/CONF.39/C.1/L.301), not because it was opposed to the idea of recourse to a competent organ of an international organization, but because it believed the amendment to be unnecessary: any State subjected to coercion had the unassailable right under the Charter to have recourse to the United Nations, but failure to have such recourse might be interpreted as loss of the right to invoke the invalidity of the treaty, a result which ran counter to the first part of the Chinese amendment. Moreover, in many cases the State was not in a position to resist coercion and if it could have resisted, would not have brought the case to the attention of the United Nations; it would simply have refused to subscribe to the treaty.

52. Finally, his delegation could not support the Japanese and Viet-Namese amendment (A/CONF.39/C.1/L.298 and Add.1), which vitiated the principle contained in the Charter and the draft convention, that a treaty was void if its conclusion had been procured by the threat or use of force; that principle could not be made dependent on recourse to the United Nations.

53. Mr. JELIC (Yugoslavia) said that the threat or use of force should include economic and political pressure and he therefore regarded the nineteen-State amendment as well-founded. Its adoption should not in any way undermine the security of treaties.

54. Mr. DE BRESSON (France) said that article 49 was undoubtedly one of the most important provisions in Part V and his delegation supported its inclusion, which would be in conformity with the Charter. As it touched upon delicate matters, the wording must be carefully chosen so as to avoid, for example, upsetting territorial settlements. The text should be rendered more explicit in order to make clear that the application of the article would depend upon the will of the injured State and that the procedure of article 62 would apply.

55. The fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) might clarify the meaning of the use of force. On the other hand, the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) could lead to confusion because of divergent views as to what constituted economic and political pressure. Such a provision would seriously threaten the stability of treaties and that risk must be carefully considered.

56. He was in favour of the other amendments being referred to a working group, together with the related provisions.

57. Mr. PINTO (Ceylon) said he supported the nineteen-State amendment, which made specific mention of political and economic pressure being brought to bear on a State in violation of the principles of the United Nations Charter. Such pressures were declared to constitute grounds for avoiding a treaty *ab initio*. Whether a narrow or a broader view was taken, it was difficult to discern in the Charter an explicit prohibition of political and economic pressure, but there were several propositions which by clear implication outlawed such action. The elaboration of the phrase " use of force " in the Charter indicated that its meaning was the use of force against the territorial integrity or political independence of a State by means of armed or physical force. The phrase " force in violation of the principles of the Charter " would be interpreted as comprehending economic and political pressure. Such action should be regarded as nullifying the treaty and should be the subject of a rule in the convention.

58. He wondered why it had been thought desirable to use the term " coercion " in article 48, which contemplated various types of acts and threats of force not exclusively of a physical nature, and the word " force " in article 49, which might without further explanation be understood in the narrow sense of armed force alone.

59. He was aware of the problems of interpretation to which the nineteen-State amendment could give rise. The determination of the existence of economic and political pressure vitiating consent could be a most complex task. Where, for example, was the line to be drawn between the normal give-and-take of negotiation and pressure? A country supplying economic aid to another might require as part of the consideration for its contribution that the recipient take a number of politically unpopular steps to strengthen some sectors of its economy. Would such a requirement be regarded as a legitimate bargaining counter, based on sound business and financial principles, or would it be regarded as political and economic pressure vitiating consent and voiding the agreement *ab initio*? It would be difficult to know which economic yardstick to apply so as to determine whether the donor's requirements would be of real benefit to the recipient.

60. The text of the nineteen-State amendment was not less clear than the Commission's, and might even be clearer. The Commission had considered that the precise scope of the acts covered by the definition should be left to be determined in practice by the interpretation of the relevant provisions of the Charter, but the amendment set some guidelines for such interpretation. However, some proper machinery for the prompt and final settlement of any disputes that might arise over the interpretation of article 49 and others was needed, particularly with respect to Part V of the draft.

61. Finally, he commended the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) to the Committee.

62. Mr. MULIMBA (Zambia) said that the Commission had stated in its commentary to article 49 that it had been guided by the conviction that the use of coercion to procure the conclusion of a treaty was a matter of such gravity that any treaty so obtained must be void *ab initio*. It had further stated in paragraph (3) of its commentary that the precise scope of the acts to be covered by the definition of the phrase " 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.

63. No jurist had denied the moral value of inserting such a principle in the convention, though some delegations had expounded the traditional view that business should not be mixed up with politics or morality. The need to include the moral principle contained in article 49 was imperative, because recent developments in international relations required new and loftier norms in a convention designed to codify progressive rules. The article was

not a mere escape clause for the evasion of treaty obligations, and misgivings that in practice it would open the door to evasion by encouraging unilateral and unfounded assertions of coercion were unjustified. The convention did not leave the door open, because any claim to invalidate a treaty on the ground that coercion had been used must follow the procedural rules set down in article 39, paragraph 1, and the invalidity had to be established under the rules laid down in article 62.

64. All progressive lawyers admitted that the term " force " included economic and political as well as other forms of pressure or coercion falling short of armed force. Non-military forms of pressure were often more potent in their effects than actual armed force, and the Commission in its commentary to article 47, when comparing the efficacy of corruption and coercion as forms of pressure, had admitted that in practice attempts to corrupt were more likely to succeed than attempts to coerce.

65. If the nineteen-State amendment were not adopted, he wished to make it clear that in his delegation's opinion the term " force " included economic and other forms of pressure.

66. An appeal had been addressed to the developing countries not to insist on the inclusion of economic pressure in article 49. They had already evinced their faith in the whole body of customary and established principles of international law without question, though some had no relation to their own concepts of law, but it would be difficult, in view of their economic circumstances, to maintain in force the international obligations they had accepted. He hoped that older States would not destroy their faith in international law by declining to consider the inclusion of new concepts in the draft articles.

67. Mr. MARTYANOV (Byelorussian Soviet Socialist Republic) said that a rule must certainly be inserted in the convention stipulating that a treaty procured by force or threat of the use of force was absolutely void. That was a matter of *lex lata* and was laid down in Article 2, paragraph 4, of the Charter. Force must be considered as a wider concept than purely physical force and as including economic pressure, particularly embargoes. The rule set out in article 49 was unquestionably correct and took account of recent changes in international law. He would support any amendment which reflected the fundamental ideas set out in article 49, but he could not subscribe to the amendment by Japan (A/CONF.39/C.1/L.298), which would only complicate matters; nor did he consider that the Peruvian (A/CONF.39/C.1/L.230) or Australian amendments (A/CONF.39/C.1/L.296) were an improvement on the Commission's text.

68. Mr. MENDOZA (Philippines) said that, in order to give rise to rights and obligations and establish conditions for justice and contribute to friendly relations, a treaty must be the product of freely given consent, and free will was totally incompatible with coercion in whatever form. Economic pressure could as effectively induce consent, and it would be incongruous to declare that a treaty might be rendered void by armed force but not by equally effective economic pressure. He did not consider that article 49 should be confined to physical and armed force and he therefore endorsed the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1), which would not unduly expand the scope of the article, particularly in view of the qualification referring to principles of the Charter. The essence of the provision was " coercion ", and even those who did not endorse the amendment conceded that economic and political pressure amounting to coercion should be condemned.

69. Mr. DEVADDER (Belgium) said that, according to article 49, any treaty procured by the threat or use of force in violation of the United Nations Charter was void because it was contrary to a principle of *lex lata* of modern international law. The use of force could take different forms and be of differing degrees, so that it might sometimes be difficult to establish whether the use of force had been of such a kind as to result in invalidating the treaty.

70. Economic or political pressures could vary widely, and in most cases it would be difficult to determine whether it had actually taken place; he therefore believed that reference to those forms of pressure would render the article impossible to apply and would create a regrettable uncertainty about the status of treaties regularly concluded. It was essential to provide that all cases of invalidity be submitted to adjudication by an impartial body in accordance with the procedures laid down in article 62.

The meeting rose at 1 p.m.

FIFTY-FIRST MEETING

Friday, 3 May 1968, at 3.45 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 49 (Coercion of a State by the threat or use of force) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 49 of the International Law Commission's draft.

2. Mr. DADZIE (Ghana) said that his delegation was a co-sponsor of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) and fully associated itself with the arguments advanced by the delegations which had introduced that amendment. There was no denying that article 49 was one of the most important and controversial articles in the whole draft. Most delegations accepted the basic principle embodied in the article, but there was disagreement on the scope and interpretation of the expression " threat or use of force ".

3. Before the League of Nations Covenant, international law had disregarded the effect of coercion in the conclusion of a treaty imposed by the victor upon the vanquished, but the position had changed after war had been prohibited by the League of Nations Covenant and the Briand-Kellogg Pact. The formulation of a