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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

legal principle generally took account of the circumstances prevailing at the time when it was formulated. That was probably why the States which had framed the Charter at the end of the Second World War had used the terms " threat " and " use of force " in the sense of military force.

4. But whatever meaning those words had been intended to have in the Charter, today they could have only the meaning attributed to them by modern practice and contemporary circumstances. The word " port ", used in several extradition treaties, provided an example. Formerly it had meant a sea port; but now there were airports, and no one could maintain that an extradition treaty did not apply to a person arriving at an airport.

5. The use of armed force to threaten a country was so patent an act that it raised comparatively few problems. Economic and political coercion was not always so obvious, even to the victim itself, and that was why it must be condemned. Not a single speaker had denied the need to protect the less economically developed States from political and economic pressure. The position of such States during the negotiation of a treaty, whether it was for the food, the medical supplies or the building materials they needed, was well known. Many delegations had expressed their sympathy with the cause defended in the amendment. But sympathy was not enough. It must find expression in action, in the present case by a vote in favour of the amendment.

6. Mr. THIAM (Guinea) said that his delegation had joined with those of the Asian, African and Latin American countries which had submitted the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1). It therefore supported the arguments advanced by the Afghan representative and the other co-sponsors.

7. His delegation fully approved of the principle that all coercion should be banned from international relations, but it regarded the present wording of article 49 as no more than a declaration of principle. The International Law Commission's aim had been to sanction with complete nullity any treaty a State's consent to which had been invalidated by coercion against the State. In article 48, the notion of coercion had been used in its widest sense, as appeared from paragraph (3) of the Commission's commentary to that article. In article 49, on the other hand, the Commission had thought it should make it clear that coercion against a State could invalidate its consent only if it took the form of the threat or use of force. The Commission had thus opened the way for an unduly restrictive interpretation of the principle it had stated. It would have been more logical to recognize all the forms which coercion could take, as in article 48.

8. During the discussion, many delegations had maintained that the prohibition of the use of armed force should now be regarded as a rule of *jus cogens*. Article 49 would then duplicate article 50, unless it was changed as proposed in the nineteen-State amendment, which specified that the use of force included economic and political pressure.

9. No one could deny that economic and political pressures were exercised; although difficult to define, they were easy to detect objectively. In modern times it had become difficult to resort to brute force. Economic pressure had thus become the favourite weapon of certain Powers, which sought to impose their will on many States, so as to retain advantages which in the past had generally been secured by the use of force. That situation was all the more serious because the gap between the rich and poor countries was growing wider and wider.

10. It was clearly necessary to put an end to a situation which conflicted with any idea of justice and seriously undermined the sovereign equality of States. The sole purpose of the sponsors in submitting their amendment had been to eliminate certain injustices from international relations and to encourage the harmonious development of true international co-operation. Article 49 should expressly state the unassailable principle that any coercion, whatever form it took, invalidated the consent of the State against which it was exercised.

11. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation attached exceptional importance to article 49 because it declared void *ab initio* any treaty whose conclusion had been procured by the threat or use of force. Cases of physical coercion had become very rare, but a powerful State often exerted economic or political pressure on a weaker State.

12. In the past, legal theory had not questioned the validity of a treaty whose conclusion had been procured by the threat or use of force. At the beginning of the twentieth century, an attempt had been made to introduce the principle into international relations, and since the October Revolution the USSR had always taken a stand against the use of force in relations between States. The Briand-Kellogg Pact had prohibited war as a means of settling international disputes. That principle had been confirmed in many legal textbooks published before and after the Second World War, and by the Nuremberg Tribunal. It had been embodied in the United Nations Charter and in various General Assembly resolutions. Several Conferences, including those at Bandung, Belgrade and Cairo, had called on States to refrain from any form of coercion. It was therefore a matter for satisfaction that the International Law Commission had dealt with the question in article 49. The inclusion of such an article would strengthen international law and protect weak States which could be subjected to pressure.

13. Some delegations had maintained during the discussion that the inclusion of such an article might impair the stability of treaties. That was not so, because the principle applied only to treaties concluded by force. It was an additional legal means of preventing the use of force in the conclusion of treaties. The principle did not weaken the rule *pacta sunt servanda*. The International Law Commission had been right to refer to the " use of force in violation of the principles of the Charter of the United Nations "; it had thus drawn a very proper distinction between coercion exercised by an aggressor and the measures which could be taken against an aggressor.

14. The text of article 49 could be improved, however. The Soviet delegation supported the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) and associated itself with the very convincing arguments which the Czechoslovak delegation had put forward on the subject. The proposal to add the words " including economic or political pressure " (A/CONF.39/C.1/L.67/

Rev.1/Corr.1) was justified, for in the opinion of the Soviet delegation, the word " force " covered all the different forms of coercion. The Japanese amendment (A/CONF.39/C.1/L.298 and Add.1) dealt with a matter of procedure rather than of substance; it complicated the article and the Soviet delegation could not support it. The other amendments did not improve the article.

15. Mr. MARESCA (Italy) said that delegations should be grateful to the International Law Commission for having introduced into the convention an article which was a remarkable advance in international law, for it provided that the use of force or the mere threat of force in the conclusion of a treaty was a ground of absolute nullity. The Commission had been right to link that principle to the United Nations Charter, which expressly prohibited the use of force.

16. The Italian delegation understood why certain delegations had submitted the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), but a rule of international law, which was something lasting, could not be based on feelings or passion; what was needed was logic and legal technique. The introduction of the words " including economic or political pressure " posed a dilemma. Either that idea was considered to be implicit in the Charter, in which case it was unnecessary to specify in article 49 what forms the threat or use of force might take; or the Charter referred only to the use of armed force, in which case the proposed addition raised the question of development of the principles of the Charter. It was true that the Charter could be amended, but the Conference was not competent to do that. For those reasons the Italian delegation, though favourable to the idea expressed in the amendment, would not be able to support it.

17. As for the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1), it must be acknowledged that it showed most commendable legal rigour, for it introduced the idea of international law embodied in the Charter. But if the international law embodied in the Charter was invoked, the same would have to be done in other articles which reflected principles already existing in the international legal order. It seemed better to refer to the principles of the Charter with all their power and future possibilities.

18. The addition of the words " it is established that ", proposed in the Peruvian amendment (A/CONF.39/C.1/L.230), seemed extremely useful. It would prevent arbitrary decisions. The Japanese amendment (A/CONF.39/C.1/L.298 and Add.1) raised certain legal problems; for if the competent organ of the United Nations had given its decision and the treaty had been ratified, the question arose whether the invalidity of the treaty was established and what procedure would have to be applied to establish it. It was not, for example, the procedure followed by the Security Council for the maintenance of peace. A completely different procedure would have to be worked out. Consequently, the Italian delegation had some reservations about the amendment.

19. The Committee had reached a very delicate and crucial point in its work of codification. If it adopted the method of voting, as was customary, it might not do its work properly. In the Italian delegation's opinion, it would be better not to vote on the amendments, but to refer them to a small group which would examine them to see what could usefully be retained. The Committee would then be able to submit to the Conference a text which could be adopted unanimously.

20. Mr. MWENDWA (Kenya) said that in a world where violence was increasing and the spirit of fraternity was on the wane, the notion of force could not apply solely to armed force and should undoubtedly extend to economic and political pressure.

21. The principle of the sovereign equality of States made it necessary to reject any provision which might help one State to dominate another. The road to equality was rugged and the vestiges of degradation and humiliation resulting from oppression could not be eradicated overnight; but nothing should be done to encourage their perpetuation. It was in the light of those considerations that the Kenyan delegation had agreed to become a co-sponsor of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1.)

22. Some delegations had maintained that that part of international law was not yet ready for codification. If that argument was accepted, it would raise insuperable difficulties both for the codification and for the progressive development of international law in all its branches, not just in that particular case. One representative had argued that, according to the rule of the " *acte contraire* ", the nineteen-State amendment showed that its sponsors had recognized that the term " force " in Article 2, paragraph 4, of the United Nations Charter could only mean armed force. The Kenyan delegation could not accept either that erroneous interpretation of the sponsors' position, or the very narrow and retrograde interpretation of the term " force " given by delegations which wished to limit that notion to armed or physical force. The amendment of which the Kenyan delegation was a co-sponsor should be understood as having been introduced *ex abundante cautela.*

23. Mr. SMALL (New Zealand) said he fully understood the problem of the economic and developmental needs of the countries whose representatives had supported the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1). The economic question was of special interest to New Zealand, a country which was geographically isolated and entirely dependent on the export of a few products.

24. His delegation believed, however, that the amendment did not merely raise a matter of economics, but went much further in seeking to construe and make explicit the meaning of one of the crucial terms of the United Nations Charter, and to indicate its entire scope in a short formula to be inserted in article 49. That task had already been attempted by various bodies, including the Sixth Committee of the General Assembly and the Committee on Friendly Relations, but they had been unable to reach agreement beyond a recognition of the prime type of force with which the Charter clearly dealt.

25. If the amendment were adopted and the definition of the word " force " were incorporated in an article of an instrument likely to become one of the most significant of modern times, that definition would inevitably have some reflection upon the Charter itself, and might make it politically assertable that whatever was settled at Vienna would be taken to be the normal operational

meaning of the Charter. The delegations participating in the Conference, however, were not authorized to settle that question in the context of a specialized draft convention on the law of treaties.

26. In order to avoid dividing the participants in the Conference, it was hoped that the co-sponsors of the amendment would not insist on its being put to the vote. His delegation was in favour of establishing in article 62 a more suitable system of judicial or arbitral settlement of disputes arising from the application of Part V, especially in relation to article 49, because of the inherent gravity of any allegations about the use of force against a State. His delegation's final attitude to article 49 woul depend on its assessment and balancing of the text of that article as it might be settled by the Conference, with the eventual form of article 62 or its equivalent.

27. Some of the amendments contained useful elements, in particular those submitted by Japan and the Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1) and by China (A/CONF.39/C.1/L.301), and he hoped that those amendments and the draft article itself could be examined by a group for conciliation and consultation which might be set up outside the Committee. According to the interpretations put on it by its co-sponsors, the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) apparently concerned the temporal application of the principle stated in the article. If that was so, the question should be dealt with more explicitly. Again, the temporal bearing of the whole convention itself was a separate issue which should be studied by the Conference in due course.

28. Mr. DE CASTRO (Spain) said that Part V of the draft showed remarkable progress in the formulation of modern and progressive international law and was in conformity with the spirit of the Charter and United Nations resolutions. Article 49 overtly and clearly proclaimed that conception of international law. Unfortunately, because of its wording and certain expressions used in the International Law Commission's commentary, it was to be feared that it might be regarded as reflecting the retrograde idea of consolidating the *status quo*, in contradiction with the general system of the draft and the principles of the Charter itself.

29. Paragraph (7) of the commentary to article 49 had been interpreted in a most contradictory manner. Some representatives had maintained that it meant that treaties procured by force before the principles of the Charter had been accepted were fully valid, not only *ab initio*, but also without any limit as to duration. Others thought it meant that article 49 did not void *ab initio* a treaty imposed by force or acts carried out before the establishment of the new international law, but that as from that date the treaty lost all legal force and no longer satisfied the necessary conditions for the application of a legal instrument, because its invalidity had been declared *ex nunc*.

30. The advocates of the first interpretation had cited in support of their thesis the general principle of non-retroactivity, and especially the tendency to maintain the *status quo*, even at the cost of overlooking the defects of a treaty. The supporters of the second interpretation had relied on the concept of non-retroactivity adopted in article 24, and on the effect given by the draft to the new norms of *jus cogens* in article 61. The reference to the principles of the Charter in article 49 would thus be merely a reminder that the use of force could sometimes be lawful and that treaties imposed by force could be valid, as provided in article 70, which dealt with the case of an aggressor State.

31. It was essential to know what scope was to be attributed to the principle of non-retroactivity. The temporal scope of article 49 would be restricted by the need to respect treaties concluded in accordance with the old law, which were regarded as valid even if they had been imposed by force. That affirmation must be qualified, as it might lead to incorrect or even unjust conclusions. Moreover, to assert the full and unrestricted validity of old treaties would be tantamount to establishing a new rule with retroactive effect and giving those treaties a validity they had never had. The traditional doctrine was not accurately summed up by the mere statement, in paragraph (1) of the commentary, that the validity of a treaty was not affected by the fact that it had been brought about by the threat or use of force. The writers clearly taught that threats and coercion invalidated treaties, but as there had been no means other than private justice to ensure the application of the law, it had been necessary to recognize the lawfulness of war in general and to regard as valid a treaty that had ended a war. Unjust treaties involving oppression or exploitation, imposed solely by coercion by the stronger party, had been considered unlawful. War to impose such a treaty had been considered " unjust ", whereas war to put an end to such a treaty, a war of liberation, had been regarded as " just ".

32. Modern law had radically changed the legal situation of the international community. The condemnation of war extended to wars of conquest as well as to wars of re-conquest. That development had set new conditions for the exercise of rights based on international norms. The old treaties which had been invalidated by force and which it had been possible to terminate by the exercise of private justice, as in the case of a just and successful war, should continue to be void and voidable. Today, the instrument for voiding them could not be war, but the peaceful means provided by the new law. There would thus be no legal justification for retroactively strengthening treaties which had been invalidated from the outset by the fact that their conclusion had been procured by force. Such treaties, which had previously been terminated by force, would be voidable by another procedure.

33. The effect given to the principle of non-retroactivity was in conformity with the system of the draft; the acts and effects of the treaty prior to the declaration of invalidity would be regarded as valid. On the other hand, from the moment the new law became applicable, a treaty procured by the threat or use of force could be declared void. For example, under articles 50 and 61, a treaty on the slave trade, considered valid *ab initio*, would be declared invalid as soon as the new law came into force. A treaty imposed by force, which exploited a nation and reduced it to slavery, might be considered valid *ab initio*, but its invalidity could be claimed under the new law. Such treaties conflicted with the principles of the Charter, which affirmed, in its preamble, that respect for the obligations arising from treaties was subject to the

determination " to establish conditions under which justice ... can be maintained ". A treaty in which obviously unjust conditions had been imposed by force could not be considered permanently binding without going against the spirit and object of the Charter.

34. The purpose of the amendment co-sponsored by Spain (A/CONF.39/C.1/L.289 and Add.1) was to prevent article 49 from being interpreted as rendering unassailable treaties which had been concluded illegally and were condemned by United Nations resolutions. The Spanish delegation was aware that such an amendment might be regarded as a potential threat to international peace and security. But according to article 49, a declaration of invalidity of an old treaty would relate only to situations based solely on the vitiated treaty; it would in no way affect situations which also had a different basis, or were based on a treaty whose defects had been remedied in conformity with article 42 of the draft.

35. Further, article 49 would not create fresh grounds for concern in international life. Situations that still existed by reason of a treaty imposed by force constituted a latent and persistent danger to peace. Article 49 would provide a means of removing such causes of instability and disputes once and for all. The aim of the amendment co-sponsored by Spain was to respect the text of the draft as far as possible, but to stress that article 49 had no undesirable retroactive effect—that it did not validate, by rendering them unassailable, treaties concluded before the date on which war had been outlawed by the Charter. The use of the word " embodied " was calculated to show that principles, including those for the maintenance of justice, had existed before the Charter had been drawn up. Treaties based on force alone must be considered void regardless of the date of their conclusion and could be declared void by the competent international tribunal on the application of the State entitled to make such application. The cases of old treaties covered by article 49 would be few, but the declaration of principle contained in the article must be retained, in conformity with the requirements of justice and the sovereign equality of States.

36. The idea behind the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1), that international treaties must always respect the freedom, independence and dignity of all peoples, deserved the sympathy of every State. But it did not seem possible, for the time being, to give that idea the formulation proposed in that amendment, since it was not likely to receive general approval. In the general concept of pressure, various possible cases must be distinguished: there was wrongful pressure, which was unlawful; pressure that was legally and morally justified, such as that used to repel aggression; and pressure which the Romans called *dolus bonus*, such as that normally applied in the negotiation of trade agreements. Moreover, if the nineteen-State amendment were adopted, it might be deduced that the formula " the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations " used in the amendment co-sponsored by Spain (A/CONF.39/C.1/L.289 and Add.1) referred only to physical force or war. But that was not the case, for a proper interpretation of the spirit of the Charter condemned all unlawful use of force of any kind whatever, and might in some cases include the abuse which consisted in exploiting the development needs of nations.

37. For those reasons, as well as for those given by the Uruguayan representative, the Spanish delegation could not support the nineteen-State amendment, which, in its present form, might provide the basis for a restrictive interpretation of the word " force " as used in the Charter.

38. Mr. SAMAD (Pakistan) said he fully endorsed the arguments advanced by the representative of Afghanistan. Economic and political pressures were much stronger than military pressure and involved the use of force prohibited by Article 2, paragraph 4, of the Charter. The purpose of the nineteen-State amendment co-sponsored by Pakistan (A/CONF.39/C.1/L.67/Rev.1/Corr.1) was to ensure the stability and security of international treaties by making the text of article 49 clearer. The concept of political or economic pressure had been accepted long before the United Nations Charter had been drawn up and had been reaffirmed by the General Assembly in resolution 2160 (XXI).

39. He supported the principle embodied in the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1).

40. Mr. RUEGGER (Switzerland) said that the direct, unqualified reference to the principles of the United Nations Charter in article 49 of the draft might raise a serious problem, from the strictly legal point of view, for a country such as Switzerland which was not a signatory of the Charter and was not a Member of the United Nations as a political organization. The problem could be solved either by Switzerland's entering a reservation, or by amending the text of article 49 on the lines of the fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1). Switzerland was in favour of that amendment, which might be made more specific by saying " ... in violation of the rules of international law generally recognized as such and embodied in the Charter of the United Nations ". That wording would make it clearer that the rules were declaratory rather than constitutive; it reproduced the formula proposed by Syria and adopted for article 34 (A/CONF.39/C.1/L.106).

41. Switzerland recognized the great value and importance of the principles of the United Nations Charter, which were derived in large part from the principles of the League of Nations Covenant, to which Switzerland, as a Member of the League, had subscribed. In the San Francisco Charter, signed after the Second World War, there had been no place for the complete neutrality of Switzerland; but the practice of the United Nations had recognized the value and effect of permanent neutrality in certain cases in which the Charter could not operate, and the importance of an independent, impartial and neutral intermediary such as Switzerland.

42. The discussion on the meaning to be given to the term " force " in article 49 had been mainly concerned with interpretation of the provisions of the Charter. The Swiss delegation considered, however, that the Conference was not called upon to go into such matters when drafting the convention on the law of treaties. The principles of the Charter would evolve: it was difficult to include in a purely legal convention a reference to imprecise elements that were liable to changes based on other than strictly legal criteria.

43. The Swiss delegation was not questioning the present or future principles of the Charter, but only their application. To give only one example, a paramount principle for Switzerland was the protection of the human person in accordance with the Geneva Conventions;[1] but events had shown that there could be a conflict between the humanitarian law of those Conventions and certain coercive and military operations of the United Nations. That problem had been examined by the Institute of International Law, which had concluded that the rules of humanitarian law were fully applicable in all circumstances, even in the case of coercive action by the United Nations against an aggressor.[2]

44. It was of the utmost importance that the convention on the law of treaties should be as universal as possible and should gain the widest possible support. The Swiss delegation was therefore renewing the proposal it had made at the thirty-ninth meeting, that a special group be set up to reconcile, as far as possible, the wider differences of opinion, in order to avoid a vote in plenary meeting which would only crystallize such differences. In the present case, that method would make it possible to avoid further consideration in plenary meeting of the amendment on which the Committee was divided. The special group should not be appointed until article 62, which was the essential complement of article 49, had been examined. France, Italy, the Netherlands, Sweden and the United Kingdom had given that proposal their support.

45. Mr. KEARNEY (United States of America) said he thought that article 49 should be approved as it stood and that the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) should be rejected. He wished to explain the reasons for his opposition to that amendment, because article 49 was one of the key articles in the proposed convention and its final text could play a large part in determining the position of the United States delegation with regard to the convention as a whole.

46. Paragraph (5) of the commentary to article 49 stated that " The Commission considered that the rule should be stated in as simple and categorical terms as possible ". The Commission had reached that conclusion after considering whether to include in the article the substance of some of the amendments before the Committee of the Whole.

47. In his fifth report, submitted in December 1965, the Special Rapporteur had taken note of the fact that in 1963 the United Nations General Assembly, by resolution 1966 (XVIII), had established a Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, composed on the basis of the principle of equitable geographical representation and of the necessity that the principal legal systems of the world should be represented. Among the principles referred to the Special Committee for study had been " the principle that States shall refrain in their international relations from 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 ".[3] The Special Rapporteur had observed that if the International Law Commission were itself to attempt to elaborate the rule contained in what was now article 49 by detailed interpretations of the principle, it would encroach on a topic which had been remitted by the General Assembly to the Special Committee.[4]

48. The United States delegation believed that the Commission had properly followed the advice of the Special Rapporteur in the matter. At its 1964, 1966 and 1967 sessions, the Special Committee had examined the question whether the obligation to refrain from the threat or use of force embraced political and economic pressure. Moreover, on 6 December 1967, the General Assembly, by resolution 2287 (XXII), had convened the first session of the United Nations Conference on the Law of Treaties, and a week or two later, by resolution 2327 (XXII), it had requested the Special Committee to complete the formulation of the principle prohibiting the threat or use of force in violation of the Charter. That sequence of events made it absolutely clear that the Conference of Plenipotentiaries on the Law of Treaties was not charged with formulating the principle stated in article 49 of the International Law Commission's text.

49. The sponsors of the nineteen-State amendment had claimed that, as the Conference would be defining the use of force for the purposes of the present convention, there would be no conflict with the work undertaken by other United Nations organs. But the Conference was not called upon to interpret the United Nations Charter, particularly parts of it having an important and dangerous political content. The participants' sole task was to adopt a convention on the law of treaties which would help to unify international relations. Attempts to resolve questions of definition or political issues relations to the Charter in the context of a convention on the law of treaties might cause States which disagreed with the proposed definition to refuse to adopt the convention.

50. Moreover, the concept of " economic or political pressure " referred to in the amendment was so lacking in juridically acceptable content as to cast grave doubts on any article containing it. Many States would use it as a pretext to rid themselves of treaties whose obligations had become burdensome to them.

51. With regard to the intervention of the Afghan representative, the United States was the first to recognize that the common objective should be to narrow the gap between rich and poor countries and it had given adequate proof of that; but it did not see how the amendment could help to achieve that objective, quite the contrary. Investors would regard the amendment as increasing their risks and would raise the cost of their investments. The amendment was therefore likely to hurt those it was supposed to help.

52. The fourteen-State amendment (A/CONF.39/C.1/L.289 and Add.1) raised the question of the time element in the application of article 49, a subject which the Commission had dealt with in paragraphs (7) and (8) of its commentary to that article. The way in which the amendment tried to solve that problem was unsatis-

[1] *United Nations Treaty Series*, Vol. 75.

[2] *Annuaire de l'Institut de droit international*, 1963, vol. 50, tome I, p. 120, and *ibid.*, 1965, vol. 51, tome I, p. 354.

[3] *Yearbook of the International Law Commission, 1966*, Vol. II, p. 19, para. 3.

[4] *Ibid.*, para. 5.

factory, for it raised two questions: to what existing treaties was the convention to apply, and when had the principle in the Charter condemning the use of force become general international law? The first question would have to be decided in the final articles of the convention on the law of treaties. As for the second, the fourteen-State amendment could be interpreted as meaning that the principle stated in Article 2, paragraph 4, of the Charter antedated the Charter itself. It was difficult for the United States delegation to support an amendment which could be so interpreted and which was insufficiently precise to settle the issues it raised.

53. The Peruvian amendment (A/CONF.39/C.1/L.230) was not one of substance and could be considered after the other amendments had been disposed of, when the drafting of the article came to be examined.

54. With regard to the amendment submitted by Japan and the Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1), his delegation supported the first requirement, that the threat or use of force must have been reported to a competent organ of the United Nations, but thought it impossible to apply the second, namely, that the organ had failed to take the necessary action.

55. Mr. TABIBI (Afghanistan), speaking on behalf of the sponsors of the nineteen-State amendment (A/CONF. 39/C.1/L.67/Rev.1/Corr.1), said he wished to thank the many delegations which had supported it; they represented the majority of the participants in the Conference.

56. Some delegations, while recognizing that the text of article 49 was elastic enough to cover economic and political pressure as a ground for invalidity, had argued that the notion of economic and political pressure was vague and that the Committee should adhere to the International Law Commission's text. But if that notion was vague, the same was true of the notion of military pressure. The sponsors of the amendment were not seeking to introduce a new element into article 49, but merely to make the text more precise by wording which would be acceptable to the majority of States throughout the world; they were proposing the insertion of a reference to economic and political pressure, which in some cases was stronger than the threat or use of armed force.

57. The representatives of Australia and the United Kingdom had stated that Article 2, paragraph 4, of the United Nations Charter could only mean armed force and that, consequently, only armed force could be recognized in the context of article 49. But a reading of the text of the article and of the commentary was enough to show that the International Law Commission had had in mind not only Article 2, paragraph 4, but also all the other provisions of the Charter. In paragraph (3) of its commentary it had recorded the view of those members who had been in favour of an express reference to economic pressure, but it had concluded that the scope of the acts covered should be determined by interpretation.

58. The United Kingdom representative had relied on the seventh paragraph of the Preamble to the Charter, but had not referred to the eighth paragraph, which mentioned economic advancement, or to Article 1, paragraph 3. He had also cited Chapter VII of the Charter, in particular Articles 41 and 42, but had not mentioned the measures not involving the use of armed force which could be taken on the decision of the Security Council; those were precisely the measures which a State might use to procure the conclusion of a treaty and which were referred to in the amendment.

59. The Australian representative should not forget that great changes had taken place in the world since the adoption of the Charter, that the Charter itself had been amended several times, and that since the adoption of the " uniting for peace " resolution the interpretation of the peace-keeping role of the Charter had developed considerably.

60. At the San Francisco Conference, the Brazilian proposal to include an express reference to economic pressure had been rejected, but not because the Conference had refused to recognize economic pressure; if that had been so, the Charter would not have mentioned the economic and political measures referred to in Article 41. Furthermore, the importance of economic problems was recognized in the preamble and in many articles of the Charter, particularly in Chapters IX and X.

61. The sponsors of the nineteen-State amendment considered that the fourteen-State amendment (A/CONF. 39/C.1/L.289 and Add.1) was not, in principle, incompatible with their own, or with the Commission's text, and they would vote in favour of it.

62. With regard to proposals for conciliation, the sponsors of the nineteen-State amendment were willing to accept any reasonable suggestions. They did not wish to take advantage of their majority to impose their point of view on the minority, but they did ask it to try to understand their position and not to demand that they sacrifice their interests because the minority was powerful.

63. Mr. RIPHAGEN (Netherlands) said that informal consultations might help to solve the problem of article 49 in a manner acceptable to the whole Committee. The Netherlands delegation therefore proposed that article 49 and the amendments thereto be not put to the vote at that stage, but that informal consultations be held between representatives of the various groups with a view to reaching agreement on a resolution to accompany article 49, which would facilitate its adoption; the results of the consultations would be reported to the Committee not later than Monday evening, 6 May.

It was so agreed.[5]

The meeting rose at 6 p.m.

[5] For the resumption of the discussion on article 49, see 57th meeting.

FIFTY-SECOND MEETING

Saturday, 4 May 1968, at 10.30 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 50 (Treaties conflicting with a peremptory norm of general international law *(jus cogens)*)

1. The CHAIRMAN invited the Committee to con-