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which were of a peremptory character that it had undertaken the drafting of article 50.

78. The International Law Commission had always been faced with two problems: to define *jus cogens* and, if need be, to expand the article by enumerating the various cases of conflict with a rule of *jus cogens*. But, as it had explained in its commentary, it had not been able to go beyond the general formulation of the notion of *jus cogens* as an element of the law of treaties.

79. Some speakers had implied that it was much as though there was a provision in criminal law laying down penalties, but not the cases to which they were to apply. That comparison did not truly reflect the position, for in the " common law " systems, the notion of public policy and of illegality in the law of contract had been developed mainly from decisions of the courts; it was only in comparatively recent times that judges, increasingly aware of the relationships between them and the legislature in that sphere, had come to consider that the courts should not extend the categories of illegality any further by judicial decision. But those considerations did not apply in the same way to international law in the present state of its development and of the organization of the international community, and when the Commission had decided to set out the rule of *jus cogens* in article 50, its decision had been largely justified.

80. He had been glad to note that the majority of delegations had not contested the principle of the article, but only the adequacy of its formulation, or the possibility of giving it adequate expression.

81. He wished to emphasize that the text of article 50, if interpreted in good faith and in accordance with the natural meaning of the words, already contained implicitly many of the elements found in the various amendments. A general rule of international law necessarily implied general recognition by the international community. He recognized, however, that the wording could and should be improved in order to make explicit what at present was only implicit in the text: namely, the need for general recognition of the norm as a norm of *jus cogens*. The amendment submitted by Greece, Finland and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2), for example, made the International Law Commission's text clearer on that point and deserved consideration.

82. The representative of Tanzania had expressed the view that the final words of article 50, " and which can be modified only by a subsequent norm of general international law having the same character ", weakened the article as a whole. He himself was of the opposite opinion. That provision strengthened the definition by specifying that the norm in question was of so peremptory a character that it could only be modified by another norm of the same character. *Jus cogens* could evolve; for example, the recent international definition of the crime of piracy given in the Convention on the High Seas [5] had modified the concept of piracy as expressed in the internal law of certain countries. Similarly, in view of the development of international organizations and the increasing delegation of powers to them, the notion of the sovereign equality of States was liable to change. The provision should not, therefore, be regarded as weakening the general principle stated in article 50 but as reinforcing the definition.

83. He shared the doubts expressed about the United States amendment (A/CONF.39/C.1/L.302). It was for the community of States as such to recognize the peremptory character of a norm. Moreover, the amendment might give rise to technical difficulties, because international law was often more advanced in certain spheres than national legal systems, for instance with regard to the coercion of a State and the rules regarding the use of force, and in many countries the constitution still laid down that in the event of a conflict between internal law and international law, internal law prevailed. Consequently, although he appreciated the United States' desire to place more emphasis on the fact that a peremptory norm must be recognized by the international community as a whole, he himself thought that the amendment approached the question from the wrong angle.

84. The CHAIRMAN announced that Finland had withdrawn its amendment (A/CONF.39/C.1/L.293) but reserved its position on article 41, relating to the separability of treaty provisions.

The meeting rose at 6 p.m.

[5] United Nations, *Treaty Series*, vol. 450, p. 11.

FIFTY-SEVENTH MEETING

Tuesday, 7 May 1968, at 8.40 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) *(resumed from the 51st meeting)* [1]

1. The CHAIRMAN invited the Committee to resume its discussion of article 49 of the International Law Commission's draft and called upon the Netherlands representative to introduce the draft declaration proposed by his delegation (A/CONF.39/C.1/L.323), which read as follows:

> " DRAFT DECLARATION ON THE PROHIBITION OF THE THREAT OR USE OF ECONOMIC OR POLITICAL COERCION IN CONCLUDING A TREATY
>
> " *The United Nations Conference on the Law of Treaties*
>
> " *Upholding* the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith;
>
> " *Reaffirming* the principle of sovereign equality of States;
>
> " *Convinced* that States must have complete freedom in performing any act relating to the conclusion of a treaty;
>
> " *Mindful* of the fact that in the past instances have occurred where States have been forced to conclude

[1] For the list of the amendments submitted to article 49, see 48th meeting, footnote 2.

treaties under pressures in various forms exercised by other States;

" *Deprecating* the same;

" *Expressing its concern* at the exercise of such pressure and anxious to ensure that no such pressures in any form are exercised by any State whatever in the matter of conclusion of treaties;

" 1. *Solemnly condemns* the threat or use of pressure in any form, military, political, or economic, by any State, in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of sovereign equality of States and freedom of consent;

"2. *Decides* that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties. "

2. Mr. RIPHAGEN (Netherlands) recalled that at the 51st meeting [2] he had moved that the various groups should hold informal consultations with a view to reaching agreement on the text of a resolution, the adoption of which by the Committee would make it possible to arrive at a generally acceptable solution in respect of article 49.

3. The text of the draft declaration was the outcome of those informal consultations. Although it was submitted in the name of the Netherlands, it was the result of the joint efforts of the representatives of the various groups of countries. Since no pride of authorship was involved on his part, he felt no embarrassment about recommending its adoption by the Committee of the Whole.

4. The CHAIRMAN said that he would take it that, in the absence of any objection, the Committee of the Whole approved the draft declaration.

It was so agreed.

5. The CHAIRMAN said that, as the sponsors of the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1) did not wish to press their amendment to a vote, he would put the Chinese amendment (A/CONF.39/C.1/L.301) to the vote.

6. Mr. ALCIVAR-CASTILLO (Ecuador) requested that the Chinese amendment be put to the vote paragraph by paragraph.

Paragraph 1 of the Chinese amendment was rejected by 36 votes to 8, with 28 abstentions.

Paragraph 2 of the Chinese amendment was rejected by 44 votes to 2, with 29 abstentions.

7. The CHAIRMAN put to the vote the amendment by Japan and the Republic of Viet-Nam.

The amendment by Japan and the Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1) was rejected by 55 votes to 2, with 27 abstentions.

8. The CHAIRMAN put to the vote the amendment by Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.289 and Add.1).

At the request of the representative of Cyprus, the vote was taken by roll-call.

The Netherlands, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Nigeria, Poland, Romania, Sierra Leone, Singapore, South Africa, Spain, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia, Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Finland, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iraq, Israel, Kenya, Kuwait, Malaysia, Mali, Mexico, Mongolia, Morocco.

Against: New Zealand, Peru, Portugal, Republic of Korea, Republic of Viet-Nam, United Kingdom of Great Britain and Northern Ireland, Australia, Chile, China, Japan.

Abstaining: Netherlands, Norway, Pakistan, Philippines, San Marino, Saudi Arabia, Senegal, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, United States of America, Argentina, Austria, Belgium, Brazil, Canada, Central African Republic, Dahomey, Denmark, Federal Republic of Germany, France, Gabon, Holy See, Iran, Italy, Ivory Coast, Jamaica, Lebanon, Liberia, Liechtenstein, Monaco.

The amendment (A/CONF.39/C.1/L.289 and Add.1) was adopted by 49 votes to 10, with 33 abstentions.

9. Mr. DE BRESSON (France), explaining his delegation's vote, said that in abstaining from voting, his delegation had not intended to reserve its Government's position on a question which was perhaps of more particular concern to the Czechoslovak delegation. In fact, the French position had long been known.

10. The reason why his delegation had abstained from voting was that it had not had the time to assess fully the possible effects of that amendment on the territorial status of many States.

11. Mr. BADEN-SEMPER (Trinidad and Tobago) said that his delegation had abstained from voting on the amendment because it was in favour of inserting the expression " international law ", but against the reference to the Charter of the United Nations. The expression " international law " included the principles and rules of the United Nations Charter.

12. Mr. NACHABE (Syria) said that his delegation had voted in favour of the amendment, subject to the reservation it had already made during the discussion on article 49, namely that the word " force " in that article should be understood in its widest meaning as set forth in the nineteen-State amendment (A/CONF.39/C.1/L.67/Rev.1/Corr.1).

13. Mr. YAPOBI (Ivory Coast) said that the reason why his delegation had abstained from voting was not because it was opposed to the amendment, but because the head of his country's delegation had been unable to be present during the whole of the discussion and could not therefore come to a decision.

14. The CHAIRMAN put to the vote the Peruvian amendment (A/CONF.39/C.1/L.230).

The Peruvian amendment was rejected by 36 votes to 11, with 40 abstentions.

[2] Para. 63.

15. Mr. GON (Central African Republic) explained that his delegation had abstained in the votes because it preferred the present wording of article 49, in which it interpreted the word " force " in its widest meaning.

16. The CHAIRMAN said that the Australian amendment (A/CONF.39/C.1/L.296) related to a question of form and should therefore be referred to the Drafting Committee.

17. Mr. BISHOTA (United Republic of Tanzania) pointed out that there was a big difference between the words " invalid " and " void " and that the amendment should not be referred to the Drafting Committee.

18. Mr. TAYLHARDAT (Venezuela) said that it was difficult for his delegation and other Spanish-speaking delegations to express an opinion on the amendment, which referred solely to the English text. The words referred to in the Australian amendment appeared in English in the Spanish text.

19. Mr. KHLESTOV (Union of Soviet Socialist Republics) said he was not sure that the Australian amendment did not relate rather to a question of substance. Accordingly, he proposed that the Chairman should put the amendment to the vote.

20. Mr. ALCIVAR-CASTILLO (Ecuador) thought that in Spanish the word " void " meant " *nulo* " and that the word " invalid " was translated by " *inválido* ". If there was any difference, as all the texts were equally authentic, it would be preferable to harmonize them in the different languages. For that reason, he supported the proposal by the representatives of the United Republic of Tanzania and the USSR.

21. Mr. DE CASTRO (Spain) said he also supported the proposal by the United Republic of Tanzania and the USSR.

22. Mr. VEROSTA (Austria) said he agreed with the Chairman's decision to refer the Australian amendment to the Drafting Committee. If the latter could not settle the question, it could submit it to the Committee of the Whole. He was not in a position to give an opinion on the text of the amendment in the different languages and would therefore abstain if the amendment was put to the vote.

23. Mr. HARRY (Australia) said that when his delegation's amendment was submitted he had clearly indicated that it concerned a question of form and that its purpose was to make the wording of article 49 clearer. The point of the amendment had been adequately discussed and he would agree to withdraw it. He was confident that the Drafting Committee would give it due consideration.

24. The CHAIRMAN said that article 49, as amended, would be referred to the Drafting Committee. [3]

Article 50 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*)) *(resumed from the previous meeting)*

25. The CHAIRMAN invited the Committee to resume its discussion of article 50. [4]

[3] For the resumption of the discussion on article 49, see 78th meeting.

[4] For the list of the amendments submitted to article 50, see 52nd meeting, footnote 1. The amendments by India (A/CONF.39/C.1/L.254), Mexico (A/CONF.39/C.1/L.266) and Finland (A/CONF.39/C.1/L.293) had been withdrawn.

26. Mr. KEARNEY (United States of America) said certain delegations had expressed concern lest the reference to national legal systems might introduce the question of internal law into consideration of the content of *jus cogens*. Further, some representatives had considered that the reference to national and regional legal systems was too restrictive and might give rise to difficulties of interpretation. The purpose of the United States amendment was not to subject *jus cogens* to national law, but merely to clarify an aspect of *jus cogens* which was implicit both in its very nature and in the definition adopted by the International Law Commission. He wished to make it clear that a principle of general international law could become *jus cogens* only upon general acceptance as such throughout all the regions of the world.

27. The discussion of the United States amendment (A/CONF.39/C.1/L.302) had indicated that there was substantial support for the principle embodied in it, but concern for the manner in which that principle was expressed. Similar doubts had been expressed with regard to the amendment by Greece, Finland and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2), which sought to clarify the same principle, but in language somewhat different from that used in the United States amendment.

28. He was much more concerned that the principle of *jus cogens* should be properly expressed than that the United States amendment should be adopted. The suggestion by the Australian delegation that the text of article 50 should refer to recognition by all the principal legal systems of the world deserved careful study.

29. He proposed that the vote on article 50 be deferred and that the article and the amendments thereto be referred to the Drafting Committee with a request to produce a revised text of article 50 capable of commanding the widest possible support.

30. Sir Francis VALLAT (United Kingdom) said he supported the United States proposal and was prepared to withdraw his own delegation's amendment (A/CONF.39/C.1/L.312) in order to assist in the move for conciliation implicit in the United States amendment (A/CONF.39/C.1/L.302). He must make it clear, however, that withdrawal of the amendment did not in the least mean that his delegation found the wording of article 50 satisfactory.

31. He must state categorically, with full recognition of the gravity of his words, that if article 50 was put to the vote at that time, the United Kingdom delegation would not vote for it and would very probably have to vote against the convention as a whole if that article was adopted.

32. Article 50 was a Pandora's box and might let loose a great many unforeseen difficulties when the convention came into force. The United Kingdom delegation believed that the text of the article must be changed and that a particular and objective criterion must be found to determine the nature and scope of the rule stated in it.

33. Mr. DADZIE (Ghana) said article 50 had been subjected to a detailed examination. The positions of most delegations were known and those in favour and those against deferring the vote on article 50 had been able to

explain their reasons. The International Law Commission's text was clear so far as the meaning of the notion embodied in it was concerned. He would therefore ask that article 50 and the amendments thereto be put to the vote immediately in accordance with the rules of procedure.

34. Mr. JAGOTA (India) said he had listened attentively to the statements by the representatives of the United States and the United Kingdom. They had originally appeared to accept the principle of *jus cogens* and to be seeking only to make drafting amendments to the text of article 50, but they now seemed to wish to turn the Drafting Committee into a negotiating body to prepare a text which suited them better. They should therefore have asked for the establishment of a working party instead of tackling the substance of the article indirectly.

35. The question of *jus cogens* had been debated at length by jurists and governments as well as by the International Law Commission and also in the course of the present debate. All positions were known. The best course would therefore be to follow the normal procedure and vote on substantive amendments which had not been withdrawn and to refer the amendment by Romania and the USSR (A/CONF.39/C.1/L.258 and Corr.1), which was a drafting amendment, to the Drafting Committee. Accordingly, he was fully in favour of the Ghanaian procedural motion.

36. Mr. DE BRESSON (France) said he was perfectly well aware that a number of delegations wished to reach a decision on article 50 speedily as they rightly considered it important, but he would ask those delegations to acknowledge that that provision was no less important to other members of the Conference.

37. It was in the nature of a vote to interrupt the discussion and crystallize positions prematurely. That was not too serious in a case of legal technique, but it might be much more serious with clauses which, like those of article 50, had much more far-reaching implications.

38. His delegation had already stated on many occasions that, in its view, it was unthinkable that the codification of the law of treaties should not be based on the general agreement of the international community. Such agreement had not yet been reached on article 50, but the discussion had shown that there were reasonable chances of its being reached, provided that the subject matter was studied thoroughly. The inescapable conclusion was that the discussion should remain open.

39. It would be preferable, therefore, to request that article 50 should be referred immediately to the Drafting Committee, provided it was made clear that that body would, in that particular case, be given special terms of reference to enable it to discuss not merely the drafting amendments, but also proposals affecting the substance.

40. That suggestion did not in any way signify a dilatory attitude on the part of the French delegation. It was, on the contrary, clear evidence of its anxiety to find a method of work that would allow of a proper perspective and the requisite attention to enable solutions to be found calculated to lead to the success of the Conference's work.

41. Mr. MENDOZA (Philippines) said that, in view of the United States representative's explanation of his delegation's amendment, his own delegation supported the proposal to refer the amendments by Greece, Finland and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2), the United States of America (A/CONF.39/C.1/L.302) and Romania and the USSR (A/CONF.39/C.1/L.258 and Corr.1) to the Drafting Committee for consideration. The Committee must, however, take a decision on the principle in article 50 so that the Drafting Committee would be aware that the Committee of the Whole accepted the *jus cogens* rule.

42. The CHAIRMAN pointed out that if the Committee adopted the article, it would be unnecessary to refer the amendments to the Drafting Committee.

43. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that after the many statements the Committee had heard on article 50, the positions were perfectly clear. The USSR delegation did not accept the United States amendment (A/CONF.39/C.1/L.302) and accordingly it was against referring that amendment, which was a substantive amendment, to the Drafting Committee. His delegation requested that the amendment be put to the vote. The method proposed by the United States representative was not consistent with the Committee's established practice.

44. The CHAIRMAN pointed out that the Committee had before it two procedural motions, one by the United States, the other by Ghana. Under rule 42 of the rules of procedure, the Committee must take a decision on the motion submitted first, that was to say, on the United States procedural motion.

45. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) objected that rule 42 dealt only with proposals relating to the item under discussion and its purpose was only to determine which amendment was to be voted on first. In any event, the Committee must take a decision on substantive amendments.

46. Mr. TABIBI (Afghanistan) said the Committee must first take a decision on the United States procedural motion to postpone the vote on the article in order to enable consultations to be held. As to referring the amendments to the Drafting Committee, rule 48 of the rules of procedure must be followed.

47. Mr. BISHOTA (United Republic of Tanzania) said there were two parts to the United States procedural motion and they could be voted on separately. The first part was to defer the vote on article 50 and the amendments thereto, the second to refer the article and the amendments to the Drafting Committee.

48. Mr. MYSLIL (Czechoslovakia) requested, under rule 40, that the United States procedural motion be divided into two; the Committee should first take a decision on referring the United States amendment (A/CONF.39/C.1/L.302) to the Drafting Committee and then on referring the other amendments to the Drafting Committee.

49. Mr. MARESCA (Italy) moved the adjournment of the debate for thirty minutes under rule 25 of the rules of procedure.

50. Mr. DADZIE (Ghana) and Mr. KHLESTOV (Union of Soviet Socialist Republics) opposed the adjournment.

51. Mr. VARGAS (Chile) and Mr. AUGE (Gabon) said they were in favour of the adjournment.

The motion for the ajournment was rejected by 49 votes to 24, with 16 abstentions.

52. Sir Francis VALLAT (United Kingdom) moved that the United States procedural motion be put to the vote.

53. Mr. DADZIE (Ghana) supported that motion. If one of the motions was adopted, the other would be automatically rejected.

54. Mr. MWENDWA (Kenya) said that in his opinion, under rule 48, an amendment could not be referred to the Drafting Committee for advice unless the Committee took a decision to do so.

55. Mr. KHLESTOV (Union of Soviet Socialist Republics) moved that the Czechoslovak motion for division be put to the vote.

56. Sir Francis VALLAT (United Kingdom) said he opposed the request for division.

The Czechoslovak motion for division was carried by 45 votes to 28, with 15 abstentions.

57. The CHAIRMAN suggested that a vote should be taken on referring the United States amendment (A/CONF.39/C.1/L.302) to the Drafting Committee.

58. Mr. KEARNEY (United States of America) objected that the procedural motion fell into two parts, namely, to defer the vote on the amendments and to refer the amendments to the Drafting Committee. That was the only form of division compatible with the procedural motion.

59. Mr. HARRY (Australia) suggested that if the first part of the motion, relating to the deferment of the vote, were put first, it would simultaneously resolve the question raised by the representative of Ghana.

60. Mr. KHLESTOV (Union of Soviet Socialist Republics), supported by Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic), Mr. MYSLIL (Czechoslovakia), Mr. KELLOU (Algeria) and Mr. MOUDILENO (Congo, Brazzaville), said that, as the Czechoslovak motion for division had been adopted, the Committee must adhere to that decision and vote separately on referring the United States amendment to the Drafting Committee and on referring the other amendments to the Drafting Committee.

61. Mr. DADZIE (Ghana) requested priority for his procedural motion.

62. Mr. KEARNEY (United States of America) said that, in his opinion, the discussion of his procedural motion could not be interrupted, since a vote had already been taken.

63. The CHAIRMAN observed that the interpretations of the motion for division which had been adopted differed.

64. Mr. KEARNEY (United States of America) said that the only possible method of division was that which he had stated and asked that the Committee take a decision on that point.

65. Mr. MEGUID (United Arab Republic) suggested that it would be better to close the discussion.

66. Mr. BADEN-SEMPER (Trinidad and Tobago) said he was against the closure of the discussion.

67. Mr. ROBERTSON (Canada) said that he too was against the closure of the discussion. Further, the division moved by the Czechoslovak delegation related only to the second part of the United States procedural motion and did not affect the first part, namely the adjournment of the vote.

68. Mr. TABIBI (Afghanistan) said that he was afraid that the procedural discussion would never end. He suggested that the Czechoslovak representative should not press his motion for division. The Committee would then be able to take a decision on the Ghanaian delegation's motion for priority and, if it was adopted, the decision already taken on the motion for division would fall.

69. Mr. KEARNEY (United States of America) said the first part of his procedural motion was merely the Ghanaian motion put the other way round. Its rejection would settle the matter.

70. Mr. JAGOTA (India) summed up the procedural discussion and observed that there were now two procedural motions before the Committee, namely the motion for priority by the representative of Ghana and the United States motion interpreting the vote on the motion for division. As the Ghanaian motion had been put forward first, the Committee should vote on it first.

71. Mr. JIMENEZ DE ARECHAGA (Uruguay) said that, in his view, the Committee had no choice in the matter. The United States representative had submitted a procedural motion to refer three amendments to the Drafting Committee. The Chairman had decided to put that motion to the vote. The Czechoslovak representative had then demanded that the motion should be divided into two parts, one to refer the United States amendment to the Drafting Committee and the other to refer the other amendments to the Drafting Committee. The United Kingdom representative had opposed the motion for division, and the Committee had then voted and had approved the division requested by the Czechoslovak representative. In accordance with that decision, the motion to refer the United States amendment to the Drafting Committee should now be put to the vote.

72. Mr. KELLOU (Algeria) said that he too thought that the Committee must stand by the Czechoslovak motion for division, unless it was withdrawn.

73. Mr. MYSLIL (Czechoslovakia) said he could hardly withdraw a motion which had been adopted by the Committee. The Committee should therefore now vote on the United States procedural motion as divided by the motion for division. A representative could, however, request priority for another motion, and the Committee was at liberty to grant that priority. If the Ghanaian representative requested priority for his procedural motion, the Czechoslovak delegation would support that request.

74. If the motion for division was followed, the vote should be taken on the proposal to refer the United States amendment to the Drafting Committee. The Ghanaian motion requested an immediate vote on the United States amendment. The two motions were not

therefore really far apart and the position was less confused than some seemed to think.

75. The CHAIRMAN said that the United States representative and the Ghanaian representative agreed that their respective motions with regard to the vote on article 50 and the two amendments thereto were two possible replies to the same question. Accordingly, the Committee could vote on the first part of the United States procedural amendment, namely that the voting on article 50 and the amendments thereto should be deferred.

76. He put the first part of the United States procedural motion to the vote.

At the request of the United States representative, the vote was taken by roll-call.

Morocco, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Netherlands, New Zealand, Nigeria, Norway, Peru, Portugal, Republic of Korea, Republic of Viet-Nam, Senegal, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Costa Rica, Denmark, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Holy See, Honduras, Israel, Italy, Japan, Lebanon, Liberia, Liechtenstein, Malaysia, Mexico, Monaco.

Against: Morocco, Pakistan, Philippines, Poland, Romania, Sierra Leone, Spain, Syria, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia, Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Ecuador, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Mali, Mongolia.

Abstaining: Saudi Arabia, Singapore, Thailand, Tunisia, Uruguay, Central African Republic, Iran.

The first part of the United States procedural motion was rejected, 42 votes being cast in favour and 42 against, with 7 abstentions.

77. The CHAIRMAN invited the Committee to vote on the United States amendment (A/CONF.39/C.1/L.302).

78. Mr. VARGAS (Chile) pointed out that there were two parts to the amendment. First, it added the words " at the time of its conclusion " to the text. Secondly, it added the phrase " which is recognized in common by the national and regional legal systems of the world ". He requested a separate vote on the two parts of the amendment.

79. The CHAIRMAN put the first part of the United States amendment, namely the addition of the words " at the time of its conclusion ", to the vote.

The first part of the United States amendment (A/CONF.39/C.1/L.302) was adopted by 43 votes to 27, with 12 abstentions.

80. The CHAIRMAN put the second part of the United States amendment, namely the expression " which is recognized in common by the national and regional legal systems of the world ", to the vote.

The second part of the United States amendment was rejected by 57 votes to 24, with 7 abstentions.

81. The CHAIRMAN said he thought that the substitution of the word " rule " for " norm ", also proposed in the United States amendment, might be regarded as a drafting amendment and left to the Drafting Committee.

It was so agreed.

82. Mr. JIMENEZ DE ARECHAGA (Uruguay) proposed that the amendment submitted by Romania and the USSR (A/CONF.39/C.1/L.258 and Corr.1) and the amendment submitted by Greece, Finland and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2) be referred to the Drafting Committee.

83. Mr. MIRAS (Turkey) requested that those amendments and article 50 be put to the vote and that the vote on article 50 be taken by roll-call.

84. Mr. JIMENEZ DE ARECHAGA (Uruguay) asked that the Committee should first vote on his motion to refer the two amendments to the Drafting Committee.

That motion was carried by 66 votes to 2, with 8 abstentions.

85. The CHAIRMAN said the amendment by Romania and the USSR (A/CONF.39/C.1/L.258/Corr.1) and the amendment by Greece, Finland and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2) would be referred to the Drafting Committee, together with article 50.

86. Mr. GON (Central African Republic), explaining his delegation's votes, said that it considered *jus cogens* an important and necessary element of international law because of the moral element it would bring to it. It was in favour of any improvement of the text and so had voted for the amendments that had been adopted. On the other hand, it had voted against the second part of the United States amendment because it believed that the notion of *jus cogens* should not be subject to national legal systems and even less to regional systems.

87. Mr. DADZIE (Ghana) asked whether the decisions the Committee had taken meant that article 50 had been approved. If not, the Committee must also vote on article 50.

88. Mr. JIMENEZ DE ARECHAGA (Uruguay), speaking on a point of order and referring to the decision by which the Committee had just referred the amendments to the Drafting Committee, said that under the rules of procedure, the vote could not be taken on article 50 until the Drafting Committee had submitted its report.

89. Mr. VARGAS (Chile) said he supported the Uruguayan representative.

90. Mr. YAPOBI (Ivory Coast) said the Committee had approved article 50 by implication in referring the amendments which it considered to be drafting amendments to the Drafting Committee. Otherwise, the decision on the amendments would be meaningless.

91. Mr. JAGOTA (India), supported by Mr. BISHOTA (United Republic of Tanzania), Mr. MWENDWA (Kenya), Mr. MOUDILENO (Congo-Brazzaville),

Mr. JACOVIDES (Cyprus), and Mr. MAIGA (Mali), said he was in favour of the Ghanaian proposal, the sole purpose of which was to indicate clearly that the Committee had approved the principle embodied in article 50 and all the Drafting Committee had to do was to improve the drafting.

92. Mr. TABIBI (Afghanistan), supported by Mr. ARIFF (Malaysia), said the Committee would remember that the practice in the case of the other forty-nine articles had been that after the substantive amendments had been adopted or rejected, the Chairman had declared that the article under consideration had been approved and had been referred to the Drafting Committee together with the drafting amendments. If it was now held that the Committee must take an express decision on article 50, that might reopen the decisions taken on the other forty-nine articles. The reference of the article with the amendments to the Drafting Committee necessarily meant that the substance of the article had been approved.

93. Mr. RUEGGER (Switzerland) said he supported the Uruguayan representative's view. All that the Committee had decided had been to refer a number of amendments and the text of article 50 to the Drafting Committee. It was the first time that any delegation had pressed for a vote on the principle contained in an article under consideration. The amendment by Greece, Finland and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2), which had been referred to the Drafting Committee, appreciably modified the substance of article 50. If any delegation pressed for a vote on the present text of article 50, the Swiss delegation would have to vote against it, as it knew neither the present nor the future content of the article.

94. Sir Francis VALLAT (United Kingdom) asked what a vote on the principle of article 50 would mean. A number of delegations had said they were in favour of the principle of *jus cogens* but against the text of article 50, and if that article was put to the vote immediately, the United Kingdom delegation would have to vote against it. The Committee would do better to await the results of the Drafting Committee's work before taking a final decision.

95. Mr. JIMENEZ DE ARECHAGA (Uruguay) said he considered that the reference of the two remaining amendments to the Drafting Committee meant that, in the Committee's view, those amendments did not modify the substance of the text. The Drafting Committee's work would perhaps make it possible to reach broader agreement on the substance. To vote immediately on article 50 would be to deprive the Drafting Committee of any possibility of modifying it. He asked the Chairman to give a ruling on the subject under rule 22 of the rules of procedure.

96. The CHAIRMAN said that article 50 was being referred to the Drafting Committee on the clear understanding that the principle of *jus cogens* had been adopted and that the Drafting Committee was now being called upon, in view of the suggested changes, to have another look at the text and see whether it could be made clearer. That was the meaning of the decision and there was no question of debating the principle of *jus cogens* again when the text was reported back from the Drafting Committee.

97. Mr. JIMENEZ DE ARECHAGA (Uruguay), Mr. DADZIE (Ghana), and Mr. TABIBI (Afghanistan) said they accepted the Chairman's ruling.[5]

The meeting rose at 11.40 p.m.

[5] For the resumption of the discussion on article 50, see 80th meeting.

FIFTY-EIGHTH MEETING

Wednesday, 8 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 51 (Termination of or withdrawal from a treaty by consent of the parties)

1. The CHAIRMAN invited the Committee to consider article 51 of the International Law Commission's draft. [1]

2. Mr. PHAN-VAN-TRINH (Republic of Viet-Nam), introducing his delegation's amendment (A/CONF.39/C.1/L.222/Rev.1), said that the proposal was one of pure drafting. The International Law Commission's text was not entirely satisfactory, since its introductory sentence grouped together the two categories of cases in which a treaty might be terminated in conformity with a provision of the treaty or by consent of the parties. The underlying idea of the article would be better expressed by stating in paragraph 1 the case of the termination of a treaty through the application of its own provisions or by consent of all the parties, and in paragraph 2, that of the withdrawal of the parties from a treaty. Furthermore, the title of the article might lead to the assumption that the consent of the parties sufficed to enable them to terminate a treaty or to withdraw from it: it did not convey the idea that a treaty might be terminated or a party might withdraw from it in accordance with a provision of the treaty. His delegation therefore proposed that the title be amended accordingly.

3. Mr. ALVARADO (Peru), introducing his delegation's amendment (A/CONF.39/C.1/L.231), said that, as was indicated in the commentary to the article, there existed a great variety of treaty clauses on termination and withdrawal. In view of that fact, the language used in sub-paragraph (*a*) of article 51 was not appropriate. Sub-paragraph (*a*) referred to " a provision of the treaty ", in the singular. In practice, a treaty could contain two or more clauses relating to its termination: one clause would make provision for the right of denunciation or withdrawal, while one or more other clauses would specify in detail the conditions under which that right could be exercised. His delegation therefore proposed to replace sub-paragraph (*a*) by the wording: " In the manner and

[1] The following amendments had been submitted: Republic of Viet-Nam, A/CONF.39/C.1/L.222/Rev.1; Peru, A/CONF.39/C.1/L.231; Netherlands, A/CONF.39/C.1/L.313; Greece, A/CONF.39/C.1/L.314 and Rev.1.