United Nations Conference on the Law of Treaties

Vienna, Austria
First session
26 March – 24 May 1968

Document:-
A/CONF.39/C.1/SR.6

6th meeting of the Committee of the Whole

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

107. The Chilean amendment did not seem necessary, since legal effects would follow under the terms of the other articles.

108. Mr. ALCIVAR-CASTILLO (Ecuador) said that the purpose of his amendment (A/CONF.39/C.1/L.25) was to reintroduce into the draft some reference to the requirements for the essential validity of a treaty. Good faith was one of those requirements and the reference thereto in article 23 did not suffice, since that article only stipulated the need to perform a treaty in good faith; good faith was equally necessary with regard to the actual conclusion of the treaty and in relation to the intention of the parties when entering into the agreement.

109. Provisions on the essential validity of treaties had been included in the Special Rapporteur's draft, following the example of his predecessor, but the International Law Commission had eliminated them, with the sole exception of draft article 5 on the capacity of States to conclude treaties. His amendment (A/CONF.39/C.1/L.25) was designed to fill that gap by specifying, even if only in the article on the use of terms, that a treaty, to be a valid treaty, must be concluded in good faith, deal with a licit object, be freely consented to, and be based on justice and equity. He had not of course included capacity, because capacity was already mentioned in article 5.

110. The requirement of a licit object was not covered by article 50, since the violation of a rule of *jus cogens* was clearly not the only case of an illicit object. With regard to free consent, a treaty required the concurrence of the parties and not merely a meeting of their wills.

111. It was perhaps a platitude to say that a treaty must be based on justice and equity, but it was a platitude well worth stressing in view of the large number of unequal treaties. The same charge of uttering platitudes had been levelled at those who, at the San Francisco Conference of 1945, had succeeded in introducing into the Charter the words " justice " and " law ", which had been significantly omitted from the Dumbarton Oaks draft of 1944.

112. Mr. BEVANS (United States of America) explained that his proposal to omit " acceptance " and " approval " from paragraph 1 (*b*) was based on the fact that those terms were not sanctioned by traditional international usage; internal procedures were totally irrelevant to that proposal. At the same time, there was no intention to exclude acceptance and approval as possible means of expressing the consent of a State to be bound by a treaty; his delegation would propose a new article 9 to make clear that signature, ratification and accession were not the only means of expressing such consent. In that connexion, he would draw the Drafting Committee's attention to the second paragraph of the rationale for the United States amendment (A/CONF.39/C.1/L.16).

113. The amendment by Ecuador (A/CONF.39/C.1/L.25) struck him as an attempt to include in paragraph 1 (*a*) of article 2 all the provisions of Part V of the draft.

114. He had some doubts regarding the proposal (A/CONF.39/C.1/L.1 and Add.1) to replace in paragraph 1 (*c*) the word " document " by " instrument ", since an instrument usually had a seal, and it was his experience that many full powers did not bear a seal.

115. His delegation had given thought to the suggestion to delete the word "international" before "agreement" in paragraph 1 (*a*) (A/CONF.39/C.1/L.28) but, on balance, had reached the conclusion that it should be retained.

116. He did not favour the proposals which had been made to treat interpretative statements as reservations. If the wording of paragraph 1 (*d*) were to be expanded to include interpretation, it would be necessary to introduce other terms as well, such as " understanding ". He therefore preferred leaving the text of the paragraph unchanged.

117. The Mexican and Malaysian amendment (A/CONF.39/C.1/L.33 and Add.1) contained some useful elements and should be referred to the Drafting Committee.

118. Lastly, the proposed definition of " general multilateral treaty " (A/CONF.39/C.1/L.19/Rev.1) lacked the necessary precision for inclusion in article 2. The concept of a treaty which dealt with " matters of general interest for the international community of States " was not exact enough: it could be held to cover such instruments as a treaty of alliance between three powerful States, or an agreement on currency problems between three or four States, treaties which were undoubtedly of interest to other States.

119. Mr. de BRESSON (France) said that his amendment (A/CONF.39/C.1/L.24, para. 3) relating to restricted multilateral treaties was not of the same order as the proposal (A/CONF.39/C.1/L.19/Rev.1) to introduce the concept of general multilateral treaty. The French amendment was intended to define the type of treaty to which the provisions of article 17, paragraph 2, related. It did not introduce any new idea into the draft and, of course, did not raise the same difficulties as the attempt to introduce the concept of a " general multilateral treaty ". Moreover, the introduction of that concept would raise problems of substance which it would be unwise to underestimate.

120. He supported the Rapporteur's recommendation that article 2, with all the amendments thereto, should be referred to the Drafting Committee; if that Committee found that any amendment involved a question of substance, it would defer its decision on it until that question had been settled in the Committee of the Whole.

The meeting rose at 6.45 p.m.

SIXTH MEETING

Monday, 1 April 1968, at 10.50 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 2 (Use of terms) *(continued)* [1]

1. Mr. JAMSRAN (Mongolia) said that he favoured the amendment in document A/CONF.39/C.1/L.19/Rev.1, which would add a definition of a general multilateral

[1] For a list of the amendments to article 2, see 4th meeting, footnote 1.

treaty to article 2, paragraph 1. He did so because of the increasing importance of that class of treaty, to which several references had been made in previous drafts.

2. The Hungarian amendment (A/CONF.39/C.1/L.23) proposed purely drafting changes which clarified and improved the wording of paragraph 1 (*d*). He therefore supported that amendment as well.

3. He also approved the first part of the Chilean amendment (A/CONF.39/C.1/L.22), to add the word " multilateral " before the word " treaty " in sub-paragraph (*d*). He had doubts, however, about the proposed new definition of the word " treaty ". Any treaty concluded by States, irrespective of its name, had legal effects, as was confirmed by the phrase " governed by international law ". The definition proposed in the Chilean amendment suggested that there could exist between States some treaties which had legal effects and others which had not. He could not therefore accept that part of the Chilean amendment, or the Mexican and Malaysian amendment (A/CONF.39/C.1/L.33 and Add.1) which expressed the same idea in different words.

4. Mr. KEITA (Guinea) said it seemed to him essential, in order to reach a decision on the amendments, to analyse the intentions of the authors of the draft and see whether the proposed amendments fulfilled the purpose of article 2.

5. That purpose clearly appeared from the text of the article and the commentary thereto: it was to enumerate the terms used in the draft convention and to specify the meaning with which they were used.

6. The amendments which provided a definition of restricted multilateral treaty (A/CONF.39/C.1/L.24) and general multilateral treaty (A/CONF.39/C.1/L.19/Rev.1) were very much in keeping with the current debate, since the two cases in question were covered by paragraphs 2 and 3 respectively of article 17. Those amendments reflected the distinction which was made in the general theory of contract between contracts *intuitu personae* and contracts of acceptance *(contrats d'adhésion)*. The delegation of Guinea therefore supported those two amendments.

7. The amendment submitted by Ecuador (A/CONF.39/C.1/L.25) met Guinea's fundamental concern that justice and good faith should prevail in relations between States, but went beyond what the authors of the draft articles were aiming at in their wording of article 2. Consideration of that amendment should therefore be deferred until a later stage in the discussion.

8. He supported the amendments in document A/CONF.39/C.1/L.1 and L.17, but he did not fully understand the significance of the phrase " or in any treaty " in the latter amendment.

9. The other amendments were drafting changes, which he was confident could be left to the Drafting Committee. It must be remembered, however, that treaties were not *belles lettres*, and some repetition was occasionally unavoidable.

10. Mr. MERON (Israel) said that the long discussion on the amendments to article 2 would serve the purpose of indicating to the Drafting Committee the opinion of the Committee of the Whole on the various proposals involved. The Committee of the Whole did not have to take a formal decision for the time being, since article 2 dealt with definitions adopted solely for the purposes of the draft convention and related to its substantive articles. Under those conditions, a vote on the amendments would be premature.

11. It would be preferable to refer the various amendments to the Drafting Committee, which would report to the Committee of the Whole after the discussion of the substantive articles. In the meantime the Committee could provisionally use the terminology proposed by the International Law Commission.

12. The delegation of Israel also thought it would be better to incorporate some on the explanations contained in article 2 in the wording of the corresponding substantive articles. In 1965, the International Law Commission had incorporated in what had become article 71 the explanation of the term " depositary " which had appeared in article 1 (*g*) of the 1962 draft. The same thing could be done with terms such as " full powers " and " reservation ", which would then be discussed *in concreto*, instead of, as in article 2, *in abstracto*.

13. He thought that as a whole, the amendments before the Committee did not improve the wording of the draft. The word " document " in sub-paragraph (*c*) was preferable to the more formal word " instrument ", because the developing practice of States was often to produce letters or telegrams as at least provisional evidence of full powers. The commentary to article 6 confirmed that practice.

14. The term " vary " used in sub-paragraph (*d*) with respect to reservation seemed to cover the idea expressed in the words " limit " and " restrict ", whose insertion in that sub-paragraph was called for by the amendments of Sweden (A/CONF.39/C.1/L.11) and of the Republic of Viet-Nam (A/CONF.39/C.1/L.29) respectively.

15. With regard to the United States amendment (A/CONF.39/C.1/L.16), he feared that the deletion from sub-paragraph (*b*) of the terms " acceptance " and " approval ", which were increasingly used in international practice, would make the draft too rigid. On the other hand, he approved of the substitution of " an " for " the " before the words " international act ".

16. Mr. RODRIGUEZ (Chile) explained the intended meaning of the expression " produces legal effects " in the Chilean amendment (A/CONF.39/C.1/L.22). The main purpose of the convention was to regulate legal relations between States. Moreover, a dividing line should be drawn between treaties intended to produce legal effects and agreements not intended to do so, even though they sometimes did. A definition of a treaty *lato sensu*, covering all agreements of whatever kind, would make the convention too wide in scope and might curtail the international dialogue which was the necessary preliminary to treaty-making. Some speakers had objected that the amendment was unnecessary because an agreement which did not produce legal effects was not a treaty. His reply to that was that if legal effects were implied in the term " treaty ", the definition should mention them. Others had maintained that the amendment would add to the text a condition for the validity of treaties. In fact, it was not a rule governing validity, which would be out of place in a definitions article, but merely a criterion for

distinguishing treaties from agreements not intended to produce legal effects.

17. Mr. NETTEL (Austria), referring to sub-paragraph (iii) of the Hungarian amendment (A/CONF.39/C.1/L.23), observed that a declaration as to interpretation did not interpret the legal effect of certain provisions of a treaty: it interpreted those provisions in order to give them a certain legal effect in their application to the State making the declaration. He therefore proposed that the last part of article 2, paragraph 1 (*d*) should be drafted to read: "... whereby it purports to exclude or to vary the legal effect of, or to interpret, certain provisions of the treaty in their application to that State ". He proposed that the matter should be referred to the Drafting Committee.

18. Mr. HAYES (Ireland) said that the effect of inserting the word " interpret ", as proposed in the Hungarian amendment (A/CONF.39/C.1/L.23), would be to include in the category of reservations declarations intended to clarify a State's position. However, as was brought out in the International Law Commission's commentary, the rules applicable to reservations should not be extended to cover such declarations. The word " limit ", in the Swedish amendment (A/CONF.39/C.1/L.11), and the word " restrict ", in the amendment of the Republic of Viet-Nam (A/CONF.39/C.1/L.29), might not have that effect; if they did not they would not in any case add anything to the word " vary ", which was already in the text. He was therefore opposed to those three amendments.

19. Sir Lalita RAJAPAKSE (Ceylon) observed that no substantive objection had been raised against the Ceylonese amendment (A/CONF.39/C.1/L.17). A reference to the use in treaties of the terms used in the draft articles would certainly be valuable. Many agreements used the term " contracting States ", for example, in a sense differing from that given to it in article 2, paragraph 1. It might perhaps be better to add the words " or in any treaty ". He would leave it to the Drafting Committee to find the best wording, but asked that the substance of his amendment should be maintained in its entirety.

20. Mr. OWUSU (Ghana) remarked that the many statements to which the amendments had given rise showed that at first sight they fell into three classes: substantive amendments, drafting amendments and mixed amendments. On further examination, however, an amendment which had seemed to be a drafting amendment might well turn out to be an amendment of substance. He therefore proposed that the Committee should defer decisions on the proposed amendments to article 2 of the draft articles before it until all the other draft articles had been fully discussed and decisions taken on them. He asked that the Committee should vote on that formal proposal after all the speakers on the Chairman's list had been given the floor.

21. Mr. BURALE (Somalia) commended the International Law Commission's work and expressed the view that the substance of article 2 required no amendment. It must be recognized, however, that the importance of international law had increased during the last few decades because the international community had understood the need to harmonize its efforts to ensure co-operation and understanding between States. General multilateral treaties were of interest to all States and participation in them should be universal. His delegation therefore supported the eight-country amendment (A/CONF.39/C.1/L.19/Rev.1) inserting a definition of " general multilateral treaty " in article 2.

22. Mr. GON (Central African Republic) said he supported the amendment by Austria and Spain (A/CONF. 39/C.1/L.1 and Add.1), which made the text of article 2, paragraph 1 (*c*) more precise. On the other hand, he was afraid the Chilean amendment (A/CONF.39/C.1/L.22) was too restrictive, for it drew a distinction between treaties which produced legal effects and those which did not, which seemed rather strange. The same comments applied to the Mexican and Malaysian amendment (A/CONF.39/C.1/L.33 and Add.1). The amendments in documents A/CONF.39/C.1/L.13, L.22 and L.23 related to reservations. In so far as they restricted the scope of reservations, his delegation supported them. It could not, however, accept the amendment in document A/CONF.39/C.1/L.19/Rev.1 at that stage. It was important that the draft should not be overloaded with unnecessary definitions; moreover, the commentary by the International Law Commission on the definition of multilateral treaties in the context of articles 2 and 12 showed the difficulties which would have to be overcome if a definition of that class of treaties was incorporated in the draft. The Commission had shown good sense in omitting that definition. The Central African delegation supported the French amendment (A/CONF.39/ C.1/L.24). The definition of a restricted multilateral treaty filled a gap, for that type of treaty was referred to in article 17. Furthermore, the amendment took account of an existing situation in international law. His delegation thought that the final decision on article 2 should not be taken until the substantive articles had been examined.

23. Mr. MAIGA (Mali) referring to the amendments submitted, said that the fundamental problem in law was to find a firm basis to justify and enforce the legal rules. A definition of the term " treaty " would be valuable only if it corresponded to a basic reality. There were two essential elements to be taken into consideration: the agreement must be freely consented to and States were legally bound by it. The amendments by Ecuador (A/CONF.39/C.1/L.25) and France (A/CONF. 39/C.1/L.24) took those elements into account. In view of the evolution of international life, the general multilateral treaty and the restricted multilateral treaty should be included in the definitions. His delegation therefore supported the amendments in documents A/CONF.39/ C.1/L.19/Rev.1 and A/CONF. 39/C.1/L.24.

24. Mr. BROCHES (Observer for the International Bank for Reconstruction and Development), speaking at the invitation of the Chairman, said he thought that the words " negotiating States " in the French amendment (A/CONF.39/C.1/L.24) might cause some difficulty. In using the term " negotiating States ", it was assumed that the text of a treaty would invariably be formulated by States, whether in direct negotiations, or at an international conference, or in a plenary organ of an international organization. In certain cases a different technique had been used, especially with respect to three multilateral treaties concluded under the auspices of the Bank: the

Articles of Agreement of the International Finance Corporation, the Articles of Agreement of the International Development Association and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Each of those treaties had been " adopted " by the Executive Directors of the Bank, who had thereupon submitted the proposed instruments to the member Governments of the Bank for signature, followed by acceptance, ratification or approval. It was not at all unusual for treaties to be adopted within an organ of an international organization, but the adoption usually took place in the plenary organ of the organization, so that it could be said that the treaty had been adopted by States. In the examples just cited that had not been so. The Executive Directors of the Bank did not constitute a plenary organ and most of the Directors had been elected by, and represented, several States. There were even cases, such as the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, in which the text of a treaty had been adopted by a body, such as the Board of Governors of the Agency, on which only a fraction of the membership of the organization was represented. In such cases it was difficulty to speak of " negotiating States ".

25. It was true that article 4 provided that the proposed convention would not fully apply to treaties adopted within an international organization. However, article 2 dealt with the use of terms and would presumably apply to any treaty within the scope of the proposed convention. In fact, a definition of the term " adoption of the text of a treaty " in article 2 might influence the meaning of the term " adopted ", as used in article 4.

26. Sir Humphrey WALDOCK (Expert Consultant) said it should be remembered that in article 2 the International Law Commission had tried to define the terms used; it had not intended to list all the necessary conditions for the validity of treaties. The only point regarding sub-paragraph (*a*) which the Commission had discussed at length was the question whether to mention the intention of establishing legal relations between States. The Commission had preferred not to mention that intention, as it believed that the words " governed by international law " were sufficient. He himself had some doubts on the point, since in many cases an instrument might have the characteristics of a treaty because of the intention with which it had been drawn up. Certain communiqués now published at the end of important conferences were in fact agreements between ministers and had legal effects.

27. With regard to the words " ratification ", " acceptance ", " approval ", and " accession ", the International Law Commission had not wished to complicate the question of the procedure relating to treaties. It had found that those words were often used to mean the same thing. The Commission had had some difficulties with the words " ratification " and " signature ". It had finally decided to include the four words which now appeared in sub-paragraph (*b*).

28. In connexion with the term " full powers " he drew attention to the use of the word " document ". Since full powers could take the form of a telegram or letter, the Commission had considered it advisable to take into account a " simplified form " of full powers. Purists might perhaps think that the term " full powers " should be reserved for a more formal document, but the Commission had decided that it could be acceptably used in a very general sense.

29. When the International Law Commission had drafted sub-paragraph (*d*), it had taken cognizance of the existence of declarations as to interpretation and had accordingly drafted sub-paragraph (*d*) in its present form. Some such declarations were of a general nature and represented an objective interpretation of what was understood to be the meaning of a treaty. The purpose of others was to clarify the meaning of doubtful clauses or of clauses which were controversial for particular States. Others, again, dealt with the application of a treaty in certain circumstances peculiar to a State. The Commission had considered that reservations should be understood to mean declarations which purported to exclude or vary the legal effect of certain provisions in their application to a particular State. That question called for thorough examination, but the Conference should be very cautious about the application of the term " reservations " to declarations as to interpretation in general.

30. The representative of Ceylon had proposed extending the application of article 2, paragraph 2 to other treaties and to the practice of international organizations. The International Law Commission had not omitted to consider that question so far as other treaties were concerned. It had, for example, had in mind the Statute of the International Court of Justice, which referred to conventions and to treaties, and the question had been raised whether the definition of a treaty given in sub-paragraph (*a*) was equally appropriate for that term as used in the Statute of the Court. The Commission had therefore limited the application of the proposed definitions specifically to their use in the draft articles. It envisaged that, by placing the words " For the purposes of the present articles " at the beginning of article 2, it would safeguard sufficiently the use of the terms defined in the article when used in any other treaties with a different meaning.

31. The Commission had, on the other hand, thought it necessary to mention the internal law of a State in paragraph 2, because the convention on the law of treaties might itself become internal law in a number of countries. It was therefore necessary to include a proviso safeguarding the use of the terms in the internal law of any State. The Conference and the Drafting Committee might reflect on that problem and see whether they agreed that the Commission's text sufficiently covered other treaties and the practices of international organizations.

32. Some delegations had commented that the terms " negotiating State ", " contracting State " and " Party " had been introduced into the text rather late and perhaps somewhat hastily. Those reproaches were not justified. The Commission had studied the question of the status of States at the different stages in the drafting and conclusion of a treaty. Different rights might attach to each of those stages. The text had been much more complicated on that point at the beginning than it was at present. The Commission had simplified the problem

and had introduced sub-paragraphs (*e*), (*f*) and (*g*) merely in order to provide convenient labels for referring to the various relationships which a State might have to the text of a treaty.

33. The CHAIRMAN observed that the Committee had before it two proposals relating to article 2. The Canadian representative had proposed [2] that the Committee should refer the amendments to the Drafting Committee without taking any decision on them and that the Drafting Committee should examine the amendments and submit a report to the Committee after it had considered the rest of the draft articles. The representative of Ghana had made a rather similar proposal, except that it did not include reference to the Drafting Committee. He asked the representative of Ghana if he could support the Canadian proposal.

34. Mr. OWUSU (Ghana) said that he was prepared to accept the Canadian proposal if the Committee could take a decision forthwith on the nature of the different amendments, some of which dealt with points of drafting and others with points of substance. The drafting amendments would then be referred immediately to the Drafting Committee and the Committee of the Whole would defer consideration of the substantive amendments.

35. The CHAIRMAN pointed out that only two of the amendments submitted dealt with points of substance, namely, the eight-country amendment (A/CONF.39/C.1/L.19/Rev.1) and the French amendment (A/CONF.39/C.1/L.24). The sponsors of those amendments could consult each other pending further consideration of article 2 by the Committee of the Whole. The other amendments would be referred to the Drafting Committee in accordance with the Canadian proposal.

36. Mr. VIRALLY (France) said that the two amendments mentioned by the Chairman differed in purpose and scope and should be considered separately. It would be better, therefore, to refer all the amendments to the Drafting Committee, which could deal immediately with those relating to drafting only. It would defer consideration of the others until the Committee of the Whole had taken a decision on their substance. The French delegation therefore supported the Canadian proposal.

37. Mr. JAGOTA (India) supported the Canadian proposal and observed that some of the amendments could be discussed immediately in the Drafting Committee, whereas others might be considered when the Committee of the Whole examined the substantive articles.

38. Mr. TABIBI (Afghanistan) said that that procedure should be followed only for article 2, for a precedent should not be established. It was for the Committee of the Whole to take decisions on the substance, and it would even be dangerous to ask the Drafting Committee to decide on the nature of the various amendments. The Committee of the Whole should set up working groups to study certain problems of substance.

39. Mr. VARGAS (Chile) said he supported the Canadian proposal, although he believed that the Drafting Committee's functions should not be widened. That Committee should, however, invite the sponsors of amendments to participate in its work and state their views.

40. The CHAIRMAN said that that was an unusual procedure; the Drafting Committee could only recommend a text to the Committee of the Whole for adoption.

41. Mr. MOUDILENO (Congo, Brazzaville) suggested that the Drafting Committee should formulate the definitions of the terms used, before the Committee of the Whole continued its work on the draft articles.

42. Mr. YASSEEN (Iraq), speaking as Chairman of the Drafting Committee, explained that the authors of amendments were not usually invited to participate in the Drafting Committee's work, but the Committee could ask them for explanations if necessary.

43. Mr. DE CASTRO (Spain) suggested that the authors of amendments should meet in a small group to try to reach an agreement. The Drafting Committee's function was to clarify the wording used; its powers should not be widened.

44. After an exchange of views, in which Mr. WERSHOF (Canada), Mr. MYSLIL (Czechoslovakia) and Mr. REGALA (Philippines) took part, the CHAIRMAN put the Canadian proposal to the vote.

The proposal was adopted by 76 votes to 2, with 12 abstentions. [3]

Article 3 (International agreements not within the scope of the present articles) [4]

45. Mr. HU (China), introducing his delegation's amendment (A/CONF.39/C.1/L.14), said that article 3 merely repeated what was said in article 1 and in article 2, paragraph 1*(a)*. However, although the Chinese delegation did not see the need for article 3, it would not ask for a vote on its amendment. He thought the amendments of the United States (A/CONF.39/C.1/L.20) and of Gabon (A/CONF.39/C.1/L.41) were fairly similar, and if article 3 was retained, they should perhaps be combined in a single text.

46. Mr. BEVANS (United States of America) said that the United States delegation was withdrawing its amendment to article 3 (A/CONF.39/C.1/L.20) because its amendment to article 1 (A/CONF.39/C.1/L.15) had not been accepted.

47. Mr. BINDSCHEDLER (Switzerland), introducing his delegation's amendment (A/CONF.39/C.1/L.26), said that article 3 rightly left no doubt as to the validity of international agreements not covered by the convention. It was, moreover, desirable in the interests of the development of international law, to which the convention under discussion would make an important contribution, that the rules set forth in it could be applied to that type of agreement. On the other hand, it was redundant to

[2] See 4th meeting, para. 28.

[3] At the 80th meeting, the Committee of the Whole decided to defer until the second session of the Conference consideration of all amendments relating to general multilateral treaties and to restricted multilateral treaties.

[4] The following amendments had been submitted: China, A/CONF.39/C.1./L.14; United States of America, A/CONF.39/C.1./L.20; Switzerland, A/CONF.39/C.1/L.26; Spain, A/CONF.39/C.1./L.34; Gabon, A/CONF.39/C.1/L.41; Ethiopia, A/CONF.39/C.1/L.57 and Corr.1; Iran, A/CONF.39/C.1/L.63; Mexico, A/CONF.39/C.1/L.65.

state that those rules were not applicable by virtue of the convention. The last part of sub-paragraph (*b*) was not clear and for that reason the Swiss delegation had proposed its deletion. The amendment was one of drafting only, and the Swiss delegation was prepared to withdraw it in favour of the Gabon amendment (A/CONF.39/C.1/L.41).

48. Mr. DE CASTRO (Spain) explained that his delegation's amendment (A/CONF.39/C.1/L.34) was only concerned with a matter of drafting in the Spanish text.

The meeting rose at 1.10 p.m.

SEVENTH MEETING

Monday, 1 April 1968, at 3.20 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 3 (International agreements not within the scope of the present articles) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 3 of the International Law Commission's draft [1].

2. Mr. JENKS (Observer for the International Labour Organisation), speaking at the invitation of the Chairman, said he was gratified at the Committee's decision to recommend that the question of agreements to which subjects of international law other than States were parties should be examined by the International Law Commission. The International Labour Office would be glad to co-operate fully in that task, which must include the question of how any codification of such rules was to become binding on the international organizations concerned, how it was to provide for any adaptations of the general rules necessary to meet the special circumstances of particular organizations and how it was to permit future development and growth.

3. Articles 3 and 4 of the draft stated principles of vital significance for the long-term development of international organizations and of international law. Article 4 stated both a rule and an exception. The rule was that treaties adopted within an international organization were subject in principle to the general law of treaties, and the exception was that the rule was not applicable in respect of matters for which a *lex specialis* existed by virtue of any relevant rules, including the established practice of the organization concerned.

4. The rule was important because it would create confusion if there were a different law of treaties for the instruments adopted within each of the forty international and regional organizations, a number which might continue to increase. Few of them could be expected to evolve a distinctive body of practice and none could claim that its practice or needs were special in respect of the whole of the law of treaties. The ILO certainly made no such claim.

5. The exception was equally important because there were cases in which an organization had special rules and a well-established body of practice governing conventions which created a body of international obligations more coherent, stable and better-adapted to requirements of the situation than could be secured by applying the more flexible provisions of the general law. The International Labour Organisation was responsible for 128 international labour conventions ratified by over 115 member States, and some 1,200 declarations of application in respect of other territories. That network of obligations was governed by the provisions of the ILO Constitution and by a well-established body of practice tested over almost fifty years. The ILO was not the only organization with a distinctive body of treaty practice, but only the League of Nations and the United Nations together possessed comparable experience as to duration, scale and variety of action. The Conference was entitled to know how the draft articles would affect the ILO's discharge of its responsibilities, and the ILO was entitled to expect that the Conference would give full regard to the obligations of members of the United Nations as members of the International Labour Organisation.

6. In some cases there was a clear incompatibility between ILO's rules and practice and the provisions of the draft articles and a change in the former, which could not in any case operate retroactively in respect of conventions to which member States had already become parties, would be inconsistent with the Organisation's constitutional structure and with the object of labour conventions. In other cases, the ILO's rules and practice and the provisions of the draft articles could be rendered compatible only by a strained interpretation of the one or the other or by some artificial modification of the ILO's existing rules, for which there was no particular need. In still other cases, in order to obtain a reasonable and equitable result, the draft articles would have to be read in the light of established ILO rules and practice.

7. In some instances it would be unprofitable to discuss to which of those categories a case belonged.

8. Article 8 provided that the adoption of a text drawn up at an international conference took place by a vote of two-thirds of the states participating in the conference, unless by the same majority it was decided to apply a different rule. The ILO rule was quite different; there a two-thirds majority was required of the votes cast by the delegations present, and half of the delegates eligible to vote did not represent Governments.

9. Article 9 provided that the text of a treaty was established as authentic and definitive by such a procedure as might be provided for in the text or was agreed upon by participating States, or failing that by authentication of the representatives of States, whereas under the ILO Constitution, ILO conventions were authenticated by the signatures of the President of the Conference and the Director-General.

10. Article 12 dealt with accession. ILO conventions were concluded within the constitutional obligations relating to their application, and accessions which did not include those obligations were therefore inconceivable.

[1] For the list of the amendments submitted, see 6th meeting, footnote 4.