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purpose was to liquidate colonialism, but there could be no doubt that it represented an act of justice. The same could be said of the Declaration on non-intervention, which had been adopted by the General Assembly on USSR initiative.

69. He categorically rejected that attempt to slight his delegation and regretted that the United Kingdom representative should have made such a statement.

The meeting rose at 1 p.m.

SEVENTY-SECOND MEETING

Wednesday, 15 May 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

TEXTS PROPOSED BY THE DRAFTING COMMITTEE

Article 17 (Acceptance of and objection to reservations)[1]

1. The CHAIRMAN invited the Chairman of the Drafting Committee to make a statement about article 17.

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had not submitted a final text for article 17, as some of the amendments to that article dealt with the question of general and restricted multilateral treaties, on which the Committee of the Whole had not yet taken a decision. The Drafting Committee had circulated the text it had provisionally adopted for article 17 (A/CONF.39/C.1/L.344) because that text raised quite a different problem, concerning which it hoped to receive immediate instructions from the Committee of the Whole.

3. Paragraph 3 of the text of article 17, as amended by the Committee of the Whole, could be divided into two parts, the first of which read:

" When a treaty is a constituent instrument of an international organization and unless it otherwise provides, the reservation requires the acceptance of the competent organ of that organization ".

4. That part reproduced, with a slight drafting change, the whole of paragraph 3 contained in the International Law Commission's draft. The second part had been added by the Committee of the Whole after the adoption of the United States amendment (A/CONF.39/C.1/L.127). It read as follows:

" but such acceptance shall not preclude any contracting State from objecting to the reservation ".

5. The Drafting Committee wished to receive instructions from the Committee of the Whole concerning the legal effect of the objections to which the second part of paragraph 3 referred.

6. Article 17, paragraph 4 (*b*) dealt with the legal effects of an objection to a reservation. It read:

"(*b*) an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State; ".

7. But paragraph 4 opened with the words:

" In cases not falling under the preceding paragraphs of this article... ".

8. In other words, paragraph 4 (*b*) did not apply to an objection to a reservation that had been accepted by the competent organ of an international organization, since that type of objection came under paragraph 3.

9. It might therefore be argued that, in the present text of article 17, that type of objection was void of legal effect. The régime laid down in paragraph 4 of article 17 could of course be applied by analogy to those objections. The Drafting Committee was uncertain whether that had been the Committee's intention when it had adopted the United States amendment.

10. Even if that had been the intention, it should be noted that the last phrase in paragraph 3 of article 17, as adopted by the Committee of the Whole, concerned a complex problem that raised numerous difficulties which could not be settled merely by a provision in the convention. It affected the functioning of international organizations and went beyond the law of treaties, having regard to the limits set by the convention itself. It belonged rather to topics included in the International Law Commission's agenda, such as the relations between States and intergovernmental organizations. He reminded the Committee of the Whole that, at its 11th meeting, it had adopted a resolution (A/CONF.39/C.1/2) which recommended to the General Assembly that it refer to the International Law Commission the study of the question of treaties concluded between States and international organizations.

11. Consequently the Drafting Committee felt bound to recommend to the Committee that it should not retain the words that had been added in conformity with the United States amendment. It would be better to leave it to the International Law Commission to study first of all the question of international organizations as a whole, as it did not seem possible to find an acceptable solution to that question within the context of the convention on the law of treaties.

12. Mr. SWEENEY (United States of America) pointed out that the purpose of the United States amendment (A/CONF.39/C.1/L.127) had been perfectly clear and fully understood by all the members of the Drafting Committee. There had been no question of authorizing a reservation or an objection to a reservation likely to affect the internal functioning of an organization. His delegation had merely wished to say that a State could always make a reservation that did not in any way affect the internal functioning of an organization and that another State could always object to that reservation.

13. Nevertheless, in view of the drafting difficulties that the idea in the amendment would cause if it was to be adapted to the provisions of article 17, his delegation was ready to agree that its amendment should not be included in the article. His delegation's position on the idea in the amendment remained unchanged, however. The situation with which it dealt remained covered by the general rules of existing international law.

[1] For discussion of article 17, see 21st to 25th meetings.

14. The CHAIRMAN suggested that the Committee should not include in article 17 the text of the United States amendment (A/CONF.39/C.1/L.127) and that it should refer the article, as amended, back to the Drafting Committee.

It was so agreed. [2]

15. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text of articles 21 to 25 adopted by the Drafting Committee.

Article 21 (Entry into force) [3]

16. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 21 adopted by the Drafting Committee read:

"*Article 21*

" 1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

" 2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

" 3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

" 4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty shall apply from the adoption of its text ".

17. Before referring article 21 to the Drafting Committee, the Committee of the Whole had approved, subject to drafting changes, the principle in the United Kingdom amendment (A/CONF.39/C.1/L.186), which had proposed the addition of a new paragraph 4 concerning certain provisions of a treaty that had legal effect prior to the entry into force of the treaty.

18. The Drafting Committee had introduced changes in the wording of paragraph 3 in the International Law Commission's text and in the paragraph 4 proposed by the United Kingdom.

19. In paragraph 3, the Drafting Committee's changes had been confined to a few drafting improvements, but in paragraph 4 it had gone further. It had tried to set out the provisions covered by that paragraph more clearly. Thus it had expressly mentioned the provisions regulating reservations and the functions of the depositary. It had replaced the expression " and other related procedural matters " by the more general formula " other matters arising necessarily before the entry into force of the treaty ". It had preferred to say that those provisions " shall apply " rather than " have legal effect " as proposed in the United Kingdom amendment. Lastly, it had stated that the provisions in question should apply from the adoption of the text of the treaty; some delegations had objected that the United Kingdom amendment had omitted that detail.

20. The Drafting Committee had rejected all the amendments referred to it by the Committee of the Whole relating to the first three paragraphs of article 21.

21. Mr. HARRY (Australia) said that in the English version of the Drafting Committee's text the expression " from the adoption of its text " did not bring out sufficiently clearly that the reference was solely to the time of the adoption of the text. The present wording could be taken to imply the existence of a cause-and-effect relationship. He thought that the English version would correspond more nearly to the French and Spanish texts if the expression " from the time of the adoption of its text " were used.

22. Mr. YASSEEN, Chairman of the Drafting Committee, confirmed that the expression in question meant that the provisions contained in that paragraph should apply from the time of the adoption of the text of the treaty.

23. The CHAIRMAN suggested that the Committee should approve the text of article 21, subject to the change in the English version proposed by the Australian representative.

Article 21 was approved, subject to that change.

Article 22 (Entry into force provisionally) [4]

24. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 22 adopted by the Drafting Committee read:

" *Article 22*

" 1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

" (*a*) the treaty itself so provides; or

" (*b*) the negotiating States have in some other manner so agreed.

" 2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty. "

25. Before referring article 22 to the Drafting Committee, the Committee of the Whole had adopted a proposal by Czechoslovakia and Yugoslavia (A/CONF.39/C.1/L.185 and Add.1) to amend paragraph 1 of the article so as to allow the provisional application of a part of a treaty as well as the provisional application of a treaty. The Committee of the Whole had also approved of the principle of including a new paragraph concerning the termination of the provisional entry into force or provisional application of a treaty, contained in the amendments submitted by Belgium (A/CONF.39/C.1/L.194) and by Hungary and Poland (A/CONF.39/C.1/L.198).

26. The Drafting Committee had made a few changes in article 22. In the opening sentence of paragraph 1, as

[2] At the 80th meeting, the Committee of the Whole decided to defer consideration of all amendments relating to " restricted multilateral treaties " and " general multilateral treaties " until the second session of the Conference. Further consideration of article 17 was therefore postponed.

[3] For earlier discussion of article 21, see 26th meeting.

[4] For earlier discussion of article 22, see 26th and 27th meetings.

worded in the amendment by Czechoslovakia and Yugoslavia, the Committee had replaced the expression " a treaty... may be applied provisionally " by the words " a treaty... is applied provisionally ". It had considered that the former expression might be interpreted to mean that the parties were left free not to apply the treaty provisionally, even when such application was prescribed by the treaty. The Drafting Committee had also simplified the text of sub-paragraph (*a*). Since paragraph 1, as now worded, expressly referred to the provisional application of part of a treaty, the Committee had deleted paragraph 2 of the International Law Commission's text, which had merely stipulated that the rule in paragraph 1 applied to the entry into force provisionally of part of a treaty. It was true that the Committee of the Whole had rejected a proposal (A/CONF.39/C.1/L.165) to delete paragraph 2 of the Commission's text; but the idea contained in that paragraph was now included in paragraph 1 and the Drafting Committee had not therefore disregarded the wishes of the Committee of the Whole.

27. Paragraph 2 of the Drafting Committee's text was based on the amendments by Belgium and by Hungary and Poland to which he had already referred.

28. The Drafting Committee had rejected all the other amendments referred to it.

Article 22 was approved.

Articles 23 (Pacta sunt servanda) [5] and 23 *bis* (new article)

29. Mr. YASSEEN, Chairman of the Drafting Committee, said that without prejudging the place it was to occupy in the draft convention, the Committee of the Whole had approved the principle stated in the amendment by Pakistan (A/CONF.39/C.1/L.181) to add to article 23 the following phrase:

" and no party may invoke the provisions of its constitution or its laws as an excuse for its failure to perform this duty ".

30. The Drafting Committee had decided to recommend that the Committee of the Whole should adopt article 23 as worded in the International Law Commission's text. In the Spanish version, the word " *ejecutado* " had been replaced by the word " *cumplido* ".

31. With regard to the amendment by Pakistan, the Drafting Committee had considered it indispensable that the *pacta sunt servanda* rule should constitute a separate article, because of its great importance in the context of a general convention on the law of treaties. It had therefore embodied the amendment in an additional article immediately following article 23 and numbered 23 *bis*.

32. The Drafting Committee had, however, made certain changes in the wording proposed in the amendment by Pakistan. In particular, it had replaced the words " constitution " and " laws " by the expression " internal law ", which was the subject of article 43. The Committee had also specified in the text of article 23 *bis* that the rule laid down therein was without prejudice to article 43, because there might be a certain overlapping between those two articles.

33. Article 23 *bis* therefore read:

"*Article 23* bis

" No party may invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 43. "

34. The Drafting Committee had been unable to adopt any of the other amendments referred to it by the Committee of the Whole. In particular, it had rejected the joint amendment by Bolivia, Czechoslovakia, Ecuador, Spain and the United Republic of Tanzania (A/CONF.39/C.1/L.118) to replace the expression " Every treaty in force " by the expression " Every valid treaty ". The Committee wished to point out that it had regarded that proposal as a drafting amendment which it had not thought it advisable to adopt.

35. The Drafting Committee had not considered it necessary to accept the other amendments referred to it. In particular, it had decided not to add the words " in conformity with the provisions of the present convention " proposed in the Cuban amendment (A/CONF.39/C.1/L.173), as in its opinion those words were implicit in the text.

36. Mr. JACOVIDES (Cyprus) said that as he had been absent during the debate on article 23, he had been unable to explain his delegation's position. He wished to state that his delegation approved of the action of the International Law Commission and the Drafting Committee in limiting the application of the *pacta sunt servanda* rule to treaties in force. Without that provision, the article might have led to the false application of that fundamental rule. It was clear that the principle expressed in article 23 applied subject to the observance of all the other rules of the convention relating to the validity of treaties. Accordingly, his delegation fully supported article 23 as drafted.

37. Mr. ALCIVAR-CASTILLO (Ecuador) recalled that when the Committee of the Whole had considered article 23, the delegations of Bolivia, Czechoslovakia, Ecuador, Spain and the United Republic of Tanzania had submitted, for the reasons they had explained at the 28th and 29th meetings, an amendment (A/CONF.39/C.1/L.118) to replace the words " Every treaty in force " by the words " Every valid treaty ". The Committee had referred that amendment to the Drafting Committee.

38. In the report he had just submitted, the Chairman of the Drafting Committee had said that that Committee had regarded the proposal as a drafting amendment and had not thought it advisable to adopt it.

39. His delegation accepted the Drafting Committee's view, as it showed quite clearly that the idea of " treaty in force " went beyond the formal validity dealt with in articles 21 and 22 of the draft and that the notion of " the validity of a treaty ", or " treaty in force ", was linked to the validity of the substance of the instrument and thus to its legal effects.

40. Mr. MYSLIL (Czechoslovakia) noted that the Drafting Committee had preferred the words " treaty in force " to the words " valid treaty " which five delegations, including his own, had proposed in their amendment to article 23 (A/CONF.39/C.1/L.118). His delegation had taken note of the statements made by the representatives of the United Kingdom and France, among others, at the Committee's 29th meeting, and the statement just made by

[5] For earlier discussion of article 23, see 28th and 29th meetings.

the Chairman of the Drafting Committee according to which a treaty in force was a treaty that was in force in accordance with the provisions of the convention, a treaty that was valid under international law. His delegation considered that interpretation of the expression " in force " as admissible and it was therefore ready to accept article 23 as drafted by the International Law Commission and adopted by the Drafting Committee.

41. The Drafting Committee might, however, reconsider whether the *pacta sunt servanda* principle was really in its right place in the draft, for in its present position it seemed closely associated with the articles relating to entry into force, whereas the application of the principle was also connected with other parts and sections of the draft convention.

42. Mr. TAYLHARDAT (Venezuela) said that article 23 *bis* touched on the very complex question of the relationship between international law and internal law. His country could not recognize the supremacy of any obligation over its constitutional law. In a judgement delivered on 29 April 1965, the Supreme Court of Venezuela had proclaimed that the Constitution took precedence over treaties.

43. Mr. KEMPFF MERCADO (Bolivia) said that his delegation supported article 23 as adopted by the Drafting Committee, on the understanding that the expression " treaty in force " meant a treaty that was valid in accordance with the provisions of the present convention.

44. Mr. BARROS (Chile) said that he was somewhat surprised that a debate which he had believed closed had been reopened. The Drafting Committee had merely introduced a minor drafting change in the Spanish text of article 23, by replacing the word " *ejecutado* " by the word " *cumplido* ". The substance remained unchanged and all the International Law Commission's comments on the article and its scope remained valid. After the long debate that had taken place in the Committee of the Whole concerning the replacement of the words " in force " by " valid ", his delegation failed to understand how it could now be maintained that the two expressions had the same meaning. It was his impression, however, that, on the proposal of some of its sponsors, the five-State amendment (A/CONF.39/C.1/L.118) had not been put to the vote in the Committee of the Whole.

45. He would merely remind the Committee of the statement made by the Chilean representative at the 29th meeting; his delegation abided by the opinion it had expressed on that occasion.

46. His delegation noted that the text of article 23, as adopted by the Drafting Committee, had the same meaning as in the International Law Commission's draft, since the wording had not been changed.

47. Mr. MARTINEZ CARO (Spain) said that in accordance with the five-State amendment (A/CONF.39/C.1/L.118), of which his delegation was a co-sponsor, and with the statement made by its representative at the 29th meeting, his delegation interpreted the expression " treaty in force " as covering not only a treaty which, from the formal point of view, had entered into force, but also all the conditions of form, substance and procedure that determined the validity of a treaty. His delegation reaffirmed its conviction that the *pacta sunt servanda* rule could apply only to valid treaties, since only valid treaties must be performed in good faith.

48. Mr. DE LA GUARDIA (Argentina) said that some treaties might contain constitutional reservations, in which case, for the application of the treaty, the relevant provisions might be invoked to the extent of those reservations.

Articles 23 and 23 bis *were approved.*

Article 24 (Non-retroactivity of treaties) [6]

49. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 24 adopted by the Drafting Committee read:

" *Article 24*

" Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party. "

50. The Drafting Committee had rejected the three amendments that had been referred to it by the Committee and had adopted the English text of article 24 as drafted by the International Law Commission. In the French text, the Committee had deleted the word " *tout* " before the expression " *fait antérieur* ", as it had considered it superfluous. It had also redrafted the Spanish text so as to eliminate the ambiguities in the original text.

51. It had not accepted the Finnish amendment (A/CONF.39/C.1/L.91) to add the words "Subject to the provisions of article 15 and ", because article 15 did not relate to the retroactive application of a treaty. The obligations imposed on States were based on article 15 itself. Neither had the Committee accepted the Cuban amendment (A/CONF.39/C.1/L.146) to replace the words " any act or fact which took place " by the words " any act or fact which was completed ". Such a modification would have created difficulties of terminology; what mattered was that the act or fact had taken place before the date of the entry into force of the treaty. The Japanese amendment (A/CONF.39/C.1/L.191) to amend the opening words of article 24 had not been adopted; the Committee had preferred to retain the International Law Commission's wording, which was used in other articles:

Article 24 was approved.

Article 25 (Application of treaties to territory) [7]

52. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 25 adopted by the Drafting Committee read:

" *Article 25*

" Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory ".

53. The Committee of the Whole had referred article 25 to the Drafting Committee with a single amendment, that by the Ukrainian SSR (A/CONF.39/C.1/L.164). The Drafting Committee had adopted that amendment with-

[6] For earlier discussion of article 24, see 30th meeting.

[7] For earlier discussion of article 25, see 30th and 31st meetings.

out a change. The International Law Commission's text had provided that the application of a treaty extended to the entire territory of each party, whereas the new text stated that a treaty was binding upon each party in respect of its entire territory. The latter formula had been considered preferable.

54. Mr. SINCLAIR (United Kingdom) said that his delegation approved the text of article 25 as submitted by the Drafting Committee, on the understanding that the expression " its entire territory " applied solely to the territory over which a party to the treaty in question exercised its sovereignty.

Article 25 was approved.

55. Mr. DE LA GUARDIA (Argentina) drew attention to the difficulties of translating the text into the different working languages. He hoped that the Spanish texts would be carefully revised.

56. The verb " *mallograr* ", which had been criticized by the Chilean representative in connexion with article 15, occurred again in the Mexican amendment to article 68 (A/CONF.39/C.1/L.357).

57. Mr. SEPULVEDA AMOR (Mexico) pointed out that the text of the amendment in question used the terms employed in article 15. It was only a provisional draft and, of course, if the Spanish text of article 15 were modified, that of article 68 would be similarly amended.

Article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) *(resumed from the 71st meeting)* and *proposed new article 62* bis (A/CONF.39/C.1/L.348) *(resumed from the 71st meeting)*

58. The CHAIRMAN invited the Committee to resume its consideration of article 62 [8] and of the proposed new article 62 *bis*.

59. Mr. KRISHNADASAN (Zambia) said that in accordance with what it had stated at the 56th meeting, his delegation had studied with interest all the proposals to strengthen article 62 by an independent and impartial system of settling disputes, and in particular by the establishment of conciliation and arbitration procedures.

60. It approved of the underlying principles of several amendments: the thirteen-State amendment (A/CONF. 39/C.1/L.352/Rev.1/Corr.1), the Swiss amendment (A/CONF.39/C.1/L.347), the Japanese amendment (A/ CONF.39/C.1/L.339) and the United States amendment (A/CONF.39/C.1/L.355), but found it difficult, owing to the way in which they were worded, to give them its unqualified support. Nevertheless, they deserved careful consideration. If they failed to obtain the Committee's support, his delegation would favour the idea contained in paragraphs 4, 5 and 6 of the Uruguayan amendment (A/CONF.39/C.1/L.343), which would make paragraph 3 of the International Law Commission's text more effective by providing for the possibility of compulsory third party settlement.

61. Nevertheless, a valuable step forward would have been taken if the Committee could see its way to formulating a more positive rule. Of course, it was important that the proposed scheme should be acceptable to the overwhelming majority of the Governments represented at the Conference. The emphasis should be on flexibility and not necessarily on international coercion as feared by some delegations. In the final analysis, the acceptance or non-acceptance of establishing conciliation and arbitration procedures under article 62 depended on the view taken of international society. If whole-hearted co-operation and genuine trust were regarded as possible at the present stage, there should not be any real objection to tightening up the rules contained in article 62. States that feared the " partiality " of arbitral tribunals should remember their own past behaviour. For instance, many States had accepted similar provisions in bilateral and multilateral agreements. The special role of the President of the International Court of Justice in the appointment of arbitrators had also been accepted. The question was whether the climate of international society was such that the task of appointing arbitrators—if the parties failed to do so—might be entrusted to an international official of the highest integrity and impartiality.

62. His delegation favoured paragraph 5 of the Swiss amendment (A/CONF.39/C.1/L.347): in case of disagreement between national arbitrators, the majority of the committee of arbitration would be composed of neutral, non-national members. Thus the chairman of the arbitration committee would not be solely responsible for deciding the case. Admittedly, States might perhaps find it very difficult to submit all economic and political treaties to compulsory arbitration. Consequently, the Committee might try to define those questions in respect of which Governments might be willing to accept arbitration unconditionally and without reservation. An alternative solution, already suggested by the Ceylonese representative, would be to add to article 62 a clause providing that States might agree in advance, in future treaties, not to apply the provision of article 62 concerning compulsory settlement.

63. In view of the complexity of the problems involved, Governments might perhaps wish to give the matter further consideration before arriving at a final decision on article 62.

64. If the Committee accepted the International Law Commission's view that the present state of international opinion did not allow of a more vigorous rule than that contained in article 62 in its present form, his delegation would support that text, in the firm conviction that justice was the aim of all.

65. Mr. MARESCA (Italy) thought that article 62 was the keystone of the convention. If that article was well conceived, the satisfactory functioning of the convention would be ensured. If it was inadequate, the balance and operation of the convention would be seriously compromised. It was impossible to stop half-way. After carefully determining the grounds on which treaties might be considered void or as having terminated or been suspended, it was essential to establish a system whereby all the provisions laid down could operate in a regular and legitimate manner. Without a system of guarantees there would obviously be disequilibrium. The International Law Commission had realized that, and it was to be commended for having inserted article 62 in the draft convention.

[8] For the list of the amendments submitted, see 68th meeting, footnote 1.

66. The question was whether the article was satisfactory. His delegation did not think so. The impression it gave was that the International Law Commission had not completed its task. It was for the Conference to continue the work. What was needed to make a system of safeguards complete? First, States must be left completely free to choose the manner of settling their disputes. That was the first stage, in other words the period of negotiation. If, however, the States concerned failed to find a solution, they reached the second stage, namely conciliation: they endeavoured to reach agreement by appealing to a body which tried to arrive at a compromise. The States still remained free. If conciliation failed to produce any practical result, it was followed by the third stage, namely, arbitration. But that was only as a last hope, when States had been unable to come to any arrangement for settling the matter. As it was essential to find a definitive solution, the States must be helped by a provision for an independent arbitral body. A fourth aspect of the system of guarantees was that it was based on international solidarity, as any dispute arising out of a treaty raised problems not only for the parties to the treaty, but for the entire international community. It was in the interest of every State that the stability of treaties and the settlement of disputes should be ensured. The merit of the amendments submitted was that they endeavoured to provide a complete system of safeguards.

67. In particular, the thirteen-State amendment (A/CONF.39/C.1/L.352/Rev.1/Corr.1) took account of the successive stages of negotiation, conciliation and arbitration. It stipulated precisely the composition of the conciliation commission and the arbitral tribunal and provided that the Secretary-General of the United Nations should, in certain circumstances, appoint the members of those bodies. Lastly, the amendment incorporated a new idea: the expenses of the conciliation commission and the arbitral tribunal should be borne by the United Nations. That would be a striking instance of international solidarity.

68. The amendment should have the support of all States, great or small, young or old, since all had the same interests. For new States it would be clear confirmation of their sovereignty, as it would enable them, if necessary, to bring their disputes before an international tribunal, and it was known that the law protected the weak. Powerful States had nothing to fear, for they would thus be following one of the noblest historic traditions. The great philosophers, jurists and moralists had been preaching since ancient times the need to resolve international disputes peacefully.

69. Mr. WARIOBA (United Republic of Tanzania) said he wished to emphasize the importance of article 62. The proposed amendments did not seem to improve the text. In his delegation's view, the article should both prevent the parties from taking unilateral action that would endanger the stability of treaties and protect parties claiming the invalidity of the treaty from any inconsiderate attitude that might be adopted by the objecting parties. The procedure must also be effective.

70. It had been argued that article 62, as it stood, did not provide for any means of final settlement in case of a deadlock. The proposed machinery did not seem to be more effective than the provisions of article 62 and would make the procedure too long. After all, it was not always the claimant party that was in the wrong and the procedure proposed should contain elements that would protect that party. For that purpose, it must be as short as possible. Some of the procedures proposed were so lengthy that a claimant State might be prevented by the deliberately malicious attitude of the objecting party from taking action.

71. It had also been objected that article 62 did not make any provision for the compulsory settlement of disputes. His delegation was not in favour of compulsory jurisdiction. The attitude of States towards international tribunals was far from encouraging. The Statute of the International Court of Justice contained an optional clause on compulsory jurisdiction, which only some forty States had accepted. Further, the majority of States that had accepted it had attached conditions which deprived the clause of effect.

72. His delegation questioned how far the proposed jurisdiction could be really compulsory. The idea of conciliation, arbitration and judicial settlement had already been embodied in paragraph 3 of article 62. What guarantees were there that a State would submit to compulsory jurisdiction and that it would abide by the decisions? The performance of international tribunals had not been encouraging and it was fair to say that the present trend was for States to settle their disputes outside those bodies. And it could not be said that solutions of that kind had not been effective and objective.

73. In his delegation's view, the convention as a whole contained ample provisions for the settlement of disputes. First of all, the principle of good faith during the negotiation and conclusion of a treaty ensured the security and stability of treaties. Why should it be supposed that States would not act in good faith? Thousands of treaties existed that were being performed in good faith, whatever the difficulties of carrying them out. Claims of invalidity or suspension were the exception and the procedure laid down in article 62 could be regarded as sufficient to deal with such exceptions.

74. Under that article, the party alleging invalidity was required to notify the other party of the grounds for its claim and the measures it proposed to take. Clearly, that ruled out any possibility of the arbitrary termination of the treaty. Moreover, the other party had only a three months' period in which to formulate an objection. That was an equitable provision that protected the rights of both parties. If they were unable to settle their disputes in that manner, it was for the governments concerned to appreciate the situation and to act as good faith demanded.

75. That was a fair, acceptable and effective procedure. In fact, most disputes had been solved by the means indicated in paragraph 3 of article 62. If they could not be settled in that way, it was because States adopted an attitude such that even compulsory jurisdiction would serve no purpose. Those cases were so rare that they did not constitute a danger to the security and stability of treaties and they did not justify the adoption of a rule that would do more harm than good.

76. It had also been argued that States should not be authorized to take bilateral decisions on questions affecting the entire community of nations. But in most

cases more than two parties would be involved. Further, even if provision was made to bring the dispute before an international tribunal, that would not prevent the parties from deciding questions of international law bilaterally.

77. His delegation could not support those amendments that sought to include provision for compulsory jurisdiction. Some of those amendments also sought to apply different treatment to various articles in Part V. His delegation agreed with the International Law Commission that the same procedure should apply to all grounds of nullity, termination or suspension of the application of treaties. The United Kingdom representative had said that some of the articles in the convention were new and contained rules concerning which bilateral decisions should not be allowed. His delegation did not share that view. In the past, States had denounced treaties on grounds that involved principles of great importance to the community of nations as a whole, but it had never been contended that they should not be permitted to decide their disputes bilaterally. In any case, article 62 dealt with the settlement of disputes; it was not meant to be a legislative procedure on international law. If important principles were involved, it was for the purpose of arriving at an agreement.

78. Some amendments, for instance the thirteen-State amendment (A/CONF.39/C.1/L.352/Rev.1/Corr.1) and the United States amendment (A/CONF.39/C.1/L.355), contained annexes prescribing the composition and powers of the proposed organs and the procedure they should follow. No annex of that type had been proposed in connexion with paragraph 3 of article 62. Such annexes were out of place and merely served to show that compulsory jurisdiction in international law contained certain weaknesses.

79. The thirteen-State amendment (A/CONF.39/C.1/L.352/Rev.1/Corr.1) provided for too long a procedure. Moreover, the usefulness of making conciliation compulsory was not apparent.

80. The United States amendment (A/CONF.39/C.1/L.355) sought to place on the claimant party the onus of establishing that no other party had communicated an objection. His delegation failed to understand why it was always sought to place the objecting State in a favourable position. Once again, that was evidence of the notion that the claimant parties were always considered to be in the wrong and the objecting States always right. His delegation did not agree that the United States proposal was merely a drafting amendment.

81. During the discussion, certain delegations had stated that their position on articles such as articles 50 and 59 depended on the content of article 62. Undoubtedly, article 62 was a key article of the whole draft convention and it would affect the attitude of many States. For its part, the Tanzanian delegation supported article 62 as it stood. It hoped that the criticism levelled against that article had been made in good faith and that it was not designed to frustrate the whole codifying work of the Conference.

82. Mr. MWENDWA (Kenya) said the International Law Commission had been right in stating in its commentary that article 62 " represented the highest measure of common ground that could be found among Governments as well as in the Commission on this question."

83. The Kenyan delegation had come to the conclusion that the Committee should approve article 62 as at present worded, as it gave adequate protection against the arbitrary assertion of the invalidity, termination or suspension of the operation of a treaty. Under paragraph 3 of the article, the parties were bound, if objection was raised, to seek peaceful means of settling their disputes as indicated in Article 33 of the Charter of the United Nations. The parties must fulfil those obligations in good faith. Further, any State, whether a Member of the United Nations or not, had a right, in certain conditions, to refer a dispute to the competent organ of the United Nations.

84. It would be remembered that the Geneva Conventions on the Law of the Sea, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations had not included provisions on compulsory means of settling disputes. In his delegation's opinion, the Conference should seek optional, as opposed to compulsory, means of settling disputes.

85. The question of the peaceful settlement of disputes was at present under study by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, and it would be most unfortunate if the Conference took any action which might hinder that Committee's work. The Committee of the Whole should preferably recognize that the matters of principle raised by the various amendments to article 62 should be studied by the Special Committee in the wider and more general context of the peaceful settlement of disputes.

86. Compulsory settlement of disputes through judicial or arbitral machinery could not be accepted by all members of the international community overnight. There were still vast areas of international law which were ill-defined, and the greater part of international law was made up of traditional and inequitable rules consonant with the interests of only a few States. Besides, some of the new areas of international law, space law for example, had been created by only a few great Powers. That being so, the smaller States were reluctant to submit themselves to the compulsory settlement of disputes for fear that justice might be sacrificed to political expediency.

87. Modern international law could not be reduced to a legal technique. In internal law it was possible to fit clearly delineated facts and situations into a known mould, but that was not so with international law. Many more vital aspects might be involved than appeared at first sight. It was well known, too, that some eminent jurists had treated certain crucial problems in a perfunctory manner. They had dealt with the problems according to the law, but in a way unrelated to the constantly changing realities of the international situation. Such success as had been obtained in international law had been brought about by the application of the principles of good faith, conciliation and common sense, upon which the International Law Commission based its confidence for the future application of article 62.

88. Law could not remain immutable, but it could not be forced upon the international community if the latter

refused to accept it. In his opinion, the International Law Commission had been right to refrain from bringing notions of internal law and doctrinal conflicts into the area of international law. Greater co-operation among States was the prerequisite for any acceptance by the international community of procedures for the compulsory settlement of disputes.

89. Contrary to what some delegations had stated, the Charter of the Organization of African Unity did not provide for compulsory arbitration.

90. International tribunals were constituted by men who might well possess honesty and intellectual integrity to the highest degree but remained the product of their education and still harboured the sympathies and prejudices of that education. For that reason, it would be better, for the time being, to let the methods for settling disputes remain optional.

91. The Committee should draw a distinction between cases where a vote was taken to approve a text by the International Law Commission which Governments had had time to study at leisure, and cases in which the problems dividing the Committee were basic problems raised by proposals which had been submitted for the first time during the Conference's work. The amendment to article 49 submitted by Afghanistan and a number of other delegations (A/CONF.39/C.1/L.67/Rev.1 and Corr.1 and Add.1) and the amendments to article 62 proposing the establishment of a compulsory jurisdiction were cases in point.

92. The sponsors of the amendment to article 49, although certain to obtain a large majority in the Committee of the Whole, were not pressing their amendment to a vote, in order to avoid dividing the Committee on that point. The sponsors of amendments to include compulsory jurisdiction in article 62 would have to assume a heavy responsibility when deciding whether their amendments should or should not be put to the vote.

93. Mr. JACOVIDES (Cyprus) said he thought the method for settling disputes among States should be flexible and take into account the particular circumstances of each case. The prime consideration was that States should settle their disputes by peaceful means in such a manner that peace and security, and justice, were not endangered. That principle, which was expressed in Article 2 (3) of the United Nations Charter, was the logical corollary of the principle in paragraph 4 of that Article. The peaceful solution of international disputes was therefore a peremptory norm of general international law. He pointed out that under Article 2 (3) and Article 1 (1) of the Charter, international disputes were to be settled in accordance with international law and the principles of justice.

94. His delegation fully supported article 62, paragraph 3, since Article 33 of the Charter gave a long list of means of peaceful settlement to which the States Members of the United Nations were bound to resort. Among those means, settlement by the International Court of Justice raised a very special problem, because there were situations in which a solution based exclusively on the letter of the law produced unfair results, and it was doubtful whether, in international affairs, courts could serve the cause of peace by ruling on political conflicts or assuming functions which were essentially legislative. Moreover, the jurisdiction of the International Court of Justice suffered from a number of drawbacks, in particular owing to the geographical basis of its membership, the inability of parties to foresee its decisions with sufficient certainty, and the absence of effective means of enforcing its decisions. Further, it could not be said that its decisions were always reached impartially without the intervention of political or extrajudicial considerations. All those factors considerably limited the Court's usefulness as a judicial organ of the United Nations.

95. On the other hand, the United Nations as a political organization, and particularly the Security Council, the General Assembly and the Secretary-General, could play a very effective role in settling international disputes arising out of a treaty, above all when the political element prevailed in the dispute.

96. Chapter VI of the Charter gave the Security Council important functions for that purpose, but owing to its voting procedure, its effectiveness in settling international disputes had often proved illusory. Nevertheless, in some cases the Council had been able to reach unanimous agreement on procedures such as mediation and good offices, which had yielded just and equitable results.

97. The General Assembly also had a very important part to play in that connexion. Under Article 10 of the Charter it had the right " to discuss any questions or any matters within the scope of the present Charter ". Moreover, under Article 14, it could " recommend measures for the peaceful adjustment of any situation, regardless of origin ", which obviously covered situations arising from disputes originating in treaties. Although the resolutions of the General Assembly were only recommendations, the authority of that body should not be underestimated.

98. The Secretary-General, too, could play a very constructive part in the peaceful settlement of disputes. He was forbidden under Article 100 of the Charter to seek or receive instructions from any government or from any other authority external to the Organization. He was thus in an exceptional position for settling disputes.

99. Having studied article 62 in detail, his delegation had reached the conclusion that it would be unrealistic at the present stage to go further than the International Law Commission. He thought that recourse to the means prescribed in Article 33 of the Charter would result in just and peaceful solutions. As the International Law Commission had pointed out in its commentary, there would also remain the right of every State to refer the dispute to the competent organ of the United Nations.

100. He could not support the substantive amendments submitted by Japan (A/CONF.39/C.1/L.339), Switzerland (A/CONF.39/C.1/L.347) or the United States (A/CONF.39/C.1/L.355), for the reasons he had stated. The Uruguayan amendment (A/CONF.39/C.1/L.343) was useful because it emphasized the need for accepting peaceful settlement procedures recommended by the competent United Nations organ.

101. The thirteen-State amendment (A/CONF.39/C.1/L.352/Rev.1/Corr.1), which, while accepting article 62,

sought to supplement it, contained interesting ideas and deserved further consideration. Although it went further than the International Law Commission's text by providing for a compulsory conciliation procedure, which could be followed by arbitration, it was nevertheless based on the principle of equality, and did not go outside the limits of the United Nations. The provisions for the appointment of the chairmen of the conciliation commission and arbitration tribunal by the Secretary-General, and for the United Nations to bear all the expenses of those bodies, had certain advantages. However, since the amendment had only been submitted quite recently, he had not had time to assess all its implications. While fully reserving his Government's position, he thought it might be preferable for the sponsors of the amendment not to press it to a vote at the present stage. It would perhaps be advisable to give Governments time for reflection and consultation until the following year before taking a final decision.

102. Mrs. ADAMSEN (Denmark) said the Danish delegation thought that the draft of article 62 proposed by the International Law Commission, the result of a compromise between the differing opinions of Governments and members of the Commission, did not provide a real solution to the problems arising out of the settlement of disputes in connexion with the application of the provisions of Part V. On the contrary, the article would open the door to many abuses. If the text was adopted as drafted, a party to a treaty, after exhausting the procedures laid down in paragraphs 1 and 2, would be able to decide unilaterally not to apply the treaty, to assert that it was invalid, to terminate it, withdraw from it or suspend its operation. In other words, it would be possible for a State to be the judge of its own case, and that would entail serious danger to treaty relations among States and to peace.

103. The Danish Government had always advocated and encouraged the settlement of disputes between States by recourse to an impartial third party; such a solution would make it possible to secure a peaceful and just settlement and to establish and affirm the rules of international law applicable to such disputes. It was not only the small and weak States which had an interest in including rules to that effect in article 62; the entire international community would benefit.

104. Although it believed that some means of settling disputes by independent adjudication was necessary, the Danish delegation was well aware that it would be hard to find a solution acceptable to the great majority of States. It was ready to support proposals for the reference of disputes, or certain kinds of dispute, to the International Court of Justice. But it was inclined to think that a system of settling disputes by a combination of compulsory conciliation and arbitration would have a better chance of obtaining the widespread support which was essential. For that reason it had joined with twelve other States in submitting an amendment to that effect (A/CONF.39/C.1/L.352/Rev.1/Corr.1). The solution was obviously not an ideal one. The wording might be improved, clarified or simplified. The principle it embodied, however, seemed to strike a happy mean between the various suggestions put forward and should attract a large number of votes.

105. Mr. KEITA (Guinea) said that, though article 62 was perhaps not perfect, it had certain merits which should not be underestimated. It took full account of State practice. The Conference's objective should be to adopt a final solution acceptable to a large majority of States or even all of them. The Conference should base itself on the precedents established by the Geneva Conventions on the Law of the Sea and the Vienna Conventions on Diplomatic and Consular Relations, which did not contain a compulsory jurisdiction clause.

106. A provision for compulsory recourse to the International Court of Justice should not be included in article 62, since Article 36, paragraph 2, of the Statute of the Court itself provided only for the faculty to recognize the Court's compulsory jurisdiction, a faculty of which only a few Member States of the United Nations had so far made use; moreover, they generally attached conditions to that recognition which considerably limited its scope.

107. The international community did not, at the present time, have any practical means of executing the judgements of the International Court of Justice. Everything depended on good faith, loyalty and the observance by States of the commitments into which they had entered. The feasibility of recourse to a compulsory jurisdiction should not, therefore, be overestimated.

108. His delegation was not opposed to the amendments to improve the form of article 62. The amendments proposing the establishment, within the United Nations, of a conciliation commission or arbitral tribunal were worth considering, provided that they did not include a compulsory clause.

The meeting rose at 6.25 p.m.

SEVENTY-THIRD MEETING

Thursday, 16 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 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) *(continued)* [1] and *Proposed new article 62* bis (A/CONF.39/C.1/L.348) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 62 of the International Law Commission's draft and of the proposed new article 62 *bis*.

2. Mr. DEVADDER (Belgium) said that a convention on the law of treaties would be incomplete without suitable machinery for the settlement of disputes, especially those arising under Part V. The danger was that a State might arbitrarily invoke grounds of invalidity, suspension or termination in order to release itself from

[1] For the list of amendments submitted, see 68th meeting, footnote 1.