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the depositary was limited to examining whether " a signature, an instrument or a reservation " was in conformity with the provisions of the treaty and of the present articles. That function should surely equally extend to the examination of notifications and communications. The Drafting Committee should consider the wording of those sub-paragraphs carefully.

56. The United States amendment (A/CONF.39/C.1/L.369) had considerable merit. In the case of a multilateral treaty, it was normally the function of a depositary to prepare the original text for signature in the various languages and he could therefore support paragraph 2 of the United States amendment. He also agreed that the depositary retained custody not only of the original text of the treaty but also of the various instruments referred to in paragraph 3 of the United States amendment. Unless the treaty otherwise provided, the depositary normally registered the treaty with the United Nations, so that the new sub-paragraph (*h*) proposed in paragraph 4 was acceptable. The differences between a State and a depositary should be considered only by those States which had taken definite steps in the direction of becoming parties to the treaty and he therefore supported the slight revision of paragraph 2 proposed in paragraph 5 of the United States amendment. The Mongolian amendment (A/CONF.39/C.1/L.368), on the other hand, was neither necessary nor desirable and might weaken the force of the obligation to act impartially.

57. The Byelorussian amendment (A/CONF.39/C.1/L.364) seriously affected the scope of the depositary's functions. The depositary was the guardian of the treaty and was not only entitled but obliged to examine whether signatures, instruments, notifications or reservations conformed to the provisions of the treaty and of the present convention. He would vote against that amendment.

The meeting rose at 1 p.m.

SEVENTY-EIGHTH MEETING

Monday, 20 May 1968, at 3.15 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)*

TEXTS PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text of articles 35, 40 and 43 to 49 proposed by the Drafting Committee.

Article 35 (General rule regarding the amendment of treaties) [1]

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that only the Spanish version of article 35 had been altered. The Drafting Committee had replaced the words " *todo tratado* " by the words " *los tratados* ".

Article 35 was approved.

[1] Fore arlier discussion of article 35, see 36th and 37th meetings.

Article 40 (Obligations under other rules of international law) [2]

3. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 40 adopted by the Drafting Committee read as follows:

"*Article 40*

" The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law."

4. In addition to replacing the words " present articles " by " present convention ", the Drafting Committee had made further changes in the International Law Commission's text. In order to bring the French version into line with the English and Spanish versions, it had replaced the words " *lorsqu'ils découlent de la mise en œuvre* " by the words " *résultant de l'application* ". In the English version, it had substituted the word " provisions " for " terms " before the words " of the treaty ", and in the French text the word " *dispositions* " for " *termes* " before the words " *du traité* ". That brought those versions into line with the Spanish version, which used the word " *disposiciones* ".

5. It had rejected the three amendments referred to it by the Committee of the Whole and had decided to re-examine the terminology of the article later, in the light of other provisions of the draft articles, in particular article 39 when it was referred to it by the Committee of the Whole.

Article 40 was approved.

Article 43 (Provisions of internal law regarding competence to conclude a treaty) [3]

6. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 43 adopted by the Drafting Committee read as follows:

"*Article 43*

" 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

" 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

7. At its forty-third meeting, the Committee of the Whole had referred article 43 to the Drafting Committee after making two changes. First, it had approved an amendment by Peru and the Ukrainian SSR (A/CONF.39/C.1/L.228 and Add.1) to alter the closing words of the article to read: " unless that violation of its internal law was of fundamental importance and manifest ". The Drafting Committee had considered that the discussion, and particularly the statement by the Peruvian representative, had clearly shown that the Committee of the

[2] For earlier discussion of article 40, see 40th meeting.

[3] For earlier discussion of article 43, see 43rd meeting.

Whole had intended those words to refer to manifest violations of rules of fundamental importance, and not, as the text suggested, fundamental violations of any rule, regardless of its importance. It had therefore amended the closing words of the article to read: " unless that violation was manifest and concerned a rule of its internal law of fundamental importance ".

8. Secondly, the Committee of the Whole had approved an amendment by the United Kingdom (A/CONF.39/C.1/L.274) to add a sentence reading: "A violation is manifest if it would be objectively evident to any State dealing with the matter normally and in good faith ". The Drafting Committee had thought it necessary to clarify the meaning of the words " dealing with the matter normally ", and had therefore worded the sentence to read:

> "A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith ".

It also decided that the sentence should form a separate paragraph.

9. In the Spanish version of paragraph 1 of the article, the words " *con violación* " had been replaced by the words " *en violación* ".

10. Mr. ROSENNE (Israel) said his delegation reserved its position regarding the text of article 43. The Drafting Committee had worded the article in accordance with the decisions of the Committee of the Whole, but the resulting text was not an improvement on the International Law Commission's wording.

11. Mr. CARMONA (Venezuela) said that the wording approved by the Drafting Committee was consistent with the amendments approved by the Committee of the Whole and improved the text of the article. Nevertheless, that wording was not entirely satisfactory to the delegations which had expressed concern on the subject when the Committee of the Whole had discussed the article; it did not solve the problems which the article might create for Parliaments. His delegation therefore reserved its position on the article.

12. Mr. CUENDET (Switzerland) said his delegation reserved its right to revert to the issues raised by article 43 at the second session of the Conference.

Subject to the above reservations, article 43 was approved.

Article 44 (Specific restrictions on authority to express the consent of the State) [4]

13. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 44 adopted by the Drafting Committee read as follows:

"*Article 44*

> " If the authority of a representative to express the consent of his State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating a consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent."

14. Before referring article 44 to the Drafting Committee, the Committee of the Whole, at its forty-fourth meeting, had approved a Mexican amendment (A/CONF.39/C.1/L.265) to add the words " or of the depositary " after the words " of the other negotiating States ". With that addition, article 44 referred to the case in which specific restrictions on the authority to express the consent of a State were notified by the State to the depositary and not direct to the other negotiating States.

15. The Drafting Committee had found that that situation was covered by article 73, sub-paragraph (*c*), which stipulated that if a notification was transmitted to a depositary, it was to be " considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1 (*e*) ". That provision of article 73 provided negotiating States with a guarantee, which might be impaired if the express reference to the depositary were retained in article 44. The Drafting Committee had therefore deleted the reference. It had also replaced the words " brought to the knowledge of " by the words " notified to ", which made it possible to apply the provisions of article 73. It had considered it unnecessary to add the word " expressly ", as proposed by the Japanese amendment (A/CONF.39/C.1/L.269) which had been referred to the Drafting Committee by the Committee of the Whole.

16. In addition to the Japanese amendment, the Drafting Committee had also had before it a Spanish amendment proposing a new text for article 44 (A/CONF.39/C.1/L.288). It had decided that the International Law Commission's text was preferable.

17. In the Spanish version, the words " *por determinado tratado* " were replaced by the words " *por un tratado determinado* ".

18. Mr. TENA IBARRA (Spain) said that, in the discussion of article 44 in the Committee of the Whole, his delegation had submitted an amendment (A/CONF.39/C.1/L.288) proposing a substantive change and a drafting change. The substantive change was similar to that proposed in the Japanese amendment (A/CONF.39/C.1/L.269).

19. The Committee of the Whole, in a single vote, had pronounced in favour of the principle of notification. His delegation thought that, if it were decided to retain article 44, provision should be made for notification. Further, the International Law Commission's wording did not express the idea in question clearly and the terms used were neither legal nor elegant, owing to the repetitions. The Spanish delegation had therefore thought it necessary to propose an amendment containing new wording.

20. His delegation reserved the right to revert to the matter at the second session of the Conference and to re-submit its amendment.

Subject to the above reservation, article 44 was approved.

Article 45 (Error) [5]

Article 46 (Fraud) [6]

Article 47 (Corruption of a representative of the State) [7]

[4] For earlier discussion of article 44, see 44th meeting.

[5] For earlier discussion of article 45, see 44th and 45th meetings.

[6] For earlier discussion of article 46, see 45th, 46th and 47th meetings.

[7] For earlier discussion of article 47, see 45th, 46th and 47th meetings.

Article 48 (Coercion of a representative of the State) [8]

21. Mr. YASSEEN, Chairman of the Drafting Committee, said that articles 45 to 48 had been approved by the Committee of the Whole and referred back to the Drafting Committee with a single amendment by the United States relating to the English title of article 48 (A/CONF.39/C.1/L.277). The Drafting Committee would defer a final decision on that amendment until it had considered all the titles adopted by the International Law Commission for the various parts, sections, and articles of the draft.

22. The Drafting Committee had not made any change in the English version of articles 45 to 48, but in paragraph 2 of article 45 it had modified the French and Spanish versions of the English expression " to put on notice ". The new wording was based on the translation of that expression in the judgment of the International Court of Justice in the *Temple of Preah Vihear* case.[9] In the Spanish version of articles 45 and 46, the words " *Todo Estado* " had been replaced by the words " *Un Estado* ", and in paragraph 1 of article 45 the words " *y que constituyera* " had been replaced by the words " *y constituyera* ".

Article 45 was approved.

23. Mr. CARMONA (Venezuela) said that his delegation reserved its position on articles 46 and 47 for the reasons explained during the debate on those articles at the forty-fifth meeting of the Committee of the Whole.

Subject to the above reservation, articles 46 and 47 were approved.

Article 48 was approved.

Article 49

(Coercion of a State by the threat or use of force)[10]

24. Mr. YASSEEN, Chairman of the Drafting Committee, said that in adopting the amendment submitted by Bulgaria and twelve other States (A/CONF.39/C.1/L.289 and Add.1), the Committee of the Whole had inserted the expression " international law embodied in " between the words " principles of " and " the Charter of the United Nations ". It had then referred article 49, as amended, to the Drafting Committee without further modification.

25. The Drafting Committee had not made any change in the English and French texts of the article, but in the Spanish text the expression " *con violación* " had been replaced by the words " *en violación* ", to bring the Spanish version into line with the English and French texts. The text accordingly read:

> " A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations. "

26. Mr. BINDSCHEDLER (Switzerland) asked whether there was any difference in meaning between the words " without any legal effect ", used in article 48, and the word " void ", used in article 49. If there was a difference in terminology, then there must presumably be a difference in meaning.

27. His delegation could not accept articles 48 and 49, as it thought that the words " without any legal effect " and " void " should be replaced by the word " voidable ". The articles should provide not for the nullity *ipso facto* of a treaty, but for the possibility of invalidating it when nullity had been established in conformity with the required procedure.

28. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Committee of the Whole had referred article 48 to the Drafting Committee without any modification of the expression to which the Swiss representative objected. It was not for the Drafting Committee to introduce a substantive change in an article.

29. With regard to article 49, no amendment to replace the word " void " had been submitted to the Committee of the Whole. Consequently, the Drafting Committee had not been asked to make any change.

30. Mr. MIRAS (Turkey) said that he agreed with the Swiss representative's observations.

31. Mr. DE BRESSON (France) said that, for reasons of principle which had been explained during the debate on article 49, his delegation would not oppose the adoption of article 49 as it stood. However, it would be advisable, at the appropriate juncture, to define the precise meaning of the concepts referred to in the various articles of Part V concerning cases of invalidity.

32. Mr. SINCLAIR (United Kingdom) said that his delegation would not oppose the adoption of article 49. As he had already said, the final acceptance by his delegation of that article and the articles that had just been approved would depend on the inclusion of satisfactory procedures in article 62.

33. Mr. HARRY (Australia) said he agreed with the remarks of the French representative; he reserved his delegation's position on article 49.

Subject to the above reservations, article 49 was approved.

34. Mr. AL-RAWI (Iraq) said that his delegation accepted the formulation of article 49, which reflected the wishes of most members of the Committee, but wished to put on record that it interpreted the idea of force as including not only armed force but any form of economic or political pressure.

35. The CHAIRMAN invited the Committee to resume its consideration of the articles of the International Law Commission's draft.

Article 71 (Depositaries of treaties) and

Article 72 (Functions of depositaries)
(resumed from the previous meeting)

36. Mr. MAKAREWICZ (Poland) said that the growing number of multilateral treaties conferred ever-increasing importance on the depositary, which must act in an impartial manner and in the interests of the entire international community. Nevertheless, in international practice there had been cases in which a depositary had acted in an impartial manner towards certain States but had shown a discriminatory attitude towards other States. The depositary generally justified its attitude by saying that it did not recognize a particular State. Such conduct was incompatible with the international character of the depositary's functions and constituted an abuse

[8] For earlier discussion of article 48, see 47th and 48th meetings.

[9] *I.C.J. Reports, 1962*, p. 26.

[10] For earlier discussion of article 49, see 48th, 49th, 50th, 51st and 57th meetings.

of powers on its part. By refusing to accept an appropriate instrument of a given State, a depositary arbitrarily precluded that State from entering into treaty relations with other parties to a treaty, thus interfering with the smooth development of treaty relations.

37. Unless the treaty otherwise provided, a depositary was required to receive instruments of ratification, accession, acceptance or approval, without making any distinction between States. Further, in conformity with the principle of the sovereign equality of States, every State was entitled to decide for itself whether or not it wished to have treaty relations with other States. When Poland functioned as a depositary, as in the case of the 1929 Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, [11] it acted in an absolutely impartial manner and regardless of such considerations as relations or recognition. That did not, of course, preclude Poland, in its capacity as a party, from expressing its own policy with regard to certain countries.

38. His delegation took the view that participation in multilateral treaties was without prejudice to the question of the recognition or maintenance of diplomatic relations. The Committee had already expressed its opinion on that question when it had approved by a large majority an amendment to article 60 which provided that severance or absence of diplomatic relations between two or more States did not prevent the conclusion of treaties between those States. The conclusion of a treaty did not affect the situation in regard to diplomatic relations.

39. Thus the Committee had already confirmed the underlying principle of the six-State amendment (A/CONF.39/C.1/L.351). The same principle should therefore be reproduced in the provisions concerning the functions of depositaries.

40. The principle according to which " the conclusion of a treaty does not affect the situation in regard to diplomatic relations ", which had also been approved by the Committee, dispelled all doubts as to the possible effects of the six-State amendment. His delegation considered that the amendment to article 60 and the six-State amendment would guarantee the smooth functioning of the depositary's machinery.

41. He supported the amendment by Bulgaria, Sweden and Romania (A/CONF.39/C.1/L.236 and Add.1), which took account of current practice. The Malaysian amendment (A/CONF.39/C.1/L.290/Rev.1) related to a question of form but did not seem to improve the wording of article 71.

42. His delegation was also in favour of the substantive amendments to article 72 by the Byelorussian SSR (A/CONF.39/C.1/L.364) and Mongolia (A/CONF.39/C.1 L.368), which stressed the principle of the impartial performance of the functions of depositaries and thus helped to promote good relations between States.

43. Mr. EUSTATHIADES (Greece) said that his delegation would support any amendment to Part VII of the draft designed to cover all situations as far as possible, and to avoid political difficulties. That meant applying three principles: flexibility, discretion in designating the depositary, and impartiality of the depositary.

44. The principle of flexibility should apply both to the status and functions of the depositary, and to the classes of treaty covered by the provisions relating to the deposit of instruments. Thus, so far as article 71 was concerned, the Greek delegation supported the Finnish amendment (A/CONF.39/C.1/L.248), which made provision for cases in which there was more than one depositary. It also supported the Mexican amendment (A/CONF.39/C.1/L.372), which took into account the practice followed by certain international organizations, in particular the Council of Europe, the secretariat of which was not an organ of the organization. Similarly, it would be useful to provide, in paragraph 1, that States could agree among themselves on the scope of the functions they wished to entrust to the depositary. The Greek delegation therefore supported paragraph 1 of the United States amendment. On the question of the designation of the depositary, he agreed with the Canadian representative that it should be optional rather than compulsory. Consequently, he could not support the amendment by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.236 and Add.1), which would have the effect of making the designation of the depositary more nearly obligatory.

45. Lastly, it was not enough to say that the depositary was under an obligation to act impartially in the performance of its functions. It must not be entrusted with functions which would expose it to the risk of acting in a way that might seem to lack objectivity and impartiality. As the French representative had said at the previous meeting, the supervision exercised by the depositary should be restricted to formalities. It should not be required to make any substantive or political judgment. The Greek delegation therefore supported the amendment by the Byelorussian SSR (A/CONF.39/C.1/L.364), which limited the depositary's functions to technical tasks. Both in practice and in theory, the Secretary-General of the League of Nations had been denied competence to make certain substantive judgments relating to the registration of treaties.

46. The French representative had also mentioned other points which were a source of danger. The Drafting Committee's attention should be specially drawn to the expression " States entitled to become parties to the treaty ", used in article 72. Apart from the problem of judgment raised by that form of words, it might well be asked whether it did not give the depositary an unduly onerous technical task and one, moreover, which did not meet the needs of the international community. In principle, only contracting States, signatory States and States which had taken part in the negotiation needed to receive such communications. Other States could first express their wish to be informed about the performance of the treaty. The formulation for paragraph 2 proposed in the United States amendment (A/CONF.39/C.1/L.369) was a very good solution and the Greek delegation supported it.

47. Mr. THIAM (Guinea), speaking as a co-sponsor of the six-State amendment to article 71 (A/CONF.39/C.1/L.351), said that particular attention should be paid to the question of the depositary's impartiality, since that was essential to the stability of treaties and consequently to the development of international co-operation. Like the other delegations sponsoring the amendment, the

[11] League of Nations, *Treaty Series*, vol. 137.

delegation of Guinea considered that the obligation of impartiality should be more clearly stated. Problems might well arise when the depositary was an international organization of which the State making the notification was not a member; or the depositary might be a State which did not have diplomatic relations with the notifying State, either because relations had been broken off or because they had never existed, the depositary State not having recognized the notifying State. Or again, relations between the two States might be going through a period of crisis. In all such cases, there should be no possibility of the depositary's impartiality being called in question. That was the purpose of the amendment.

48. It might perhaps be better to replace the words " the depositary State " by " the latter " in the text of the amendment in order to avoid giving the impression that the functions of a depositary were always entrusted to a State.

49. Mr. SECARIN (Romania) said that the rules drawn up by the International Law Commission in articles 71 and 72 were designed to give the depositary a legal status enabling it to play its essential part in the application of multilateral treaties. The importance of such treaties in international life was such that the provisions relating to the depositary should take account of new arrangements and methods adopted in practice, in order to ensure more effective operation of the treaties. One such method was to entrust the function of depositary to several States; that should be taken into account in the future convention. The Romanian delegation had therefore joined the Bulgarian and Swedish delegations in sponsoring their amendment (A/CONF.39/C.1/L.236). It was in favour of the Finnish amendment (A/CONF.39/C.1/L.248) for the same reasons. Those two amendments could be referred to the Drafting Committee, but if the Committee of the Whole wished to take a decision on them, it could vote on the principle. The words "shall designate" in the three-State amendment (A/CONF.39/C.1/L.236) did not make the procedure for designating depositaries compulsory; it was merely a possibility left to the discretion and will of the parties to a multilateral treaty.

50. In view of the international nature of its functions, the depositary must be strictly impartial. The nature of the relations between the depositary and a State sending notifications or communications concerning its participation in a treaty should have no influence on the impartiality of the depositary. Article 71 should mention that point expressly. The Romanian delegation would therefore support the six-State amendment (A/CONF.39/C.1/L.351).

51. Sir Humphrey WALDOCK (Expert Consultant) said that in article 71, paragraph 1, the International Law Commission had intended to state a declaratory, not a mandatory, rule. There had even been some question of framing the content of paragraph 1 in the form of a definition of depositary, and placing it in paragraph 2. The Commission had preferred, however, to devote paragraph 2 solely to the important substantive provision it now contained. It had been said that the words " shall be designated " appeared to be mandatory. That had not been the Commission's intention, however, and it was to be hoped that the Drafting Committee would find an appropriate form of words.

52. It had been asked whether the functions of a depositary were confined to multilateral treaties. The Commission had considered the question, but since there were sometimes depositaries for bilateral treaties, it had thought that it should not exclude them.

53. With regard to article 71, paragraph 1, it had been said that there might be more than one depositary. The International Law Commission had been aware of that practice, but had considered that the expression " a State " was very general and could equally cover cases in which there were two or three depositaries. Further, the practice introduced complications into the operation of the depositary system and, though it might sometimes be a useful expedient, the Commission had come to the conclusion that it should not press the point. If the Committee of the Whole wished to refer to that practice expressly, however, that would be consonant with the International Law Commission's intention and with modern practice.

54. It had been proposed that the words " or the chief administrative officer of the organization " should be added in paragraph 1. By " international organization ", the Commission had, of course, meant both the organization and its organs.

55. The word " impartially " in article 71, paragraph 2 should apply, in the Commission's view, to all the depositary's obligations in respect of a treaty for which it was to perform the functions of depositary.

56. Numerous comments had been made on article 72. The Canadian representative had asked for an explanation of paragraph 1 (*d*). His interpretation of it was correct. In the opinion of the International Law Commission, a depositary notified of reservations falling under article 16, sub-paragraph (*c*), that was to say, reservations incompatible with the object and purpose of a treaty, must communicate the text of the reservation to the other States concerned and leave it to them to decide the question of compatibility.

57. The Commission had made a very clear distinction between the functions of a depositary set out in paragraph 1 (*d*) and those in paragraph 2. Paragraph 2 dealt with cases in which there were differences of opinion between a State and the depositary about the application of paragraph 1 (*d*). In such cases, the matter was discussed with the other States concerned; consultations must be held; the depositary could not take any decision on the matter.

58. In his opinion, the expression " States entitled to become parties to a treaty " was too broad. The Commission had intended it to designate signatory States and any State entitled to become a party under the terms of the treaty; cases of succession of States were not covered. The proposal in the United States amendment (A/CONF.39/C.1/L.369) to refer to " signatory and contracting States " was a compromise which deserved consideration by the Drafting Committee.

59. It had been asked whether the registration of treaties should not be part of a depositary's functions. The International Law Commission had studied that problem, but had come to the conclusion that the function of registration might cause difficulties, in view of the rules applied by the General Assembly where the depositary was an international organization. There were very strict rules on the subject. The Commission had come to the conclu-

sion that it would be unwise to mention registration as one of the functions of a depositary without making a more thorough study of the relationship between the provision and the rules on the registration of treaties applied by the United Nations.

60. The CHAIRMAN said he would invite the Committee to vote on the various amendments to articles 71 and 72.

61. Mr. ARIFF (Malaysia) said he wished to withdraw his delegation's amendments (A/CONF.39/C.1/L.290/Rev.1 and L.291).

62. Mr. BLIX (Sweden) said that since there was no great difference between the amendment by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.236 and Add.1) and the second Finnish amendment (A/CONF.39/C.1/L.248), he would suggest that a vote be taken on the principle expressed in those amendments, that " one or more States " might be designated as depositary.

It was so agreed.

63. The CHAIRMAN said that, after the vote on the principle expressed in those amendments, he would put the remaining amendments to article 71 to the vote, paragraph by paragraph where necessary.

The principle expressed in the two amendments was adopted by 77 votes to none, with 5 abstentions.

Paragraphs 1 and 2 of the Chinese amendment (A/CONF.39/C.1/L.328) were rejected by 39 votes to 9, with 19 abstentions.

Paragraph 3 of the Chinese amendment was rejected by 35 votes to 8, with 27 abstentions.

The Mexican amendment (A/CONF.39/C.1/L.372) was adopted by 40 votes to 10, with 32 abstentions.

64. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said that, as a result of the comment by the representative of Guinea, the sponsors of the six-State amendment (A/CONF.39/C.1/L.351) had decided to replace the words " the depositary State " by the words " the latter ".

The six-State amendment, as thus revised, was rejected by 25 votes to 23, with 28 abstentions.

65. The CHAIRMAN said that if there were no objection he would take it that the Committee agreed to refer article 71, as thus amended, to the Drafting Committee.[12]

It was so agreed.

66. The CHAIRMAN said he would put the various amendments to article 72 to the vote, paragraph by paragraph where necessary, beginning with the United States amendment.

Paragraph 1 of the United States amendment (A/CONF.39/C.1/L.369) was adopted by 46 votes to 12, with 28 abstentions.

Paragraph 2 of the United States amendment was adopted by 45 votes to 4, with 32 abstentions.

Paragraph 3 of the United States amendment was adopted by 71 votes to none, with 13 abstentions.

Paragraph 4 of the United States amendment was adopted by 59 votes to none, with 22 abstentions.

Paragraph 5 of the United States amendment was adopted by 55 votes to one, with 29 abstentions.

67. The CHAIRMAN said he would now put the Byelorussian amendment (A/CONF.39/C.1/L.364) to the vote. Paragraph 3 would be voted on after paragraph 1 since, if it were rejected, paragraph 2 fell, while if it were adopted, paragraph 2 followed automatically.

Paragraph 1 of the Byelorussian amendment was adopted by 32 votes to 24, with 27 abstentions.

Paragraph 3 of the Byelorussian amendment was adopted by 35 votes to 16, with 33 abstentions.

68. The CHAIRMAN said there now only remained the Finnish, Mongolian and Mexican amendments. In the case of the Mexican amendment (A/CONF.39/C.1/L.373) what he would put to the vote would be the principle contained in that amendment and in the Finnish amendment to paragraph 1 (*a*).

*The Finnish amendment (A/CONF.39/C.1/L.249) to paragraph 1 (*e*) was adopted by 64 votes to 2, with 18 abstentions.*

The Mongolian amendment (A/CONF.39/C.1/L.368) was adopted by 29 votes to 28, with 29 abstentions.

*The principle contained in the Mexican amendment and in the Finnish amendment to paragraph 1 (*a*) (A CONF.39/C.1/L.249), that amendments to the treaty be mentioned in paragraph 1 (*a*), was adopted without opposition.*

69. The CHAIRMAN said that if there were no objection he would take it that the Committee agreed to refer article 72, as thus amended, to the Drafting Committee. [13]

It was so agreed.

Article 73 (Notifications and communications)

Article 73 was approved and referred to the Drafting Committee [14]

Article 74 (Correction of errors in texts or in certified copies of treaties) [15]

70. Mr. VEROSTA (Austria), introducing his delegation's amendment to paragraph 2 (*a*) (A/CONF.39/C.1/L.8/Rev.1), said that paragraph (4) of the International Law Commission's commentary contained an important statement relating to the correction of errors, which read: " The technique is for the depositary to notify all the interested States of the error or inconsistency and of the proposal to correct the text, while at the same time specifying an appropriate time limit within which any objection must be raised ". It was desirable that the temporal element should also be mentioned in the text of article 74, and that was the purpose of his delegation's amendment.

71. His delegation's amendment to sub-paragraph 2 (*b*) (A/CONF.39/C.1/L.9) was of a drafting nature and could be referred to the Drafting Committee.

72. Mr. BEVANS (United States of America) said that his delegation's amendment (A/CONF.39/C.1/L.374) sought to bring article 74 into conformity with the practice

[12] For resumption of the discussion of article 71, see 82nd meeting.

[13] For resumption of the discussion of article 72, see 82nd meeting.

[14] For resumption of discussion of article 73, see 82nd meeting.

[15] The following amendments had been submitted: Austria A/CONF.39/C.1/L.8/Rev.1 and L.9; United States of America A/CONF.39/C.1/L.374 and Congo (Brazzaville), A/CONF.39/C.1/L.375.

of depositaries. The use of the words " contracting States " overlooked two important considerations. First, it might be desirable to reach agreement on a correction before any of the signatory States had become " contracting States ". Secondly, there might be several contracting States within a relatively short period, but for various reasons certain signatory States might not yet have become contracting States; for example, their Parliament might not have been in session.

73. To replace the rule in article 74, which had been considered too strict, it had been suggested that States which had participated in the negotiation should be consulted before a treaty entered into force. That solution also seemed to be too restrictive. In some instances a multilateral treaty would be brought into force after only two ratifications by signatories and it would be unwise to deprive the other signatory States of the right to consider a proposed correction, particularly if only a very short period had elapsed since the treaty was signed. A literal application of article 74 would be unrealistic in view of the practice followed by depositaries. Some negotiating or signatory State might object to a correction yet never become a contracting State, but the likelihood of such an objection would seem so remote that it did not justify the restrictive wording of article 74.

74. Mr. MOUDILENO (Congo, Brazzaville) introducing his delegation's amendment (A/CONF.39/C.1/L.375), said that the verb " find " expressed an objective criterion, whereas the words " are agreed " contained a subjective element. Also, for the French version, the word " *rectification* " seemed more appropriate than the word " *correction* ".

75. Mr. WERSHOF (Canada), referring to the Austrian amendment to paragraph 2 (*b*) (A/CONF.39/C.1/L.9), said that the words " States entitled to become parties " had a wider meaning than " signatory and contracting States ". He was afraid that a hurried change of the terms used in the convention might be detrimental to the harmony of the terminology employed in the various articles. He wondered why the Austrian delegation had restricted its amendment to paragraph 2(*b*).

76. Mr. VEROSTA (Austria) said that, when proposing the change in question, his delegation had assumed that the Drafting Committee would examine all the articles containing expressions such as " negotiating States " and " contracting States ". The scope of article 74 had to be widened as much as possible in order to enable States entitled to become parties to express their views on the correction of errors.

77. Mr. HARRY (Australia) said there was a difference between the case covered by paragraph 2 (*b*) in the Austrian amendment, and the other cases to which the United States amendment (A/CONF.39/C.1/L.374) referred. Only contracting States, and States which by signing the treaty had expressed a wish to become contracting parties, should be entitled to decide whether the text contained an error and to make any appropriate corrections; but the depositary should notify the error, and the proposal to correct it, to all States entitled to become contracting parties.

78. Sir Francis VALLAT (United Kingdom) said he supported the observations of the Australian representative, which should be considered by the Drafting Committee. The words " signatory and contracting States " met all practical requirements with regard to the correction of errors in treaties.

79. The CHAIRMAN put to the vote the Austrian amendment to paragraph 2 (*a*) (A/CONF.39/C.1/L.8/Rev.1).

The Austrian amendment was adopted by 39 votes to 7, with 38 abstentions.

80. The CHAIRMAN put to the vote the Austrian amendment to paragraph 2 (*b*) of article 74 (A/CONF.39/C.1/L.9).

The Austrian amendment was adopted by 27 votes to 7, with 43 abstentions.

81. The CHAIRMAN put to the vote the United States amendment to paragraphs 1, 2 (*a*) and (*c*), and 3-5 (A/CONF.39/C.1/L.374).

The United States amendment was adopted by 65 votes to none, with 14 abstentions.

82. The CHAIRMAN put to the vote the Congo (Brazzaville) amendment (A/CONF.39/C.1/L.375).

The Congo (Brazzaville) amendment was rejected by 21 votes to 13, with 48 abstentions.

83. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to refer article 74, together with the amendments by Austria and the United States, to the Drafting Committee. [16]

It was so agreed.

The meeting rose at 5.50 p.m.

[16] For resumption of discussion of article 74, see 82nd meeting.

SEVENTY-NINTH MEETING

Tuesday, 21 May 1968, at 11 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 75 (Registration and publication of treaties)

1. The CHAIRMAN invited the Committee to consider article 75 of the International Law Commission's draft. [1]

2. Mr. KUO (China) said that the Chinese amendment (A/CONF.39/C.1/L.329 and Corr.1) was of a purely drafting nature. As article 75 was obviously based on Article 102 of the Charter, an express reference to the latter article should be made and its wording should be followed as closely as possible. For that reason the word " party " had been replaced by the words " any party ".

[1] The following amendments had been submitted : China, A/CONF.39/C.1/L.329 and Corr.1; Byelorussian Soviet Socialist Republic, A/CONF.39/C.1/L.371; United States of America and Uruguay, A/CONF.39/C.1/L.376.