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Charter, it was not the conclusion but the entry into force of a treaty which generated the obligation to register it with the United Nations Secretariat.

17. The idea embodied in the amendment by the United States and Uruguay (A/CONF.39/C.1/L.376) was admirable; it would simplify the registration of certain types of treaties. The subject matter of the amendment could be covered by States in their treaties, and by international organizations by adopting a suitable general resolution on the subject.

18. He agreed with the slight misgivings expressed by the Italian representative on the subject of amendments which appeared to create obligations for States in general. A provision of that type could be said to encroach upon the rules which had been adopted in articles 30 to 33 on the subject of treaties and third States. The International Law Commission had been careful, when drafting article 75, to speak only of treaties " entered into by parties to the present articles ".

19. The CHAIRMAN said he would first put to the vote the principle embodied in the amendment by the Byelorussian SSR (A/CONF.39/C.1/L.371), on the understanding that the Drafting Committee would take into account the Expert Consultant's remarks. He would then put the joint amendment and the Chinese amendment to the vote.

The principle embodied in the amendment by the Byelorussian SSR (A/CONF.39/C.1/L.371) was adopted by 56 votes to 4, with 26 abstentions.

The amendment by the United States of America and Uruguay (A/CONF.39/C.1/L.376) was adopted by 61 votes to none, with 25 abstentions.

The amendment by China (A/CONF.39/C.1/L.329 and Corr.1) was rejected by 20 votes to 5, with 51 abstentions.

20. The CHAIRMAN said that, if there were no objection, he would consider that the Committee agreed to refer article 75 to the Drafting Committee with the amendments which had been adopted.

It was so agreed.

The meeting rose at 11.40 a.m.

EIGHTIETH MEETING

Tuesday, 21 May 1968, at 5.5 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)*

TEXT PROPOSED BY THE DRAFTING COMMITTEE

Article 50 (Treaties conflicting with a peremptory norm of general international law) *(jus cogens)*

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text of article 50 adopted by the Drafting Committee. [1]

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 50 adopted by the Drafting Committee read:

" *Article 50*

" A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. "

3. By adopting the United States amendment (A/CONF.39/C.1/L.302) the Committee of the Whole had decided that the opening words of article 50 should read: " A treaty is void if, at the time of its conclusion, it conflicts... ". It had then referred the article to the Drafting Committee with two amendments, one submitted by Romania and the USSR (A/CONF.39/C.1/L.258 and Corr.1) and the other by Finland, Greece and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2). The Committee of the Whole had specified that it had approved the principle of *jus cogens*, and that the amendments referred to the Drafting Committee related to drafting only.

4. The Drafting Committee had decided that the amendment by Finland, Greece and Spain would clarify the text, and had therefore inserted the phrase " a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole ". Only the word " recognized " was used in the three-Power amendment, but the Drafting Committee had added the word " accepted " because it was to be found, together with the word " recognized ", in Article 38 of the Statute of the International Court of Justice.

5. The Drafting Committee had also decided to divide article 50 into two sentences, the first setting out the rule, and the second defining a peremptory norm of general international law for the purposes of the convention.

6. In view of the new wording of article 50, the Drafting Committee had thought it unnecessary to adopt the Romanian and USSR amendment, because the new text was in keeping with the intentions of the sponsors of that proposal.

7. It appeared to have been the view of the Committee of the Whole that no individual State should have the right of veto, and the Drafting Committee had therefore included the words " as a whole " in the text of article 50.

8. Mr. CASTRÉN (Finland) drew attention to the amendment (A/CONF.39/C.1/L.293) which his delegation had submitted to the Committee of the Whole. In view of the link between the amendment and article 41 on separability, the Finnish delegation had provisionally withdrawn its amendment, pending a final decision on article 41, which was now being considered by the Drafting Committee. It therefore reserved the right to revert to the question of the application of the principle of separability to article 50 when article 41 came back from the Drafting Committee.

9. Mr. MIRAS (Turkey) said that, although he appreciated the Drafting Committee's efforts to produce a new text of article 50, he was unable, for the reasons he had already given, to support the new text, since it retained the

[1] For earlier discussion of article 50, see 52nd-57th meetings.

essential features of the original draft article. His delegation requested that article 50 be put to the vote.

10. Mr. HAYES (Ireland) said that his delegation agreed in principle that there should be a rule under which a treaty would be void if its provisions conflicted with *jus cogens*. The Irish delegation had no objection to the text proposed by the Drafting Committee, but wished to point out that it would be impossible to define *jus cogens* in such a way as to determine beyond doubt that a rule of international law was peremptory in character. It was therefore essential to establish independent machinery for adjudicating on alleged violations of *jus cogens*. His delegation reserved its position on article 50 pending a decision on procedure, and would therefore abstain in the vote.

11. Mr. BARROS (Chile) asked the Chairman of the Drafting Committee to give further details of the meaning of the words " as a whole " added by the Drafting Committee.

12. Mr. YASSEEN, Chairman of the Drafting Committee, explained that by inserting the words " as a whole " in article 50 the Drafting Committee had wished to stress that there was no question of requiring a rule to be accepted and recognized as peremptory by all States. It would be enough if a very large majority did so; that would mean that, if one State in isolation refused to accept the peremptory character of a rule, or if that State was supported by a very small number of States, the acceptance and recognition of the peremptory character of the rule by the international community as a whole would not be affected.

13. Mr. RUEGGER (Switzerland) said that although he appreciated the Drafting Committee's considerable efforts to take into account the views expressed on article 50, his delegation still thought it was essential to include in the convention a clear, watertight text containing the necessary guarantees, and also to provide that the treaty should be voidable but not void. He agreed with the Turkish representative that the article should be put to the vote; the Swiss delegation could not vote in favour of article 50 as drafted.

14. Mr. DADZIE (Ghana) said that, after listening carefully to the explanations given by the Chairman of the Drafting Committee regarding the phrase " as a whole ", his delegation felt that the idea thus expressed was implicit in the concept of " the international community of States " and the words " as a whole " might therefore be interpreted otherwise than in the sense indicated by the Chairman of the Drafting Committee. In view of the ambiguity of those words, the Ghanaian delegation would ask for a separate vote on them.

15. The CHAIRMAN invited the Committee to vote on the phrase " as a whole " in the Drafting Committee's text of article 50.

The phrase was approved by 57 votes to 3, with 27 abstentions.

16. The CHAIRMAN put to the vote the text of article 50 adopted by the Drafting Committee.

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

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

In favour: Kenya, Kuwait, Lebanon, Liechtenstein, Madagascar, Malaysia, Mali, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Sierra Leone, Singapore, Spain, Sweden, Syria, Thailand, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, China, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia, Finland, Ghana, Greece, Guatemala, Guinea, Guyana, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jamaica.

Against: Monaco, Switzerland, Turkey.

Abstaining: Liberia, New Zealand, Norway, Senegal, South Africa, United Kingdom of Great Britain and Northern Ireland, Australia, Austria, Belgium, Canada, Chile, Denmark, Federal Republic of Germany, France, Gabon, Ireland, Italy, Japan.

The text of article 50 was approved by 72 votes to 3, with 18 abstentions.

17. Sir Francis VALLAT (United Kingdom), explaining his delegation's vote, said that the new text was a considerable improvement on the original draft article. Nevertheless, the United Kingdom delegation reserved its position, pending the decisions to be taken on the separability of treaties in article 41 and on procedure in article 62, and it had therefore abstained in the voting.

18. Mr. KEARNEY (United States of America) said that his delegation had voted for the text of article 50 submitted by the Drafting Committee as being better than that of the original draft. The United States delegation was still concerned about the links between articles 50 and 62. It had found it possible to vote for article 50 on the understanding that it would be possible to establish a system for the impartial settlement of disputes arising from the application of article 50 and other articles. If such a system could not be set up, the United States delegation would be obliged to reconsider its position on article 50 and on some other articles.

19. Mr. DE BRESSON (France) said that his delegation had abstained because it could not take a definite stand on article 50 until the fate of certain related articles was known.

20. Mr. DADZIE (Ghana) said that his delegation had voted for article 50, although it objected to the words " as a whole ". It was no surprise to his delegation to see that delegations notoriously opposed to the principle of *jus cogens* regarded the present text as an improvement on the original, since the improvement lay exclusively in the addition of the words " as a whole ". Nevertheless, the Ghanaian delegation was relying on the explanation of the meaning of those words given by the Chairman of the Drafting Committee.

21. Mr. BLIX (Sweden) explained that he had voted for article 50 subject to the adoption in due course of a system for the impartial settlement of disputes, without which the provision in article 50 might threaten the stability of contractual relations.

22. Mr. MARESCA (Italy) said that, although the Italian delegation was in favour of the principle in article 50, it had felt bound to abstain because of the close link between that provision and the machinery which the Conference should establish for the settlement of any disputes arising out of that article. His delegation sincerely hoped that it would be able to reconsider its position as soon as possible.

23. Mr. DEVADDER (Belgium) explained that his delegation was in agreement with the content of article 50 but had had to abstain because acceptance would depend on how the problems raised by article 62 were solved.

24. Mr. IPSARIDES (Cyprus) said that his delegation unreservedly supported the principle of *jus cogens*. It had no objection to the expression " as a whole " but would have preferred the formula " binding the international community " rather than " recognized ... by the international community " because the latter expression was subjective in character. However, he was satisfied with the explanations given by the Chairman of the Drafting Committee and had therefore voted both for the words " as a whole " and for article 50.

25. Mr. WERSHOF (Canada) said he had abstained for the same reasons as the United Kingdom representative, although he appreciated the improvements introduced in the text of article 50 by the Drafting Committee.

26. Mr. BARROS (Chile) explained that his delegation had had to abstain, because although the present text of article 50 was much more satisfactory than that of the draft, the provision in question was linked to other articles whose fate was not yet known. The acceptance by his delegation of the principle of *jus cogens* was not in doubt, however, and it hoped to be able to reconsider its position on article 50.

27. Mr. CRUCHO DE ALMEIDA (Portugal) said that his delegation had voted for article 50 in the hope that an acceptable solution would be found for all the problems created by articles 41 and 62. However, it reserved its position in the event of that not being achieved.

28. Mr. FLEISCHHAUER (Federal Republic of Germany), explaining his vote, said that, at the 55th meeting, his delegation had stated that it recognized the existence of peremptory rules of international law. It was therefore not opposed to the inclusion of article 50 in the convention on the law of treaties. However, as the notion of *jus cogens* was a new one, a definition of the criteria for determining that a rule was peremptory in character was needed. The new wording of article 50 was a step in the right direction, but his delegation was not sure for the time being whether it was sufficiently precise. Given that uncertainty, the danger of abuse, and the fact that no satisfactory solution had as yet been found for the question of the procedural safeguards in article 62, his delegation had abstained in the vote.

Article 62 (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty) *(resumed from the 74th meeting)* and *Proposed new article 62* bis *(resumed from the 74th meeting)*

29. The CHAIRMAN invited the Committee to resume its consideration of article 62 of the International Law Commission's draft and of the proposed new article 62 *bis*.[2]

30. He announced that the draft resolution submitted by Ceylon and Czechoslovakia (A/CONF.39/C.1/L.361) and that submitted by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.362) had been withdrawn.

31. Mr. JAGOTA (India) said that article 62 had been discussed at great length; he therefore proposed that it be put to the vote forthwith, together with the amendments relating to it.

32. Mr. DADZIE (Ghana) said he supported the Indian representative's proposal; delegations had already stated their position on article 62. In approving article 62, the Committee should base its action on the conclusions set out by the International Law Commission in paragraph (4) of its commentary. It should certainly be possible the following year, or in the not too distant future, to make a further move towards the establishment of stricter and more binding methods of settling disputes.

33. Mr. RIPHAGEN (Netherlands) said that the sponsors of the thirteen-State amendment (A/CONF.39/C.1/L.352/Rev.1/Corr.1) had come to the conclusion that the substance of their amendment was compatible with the present wording of article 62. Accordingly, they had decided to withdraw their amendment to article 62 and to propose instead a new article 62 *bis* (A/CONF.39/C.1/L.352/Rev.2), the substance of which would be similar to that of the amendment just withdrawn. At the same time the sponsors of the new draft article proposed that consideration of their proposal and the vote on it should be postponed until the following session of the Conference.

34. Mr. FUJISAKI (Japan) said that, in view of the proposed new article 62 *bis*, the substance of the Japanese amendment to article 62 (A/CONF.39/C.1/L.339) should be regarded as an amendment to the new article 62 *bis* and should therefore be examined at the next session. His delegation reserved the right to modify the text of that amendment in due course.

35. Mr. KEARNEY (United States of America) pointed out that the United States amendment to article 62 (A/CONF.39/C.1/L.355) was based on the same considerations as the new article 62 *bis* and could therefore be studied at the same time. However, some aspects of the problem which might arise in connexion with the termination or suspension of the operation of a treaty by virtue of the convention had not been dealt with comprehensively in the new article 62 *bis*. He had in mind, for example, the method to be followed in the case of the breach of a treaty under article 57 and the

[2] For earlier discussion, see 68th-74th meetings.

question of how to give legal content to the series of articles in Part V, which were framed in very general terms.

36. Mr. ALVAREZ (Uruguay) said that, for the reasons given by previous speakers, his delegation could agree that its amendment to article 62 (A/CONF.39/C.1/L.343) should be studied at the same time as the new article 62 *bis* at the next session, but it reserved the right to modify its amendment if necessary.

37. Mr. RUEGGER (Switzerland) said he agreed to his amendment (A/CONF.39/C.1/L.347) being examined at the same time as article 62 *bis* at the next session, but reserved his delegation's position entirely on the subject of article 62.

38. Mr. DE BRESSON (France) said that his delegation's amendment (A/CONF.39/C.1/L.342) was aimed solely at clarifying a system which it did not seek to change. His delegation wished to state clearly that any case of invalidity, whether *ab initio* or relative, was subject to the procedure laid down in article 62. It was not a matter of questioning the possible difference in character between the two, but of clarifying the wording, which was in some respects ambiguous.

39. Mr. ALCIVAR-CASTILLO (Ecuador) said that the French amendment was not a drafting matter, since it involved the disappearance of the word " invalid " in paragraph 1. He asked that it be put to the vote.

The French amendment (A/CONF.39/C.1/L.342) was adopted by 39 votes to 31, with 20 abstentions.

40. Mr. ALVAREZ TABIO (Cuba) said he withdrew his delegation's amendment (A/CONF.39/C.1/L.353). He wished to emphasize, however, that in his view a treaty that was void under articles 48, 49, and 50 did not bind the parties and that there was no question of claiming its invalidity, since it was null and void *ab initio*.

41. The CHAIRMAN said that article 62 of the draft had been adopted and would be referred to the Drafting Committee with the French amendment (A/CONF.39/C.1/L.342).

42. Mr. RUEGGER (Switzerland) said that the Swiss delegation did not support article 62 and could not state its position on article 62 *bis* at the present stage.

43. Sir Francis VALLAT (United Kingdom) said he reserved his delegation's position on article 62. Its attitude would depend on a number of points, including the presumption in favour of the continued validity of treaties when an objection had been made to a notification. The problem had been raised in the United States amendment and could be studied by the Drafting Committee.

44. A phrase should be added to paragraph 3 providing that " meanwhile the presumption shall be that the treaty continues in force and in operation " so as to avoid any doubt on the status of a treaty when an objection had been made under article 62.

45. Mr. MIRAS (Turkey) said that, for the reasons he had stated at the 69th meeting, the Turkish delegation was opposed to the present wording of article 62.

46. Mr. WERSHOF (Canada) said that if article 62 had been put to the vote, his delegation would have voted against it, since it did not approve the present wording. Examination of the proposed new article 62 *bis* at the next session of the Conference would perhaps provide an opportunity for improving the article. He asked whether the Japanese amendment to article 62 (A/CONF.39/C.1/L.338) had been withdrawn.

47. The CHAIRMAN said that the Japanese delegation had withdrawn the second part of its amendment (A/CONF.39/C.1/L.338), relating to paragraph 2; he therefore suggested that the Committee vote on the part of the amendment which related to paragraph 1.

48. Mr. BLIX (Sweden) thought it unnecessary to vote on the first part of the Japanese amendment, since it covered the same ground as the French amendment just adopted.

49. Mr. FUJISAKI (Japan) said he agreed with the Swedish representative.

50. Mr. KEARNEY (United States of America) said that his delegation was still concerned about the problem of establishing a system for the settlement of disputes. His delegation's position on article 62 would be decided only when that point had been settled.

51. Mr. JAGOTA (India) said that his delegation's understanding of the decision which had just been taken was that article 62 had been adopted as representing a minimum agreement by the Committee. The substance of the amendment in document A/CONF.39/C.1/L.352/Rev.1/Corr.1 would be considered at the next session of the Conference as a proposed new article 62 *bis*. The sponsors of amendments to paragraph 3 of article 62 had withdrawn them or did not press them. If their sponsors so wished, those amendments could therefore be resubmitted at the next session as amendments to article 62 *bis*.

52. The CHAIRMAN confirmed that the new article 62 *bis* would be considered at the second session along with all the amendments in question, which would be recast and submitted as amendments to the new article.

53. Mr. EUSTATHIADES (Greece) said that, in view of the procedure just adopted with regard to article 62, his delegation reserved its position on the provisions of that article and also on any provisions which might be adopted to supplement it in the light of the discussion on the proposal to insert a new article 62 *bis*.

54. Mr. HARRY (Australia) said that the Australian delegation reserved its position on article 62. It was his understanding that article 62 had been adopted and referred to the Drafting Committee with the French amendment.

55. Mr. DE BRESSON (France) said that his delegation had no objection to the decision just taken to adopt article 62 and refer it to the Drafting Committee. However, the French delegation could not take a final position until it knew what was going to happen to article 62 *bis*.

56. Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation accepted article 62, paragraph 3, as far as it went. Nevertheless, its final position

on article 62 would depend on the additional procedural safeguards which it hoped would be added in article 62 *bis*.

57. Mr. MARESCA (Italy) said that his delegation favoured the principle embodied in article 62 but reserved its position on the actual text of that article until a decision had been reached on article 62 *bis*.

58. Mr. SMALL (New Zealand) said that his delegation reserved its position on article 62 pending a decision on article 62 *bis* in 1969.[3]

Proposed new article 76

59. The CHAIRMAN invited the Swiss representative to introduce the new article 76 proposed by his delegation (A/CONF.39/C.1/L.250).

60. Mr. RUEGGER (Switzerland) urged delegations to reflect carefully until the next session of the Conference on the meaning, scope and advantages of the Swiss proposal submitted in document A/CONF.39/C.1/L.250. The proposal was to include in the draft convention an article providing for the settlement of disputes regarding the interpretation and application of the convention of the law of treaties. The proposal followed logically from the position adopted by Switzerland at all the conferences on the codification of international law which had taken place in the past decade. The problem was very different from that raised by article 62. The purpose of the proposal was to make provision for the settlement of disputes arising from the interpretation and application of the convention itself. The Federal Government of Switzerland attached great importance to the question. It might be asked why, in formulating its proposal, Switzerland had not drawn, for example, on the text of the clause adopted by the Institute of International Law,[4] a model clause which reflected contemporary legal practice and technique. The reason was that his country had thought it preferable to adopt as a basis a text which had become familiar at United Nations codification conferences, namely the text included in the optional protocols to various recent conventions.

61. At the 1958 Geneva Conference on the Law of the Sea, the Swiss delegation had urged the inclusion, in the actual text of each of the conventions which had resulted from that Conference, of an article providing for the compulsory settlement by arbitration or adjudication of disputes arising out of the interpretation or application of those conventions. When the proposals were not adopted, the Swiss delegation had taken the initiative of proposing [5] that an optional protocol should be attached to the conventions on the law of the sea, feeling that some link, however inadequate or fragile, must be established between the first codification conventions and the systems already established and confirmed by the community of nations for stating the law. The solution thus proposed by Switzerland as a temporary one had been taken up later in connexion with other conventions. A number of delegations, while recognizing that compulsory arbitration and adjudication pointed the way to the future, had nevertheless felt that it was still too early at present to take that path. The Swiss delegation hoped those delegations would not maintain their reservations with regard to the inclusion in the present draft convention of a compulsory clause on the interpretation or application of the articles so far adopted. The inclusion of such a clause would constitute the best guarantee of the good faith reaffirmed in the convention.

62. Those who opposed the idea of compulsory arbitration for the settlement of disputes often invoked the prerogatives of State sovereignty. Yet many of them had agreed to be bound by compulsory clauses in such multilateral conventions as the Constitution of the International Labour Organisation, the Convention on the Prevention and Punishment of the Crime of Genocide,[6] the Supplementary Convention on the Abolition of Slavery,[7] the International Convention on the Elimination of All Forms of Racial Discrimination,[8] and the 1965 Convention on Transit Trade of Land-Locked States.[9] For example, article 16 of the last-named convention, which had been adopted by a two-thirds majority, specified that disputes relating to the interpretation or application of the convention would be settled by arbitration at the request of either party.

63. It was therefore difficult to understand why States which had agreed to be bound by important conventions whose interpretation and application was subject to compulsory settlement by impartial adjudication or arbitration, could have any real difficulty in approving the same legal principle in the convention that was to govern the law of treaties.

64. The doctrine of State sovereignty and the concept of an all-powerful State free to act arbitrarily had led to the undermining of many moral values which should be common to all mankind. The opinions of all must of course be respected. But the " new " States, whose entry into the international community had been so warmly welcomed, should reflect before being swayed by an understandable distrust of old methods. As far as Switzerland was concerned, nearly seven centuries of democracy had taught it that negotiation must be supplemented by arbitration. The many hundreds of arbitral awards handed down in the territory of the Swiss Confederation between the year 1200 and the beginning of the sixteenth century had no doubt greatly contributed to strengthen the bonds between the very diverse elements which formed the Swiss nation of today.

65. He suggested that no decision should be taken on the Swiss proposal at that session of the Conference. The Committee appeared to be heading sensibly towards the decision to postpone for a time a decision on such fundamental articles as article 62. The problem dealt with in the Swiss proposal was quite different from the one discussed at length in connexion with article 62. That article dealt with the procedural safeguards and guarantees which must surround the invalidation, termination or suspension of treaties, whereas the pro-

[3] For resumption of the discussion on article 62, see 83rd meeting.

[4] See *Annuaire de l'Institut de Droit international, 1956*, vol. 46, pp. 365-367.

[5] *United Nations Conference on the Law of the Sea, Official Records*, vol. II, pp. 110 and 111, document A/CONF.13/L.24, annex I.

[6] United Nations, *Treaty Series*, vol. 78, p. 277.

[7] United Nations, *Treaty Series*, vol. 266, p. 40.

[8] See annex to General Assembly resolution 2106 (XX).

[9] See *Official Records of the Trade and Development Board, Second Session, Annexes*, agenda item 6, document TD/B/18.

posed new article 76 dealt exclusively with disputes relating to the interpretation or application of the text of the convention. Although the two problems were quite distinct, differences of opinion on the subject of article 62 might well have repercussions on the decisions which the Committee might take on the Swiss proposal. It was therefore preferable to allow Governments time for reflection.

66. The CHAIRMAN suggested that consideration of the Swiss proposal (A/CONF.39/C.1/L.250) should be deferred until the second session of the Conference.

It was so decided.

Postponement of consideration of amendments containing specific references to "general multilateral treaties" and "restricted multilateral treaties"

67. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to defer consideration of all amendments to add a specific reference to general or restricted multilateral treaties until the second session of the Conference.

It was so decided.

The meeting rose at 6.50 p.m.

EIGHTY-FIRST MEETING

Wednesday, 22 May 1968, at 11.20 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)*

TEXTS PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts of articles 51-54, 56-60 and 69 *bis* adopted by that Committee.

2. The Drafting Committee had not submitted any text for article 55 because some of the amendments to that article which had been referred to it touched on questions of substance not yet settled by the Committee of the Whole. [1]

Article 51 (Termination of or withdrawal from a treaty by consent of the parties) [2]

3. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text for article 51 adopted by the Drafting Committee read:

"*Article 51*

" A treaty may be terminated or a party may withdraw from a treaty,

" (*a*) in conformity with the provisions of the treaty allowing such termination or withdrawal; or

" (*b*) at any time by consent of all the parties after consultation with the other contracting States. "

4. The Drafting Committee had made two changes. The word " provision " in sub-paragraph (*a*) had been put in the plural and the same change had been made in sub-paragraph (*a*) of article 54 because a treaty might contain several provisions on its termination or on the withdrawal of a party. With regard to sub-paragraph (*b*), the Netherlands delegation had proposed (A/CONF.39/C.1/L.313) that the clause be amended to read " at any time by consent of all the contracting States ". The Drafting Committee considered that the contracting States which were not yet parties to the treaty should not have the power of decision in connexion with the termination of a treaty, but that they had the right to be consulted in the matter. It had therefore confined itself to adding the words "after consultation with the other contracting States " at the end of sub-paragraph (*b*). Finally, in the Spanish version, the words " *poner término* " had been replaced by " *dar por terminado* ".

5. Mr. WERSHOF (Canada) said it was not clear to his delegation how a contracting State under article 51 could be a State which was not a party to the treaty. The " parties " referred to in sub-paragraph (*b*) must be those defined in article 2, sub-paragraph 1 (*g*), or States which had consented to be bound by the treaty and for which the treaty was in force. He would therefore appreciate an explanation of the reason for differentiating between the parties and the other contracting States in sub-paragraph (*b*).

6. Mr. YASSEEN, Chairman of the Drafting Committee, said that that question had been raised in the Drafting Committee, where it had been pointed out that there were a few cases in which a treaty already in force was not in force in respect of certain contracting States, which had expressed their consent to be bound by the treaty but had postponed its entry into force pending the completion of certain procedures. In those rare cases, the States concerned could not participate in the decision on termination, but had the right to be consulted; nevertheless, those States were contracting States, not parties to the treaty, for the limited period in question.

Article 51 was approved.

Article 52 (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force) [3]

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

"*Article 52*

" Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force. "

8. The Committee of the Whole had referred article 52 to the Drafting Committee with a United Kingdom amendment (A/CONF.39/C.1/L.310) to delete the words " specified in the treaty as ". The Drafting Committee considered that the number of parties necessary for the entry into force of a treaty might conceivably not be specified in the treaty itself, and had adopted the United

[1] See 80th meeting, para. 67.

[2] For earlier discussion of article 51, see 58th meeting.

[3] For earlier discussion of article 52, see 58th meeting.