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for denunciation. The Conference was therefore being asked to accept a new principle of law which would compel States to include a previously implicit denunciation clause in their treaties. Article 57 also laid down new provisions concerning the right of a State to invoke a breach of a treaty as a ground for its termination.

65. In view of the changes made in established rules of law and of the differences of opinion on the questions of arbitration and universality, it seemed essential, if the largest possible number of accessions was to be ensured, to state clearly and precisely that the provisions of the convention would apply only to treaties signed in the future. Some delegations considered that article 24, on non-retroactivity, provided an adequate solution to the problem, but there were many cases not covered by its provisions, since some situations lasted indefinitely or had not ceased to exist. The article was therefore ambiguous and eminent jurists had already gone into the matter very thoroughly. The Venezuelan delegation was proposing a simple and clear formula which might help a greater number of States to accede to the convention.

The meeting rose at 12.55 p.m.

ONE HUNDRED AND FIRST MEETING

Wednesday, 23 April 1969, at 3.25 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)*

Final clauses (including proposed new articles 76 and 77) (continued)

1. Mr. BRAZIL (Australia) said that on the question of participation his delegation would support the joint proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1). The Vienna clause, which had been used in previous codification conventions, should be applied in the present case also, as provided in article A of the joint proposal.

2. The unique character of the convention should be borne in mind when a decision was taken on the number of instruments required for the purpose of bringing the convention into force. It was a convention that had an almost constitutional significance in that it laid down the basic rules that would govern the procedural aspects of treaty relations as well as the question of the essential validity of treaties that were negotiated. Possible difficulties might arise if a number of States did not become parties to the convention. There was also the possibility of transitional problems, for instance on reservations, as the convention began to come into force for some States whereas other States had not yet become parties.

3. In the view of his delegation, the convention should not come into force until a significant part of the international community had indicated its acceptance of the code laid down in the convention. Australia would therefore favour the Swiss amendment (A/CONF.39/C.1/L.396) which provided for the entry into force of the convention following the deposit of the sixtieth instrument of ratification or accession. Should that amendment not be adopted by the Committee, the Australian delegation would support the joint proposal by Brazil and the United Kingdom under which forty-five instruments of ratification or accession would be required for the convention to enter into force.

4. In the matter of reservations to the convention, two courses of action were open. One was to include no provision at all on reservations, in which case the residual rules laid down in articles 16 to 20 would apply. The other was to take the opposite course of prohibiting all reservations, having regard to the basic nature of the convention, or at least to prohibit reservations to any portion of Part V.

5. The Australian delegation was unable to take a final position on that important question at the present stage. If, for example, the Conference were to adopt the residual rules contained in articles 16 to 20, the result would be to apply to the convention the flexible system of reservations contained in those articles. Serious thought should be given to the question whether, on balance, that would be the best solution in the case of a convention intended to lay down the essential framework within which States would in future enter into treaty relations.

6. With respect to the question of non-retroactivity, the Australian delegation preferred the more balanced and precise statement of that principle in the five-State proposal (A/CONF.39/C.1/L.400) to the simpler clause contained in the Venezuelan proposal (A/CONF.39/C.1/L.399).

7. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said that the question before the Conference was whether it wished the rules laid down in the convention which was to govern treaty relations between States to be applied by everyone; if so, accession to the convention should be open to any State wishing to become a party to it. Only in that way would the convention serve the interests of the international community. A difficult situation would arise if some States were debarred from participation.

8. The western countries were discriminating against some of the socialist States by wishing to exclude them from the convention. It was hard to say at the present stage how many States would be debarred from participation in the convention in the future and what new States which might emerge from the struggle for national liberation would be subjected to political discrimination by the western Powers. The number of States thus debarred from the convention could not be predicted at the present stage. They would have nothing on which to base their treaty relations if they were not allowed to accede to the convention. An awkward situation might arise if a State now opposed

to the principle of universality subsequently wished to conclude a treaty with a State excluded from accession to the convention.

9. There was still time for the Conference to be guided by reason. The Byelorussian delegation appealed to it, in the interests of order, justice, and respect for the rights of sovereign States, to allow all States wishing to accede to the convention to do so.

10. Mr. PHAM-HUY-TY (Republic of Viet-Nam) said that his delegation's objections to the " all States " formula had already been explained in connexion with article 5 *bis*; they applied equally to the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1). On the other hand, his delegation would support the " United Nations clause " contained in the joint proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1). The Vienna formula did not run counter to the principle of universality; on the contrary, it ensured a proper and equitable application of that principle.

11. To allow a territorial entity whose status was disputed to become a party to the convention might prevent other States whose participation was desirable from acceding to it. Some representatives who supported the " all States " formula had argued that without it a small group of countries might prevent a wider participation in the convention. That was not true, for how could a small group of countries do that when the decision as to which States should be invited to accede to the convention was a matter in the final instance for the majority of the States in the United Nations General Assembly, the supreme international forum?

12. Mr. YU (Republic of Korea) said that since the Conference had been convened under United Nations auspices to adopt a convention on the law of treaties, the final clauses of the convention should conform to United Nations practice. His delegation accordingly supported the United Nations formula proposed by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1), which dealt adequately with the question of the eligibility of States to sign and accede to the convention.

13. On the other hand the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1) and the amendment by Ghana and India (A/CONF.39/C.1/L.394), both of which contained the " all States " formula, were unacceptable to his delegation. Serious difficulties would arise if any and every political entity was allowed to accede to the convention. There was no international body competent to determine objectively whether a given political entity was in fact a State, so the decision should be left to the principal political organ of the United Nations. On the question of the minimum number of accessions required to bring the convention into force, he wished to reserve his delegation's position.

14. Mr. ALVAREZ TABIO (Cuba) said that he wished to state his delegation's position on the final clauses, particularly article A. It was that, in view of its nature and importance, the convention on the law of treaties must be open to all States wishing to participate in it, without discrimination. Unqualified recognition of the principle of universality was fundamental for the progressive development of international law and to keep it in touch with reality. It would accordingly be anachronistic to maintain formulas which were no longer in keeping with the present state of the international community. The Vienna formula did not constitute the last word on the much-discussed question of participation in multilateral treaties of interest to mankind as a whole. New States had emerged in international relations and it would be both absurd and unjust to admit some and to exclude others merely on political grounds, and because they were socialist States. To try to retain rigid and unrealistic formulas and give them the status of norms conflicted with the dynamic character of legal rules, which emerged, developed and changed continually in consonance with varying conditions. No legal formula could be valid for all time.

15. His delegation could not therefore accept article A in the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1) which flew in the face of international reality. On the other hand, it supported the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1) which was in conformity with the present state of international treaty relations. The amendment by Ghana and India (A/CONF.39/C.1/L.394) had the merit of broadening the scope of the Vienna formula and represented a step forward towards unqualified recognition of the principle of universality. His delegation was therefore prepared to vote in favour of that amendment if the just cause of full universality did not prevail.

16. Mr. WARIOBA (United Republic of Tanzania) said that adoption of a so-called " all States " clause would not dramatically alter relations between States. Some delegations appeared to think that it would lead to an attempt by all the States excluded by the Vienna formula to join the convention, but that would not be so. Experience had demonstrated that the States which it was sought to exclude under the Vienna formula were not anxiously waiting at the gate and that there would be no concerted rush to accede to the convention.

17. There were already two treaties in which the " all States " formula had been adopted and he trusted that the trend would continue. It appeared illogical to allow States to participate in certain selected treaties and at the same time to object to the adoption of an " all States " formula in a convention which would govern relationships in an all States treaty. Delegations were of course aware of the real motives which had led to the opening to participation by all States of the Nuclear Test Ban Treaty and the Outer Space Treaty and there was no need to point out that some of the strongest opponents of the " all States " formula were the staunchest advocates of the same formula in the case of the Test Ban Treaty and the Outer Space Treaty.

18. The amendment by Ghana and India (A/CONF.39/C.1/L.394) was the perfect answer to those who feared that the " all States " formula would lead to claims

by entities whose statehood was in dispute. If the argument was that an " all States " formula was likely to bring in disputed entities, how could the position under the Nuclear Test Ban Treaty and the Outer Space Treaty be explained?

19. It had been suggested that the " all States " formula raised the question of article 5 *bis* but, while the two issues were related, article 5 *bis* was broader in scope.

20. His delegation would have wished to support the proposal by Hungary, Poland, Romania and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.389 and Corr.1), but since general support for that proposal appeared to be lacking, it would support instead the amendment by Ghana and India.

21. On the question of the number of ratifications necessary to bring the convention into force, his delegation supported the proposal made in the amendment by Ghana and India of thirty-five ratifications. Thirty-five was roughly one third of the States attending the Conference, which appeared a suitable number. His delegation was entirely opposed to the Swiss amendment (A/CONF.39/C.I/L.396) since the convention was so important that it would be undesirable to wait for its entry into force until so large a number had ratified it.

22. He would explain his delegation's views on the question of reservations and non-retroactivity at a later stage.

23. Mr. PINTO (Ceylon) said that his delegation had been a sponsor of article 5 *bis* and would therefore support the proposal by Hungary, Poland, Romania and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.389 and Corr.1). Any gaps in that proposal were of a technical character only, and gave rise to no difficulties.

24. The amendment by Ghana and India (A/CONF.39/C.1/L.394) combined what had been called the Vienna formula with the unusual device of opening the convention to parties to two other recently concluded international treaties. At that stage, the implications of the proposal were not entirely clear, particularly in respect of the operation of the new sub-paragraph (*b*) to be inserted in paragraph 1. That sub-paragraph would open the convention to parties to the Test Ban Treaty or the Outer Space Treaty. It therefore appeared that certain members of the international community who wished to accede to the convention on the law of treaties would first have to become parties to one or other of those treaties, which had little in common with the subject-matter of the law of treaties. His delegation was not attracted by that technique and did not consider the precondition of accession to those treaties warranted. The two treaties in question both contained the so-called " all States " formula. What his delegation would like to see was the incorporation of a straightforward " all States " clause in the convention. The amendment by Ghana and India did not go far enough, and his delegation would reserve its position on it.

25. He had not yet reached a conclusion on the Swiss proposal for an article 76 (A/CONF.39/C.1/L.250), which would give compulsory jurisdiction to the International Court of Justice. His Government did not share the current disenchantment with the principal judicial organ of the United Nations; it had been critical of some of the Court's recent decisions but it did not believe in condemning or abandoning the Court. His delegation's doubts concerning the proposed article 76 were related not to the mention of the International Court but to the scope of the provisions of article 76 and its relationship with a possible new article 62 *bis*. Whether or not the application of article 76 was limited to disputes falling outside the scope of article 62 *bis*, questions of extraordinary complexity would arise as a result of their possible overlapping. It appeared that a dispute arising out of the application of an article in Part V of the convention, which would have to be dealt with under article 62 *bis*, might itself be a dispute to which the procedures under article 76 would apply. Which set of procedures would then be applicable? Was article 76 a " higher " procedure, since it could encompass the interpretation of article 62 *bis*?

26. His delegation had always maintained that the provisions of the convention should be prospective, not retrospective, in their application, and consequently it had considerable sympathy with the Venezuelan proposal (A/CONF.39/C.1/L.399). Though the principle of non-retroactivity of treaties was widely, even if not universally, accepted, a provision along those lines was necessary, not merely to give expression to the principle, but also to clarify the manner in which it was to apply. The Venezuelan proposal, however, seemed to limit application of the convention to " treaties concluded in the future ". In his delegation's view, that was too vague an expression. It should be stated that the convention applied only to treaties adopted, in other words whose texts were established, after the entry into force of the convention. Every effort must be made to avoid a situation where a treaty had parties some of which considered themselves bound, with respect to it, by the terms of the convention, while others did not. At least such a provision should be qualified by a statement to the effect that nothing in the article prevented States from applying the provisions of the convention to earlier treaties by agreement between them, nor prejudiced the application of the rules of customary law to which the convention sought to give expression.

27. In that respect the five-State proposal (A/CONF.39/C.1/L.400) was much more satisfactory, but it too lacked an essential precision in that it referred to the date of conclusion of treaties. It would be better to speak of the date of the adoption or of the establishment of the text of a treaty as the point of reference for application of the convention; his delegation considered that a matter of substance and not of drafting.

28. Mr. OSIECKI (Poland) said that his delegation was one of the sponsors of the proposal concerning final clauses introduced by the Hungarian representative (A/CONF.39/C.1/L.389 and Corr.1). His delegation was a firm supporter of the principle of universality and had advocated the " all States " formula at many international conferences. It accordingly noted, with regret,

the recent emergence of a different formula which attempted to limit, in a discriminatory way, participation in international treaties. The formula in the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1) was limitative in that it provided that, apart from certain categories specified in the Vienna formula, the convention should be open for signature by States invited by the General Assembly. But that additional clause concerning States invited by the General Assembly had never been applied and it was unlikely, in view of the contemporary international situation, that it ever would be. Consequently, it could not provide a satisfactory solution. The limitative formula did not answer the requirements of the facts of international life.

29. In a number of treaties of the highest importance for international peace and security, that formula had been abandoned; he was referring to treaties for which three depositaries had been appointed. Furthermore, many resolutions adopted by the General Assembly had been addressed to all States; indeed, only the universality formula was in accordance with the Charter. A limitative formula not only disregarded contemporary reality but in some cases led to quite absurd situations. An example was the participation by both the German Democratic Republic and the Federal Republic of Germany in the International Conventions concerning the Transport of Passengers and Baggage by Rail [1] and concerning the Transport of Goods by Rail.[2] In addition to other States, the railway administrations of the two States were parties to those agreements. The resulting legal situation was so bizarre that in the end it was impossible to make out what was the legal position of the States in question in those agreements. Another example was the 1967 Brussels Conference on Private Maritime Law at which additional protocols had been adopted revising certain provisions of the basic agreements concluded before the war. The basic agreements had been universal but the protocols contained a limitative clause. As a result, it might happen that a State which was a party to the basic agreement but was not covered by the limitative clause could not become a party to the protocol revising the very agreements to which it was a party. That was in flagrant contradiction with the principle set out in article 36, paragraph 3, of the draft convention that " Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended ".

30. The limitative formula was undoubtedly a retrograde step in the development of international law. It could not serve the interests of humanity, it was not in accordance with realities, and it was not correct from the legal standpoint. It was for those reasons that his delegation had proposed the abandonment of a limitative formula and its replacement by article A of the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1). An objection put forward by the opponents of that proposal was the difficulty which they claimed would arise for the Secretary-General, as depositary of the convention, if he was called upon to determine whether or not a given entity was a State. But that difficulty was only apparent and could be disposed of. A possible solution would be to submit appropriate suggestions to the Secretary-General. It was merely a question of good faith.

31. His delegation maintained the arguments it had advanced against the article 76 proposed by Switzerland (A/CONF.39/C.1/L.250) during the debate on article 62 *bis*, and would vote against it.

32. Mr. KHASHBAT (Mongolia) said that the Conference was drafting an exceptional convention, a unique instrument that would apply to future treaties of all kinds. It would apply to all States concluding treaties, and since there was no State that had never concluded a treaty, its field of application would be universal. It was therefore illogical to propose that the convention should be open for accession only to Members of the United Nations or of its specialized agencies. All States should be free to sign or accede to the convention if they so wished, provided they assumed the obligations it imposed. Since the Vienna formula recognized only certain categories of States, it could not be regarded as a universal formula.

33. Mongolia therefore supported the proposal for final clauses submitted by Hungary, Poland, Romania and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.389 and Corr.1). For the same reasons, it found the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1) unacceptable.

34. Mr. MARESCA (Italy) said that drafting the final clauses was one of the most difficult tasks of a codification conference. If a codifying treaty permitted any weakness or confusion in its provisions concerning reservations, that would defeat its whole purpose. That was particularly true of the convention on the law of treaties; each article was connected with each other article, and it was not possible to accept one and reject another. A good example of the problems arising out of that kind of interrelationship was offered by articles 11 and 37 of the Vienna Convention on Diplomatic Relations; it was to be hoped that such reservation problems would not arise in the present case.

35. The number of ratifications required before the convention could enter into force should be related to the number of States expected to accede to it. In view of the increase in the numbers of the international community since the conclusion of the Vienna Conventions on Diplomatic and Consular Relations, the number of ratifications considered appropriate in those cases was no longer acceptable, and the proposal by Brazil and the United Kingdom to set the figure at forty-five (A/CONF.39/C.1/L.386/Rev.1) seemed an appropriate compromise between the figure adopted in the earlier conventions and the figure of sixty proposed by Switzerland (A/CONF.39/C.1/L.396).

36. Another very important point was the application of the convention in time; in other words, should it have retroactive effect? It was a basic principle of law that legislation should apply to the future and not to the past, which should be governed by the law in force

[1] League of Nations, *Treaty Series*, vol. CXCII, p. 327.

[2] *Ibid.*, p. 389.

at the time. It was a special feature of the convention on the law of treaties that it contained two elements: new rules representing the progressive development of international law, and the expression of existing rules of customary law. The situation was clearly explained in the five-State proposal for a new article 77 (A/CONF.39/C.1/L.400). The question which articles represented rules of customary law could be left to future interpreters of the convention.

37. With regard to the question of what States should become parties to the Convention, it was obvious that, since the convention was a codification instrument of general application, the largest possible number of States should participate. But that did not mean that the Conference would be justified in abandoning the rules laid down ten years ago and confirmed three years later. Those rules were flexible, since they provided for participation not only by Members of the United Nations and of the specialized agencies, as well as by Parties to the Statute of the International Court of Justice, but also by any other States that the General Assembly, in the exercise of its sovereign power, might invite to participate. That formula left the door wide open, and there was no need to go beyond it.

38. Mr. KEARNEY (United States of America) said that his delegation supported the proposal regarding final clauses submitted by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1). His delegation had listened with attention to the lengthy discussion of the principle of universality; it respected the motives of those to whom the philosophical and juridical basis of that principle meant much, but it must insist on a similar respect for its own motives.

39. The United States strongly supported the Vienna formula. With only three or four exceptions, the United Nations had adopted that formula for the accession clause for treaties concluded within, or under the auspices of, the United Nations. The Vienna formula, which was embodied in the proposal by Brazil and the United Kingdom, did not exclude the possibility of universality. It emphasized the authority of the United Nations General Assembly to invite a particular State to sign a United Nations treaty, and it was entirely appropriate that the General Assembly, the organ most clearly based on the principle of the sovereign equality of Member States, should have that authority.

40. No member of the United Nations had as yet attempted to induce the General Assembly to invite participation in a treaty by a State that was not a member of the United Nations family. That was undoubtedly because of a desire to avoid the results of a vote in the General Assembly, and it was the strongest argument against those alleging that the principle of universality was not being properly respected. In fact, the issue of the accession clause was entirely political; that was made clear by the proposal by Ghana and India (A/CONF.39/C.1/L.394). The effect of that proposal would be to involve the Conference in European political and security problems. The purport of the formula proposed by Ghana and India was merely to enhance the importance of the East German régime, since among the generally unrecognized régimes, it was only East Germany that had sought to sign and ratify the Nuclear Test Ban Treaty and the Outer Space Treaty. Accordingly, the United States strongly supported the proposal by Brazil and the United Kingdom, and equally strongly opposed the proposal by Ghana and India, with all its complications of an initial depositary and a final depositary.

41. The United States also strongly opposed the so-called " all States " accession clause advanced by Hungary, Poland, Romania and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.389 and Corr. 1). The proposal was unworkable; the Secretary-General had repeatedly stated that the Secretariat could not function under an " all States " formula.

42. Mr. BLIX (Sweden) said he wished to submit to the Committee the five-State proposal for a new article 77 (A/CONF.39/C.1/L.400). His delegation considered it would be wise to establish expressly that the present convention, qua convention, did not operate retroactively. Sweden had stated during the discussion on article 62 *bis* that that article and the machinery it provided did not apply retroactively to old treaties or disputes. Similarly, other articles of the convention did not, as a matter of treaty law, apply retroactively to treaties concluded by States before the present convention had entered into force for them.

43. It was generally agreed that most of the contents of the present convention were merely expressive of rules which existed under customary international law. Those rules obviously could be invoked as custom without any reference to the present convention. But to the limited extent that the convention laid down rules that were not rules of customary international law, those rules could not be so invoked. That position could be regarded as already made clear from the general rule contained in article 24 of the convention. It might, nevertheless, be safer to make the point explicit in one of the final clauses. That was the purpose of the five-State proposal for a new article 77 which he was now submitting.

44. Although the proposal by Venezuela (A/CONF.39/C.1/L.399) had a similar aim, his delegation found it unsatisfactory, because it did not include the vital qualification that the rules of customary international law, which formed the major part of the convention, continued to govern treaties concluded in the past. It lacked the necessary indication that the convention, qua convention, would apply not generally to treaties concluded in the future, but only to treaties concluded by States after the convention had entered into force for them. That was not an easy thought to express clearly, and the sponsors of the five-State proposal would welcome suggestions for improving the text, especially from the Expert Consultant. Those comments could be taken into account by the Drafting Committee if the proposed new article 77 were accepted by the Committee.

45. Mr. BAYONA ORTIZ (Colombia) said that since questions of a political nature did not properly come within the competence of the Conference but should be

left for decision by the General Assembly, his delegation fully supported the Vienna formula and, consequently, the proposal regarding final clauses submitted by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1).

46. For the time being, he would refrain from commenting on the Venezuelan proposal (A/CONF.39/C.1/L.399) and the five-State proposal (A/CONF.39/C.1/L.400), on the question of non-retroactivity, since they had certain aspects which called for further clarification.

47. His delegation considered it most important that the convention, if it was to produce practical results, should enter into force as soon as possible, and that for that reason the number of ratifications proposed by Switzerland (A/CONF.39/C.1/L.396) seemed excessive. In its view, ratification by one-third of the participating States should be sufficient for the purpose.

48. Mr. SAULESCU (Romania) said that the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1) provided that the future convention on the law of treaties should be open for signature and ratification by all States. His delegation had already stated that the principle of the universality of general multilateral treaties was a rule already crystallized in international law. Formed by State practice, it was the natural corollary of the principle of sovereign equality. The present convention obviously came within the category of such treaties, since its purpose was to bring about the codification and progressive development of the law of treaties. By its very nature, the convention served a universal purpose since it contained norms for the guidance of the practice of all States, in all fields, with respect to treaties. Consequently, it should be an instrument of universal application. The purpose of the convention on the law of treaties was to develop a single practice with regard to treaties which would be in conformity with the needs of international life and the fundamental principles of international law, namely that of *pacta sunt servanda* and the other principles constituting the *jus cogens gentium.*

49. His delegation, therefore, was in favour of the adoption of a new Vienna formula, which, by eliminating the earlier discriminatory practices, would make a substantial contribution to the codification of international law in conformity with the realities of contemporary international life. For that reason, it considered it essential to avoid adopting old and obsolete formulas which were only relics of the past. In view of the universal character of the convention on the law of treaties, the final clauses should include a provision respecting accession which would effectively ensure the universal application of the convention and enable all States to become parties to it. Why, in fact, should it be considered right and in conformity with law to permit all States to become parties to treaties such as, for example, the Universal Copyright Convention, and at the same time to maintain that the present convention should be open only to certain States or certain categories of States?

50. His delegation could not support the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1) and reserved the right to revert to the subject of final clauses after considering the new proposals which had just been submitted.

51. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the sponsors of the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1) had proceeded on the premise that participation in the convention would be open to all States, since universal participation was obviously in the interests of the international community as a whole. Arguments against that proposal had been advanced by the representatives of the United Kingdom, the United States and the Federal Republic of Germany, who had referred to the so-called " Vienna formula ". The representative of the Federal Republic of Germany, in particular, had based much of his argument on references to the political considerations underlying the Nuclear Test Ban and Outer Space Treaties, although those treaties would appear to be exceptions to the general rule. It could be said with equal justice that political considerations had played a part in the 1961 Vienna Convention on Diplomatic Relations. But the 1949 Geneva Conventions for the Protection of War Victims,[3] for example, had provided that they should be open to accession by all States. In view of those facts, it might well be asked who could become a party to an international treaty. It had been suggested that the question was one which should be decided by the General Assembly, but surely to raise that issue at the present Conference, whose purpose was to work out a general law of treaties, showed a certain lack of confidence in the Conference itself.

52. The representative of the Federal Republic of Germany had also said that the application of the " all States " formula would lead to special difficulties for Governments; he (Mr. Khlestov), however, only wished to point out that the Federal Republic of Germany was already participating in a number of multilateral treaties with the German Democratic Republic. Once embarked upon that course, he could not see why the Federal Republic of Germany should find any special difficulties in accepting the " all States " formula. One of its objections, namely, that based on the alleged difficulty of defining a " State ", seemed to him purely artificial. He could only regret that the delegation of the Federal Republic of Germany, together with certain others, by trying to include limitative clauses in the convention, seemed to be obstructing the proper functioning of the present Conference. The right of all States to participate in general multilateral treaties was something which could not be disputed. The convention on the law of treaties was an obvious example of such a treaty, as it codified and progressively developed norms and principles of that law. The convention must therefore be open to all States.

53. He reserved the right to speak later on the subject of final clauses.

The meeting rose at 5.30 p.m.

[3] United Nations, *Treaty Series,* vol. 75.