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104th meeting of the Committee of the Whole

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was needed to bring it into force. If, *ex hypothesi*, it dealt largely with a law which was acceptable as general law, then the argument for a large number of ratifications did not seem to be particularly strong. The record would show, for example, that some eighty-seven representatives had been present at the Geneva Conference on the Law of the Sea at which it had been decided that twenty-two ratifications would be required to bring into force the four conventions adopted. In fact, they had all come into force, the Convention on the High Seas having received forty-two ratifications, the Convention on Fishing and Conservation of the Living Resources of the High Seas twenty-six ratifications, the Convention on the Continental Shelf thirty-nine ratifications and the Convention on the Territorial Sea and the Contiguous Zone thirty-five ratifications. Again, the Vienna Convention on Diplomatic Relations had received eighty ratifications, while thirty-three States had ratified the Convention on Consular Relations. But had the much higher figures suggested in the case of the present convention been applied to those conventions, only the Convention on Diplomatic Relations would be in force today. That was a serious matter, because there might be particular difficulty in getting early ratifications of the present convention. It was a difficult, long and technical convention, with many provisions of a highly intellectual quality. They were not the sort of provisions which it was easy for governments to pilot through parliaments. There might be a certain slowness in the procedure of ratification. It was common experience that, when a convention came into force, that tended to produce an acceleration in the process of ratification by additional States. It would also be agreed that, however important the mere act of adoption of a text such as the present convention, its effect as a general codifying convention would be enormously increased the moment it came into force.

83. His own feeling was that the figure of thirty-five suggested by Ghana and India would serve the purpose of recognizing the implications of an enlarged community and yet would not unduly delay the bringing into force of the convention nor endanger some of the benefits of the great work done on the convention at the present Conference.

The meeting rose at 5.55 p.m.

ONE HUNDRED AND FOURTH MEETING

Friday, 25 April 1969, 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)

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

1. Mr. KHLESTOV (Union of Soviet Socialist Republics), supported by Mr. SECARIN (Romania), requested

that the Committee, in voting on the proposals before it with regard to the final clauses, vote first on the proposal submitted by the delegations of Hungary, Poland, Romania and the USSR (A/CONF.39/C.1/L.389 and Corr.1); that proposal aimed at securing acceptance for the principle of universality, and the convention on the law of treaties, as a multilateral treaty forming the very basis of all treaties, should by definition be open to all States.

2. Mr. GON (Central African Republic) said that, bearing in mind the arguments his delegation had advanced at the first session with regard to the jurisdiction of the International Court of Justice, and particularly the awkward problems which the new article 76 would raise by unduly prolonging the procedure for the settlement of the majority of treaty disputes, he would vote against the proposed new article 76 (A/CONF.39/C.1/L.250).

3. On the question of participation in the convention on the law of treaties, he said that his delegation endorsed the principle of universality, although it considered that it was the General Assembly of the United Nations that should deal with any problems which might arise in that respect. It could only support the proposals in favour of the adoption of the Vienna formula, which represented the best way of ensuring respect for the principle of universality.

4. With regard to the minimum number of ratifications needed to bring the convention into force, the Central African Republic would vote against the figure of sixty proposed by Switzerland in document A/CONF.39/C.1/L.396, since it considered that number excessive.

5. On the other hand, his delegation would vote for a provision that the convention should be non-retroactive, in other words for the seven-State proposal for a new article 77 (A/CONF.39/C.1/L.403), the wording of which seemed to cover all the points.

6. Mr. PINTO (Ceylon) said he would vote in favour of the seven-State proposal for a new article 77 (A/CONF.39/C.1/L.403), which laid down the principle of the non-retroactivity of the convention on the law of treaties, because he thought the convention should contain a provision to that effect. The words "treaties which are concluded by States" were however ambiguous; it would be better to take the date on which a treaty was "adopted" or the date on which its text was settled as the point of reference.

7. With regard to participation in the convention on the law of treaties, although his delegation had consistently advocated the principle of universality, as was shown by the fact that it was co-sponsoring a proposal for an article 5 *bis* providing for the adoption of the "all States" formula (A/CONF.39/C.1/L.388 and Add. 1), it would have to abstain from voting on the amendment by Ghana and India (A/CONF.39/C.1/L.394) to the proposal submitted by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1), for various reasons.

8. The first was that the amendment by Ghana and India resorted to an undesirable legal technique: a State wishing to become a party to the convention on the law of treaties would first have to accede to two other treaties

unrelated to the convention and concerning more or less extraneous matters which might very well be of no interest to the State concerned in either the immediate or the more distant future. It would be detrimental to the sovereignty of States to place them under that obligation solely in order to make them acceptable to their peers, namely the other parties to the convention on the law of treaties.

9. Secondly, the amendment did not adequately reflect the "Moscow formula", in other words the "all States" formula, which his delegation regarded as the only real guarantee of universality. The Moscow formula as modified by Ghana and India would have the undesirable effect of automatically excluding from the convention on the law of treaties those States not intending to become parties to the two treaties mentioned, which would form a sort of "gateway" to the convention.

10. Lastly, in the event of the amendment by Ghana and India being adopted, at least one of the great Powers with which Ceylon had excellent relations, and which it was hoped would accede to the convention on the law of treaties through the device of an "all States" formula, might refuse to become a party to the convention solely because apparently it was refusing at present to accede to either of those "gateway" treaties. He did not wish to be associated with that possible result of the amendment.

11. The formula proposed by Ghana and India was nevertheless highly ingenious and had the great merit of being a compromise. But Ceylon stood by the principle of universality in its initial form, and it could therefore not vote in favour of the final clauses proposed by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1).

12. Mr. BLIX (Sweden) said that none of the three proposals submitted with regard to the final clauses (A/CONF.39/C.1/L.386/Rev.1, L.389 and Corr.1, and L.394) was perfect for a convention such as the convention on the law of treaties. Ideally, the participation clauses should open the convention to all entities enjoying some degree of recognition in the international community. It was obviously difficult exactly to specify what degree and to say what machinery should be established to assess the degree of recognition. The international community would probably be unwilling to authorize virtually unrecognized entities, or entities which the United Nations had recommended its States Members not to recognize, to accede to codification conventions. In the Swedish view, the recognition of an entity by only one of the States parties to a treaty should not be sufficient to enable that entity to become a party to the treaty. Yet that would seemingly be the effect of the "all States" formula if the depositary was not to be required to settle controversial questions, or to refer them to some other organ. Premature or unjustified recognition had often occurred.

13. At the same time, it was going rather far to require an entity to be recognized by half the States Members of the United Nations before it could be authorized to participate in conventions of the kind prepared at Vienna.

That, of course, was the practical effect of the Vienna formula. However, the latter had the advantage of making the General Assembly, the world's most representative political organ, decide on behalf of the international community which entities should have access to certain treaties of general concern. Nor did it place the Secretary-General in a difficult position or cause any legal ambiguity.

14. What was known as the Moscow formula really amounted to authorizing any one of three depositaries to decide whether or not an entity was a State. Its practical effects were less restrictive than the Vienna formula, which was an advantage, but from the point of view of principle it was undesirable that three different Powers should be left to decide on behalf of the entire community who could and could not accede to certain very important treaties; that should be a community decision. Legally, there was also the risk of confusion if all three depositaries did not take the same decision. Sweden had nonetheless shown itself willing to accept that formula where it had been accepted by consensus and applied to some treaties of particular interest to the great Powers.

15. The amendment by Ghana and India (A/CONF.39/C.1/L.394), which proposed a combination of the Vienna and Moscow formulas, had some merit; the new formula would be less restrictive than the Vienna formula and would place the functions of depositary in the hands of the Secretary-General rather than of particular States. But it would not immediately ensure the universality so strongly favoured by its advocates. It would also be rather curious if some entities, in order to become parties to the convention on the law of treaties, had to have their standing as States verified beforehand in Moscow, Washington or London, in connexion with their accession to the Nuclear Test Ban Treaty or the Outer Space Treaty, if they did not wish to raise the question in the General Assembly.

16. In view of the advantages and disadvantages of the various proposals, the Swedish delegation would support the Vienna formula in its traditional form (A/CONF.39/C.1/L.386/Rev.1) until a better formula, or a formula which could be unanimously adopted, was worked out. But his delegation would nevertheless not vote against the formula proposed by Ghana and India, the application of which ought not to raise any legal or technical difficulties.

17. Sir John CARTER (Guyana) said he was satisfied with the new formulation of the proposed article 77 and would vote for it. He would be glad, however, if the Drafting Committee could consider the possibility of amending the opening words to read: "Without prejudice to the application of the rules of international law to which treaties would be subject, independently of the convention, the convention will apply. . ."

18. With regard to the various proposals relating to the final clauses (A/CONF.39/C.1/L.386/Rev.1, L.389 and Corr.1, and L.394), his delegation would vote in the way it had already explained to the Committee at the 102nd meeting.

19. Mr. BOULBINA (Algeria) said he was in favour

of the principle of universality which the draft final clauses submitted in the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1) would embody. Algeria would therefore vote for that proposal.

20. It was essential that the convention on the law of treaties should be open to all States, since it codified a system of rules which was to govern the subject of treaties in the interest of the international community as a whole. It should therefore constitute a decisive stage in the development of international law and promote closer relations among States and peoples. Both the foundations and the scope and application of the convention should be as broad and solid as possible.

21. Although the amendment by Ghana and India (A/CONF.39/C.1/L.394) restricted the principle of universality, the Algerian delegation would vote for that proposal if the four-State proposal was not adopted.

22. Mr. ESCUDERO (Ecuador) moved that the Committee postpone the voting on the new version of article 77 (A/CONF.39/C.1/L.403) until the beginning of the following week so that Governments would have time to weigh all the implications of a complex text which had not been sufficiently discussed in the Committee.

23. The CHAIRMAN said that, under rule 25 of the rules of procedure, two speakers could speak for the motion for adjournment of the debate and two against.

24. Mr. BLIX (Sweden) said that as one of the sponsors of the new article 77 (A/CONF.39/C.1/L.403) he was against the motion for adjournment. The text had been amply discussed at the previous meeting and the Expert Consultant had taken part in the debate. Furthermore, all the changes made by sponsors of article 77 related to the first part of the provision, which was now based very closely on article 3 (b) of the convention adopted at the first session after thorough consideration both in the Committee of the Whole and in the Drafting Committee.

25. To judge from informal discussions, he believed that it was the words "independently of the Convention" that were at issue, as some delegations believed them unnecessary. They were, however, essential, since the convention as such would be part of international law, binding on all those who became parties to it.

26. Mr. ROMERO LOZA (Bolivia) supported the Ecuadorian representative's motion for adjournment. Consultations were still taking place and several delegations were awaiting instructions.

27. Mr. CARMONA (Venezuela) supported the Swedish delegation's arguments against the motion for adjournment. Incidentally, to adjourn the vote on article 77 would probably compel the Conference to prolong its second session.

28. Mr. ALVAREZ TABIO (Cuba) supported the motion for adjournment.

29. The CHAIRMAN put to the vote the motion for adjournment of the vote on the proposed new article 77.

The motion for adjournment was rejected by 53 votes to 17, with 32 abstentions.

30. Mr. ESCUDERO (Ecuador) said that in view of the result of the vote on his motion, he considered it necessary to give in advance the reasons why he would oppose the seven-State amendment (A/CONF.39/C.1/L.403).

31. The Ecuadorian delegation believed that the amendment was not only contrary to every principle of law; it was devoid of elementary justice, since it was contrary to the interests of a large number of States, especially small States, on which treaties had been imposed by force.

32. If the amendment was adopted, those States would not be able to assert their rights in accordance with the procedures laid down in Part V of the draft, since they could not be applied to treaties concluded before the convention entered into force. The International Law Commission had been wise enough not to include in its draft an article similar to what was proposed in the seven-State amendment. It would also be remembered that the Expert Consultant had intimated that a provision of that kind was not necessary in view of article 24.

33. Mr. KRISHNA RAO (India) said that his delegation would vote for the "all States" formula and also, of course, for the amendment of which his delegation was one of the sponsors (A/CONF.39/C.1/L.394).

34. Replying to the comments made by certain delegations, he explained that the purpose of the amendment was to provide machinery for the application of the "all States" formula. The two treaties mentioned in it incorporated that formula, and by quoting them the sponsors of the amendment had shown that they were in favour of the "all States" formula.

35. Some States which maintained excellent relations with a certain well-known country wondered if the result of the amendment by Ghana and India might not be that the country in question would have to become a party to the treaties mentioned before becoming a party to the convention on the law of treaties. The answer to that question was emphatically no; the problem related only to membership of the United Nations and the representation of Governments in the Organization.

36. It would be noted that the amendment did not use the term "State" but "party"; it was not concerned with the problem of recognition or the question whether an entity was or was not a State.

37. The amendment by Ghana and India was an indivisible whole; the vote should therefore be taken on the amendment as a whole, not on its parts separately.

38. Mr. CASTRÉN (Finland) said that he would vote for the amendment by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1) and the seven-State amendment (A/CONF.39/C.1/L.403).

39. His delegation would vote against the four-State amendment (A/CONF.39/C.1/L.389 and Corr.1) for reasons similar to those given by the representative of

Sweden. It would abstain on the amendment by Ghana and India (A/CONF.39/C.1/L.394).

40. The CHAIRMAN put the Swiss proposal (A/CONF.39/C.1/L.250) to the vote.

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

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

In favour: Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay, Australia, Austria, Barbados, Belgium, Cambodia, Canada, Chile, China, Colombia, Denmark, Dominican Republic, El Salvador, Federal Republic of Germany, Finland, France, Guyana, Holy See, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, Pakistan.

Against: Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Afghanistan, Algeria, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Ghana, Hungary, India, Indonesia, Iran, Iraq, Israel, Jamaica, Kenya, Kuwait, Libya, Madagascar, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Nigeria, Panama.

Abstaining: Senegal, Singapore, Spain, Trinidad and Tobago, Tunisia, Uganda, United States of America, Yugoslavia, Zambia, Argentina, Ceylon, Costa Rica, Gabon, Greece, Guatemala, Honduras, Ivory Coast, Lebanon, Liberia, Netherlands.

The Swiss proposal (A/CONF.39/C.1/L.250) was rejected by 48 votes to 37, with 20 abstentions.

41. Mr. RATTRAY (Jamaica), explaining his delegation's vote, said that the Swiss proposal introduced an element of confusion with respect to the procedure for the settlement of disputes and made not only the interpretation but also the application of the convention more complicated.

42. Moreover, the proposal had been submitted before the Committee had considered article 62 *bis*. In view of the Committee's decision on that article, the meaning of some of the provisions in the convention, and particularly those in Part V, would have had to be determined by two separate tribunals — the International Court of Justice in the case of the Swiss proposal, and the machinery for settlement set up by article 62 *bis*.

43. The CHAIRMAN put the seven-State proposal (A/CONF.39/C.1/L.403) to the vote.

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

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

In favour: Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Argentina, Australia, Austria, Barbados, Belgium, Brazil, Canada, Central African Republic,

Ceylon, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guyana, Holy See, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Liechtenstein, Luxembourg, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Sudan, Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia.

Against: Algeria, Bolivia, Congo (Democratic Republic of), Cuba, Ecuador.

Abstaining: Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Zambia, Afghanistan, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Congo (Brazzaville), Cyprus, El Salvador, Ethiopia, Ghana, Guatemala, Honduras, Hungary, Indonesia, Madagascar, Malaysia, Mongolia, Morocco, Pakistan, Poland, Sierra Leone, Spain.

The seven-State proposal (A/CONF.39/C.1/L.403) was adopted by 71 votes to 5, with 29 abstentions.

44. Mr. NEMEČEK (Czechoslovakia), explaining his delegation's vote, said that in its view one of the basic principles of international law was that any treaty concluded by the threat or use of force in violation of the rules of international law, or which was contrary to a peremptory norm of general international law, was void.

45. The CHAIRMAN reminded the Committee that the USSR representative had requested that a vote be taken first on the proposal by Hungary, Poland, Romania and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.389 and Corr.1). Since no delegation had opposed that procedure, he would put the proposal to the vote.

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

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

In favour: Yugoslavia, Zambia, Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, Ghana, Hungary, India, Indonesia, Iraq, Mexico, Mongolia, Pakistan, Poland, Romania, Sierra Leone, South Africa, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania.

Against: Venezuela, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Holy See, Honduras, Ireland, Israel, Italy, Ivory Coast, Japan, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Monaco, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstaining: Congo (Democratic Republic of), Cyprus, El Salvador, Ethiopia, Guyana, Iran, Jamaica, Kenya, Kuwait, Lebanon, Libya, Mauritius, Morocco, Saudi Arabia, Singapore, Trinidad and Tobago, Uganda.

The four-State proposal (A/CONF.39/C.1/L.389 and Corr.1) was rejected by 56 votes to 32, with 17 abstentions.

46. Mr. BILOA TANG (Cameroon) said he had voted in favour of the proposal as an indication of his concern for the principle of universality. There were certain matters in which every political entity, even if it was not recognized by everybody, should be given an opportunity to participate in treaties.

47. Mr. BRODERICK (Liberia) explained that he had voted against the proposal because his delegation, while in favour of universality with respect to participation in general multilateral treaties, considered that it was the responsibility of the General Assembly to decide what States had the right to become parties to the convention.

48. The CHAIRMAN put to the vote the amendment by Ghana and India (A/CONF.39/C.1/L.394) to the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1).

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

The United Kingdom of Great Britain and Northern Ireland, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United Republic of Tanzania, Yugoslavia, Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cuba, Czechoslovakia, Ecuador, El Salvador, Ghana, Hungary, India, Indonesia, Iraq, Kenya, Mongolia, Morocco, Nigeria, Pakistan, Poland, Romania, Saudi Arabia, Sierra Leone, Sudan, Syria, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic.

Against: United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Central African Republic, China, Colombia, Costa Rica, Denmark, Dominican Republic, Federal Republic of Germany, France, Gabon, Greece, Guatemala, Holy See, Honduras, Ireland, Israel, Italy, Ivory Coast, Japan, Liberia, Liechtenstein, Luxembourg, Malaysia, Monaco, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Thailand, Tunisia, Turkey.

Abstaining: Zambia, Austria, Barbados, Cameroon, Ceylon, Chile, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Ethiopia, Finland, Guyana, Iran, Jamaica, Kuwait, Lebanon, Libya, Madagascar, Mauritius, Mexico, Singapore, South Africa, Sweden, Switzerland, Trinidad and Tobago.

The amendment by Ghana and India (A/CONF.39/C.1/L.394) was rejected by 48 votes to 32, with 25 abstentions.

49. Mr. MAKAREWICZ (Poland) said that his delegation, like the other sponsors of the four-State proposal (A/CONF.39/C.1/L.389 and Corr.1), was in favour of the principle of universality and believed that the "all States" formula was the one best suited for the development of international relations both in theory and in practice. During the debate on universality, however, the Polish delegation had stated that it was

prepared to accept any proposal which would enable all States to become parties to the convention. It had also said that it was ready to co-operate in finding a formula acceptable to as many States as possible. The Polish delegation had voted for the "new Vienna formula" on the understanding that that new formula, by referring to treaties containing the "all States" clause, would make the convention on the law of treaties open in fact to all States.

50. Mr. KHLESTOV (Union of Soviet Socialist Republics) explained the reasons for his delegation's vote in favour of the amendment by Ghana and India (A/CONF.39/C.1/L.394). The Soviet Union delegation had stated that it was in favour of the principle of universality and wished it to be applied to the present convention. Admittedly, the formula in the amendment by Ghana and India did not entirely meet the views of the Soviet Union delegation, but it did represent a step towards universality, and his delegation had therefore voted for it, thus showing its readiness to seek a compromise solution. Its vote should not, however, be construed to mean that the Soviet Union delegation had altered its basic position, which was to uphold the principle of universality with respect to multilateral treaties.

51. Mr. CUENDET (Switzerland) said his delegation withdrew its amendment (A/CONF.39/C.1/L.396 to the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1).

52. The CHAIRMAN asked the Committee to vote on the proposal by Brazil and the United Kingdom (A/CONF.39/C.1/L.386/Rev.1).

53. Mr. DE CASTRO (Spain) drew attention to the fact that the proposal by Brazil and the United Kingdom raised a number of quite different points. The Spanish delegation was prepared to approve some parts of the proposal, but wished to make reservations on others. In particular, it would like a separate vote on article D concerning the number of accessions and ratifications required for the convention to enter into force. Furthermore, reservations were not mentioned in the proposal; by approving it, delegations might give the impression that they agreed that the final clauses should contain no provision concerning reservations.

54. The CHAIRMAN pointed out that the Spanish representative could raise the question of reservations in the plenary Conference, but the Committee had now to vote on the proposal by Brazil and the United Kingdom. With regard to the number of accessions and ratifications needed for the convention to come into force, a separate vote could be taken on the figure of forty-five ratifications or accessions mentioned in the proposal.

55. Mr. FATTAL (Lebanon) said it might be preferable to put the figure at forty, as a compromise between the figures of thirty-five and forty-five which had been proposed.

56. Sir Francis VALLAT (United Kingdom) and Mr. NASCIMENTO E SILVA (Brazil) said they would accept a vote on the figure of forty.

57. After an exchange of views, Mr. KRISHNA RAO (India) proposed that the figure should be left blank and that the vote should be taken on the remainder of the proposal; it would then be left to the plenary Conference to take a decision on the figure to be inserted.

58. Mr. SHUKRI (Syria), Mr. HUBERT (France) and Mr. KHLESTOV (Union of Soviet Socialist Republics) supported the Indian proposal.

59. After a further exchange of views, the CHAIRMAN suggested that the Committee accept the Indian proposal.

It was so decided.

60. The CHAIRMAN invited the Committee, in the light of the decision just taken, to vote on the proposal by Brazil and the United Kingdom (A./CONF.39/C.1/L.386/Rev.1).

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

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

In favour: Guyana, Holy See, Honduras, Iran, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Lebanon, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Mauritius, Monaco, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala.

Against: Hungary, India, Iraq, Mexico, Mongolia, Nigeria, Panama, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Zambia, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, El Salvador, Ghana.

Abstaining: Indonesia, Kenya, Kuwait, Libya, Morocco, Saudi Arabia, Sierra Leone, Singapore, South Africa, Sudan, Trinidad and Tobago, Uganda, United Republic of Tanzania, Afghanistan, Cambodia, Cameroon, Congo (Democratic Republic of), Cyprus, Ethiopia.

The proposal by Brazil and the United Kingdom (A./CONF.39/C.1/L.386/Rev.1) was adopted by 60 votes to 26, with 19 abstentions.

The meeting rose at 1.35 p.m.

ONE HUNDRED AND FIFTH MEETING

Friday, 25 April 1969, at 3.35 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. SHUKRI (Syria), explaining his vote on the proposal by Brazil and the United Kingdom (A./CONF.39/C.1/L.386/Rev.1) which had been adopted at the previous meeting, said that, by voting against that proposal, his delegation had voted against the old Vienna formula, which it considered deficient for four main reasons. First, it failed to take account of international reality by seeking to exclude from the convention several States which actually existed. Secondly, it confused the primarily legal question of participation in multilateral treaties with the political question of recognition. Thirdly, it assigned to the General Assembly which, in the final analysis, was a political organ, the legal role of determining the subjects of treaty law. And finally, it postulated a policy of political discrimination at a time when all kinds of discrimination had long since been outlawed.

Proposed new article 5 bis (The right of participation in treaties) (resumed from the 91st meeting)

2. The CHAIRMAN reminded the Committee that the original proposal for a new article 5 bis (A./CONF.39/C.1/L.74 and Add.1 and 2) submitted by eleven States at the first session, had been withdrawn and replaced by a proposal by thirteen States (A./CONF.39/C.1/L.388 and Add.1).¹ He invited representatives who wished to explain their votes on that proposal to do so before the voting commenced.

3. Mr. SUAREZ (Mexico) said that his delegation would vote for the new proposal for reasons of a purely legal character. A convention which established general principles of the law of treaties for the purpose of its progressive development must be observed by all States, and all States must be entitled to participate in its formation. His Government had consistently maintained that international instruments dealing with such subjects as disarmament, the control of outer space, human rights and health, should be open to all States.

4. Some representatives had maintained that in the proposed amendment, two equally respectable legal principles were in conflict, namely, the principle of universality and the principle of freedom of contract. His delegation disagreed, since it did not consider that freedom to choose the partner was an essential part of freedom of contract. In private law, where the principle of the autonomy of the will prevailed just as much as in international law, there was a class of contract — the so-called *contrats d'adhésion* — in which one party made an offer and any other party could accept it, thus completing the contract. No one had suggested that contracts of that kind violated the principle of freedom of contract.

5. It was quite possible that the introduction of the principle of universality might give rise to some

¹ For text, see 89th meeting, footnote 4.