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105th meeting of the Committee of the Whole

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, Second Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

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

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

problems, but that was inevitable since the codification of international law would not come to an end with the convention on the law of treaties and some gaps would necessarily remain which would be gradually filled by subsequent codification or from other sources.

6. The solution of such problems would put an end to the claims of certain groups of people, who, while they exercised temporary control over a particular territory, attempted to participate in multilateral treaties entered into by authentic States. As some future date the codification of international law would set out the requirements which must be fulfilled by subjects of international law, which at present were governed by the rules of internal constitutional law. Those problems, and some of a merely administrative nature which admitted of easy solution, should not be a ground for not accepting the noble principle of universality, which welcomed all the States in the world to a free discussion of the legal principles which should govern relations in the international community.

7. Mr. ALCIVAR-CASTILLO (Ecuador) said that his delegation would vote for the proposed new article 5 *bis* because it felt strongly that there was no justification for confusing the principle of the universality of international legal norms laid down by a treaty with the institution of the recognition of States. The universality of norms of general international law was closely linked with the universal dimensions of the international community. The limited concept of the international community under the Covenant of the League of Nations had accorded with the political realities of an international society governed by colonialist empires which had maintained vast areas of the world in subjection. But at San Francisco a new image of the international community had emerged, and the present international community was characterized by its unlimited universality.

8. Customary law, previously conceived as the sole general norm of positive law governing the international legal order, had been the logical outcome of custom imposed by political power, but now treaties, which in the past had been given the modest task of establishing specific contractual norms, had become the most important source of general norms of international law. The universality of norms of customary law derived from the obligations imposed by custom, whereas the universality of treaty norms could only be achieved, at least in the initial stages, by the joint will of sovereign States. The idea of the recognition of States did not fall within the scope of the Conference's task, which was to treaty law, and thus there was nothing to justify any restriction of the principle of universality in the convention on the law of treaties.

9. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the proposed new article 5 *bis,* like the final clauses, reflected the principle of universality. The convention on the law of treaties was unique in character, in that it would constitute the foundation of treaty law and all future treaties should be based on it. It was thus of particular importance that the principle of universality should be incorporated in the convention. The validity of the principle of universality was undeniable and the statements which had been made in opposition to the right of States to participate in the convention resulted from political manœuvres designed to diminish the validity of the convention's text, and were not based on principles of law. Whatever the result of the vote on article 5 *bis,* his delegation would continue to strive for the acceptance of the principle of universality and it was convinced that in the long run that principle would triumph.

10. The CHAIRMAN invited the Committee to vote on the proposed new article 5 *bis* (A/CONF.39/C.1/L.388 and Add.1).

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

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

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

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

Abstaining: Kenya, Lebanon, Libya, Mauritius, Morocco, Nigeria, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Trinidad and Tobago, Uganda, Barbados, Chile, Congo (Democratic Republic of), Cyprus, Ethiopia, Iran.

The proposed new article 5 bis *(A/CONF.39/C.1/L.388 and Add.1) was rejected by 52 votes to 32, with 19 abstentions.*

11. Mr. JACOVIDES (Cyprus), explaining his vote, said that his delegation's attitude to the controversial issues involved in article 5 *bis* and in the final clauses was governed by its ardent desire to see the Conference produce a legally sound and politically acceptable convention which would stand a good chance of being ratified by the largest possible number of States in the shortest possible time. If that objective was to be achieved, moderation was essential and no substantial group of States should be forced into a position in which it felt it could not support the convention.

12. While his delegation favoured the principle of universality in general, and its incorporation in the convention in particular, it could not ignore the practical problems which would result from the adoption of the

" all States " formula. The amendment by Ghana and India (A/CONF.39/C.1/L.394) relating to the final clauses had gone a long way towards curing some of the deficiencies of the " all States " formula but had fallen short of universality in the full sense of the term. The Vienna formula had much to commend it, but it did tend to represent a position that had remained static in a world of change, particularly in view of the implications of the method adopted to enable States to participate in the Nuclear Test Ban Treaty. Every effort must be made to accommodate conflicting views if the Conference were to achieve success, and his delegation had therefore felt that it could not commit itself to either extreme view.

13. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that the vote on the principle of universality and the statements made against it in the Committee showed that many delegations were guided by purely political motives. In rejecting that realistic principle, its opponents had resorted, not to fair and logical arguments, but to the purely arithmetical pressure of votes, though in matters relating to international co-operation and to the interests of all States and peoples, such arithmetical considerations had no validity. The Ukrainian delegation had voted in favour of including the principle of universality, which was an inalienable part of contemporary international law, in the convention on the law of treaties, since its attitude to the convention as a whole would be affected by the absence of such a provision.

Texts proposed by the Drafting Committee

14. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text of articles 12, 2 and 62 *bis* and of annex I, as adopted by the Drafting Committee.

Article 12 (Consent to be bound by a treaty expressed by accession) [2]

15. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 12 by the Drafting Committee read :

Article 12

The consent of a State to be bound by a treaty is expressed by accession when:

(*a*) The treaty provides that such consent may be expressed by that State by means of accession;

(*b*) It is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(*c*) All the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

16. The only amendment submitted to article 12 had been the Czechoslovak proposal (A/CONF.39/C.1/L.104), which had not been voted on by the Committee of the Whole. The Drafting Committee had decided to delete the words " or an amendment to the treaty " in sub-paragraph (*a*), because an amendment to the treaty was an integral part of the instrument, and a reference to amendment, which, moreover did not appear in any other part of the convention, might give rise to difficulties of interpretation.

17. Mr. NEMEČEK (Czechoslovakia) said that, when commenting on article 5 *bis* at the 89th meeting,[3] his delegation had stated that it would be prepared to withdraw its amendment to article 12 if a provision along the lines of article 5 *bis* were adopted. By proposing that compromise solution, it had hoped to reconcile varying opinions on article 5 *bis* and 62 *bis*. Unfortunately, however, the rigid attitudes of some delegations had prevented any such conciliatory solution; indeed, the Committee had even been unable to adopt the compromise solution for the final clauses proposed by Ghana and India. His delegation therefore did not consider that it would serve any useful purpose to press for a vote on a basically analogous proposal and therefore withdrew its amendment (A/CONF.39/C.1/L.104).

18. The CHAIRMAN suggested that article 12, as amended by the Drafting Committee, be considered as approved.

It was so agreed.[4]

Article 2 (Use of terms) [5]

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

Article 2

1. For the purposes of the present Convention:

(*a*) " treaty " means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) " ratification ", " acceptance ", " approval " and " accession " mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*c*) " full powers " means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(*d*) " reservation " means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*e*) " negotiating State " means a State which took part in the drawing up and adoption of the text of the treaty;

[2] For earlier discussion of article 12, see 18th meeting, paras. 28-32.

[3] Para. 64.

[4] For further discussion and adoption of article 12, see 10th plenary meeting.

[5] For earlier discussion of article 2, see 87th meeting.

(*f*) " contracting State " means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*g*) " party " means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*h*) " third State " means a State not a party to the treaty;

(*i*) " international organization " means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

20. The Committee of the Whole had referred twenty amendments to article 2 to the Drafting Committee at the first session and five at the second session.

21. In paragraph 1 (*a*), the Committee had rejected all amendments to include a reference to the legal effect of treaties. It did not underestimate the scientific merits of such a reference, but considered that it would be superfluous in a definition whose scope, as expressly stated at the beginning of the article, was limited to " the purposes of the present Convention ".

22. The Committee had considered that the expression " agreement. . . governed by international law ", in paragraph (*a*) covered the element of the intention to create obligations and rights in international law. It had also noted that States had the right to choose whether a treaty concluded by them should be governed by international law or by internal law only in so far as such choice was permitted by international law itself.

23. The Committee had also not accepted the revised amendment by Ecuador (A/CONF.39/C.1/L.25/Rev.1) to insert the words " freely consented to " between the words " agreement " and " concluded ", because it felt that such an insertion would have been incompatible with the structure of Part V of the draft. If the Ecuadorian amendment were accepted, an international agreement not freely consented to would not be a treaty. Under the provisions of Part V, such an agreement was void but was still a treaty.

24. The only amendment to paragraph 1 (*a*) accepted by the Drafting Committee was the second amendment proposed by Spain (A/CONF.39/C.1/L.28), whereby in the French version the words " *un accord international conclu entre Etats en forme écrite* " would be replaced by the word " *un accord international conclu par écrit entre Etats* ", and in the Spanish version the words " *un acuerdo internacional celebrado entre Estados por escrito* " would be replaced by the word " *un acuerdo internacional celebrado por escrito entre Estados* ". That amendment did not affect either the English or the Russian versions.

25. Amendments had been submitted to paragraph 1 (*b*) by the United States (A/CONF.39/C.1/L.16) and Belgium (A/CONF.39/C.1/L.381) respectively. The United States amendment had been withdrawn. The Belgian amendment (A/CONF.39/C.1/L.381), which did not affect the English version, was to replace the words " *dans chaque cas* " by the words " *selon le cas* ". The Drafting Committee had accepted that amendment as an improvement of the wording.

26. The only amendment submitted to paragraph 1 (*c*) was the amendment by Austria and Spain (A/CONF.39/C.1/L.1 and Add.1) to replace the word " document " by the word " instrument ". The Drafting Committee had rejected that amendment because it had taken the view that in modern practice full powers were often contained in documents which could not be described as instruments.

27. For grammatical reasons, the Committee had replaced the closing words of the French version, " *à l'égard du traité* ", by the words " *à l'égard d'un traité* ".

28. The Drafting Committee had rejected as superfluous all the amendments to paragraph 1 (*d*), except the Hungarian amendment (A/CONF.39/C.1/L.382) to rearrange the words " signing, ratifying, accepting, approving or acceding " in the order in which they appeared in article 16. That amendment only affected the English and Russian versions, as the order proposed was already followed in the other language versions.

29. In the interests of uniformity of terminology, the Drafting Committee had replaced the expression " to vary the legal effect " in the English version by the expression " to modify the legal effect ", since article 19, which dealt with the legal effect of reservations, used the term " modify ", not " vary ".

30. The Drafting Committee had rejected all the amendments submitted to paragraph 1 (*e*) to 1 (*i*), but on its own initiative had replaced in the French version of paragraph 1 (*e*) the expression " *Etat ayant participé à la rédaction* " by the expression " *Etat ayant participé à l'élaboration* ", since it had considered that the word " *élaboration* " came closer to the English " drawing up " than did " *rédaction* ". A similar modification had been made in the Spanish version. A drafting change had also been made in the Russian version of paragraph 1 (*g*).

31. In the light of communications from GATT and the United International Bureaux for the Protection of Intellectual Property (BIRPI) concerning paragraph 1 (*i*), the Drafting Committee had examined the question of the meaning to be given to the term " international organization ", which was the subject ot the paragraph. The Drafting Committee had considered that the term covered institutions established at intergovernmental level either by agreements or by practice and which exercised international functions of some permanence. In the opinion of the Committee, the agreements or the practice establishing those institutions played the same role as the constituent instruments mentioned in article 4.

32. The Drafting Committee had examined all the amendments to add definitions of terms not included in article 2, but had considered that none was necessary for the interpretation of the convention and had therefore rejected them all.

33. There had only been one amendment to paragraph 2, that by Ceylon (A/CONF.39/C.1/L.17), to add, at the end of the paragraph, the words " or in the practice of international organizations or in any treaty ". The Committee had considered that to add those words

would duplicate the general reservation set forth in article 4 and had therefore rejected the amendment.

34. Mr. SEVILLA-BORJA (Ecuador) said that his delegation had taken due note of the reasons given by the Drafting Committee for not accepting the Ecuadorian amendment (A/CONF.39/C.1/L.25/Rev.1), to paragraph 1 (*a*) of article 2, the purpose of which was to introduce the element of freedom of consent into the definition of " treaty ". His delegation would not press its amendment because the Drafting Committee had not rejected its substance but had considered that the fundamental element of freedom of consent was already dealt with in Part V of the convention and did not fit in article 2, which did not contain a complete definition of the concept, but merely a brief explanation, intended to facilitate the understanding of the terms used in the convention.

35. His delegation, however, wished to place on record its abstention on paragraph 1 (*a*) of article 2, because it considered its contents inadequate and its scope limited. A fuller definition of the term " treaty " would have been more acceptable. As at present worded it dealt more with the formal character of a treaty and made only a rather general reference to those essential or substantive requirements which were the characteristic features of an international instrument.

36. As interpreted by his delegation, the words " governed by international law ", as used in the present text, covered both the formal elements and the elements of substance — namely the requirements that treaties must be freely consented to by the parties participating in their conclusion, that they must be concluded in good faith and that they must have a licit object.

37. He requested that the Rapporteur include that interpretation by the Ecuadorian delegation of the definition of " treaty " in his report.

38. He would also urge the Drafting Committee, when drafting the preamble of the convention, to cover the essential characteristics of treaties. On that condition, his delegation would not press its views in the plenary meetings of the Conference. Those views had been expressed in its amendment (A/CONF.39/C.1/L.25/Rev.1) which had not been accepted by the Drafting Committee purely for technical reasons.

39. Lastly, he noted in the Spanish version of the opening sentence of paragraph 1 of article 2 the expression " *a los efectos de la presente Convención* ". That was a gallicism and should be replaced by the expression " *para los efectos de la presente Convención* ". The same change should be made wherever those words appeared throughout the various articles of the convention.

40. The CHAIRMAN said that the Committee still had to dispose of two amendments to article 2: the Syrian amendment (A/CONF.39/C.1/L.385) and the eight-State amendment (A/CONF.39/C.1/L.19/Rev.1).

41. Mr. SHUKRI (Syria) said that his amendment (A/CONF.39/C.1/L.385) had been intended to supplement article 5 *bis*. Since the Committee had rejected the proposal to include article 5 *bis*, his amendment dropped automatically.

42. Mr. USTOR (Hungary), speaking only for Hungary as one of the sponsors of the eight-State amendment (A/CONF.39/C.1/L.19/Rev.1) said that the amendment no longer stood, since the definition of " general multilateral treaty " would be needed in article 2 only if that term were used in the convention itself.

43. The CHAIRMAN said that, in the absence of any comment by the other sponsors of the eight-State amendment (A/CONF.39/C.1/L.19/Rev.1) he would take it that they accepted that view. The two amendments would therefore be considered as withdrawn.

Article 2 was approved.[6]

Article 62 bis [7]

44. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 62 *bis* by the Drafting Committee read:

Article 62 bis

1. If, under paragraph 3 of article 62, the parties have been unable to agree upon a means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon some means of settlement other than judicial settlement or arbitration and that means of settlement has not led to a solution accepted by the parties within the twelve months following such agreement, any one of the parties may set in motion the procedures specified in Annex I to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations.

2. Nothing in the foregoing paragraph shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

45. Article 62 *quater* (A/CONF.39/C.1/L.393/Corr.1) which mentioned article 62 *bis*, repeated the language of a provision already approved by the Committee of the Whole for article 62. That provision, however, did not constitute a separate article but simply paragraph 4 of article 62. In the interests of symmetry, the Drafting Committee had therefore made article 62 *quater* the second paragraph of article 62 *bis*.

46. In the first paragraph of article 62 *bis*, the Drafting Committee had only made slight drafting changes. It had noted that the French version of that paragraph, which was the original, used the terms " *règlement judiciaire* " and " *arbitrage* " which appeared in Article 33 of the Charter. The terminology used in the Charter had not been followed in the translation of those expressions into the other languages, so the Committee had made the necessary corrections.

47. He would introduce the annex to article 62 *bis* later.[8]

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[6] For further discussion of article 2, see 7th plenary meeting. The article was adopted at the 28th plenary meeting.

[7] For earlier discussion, see 92nd to 99th meetings.

[8] See below, para. 54.

48. Mr. CUENDET (Switzerland) said he must point out that the Swiss proposal for an article 62 *quater* (A/CONF.39/C.1/L.393/Corr.1) had not been submitted with the idea that it should become a paragraph of article 62 *bis;* the idea had been that it should be combined in due course with paragraph 4 of article 62. That was not yet possible because article 62 had already been approved, but perhaps later the two paragraphs could be combined into a separate paragraph referring to both articles 62 and 62 *bis*.

49. Mr. HAYTA (Turkey) said that his delegation wished to associate itself with what had just been said by the Swiss representative, namely that article 62 *quater* should be combined with paragraph 4 of article 62 as a new article. His delegation was therefore not in favour of incorporating article 62 *quater* in article 62 *bis*.

50. Mr. ALVAREZ TABIO (Cuba) said that his delegation approved the Drafting Committee's proposed text because it expressed the agreement reached in the Committee, but that did not mean that Cuba accepted article 62 *bis*.

51. Mr. BILOA TANG (Cameroon) said that while his delegation approved the report of the Drafting Committee, he must draw attention to the statement he had made at the 97th meeting [9] where he had suggested that provision could be made in article 62 *bis* not only for conciliators but also for arbitrators, a practice followed by the International Bank for Reconstruction and Development in connexion with the protection of private investments. He had also suggested that appointments of any conciliators or arbitrators by the United Nations Secretary-General should be made in consultation with, and subject to the consent of, the parties to the dispute. Since those suggestions had not been taken into account, he asked to have his statement placed on record.

52. Mr. KHLESTOV (Union of Soviet Socialist Republics) said his delegation considered it essential to point out, first, that the Committee was approving an article 62 *bis* that could involve expenditure for the United Nations, without first consulting that Organization. Such a step was not in accordance with normal practice.

53. Secondly, it must be made clear that consideration of drafting points relating to the articles did not mean that a number of delegations, including his own, had abandoned their opposition to article 62 *bis*. The Soviet Union still maintained the position that it had explained during the general debate. He asked that those two points be noted in the summary record.

Article 62 bis *was approved.* [10]

[9] Para. 27.

[10] For further discussion of article 62 *bis*, see 25th to 28th plenary meetings. The article, and annex I, were put to the vote at the 27th plenary meeting and were not adopted, having failed to obtain the required two-thirds majority.

Annex I

54. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text of annex I read as follows:

Annex I

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the persons so nominated shall constitute the list. The nomination of a conciliator, including any conciliator nominated to fill a casual vacancy, shall be for a period of five years which may be renewed. A conciliator whose nomination expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 62 *bis*, the Secretary-General shall bring the dispute before a Conciliation Commission constituted as follows.

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) One conciliator of the nationality of that State or of one of those States, chosen either from the list referred to in paragraph 1 above or from outside that list;

(*b*) One conciliator not of the nationality of that State or of one of those States, chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within the period of sixty days following the date on which the Secretary-General received the request.

The four conciliators shall, within the period of sixty days following the date of the last of their own appointments, appoint as Chairman a fifth member chosen from the list.

If the appointment of the Chairman or of any of the other conciliators has not been made within the period required above for that appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period.

Any of the periods within which appointments must be made may be extended by agreement between all the parties to the dispute.

Any vacancy shall be filled in the manner specified for the initial appointment.

3. The Commission thus constituted shall establish the facts and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

4. The Commission may draw the attention of the parties to the dispute to any measures likely to facilitate an amicable settlement. The Commission shall be required to report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

5. If the conciliation procedure has not led to a settlement of the dispute within six months of the date of deposit of the Commission's report, and if the parties have not agreed on a means of judicial settlement or to an extension of the abovementioned period, any one of the parties to the dispute may

request the Secretary-General to submit the dispute to arbitration.

6. The Secretary-General shall bring the dispute before an arbitral tribunal consisting of three members. One arbitrator shall be appointed by the State or States constituting one of the parties to the dispute. The State or States constituting the other party to the dispute shall appoint an arbitrator in the same way. The third member, who shall act as Chairman, shall be appointed by the other two members; he shall not be a national of any of the States parties to the dispute.

The arbitrators shall be appointed within a period of sixty days from the date when the Secretary-General received the request.

The Chairman shall be appointed within a period of sixty days from the appointment of the two arbitrators.

If the Chairman or any one of the arbitrators has not been appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations within sixty days after the expiry of the period applicable.

Any vacancy shall be filled in the manner specified for the initial appointment.

7. The arbitral tribunal shall decide its own procedure. The tribunal, with the consent of the parties to the dispute, may invite any party to the treaty to submit its views orally or in writing. Decisions of the arbitral tribunal shall be taken by a majority vote. Its award shall be binding and definitive.

8. The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

55. The Drafting Committee had made a number of drafting changes in annex I, as was permitted under rule 48 of the rules of procedure, and paragraph 2 had been recast to make it clearer. Sub-paragraphs 2, 3, 4, 5 and 6 of paragraph 5 had been combined in a separate paragraph, now renumbered 6. At the end of the first sub-paragraph of the new paragraph 6, a sentence had been added to make it clear that the third member of the arbitral tribunal should not be a national of any of the States parties to the dispute.

56. With regard to the provision in paragraph 3 that the expenses of the Commission should be borne by the United Nations, the Drafting Committee had noted that it could not be implemented until it had been approved by the General Assembly of the United Nations, in accordance with the financial rules of the Organization. Some members of the Drafting Committee had expressed serious doubts about the desirability of that provision.

57. When reviewing the wording of the convention as a whole, the Drafting Committee would consider whether some provision should be included in annex I regarding the taking of provisional measures by the arbitral tribunal, and on the question which body was competent to interpret the awards of the tribunal.

Annex I was approved.[11]

Statement by the Chairman of the Drafting Committee

58. Mr. YASSEEN, Chairman of the Drafting Committee, said that rule 48 of the rules of procedure of the Conference provided that the Drafting Committee " shall co-ordinate and review the drafting of all texts adopted, and shall report as appropriate either to the Conference or to the Committee of the Whole ". In paragraph 9 of the Secretary-General's memorandum on methods of work and procedures of the second session of the Conference (A/CONF.39/12), it was suggested that the Drafting Committee should submit direct to the plenary its report on the co-ordination and review of the drafting of the texts adopted by the Committee of the Whole. No objection had been raised to that suggestion at the opening of the second session, during the discussion of the memorandum by the Conference at the 6th plenary meeting. The Drafting Committee therefore proposed to follow the procedure suggested by the Secretary-General.

59. The Drafting Committee's report would also contain any decisions taken by that Committee regarding the titles of parts, sections and articles, and any amendments thereto. The Committee of the Whole would remember that he had informed it at the 28th meeting [12] that the Drafting Committee had decided not to consider titles until after the adoption of all the provisions to which they related, since the wording of a title necessarily depended on the content of the article.

Adoption of the reports of the Committee of the Whole

60. The CHAIRMAN invited the Committee to adopt the draft report on its work at the first session of the Conference.

61. Mr. JIMENEZ DE ARECHAGA (Uruguay), Rapporteur, said that the report of the Committee of the Whole on the work of its first session (A/CONF.39/C.1/L.370/Rev.1, vol. I and II) contained a record of the discussions, all the amendments submitted and the Committee's final decisions; it had been used throughout the Committee's debates at its second session.

62. Mr. CARMONA (Venezuela) said that the comprehensive report on the work of its first session impelled the admiration of all the members of the Committee. The Committee should not adopt the report without a special vote of thanks to the Rapporteur.

63. Mr. KHLESTOV (Union of Soviet Socialist Republics) said he agreed that the Committee should express its thanks to the Rapporteur and to all those who had helped him to prepare an admirable report. Nevertheless, the Soviet delegation wished to draw attention to a few very minor points.

64. First, it would be noted that paragraphs 39, 68, 94, 146, 187, 262, 333, 510 and 616 all contained the statement that " at the eightieth meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments relating to universal participation in multilateral treaties, to general multilateral treaties and to restricted multilateral treaties ". It would be better to clarify that statement in order to

[11] See footnote 10.

[12] Para. 2.

avoid criticism from the many future readers of the report. Secondly, the statement made by the USSR representative at the 35th meeting and referred to in paragraph 21 (*d*) was not quite accurately reflected. In actual fact, what the USSR representative had said was that the International Law Commission itself considered that article 32 did not in any way affect the rights of States enjoying most-favoured-nation treatment, but paragraph 21 (*d*) seemed to imply that that was only the view of the USSR delegation.

65. Mr. STREZOV (Bulgaria) said that the Rapporteur was to be commended for his excellent work, but that his delegation had a few minor comments to make on the Russian version. In paragraph 653, the text that the Committee had adopted for article 71 was given instead of the International Law Commission's text, and in paragraph 669, reference was made to article 75 instead of to article 73.

66. Mr. JIMENEZ DE ARECHAGA (Uruguay), Rapporteur, said that the USSR representative's comment on paragraph 21 (*d*) might be met by deleting in the third line the words " the views of his delegation ", and in the next to the last line, inserting the words " expressing the view " before the words " that, similarly ".

67. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that that change would be acceptable to his delegation.

68. Mr. SINCLAIR (United Kingdom) and Mr. BEVANS (United States of America) both supported the Venezuelan representative's suggestion that the Committee should adopt the report with a vote of thanks to the Rapporteur.

The draft report of the Committee of the Whole on its work at the first session of the Conference, as thus amended, was adopted with a special vote of thanks to the Rapporteur.

69. Mr. JIMENEZ DE ARECHAGA (Uruguay), Rapporteur, said that only certain parts of the Committee's report on the work of its second session had so far been circulated; the remainder would be circulated as soon as it was completed.

70. The CHAIRMAN suggested that the Committee adopt those parts of the report which had already been circulated on the understanding that the Rapporteur would submit the complete text to the plenary conference.

It was so agreed.

71. The CHAIRMAN said that with the adoption of its report, the Committee of the Whole had now completed its work.

72. Mr. KRISHNA RAO (India) said that it had been the Committee's responsibility to endeavour to bring the Conference to a successful conclusion. That was a duty it owed to its hosts, the Government and people of Austria, to the International Law Commission, for its years of work on the draft, and to the international community, which was concerned that the progressive development and codification of international law should not suffer a setback. Whatever the final form of the articles eventually adopted by the Committee, they would be of little avail if their content was unacceptable to a segment of the world community. Those who insisted on imposing their own point of view in disregard of the genuine convictions of those holding other views should reflect on the possible consequences of their attitude.

73. In common with all other delegates, he was sincerely grateful to the Chairman for the wisdom and impartiality with which he had guided the Committee's proceedings through a very difficult Conference. The Chairman had admirably represented the finest traditions of Asia and Africa, and upheld the best traditions of international law.

74. Sir Francis VALLAT (United Kingdom), Mr. MARESCA (Italy), Sir John CARTER (Guyana), Mr. USTOR (Hungary), Mr. HU (China) and Mr. VEROSTA (Austria) all, on behalf of their respective countries, groups, or regions, expressed their thanks to the Chairman for his guidance, his impartiality and his devotion to duty, to the Expert Consultant, the Chairman of the Drafting Committee and the Rapporteur for their invaluable help, to the Secretariat for its unobtrusive but essential contribution to their work, and finally to the Government and people of Austria for their welcome and hospitality.

75. Mr. VEROSTA (Austria) said that the Austrian delegation was deeply appreciative of the generous tributes paid to its country.

76. The CHAIRMAN said he was very touched by and sincerely grateful for the tributes paid him by the various delegations. His own contribution had only been made possible by the co-operation and goodwill of the members of the Committee. He considered himself fortunate to have been given such an opportunity to serve the international community.

77. He would like especially to thank his colleagues on the rostrum, and to express on their behalf their appreciation for the valuable contribution made by the Secretariat.

The meeting rose at 6 p.m.