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opponents of the Ukrainian amendment merely said that it was not useful at the present stage, or that it would be rash, inasmuch as multilateral treaties as yet represented only a trend in international law. But multilateral treaties were already an established practice, as was confirmed, incidentally, by the *Treaty Series* regularly published by the Secretariat of the United Nations and comprising all agreements signed since the League of Nations. Thus the United Nations explicitly recognized the existence of such treaties.

52. The Austrian amendment (A/CONF.39/C.1/L.379) would appear to be purely of a drafting nature, and his delegation could support it. The Australian amendment (A/CONF.39/C.1/L.380) was interesting, but it called for more detailed study.

53. Mr. DADZIE (Ghana) said he would prefer to see the International Law Commission's text retained as a whole. It seemed to him useless to draw a distinction between different kinds of treaties and between different kinds of conferences, and he could not support the amendments which proposed to introduce such distinctions.

54. For the reasons stated by the representative of the Secretary-General, he accepted in principle the amendment submitted by the United Republic of Tanzania (A/CONF.39/C.1/L.103), subject to the necessary drafting changes; every conference should have sufficient latitude to decide for itself whether the question before it was one of procedure, calling for a decision by simple majority, or a question of substance which might call for a decision by a two-thirds majority.

55. The Austrian amendment (A/CONF.39/C.1/L.379) was a purely drafting matter and could be referred to the Drafting Committee.

56. Mr. JAGOTA (India) said that the question of the adoption of the text dealt with in article 8 was a purely procedural matter. The Australian and Ukrainian amendments, which had led the Committee to discuss the field of application of article 8 and, consequently, the type of conference referred to or the nature of the treaty concluded, were actually without relevance to article 8.

57. Paragraph 1 merely stated a rule which corresponded to general practice. It could be made more explicit along the lines of the Austrian amendment (A/CONF.39/C.1/L.379), which could be referred to the Drafting Committee.

58. With respect to paragraph 2, it was desirable, as the representative of the Secretary-General had observed, to interpret it as meaning a two-thirds majority of States " present and voting " at the time of the adoption of the treaty. In the light of that interpretation, it would no doubt be necessary either to adopt the amendment of the United Republic of Tanzania (A/CONF.39/C.1/L.103), referred to by the representative of the Secretary-General and supported by the representative of Ghana, or to say " unless a different rule is prescribed by the rules of procedure adopted at that conference ". The Committee might leave it to the Drafting Committee to amend paragraph 2 as necessary; but in any case it should be dealt with strictly as a procedural matter.

The meeting rose at 12.55 p.m.

EIGHTY-FIFTH MEETING

Thursday, 10 April 1969, at 3.10 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)*

Article 8 (Adoption of the text) *(continued)* [1]

1. The CHAIRMAN invited the Committee to continue its consideration of article 8.

2. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that his delegation wished to thank all those who had spoken in support of its amendment (A/CONF.39/C.1/L.51/Rev.1). He had not been convinced by the arguments advanced against that amendment, but in a sincere desire to facilitate general agreement his delegation was prepared to withdraw it. He reserved the right, however, to revert to the subject in plenary.

3. His delegation was prepared to support both the Austrian and the Australian amendments (A/CONF.39/C.1/L.379 and L.380).

4. Mr. SECARIN (Romania) said that, in general, his delegation approved of article 8, although it considered it possible that the drafting might be improved. The Austrian amendment (A/CONF.39/C.1/L.379), in particular, contained suggestions which he was inclined to consider favourably and he hoped that the Drafting Committee would take them into consideration.

5. His delegation had also been prepared to support the Ukrainian amendment (A/CONF.39/C.1/L.51/Rev.1); it would have greatly helped to clarify the position of general multilateral treaties, which were becoming increasingly important in the treaty relations of States.

6. His delegation also appreciated the efforts by the Australian delegation in its amendment (A/CONF.39/C.1/L.380) to clarify the text of paragraph 2. He hoped that on the basis of that text the Drafting Committee would reconsider the possibility of making drafting improvements in article 8 that would meet all the objections which had been raised.

7. Mr. YASSEEN (Iraq) said that at the first session his delegation had expressed the view that the text

[1] For the list of the amendments submitted, see 84th meeting, footnotes 2 and 3.

of article 8 as proposed by the International Law Commission could be improved. In paragraph 2, in particular, it was necessary to specify in greater detail which treaties and which conferences were meant.

8. At the present session, the Committee had a new amendment before it which had been submitted by Austria (A/CONF.39/C.1/L.379); his delegation did not think that that amendment affected the substance of the article, although the Drafting Committee might examine it as a purely drafting proposal.

9. The Australian amendment (A/CONF.39/C.1/L.380) was in part similar to a proposal made by his delegation at the first session.[2] The two-thirds majority rule did not apply to all kinds of conferences but only to general international conferences; similarly, the treaties referred to in paragraph 2 were not all treaties but only general multilateral treaties. His delegation would therefore vote for that amendment.

10. At the previous meeting, the representative of the Secretary-General had questioned the conformity of article 8 with the general practice of international organizations. At the same time, he had described paragraph 2 as being of a purely procedural nature and had expressed some doubts concerning the two-thirds majority vote. In his (Mr. Yasseen's) view, the decision whether a text should be adopted by simple majority or whether it required unanimity or a two-thirds majority was certainly a matter of substance, and the two-thirds majority rule, as compared with the traditional unanimity rule, was an essential part of the progressive development of international law in that context and was a rule that should be observed and safeguarded. Any derogation from that rule at a general international conference should therefore be permitted only by a two-thirds majority vote, since the treaties in question were multilateral treaties which concerned the international community as a whole. Any amendment providing for a simple majority vote would be entirely unacceptable to his delegation. Since the question was one of substance and not of procedure, he was not in favour of referring article 8 to the Drafting Committee; a decision should be taken in plenary.

11. Mr. KEARNEY (United States of America) said that his delegation was in favour of the Austrian amendment (A/CONF.39/C.1/L.379).

12. He had found the comments by the representative of the Secretary-General of substantial interest, but he fully agreed with the representative of Iraq that it was desirable to maintain the two-thirds majority rule. It might be helpful if the Expert Consultant would give an outline of the legal reasons in favour of that rule.

13. With regard to the Australian amendment (A/CONF.39/C.1/L.380), he pointed out that the implication of that amendment was that, if the text of a treaty was not adopted at a " general " international conference, it would have to be approved unanimously, as provided in paragraph 1. That naturally led to the question of what was meant by a " general " international conference. For example, if a conference of thirty or forty States met to discuss some problem of private international law, such as motor vehicle traffic, would that be a general international conference? What would be the effect if all the participating States were States Members of the United Nations or if they were all from a certain geographical region? For those reasons, he thought that the Australian amendment tended to call in question the procedure of any international conference. The International Law Commission's text of article 8, however, laid down an easy rule, since the provision concerning the two-thirds majority would afford ample protection at all international conferences, whether general or limited.

14. Mr. ABDEL MEGUID (United Arab Republic) said that in the opinion of his delegation the Commission's text of article 8 was in need of some clarification. The article dealt with the adoption of a text of a treaty which had been drawn up by the participating States; it was obvious and logical, therefore, that a State which had participated in drafting that treaty could only accept it subject to its own consent. The question then arose of the procedure to be followed in adopting the text of a treaty concluded between several States, which required a two-thirds majority vote. Two possible ways of solving the problem had been suggested: first, the Australian amendment (A/CONF.39/C.1/L.380), which referred to a " general international conference "; and, secondly, the Ukrainian amendment (A/CONF.39/C.1/L.51/Rev.1), which had referred to different kinds of multilateral treaties. His delegation regarded those two conceptions as complementary, since a general international conference could only give rise to a general multilateral treaty, just as a general multilateral treaty could only be the product of a general international conference. As the Ukrainian delegation had withdrawn its amendment, his delegation proposed that the Australian amendment should be referred to the Drafting Committee for further study.

15. Sir Humphrey WALDOCK (Expert Consultant) noted that the Austrian amendment (A/CONF.39/C.1/L.379), which was clearly of a drafting character, had been generally commended. He too considered it a desirable amendment because it would bring the language of paragraph 1 of article 8 into line with that used in other articles of the draft dealing with a similar matter.

16. With regard to the comments by the representative of the Secretary-General at the previous meeting, he thought that the words " two-thirds of the States participating in the conference " in paragraph 2 should not give rise to any difficulty. Those words had been used by the International Law Commission in their general meaning; they were not necessarily intended to cover all the States which had taken any part in the conference. The alternative wording " two-thirds of the States present and voting " would not be contrary to the intention of the International Law Commission.

17. The second remark by the representative of the Secretary General, relating to the concluding proviso of paragraph 2 — " unless by the same majority they shall decide to apply a different rule " — raised a matter of

[2] See 15th meeting, para. 27.

substance, not of procedure. That had been the Commission's view and he fully supported the representative of Iraq's comments on that point.

18. The International Law Commission had recognized that a conference was master of its own procedure; but, when the subject-matter of the conference was the conclusion of a treaty, a matter of substance relating to the law of treaties clearly arose. The International Law Commission had therefore endeavoured to produce a text for paragraph 2 of article 8 which, while giving sufficient recognition to the sovereignty of a conference over its own procedure, would also give some protection to the substance of the law of treaties. It was essential to protect the views of a substantial minority at a conference engaged in drawing up a treaty and at the same time to safeguard the existing practice in favour of the two-thirds majority rule where major international conferences were concerned.

19. He had used the neutral term " major international conferences " advisedly. The International Law Commission had had in mind large conferences attended by a great number of States. The Peruvian amendment to paragraph 2 (A/CONF.39/C.1/L.101 and Corr.1) to a great extent expressed what the Commission had been thinking.

20. It would undoubtedly be difficult to determine the number of States required for a conference to be a " large " conference. A similar question arose in connexion with the Australian amendment (A/CONF.39/C.1/L.380), which used the expression " general international conference ". Those problems of definition were partly of a substantive and partly of a drafting nature; perhaps the Drafting Committee could devise a formula on the lines of the Peruvian or the Australian amendments that would prove generally acceptable.

21. The issue was very much a matter of substance relating to the law of treaties. Two different ways of solving the problem had been suggested. One proposal was that a distinction should be drawn between " general multilateral treaties " and other treaties, or between " restricted multilateral treaties " and other treaties. The other proposal was that the question should be settled by distinguishing between " general international conferences " and other conferences. The International Law Commission had taken the view that it was a matter of the number of States participating in a conference rather than of the nature of the particular treaty. Examples could be given of treaties which were clearly general in character but which had been concluded by a conference falling outside the scope of paragraph 2 of article 8. One was the Moscow Nuclear Test Ban Treaty. The conference which had concluded that Treaty clearly came under the provisions of paragraph 1 of article 8, not of paragraph 2; nevertheless, the Moscow Treaty was undoubtedly intended to be of a general character.

22. The CHAIRMAN suggested that article 8, together with the amendments submitted at the first session and the amendments by Austria (A/CONF.39/C.1/L.379) and Australia (A/CONF.39/C.1/L.380) should now be referred to the Drafting Committee.

It was so agreed. [3]

Article 17

(Acceptance of and objection to reservations) [4]

23. The CHAIRMAN invited the Committee to consider the Drafting Committee's text of article 17 which read:

Article 17

1. A reservation expressly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, the reservation requires the acceptance of the competent organ of that organization but such acceptance shall not preclude any contracting State from objecting to the reservation.

4. In cases not falling under the preceding paragraphs of this article and unless the treaty otherwise provides:

(*a*) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force for those States;

(*b*) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;

(*c*) An act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

24. At the 72nd meeting,[5] the Committee of the Whole had decided to delete from paragraph 3 the concluding words " but such acceptance shall not preclude any contracting State from objecting to the reservation ".

25. Mr. KHLESTOV (Union of Soviet Socialist Republics) drew attention to the amendment and explanatory memorandum (A/CONF.39/L.3) submitted by his delegation to the plenary.

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[3] For the resumption of the discussion in the Committee of the Whole, see 91st meeting.

[4] For earlier discussion of article 17, see 72nd meeting, paras. 1-14. The amendments by Czechoslovakia (A/CONF.39/C.1/L.84) and by France and Tunisia (A/CONF.39/C.1/L.113) had been withdrawn.

[5] Para. 14.

26. As explained in that memorandum, the International Court of Justice, in its advisory opinion of 28 May 1951, [6] had confirmed the principle that the fact that an objection had been made to a reservation did not signify that the treaty in question automatically ceased to be in force in the relations between the reserving State and the objecting State. The Court had come to the conclusion that, if a party to a multilateral treaty objected to a reservation made by another party, it could consider that the reserving State was not a party to that treaty;[7] the effect was not automatic and it was for the objecting State to decide in each case what the legal consequences of its objection would be.

27. The provisional text of article 17 was thus at variance with the accepted rules of international law in the matter and in contradiction with the practice of States and of the Secretary-General of the United Nations in his capacity as depositary.

28. In view of the complexity of the problem, his delegation had considered it necessary to submit a written memorandum on the subject (A/CONF.39/L.3). If the article were put to the vote in its present form, his delegation would have to vote against it.

29. Mr. CARMONA (Venezuela) said that although his delegation on the whole favoured most of the principles embodied in article 17, it concurred with the criticisms put forward on certain points by the USSR delegation. If article 17 were put to the vote as it stood, his delegation would be obliged to vote against some of its paragraphs.

30. It was important that article 17 should not be the subject of a hasty decision; the whole problem should be referred to the plenary so as to give delegations time for reflection.

31. Mr. WYZNER (Poland) said it was obvious that, unlike the solution adopted by the Committee in connexion with other articles relating to reservations, article 17 gave rise to many objections and misgivings, which had been confirmed by the memorandum of the Soviet delegation and the statement just made by the Venezuelan representative. The Polish delegation did not consider that the rule now stated in paragraph 4 (*b*), establishing a presumption in favour of the non-existence of treaty relations between the reserving and the objecting State, had any real foundation in the contemporary practice of States. For example, in all the volumes of the United Nations *Treaty Series,* some forty-seven instruments might be found which contained objections to reservations; the legal effects of those objections were not settled in the treaties themselves, and only three instruments contained declarations to the effect that the objecting State did not regard the treaty as being in force between itself and the reserving State. On the other hand, as many as forty-one instruments contained no indication of the intentions of the objecting State with regard to the existence or non-existence of treaty relations between it and the reserving State, and it might be assumed that in those cases treaty relations did exist.

32. In the light of those misgivings, the Polish delegation considered that the Venezuelan proposal was wise, for if the Committee reached a hasty decision, it would only confirm the profound differences already existing in the matter.

33. The CHAIRMAN suggested that article 17 should now be referred to the plenary Conference.

34. Mr. KHLESTOV (Union of Soviet Socialist Republics) asked that a vote be taken on article 17, so that there should be no grounds for assuming that the Committee had approved it unanimously.

Article 17 was approved by 60 votes to 15, with 13 abstentions.[8]

35. Mr. BLIX (Sweden), explaining his delegation's vote, said he had not objected to the request for a vote on the article, in order not to complicate the Committee's work. Nevertheless, his delegation strongly doubted the need for the vote, since the article had been approved by the Committee, and the only two amendments outstanding had been withdrawn. The vote had therefore amounted to a reconsideration, which should have been decided upon by a two-thirds majority. His delegation's vote merely confirmed its vote on the article during the first session.

36. Mr. TSURUOKA (Japan) said that his delegation had abstained in the vote on article 17 for the reasons it had given at length during the first session, when Japan had introduced an amendment to the whole scheme of reservations under section 2 of part II.

37. Mr. BRAZIL (Australia) said that his delegation, too, had abstained for the reasons it had given in detail at the first session.

Article 26 (Application of successive treaties relating to the same subject-matter) [9]

38. The CHAIRMAN invited the Committee to consider article 26. Amendments submitted by the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.202), Romania and Sweden (A/CONF.39/C.1/L.204), Japan (A/CONF.39/C.1/L.207) and Cambodia (A/CONF. 39/C.1/L.208) had been referred to the Drafting Committee at the first session. France had withdrawn its amendment (A/CONF.39/C.1/L.44).

39. Mr. SINCLAIR (United Kingdom) said that his comments on article 26 had no specific relation to any of the amendments before the Drafting Committee. The Committee would remember that the debate on article 26 at the first session had been very brief and had been held in the absence of the Expert Consultant. The United Kingdom delegation now wished to revert to two points it had raised during the first session,

[6] Reservations to the Convention on Genocide, Advisory Opinion: *I.C.J. Reports 1951,* p. 15.

[7] *Ibid.,* p. 29.

[8] For further discussion of article 17, see 10th plenary meeting, when an amended text was adopted.

[9] For earlier discussion of article 26, see 31st meeting, paras. 4-36.

which emerged from the very title of that complex article.

40. In the first place, there was an element of ambiguity in the word " successive ", for it was difficult to decide which of two treaties was the later one: for example, if convention A had been signed in 1964 and convention B in 1965, but convention B entered into force in 1966 and convention A not until 1968, the question arose which should be regarded as the prior treaty. His delegation's opinion was that the decisive date should be that of the adoption of the treaty; it based that view on paragraph 1 of article 56, which referred to the conclusion of a later treaty. It would, however, welcome the Expert Consultant's views on the matter.

41. The second point, perhaps more significant, concerned the words " relating to the same subject-matter ". There were, of course, cases where a series of treaties, relating to such specific subjects as copyright or safety of life at sea, clearly fell within the scope of the rule set out in article 26. But if, for example, a convention on such a specific topic as third party liability in the field of nuclear energy contained a provision relating to the taking of legal action in the courts of one State and the giving effect to judgements in the courts of another State, it could not be regarded as relating to the same subject-matter as a later treaty on the entirely different topic of the general reciprocal recognition and enforcement of judgements. The phrase in question should be construed strictly and should not be held to cover cases where a general treaty impinged indirectly on the content of a particular provision of an earlier treaty; in such cases, the question involved was one of interpretation or of the application of such maxims as *generalia specialibus non derogant.*

42. Furthermore, paragraph 2 of the International Law Commission's text of article 26 implied that the article was in the nature of a residuary rule, although it was not specifically drafted as such, for the content of the article clearly led to the assumption that matters involving the application of successive treaties could be regulated in the series of treaties themselves; indeed, it was to be hoped that those matters would be so regulated. Finally, the Japanese amendment (A/CONF.39/C.1/L.207) was correct in principle, for where a treaty specified that it was not to be considered inconsistent with an earlier treaty, the question became one of interpretation, not of the application of successive treaties.

43. Mr. KOVALEV (Union of Soviet Socialist Republics) said that his delegation has supported article 26 at the first session on the understanding that the conclusion of successive treaties could not exempt States from the obligation to observe the *pacta sunt servanda* principle, of from the scrupulous observance of earlier treaties. The Soviet Union had submitted an amendment to that effect (A/CONF.39/C.1/L.202), which had not been accepted by the Drafting Committee because it had considered that the International Law Commission's text covered the point. His delegation now supported article 26 on the assumption that the Committee of the Whole shared that view.

44. Mr. KEARNEY (United States of America) said that his delegation regarded the Japanese amendment (A/CONF.39/C.1/L.207) as a very sensible proposal, because it believed that, if a treaty specified that it was not to be considered as inconsistent with another treaty, the purpose of the clause was not that the earlier or the later treaty should prevail, but that an effort be made to read the provisions of both treaties in a consistent manner and to allow both sets of provisions to exist as far as possible.

45. The CHAIRMAN suggested that article 26 be referred back to the Drafting Committee for consideration with the four amendments already before it.

It was so agreed. [10]

The meeting rose at 4.40 p.m.

[10] For the resumption of the discussion in the Committee of the Whole, see 91st meeting.

EIGHTY-SIXTH MEETING

Friday, 11 April 1969 at 10.55 a.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 *(continued)*

Article 36 (Amendment of multilateral treaties) [1]

1. The CHAIRMAN said that at the first session of the Conference the Committee of the Whole had decided to refer article 36 to the Drafting Committee, together with the amendments submitted by France (A/CONF.39/C.1/L.45) and the Netherlands (A/CONF.39/C.1/L.232). The French delegation had now withdrawn its amendment. He suggested that the Committee should refer article 36 back to the Drafting Committee together with the Netherlands amendment.

It was so agreed. [2]

Article 37 (Agreements to modify multilateral treaties between certain of the parties only) [3]

2. The CHAIRMAN said that amendments had been submitted to article 37 by France (A/CONF.39/C.1/L.46), Australia (A./CONF.39/C.I/L.237), Czechoslovakia (A/CONF.39/C.1/L.238) and Bulgaria, Romania and Syria (A/CONF.39/C.1/L.240). The Czechoslovak amendment and the amendment submitted by Bulgaria, Romania and Syria had been referred to

[1] For earlier discussion of article 36, see 36th meeting, paras. 53-79, and 37th meeting, paras. 1-27.

[2] For the resumption of the discussion in the Committee of the Whole, see 91st meeting.

[3] For earlier discussion of article 37, see 37th meeting, paras. 28-56.