United Nations Conference on the Law of Treaties

Vienna, Austria
Second session
9 April – 22 May 1969

Document:-
A/CONF.39/C.1/SR.87

87th 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)*

amendments submitted by Czechoslovakia (A/CONF.39/C.1/L.238) and by Bulgaria, Romania and Syria (A/CONF.39/C.1/L.240); but it could not support the Australian amendment.

The Australian amendment (A/CONF.39/C.1/L.237) was rejected by 62 votes to 4, with 22 abstentions.

12. The CHAIRMAN suggested that article 37 and the amendments relating thereto (A/CONF.39/C.1/L.238 and L.240) should be referred to the Drafting Committee.

It was so agreed.[4]

Article 55 (Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only) [5]

13. The CHAIRMAN said that the only proposal relating to article 55 still before the Committee was the amendment by Australia (A/CONF.39/C.1/L.324), since the French amendment (A/CONF.39/C.1/L.47) had been withdrawn by its sponsor at the 84th meeting.[6] An amendment by Peru (A/CONF.39/C.1/L.305), which was of a drafting nature, had been referred to the Drafting Committee at the first session.

14. Mr. BRAZIL (Australia) said that since the Committee had just rejected the Australian amendment to article 37 (A/CONF.39/C.1/L.237), it probably would not approve the Australian amendment to article 55 (A/CONF.39/C.1/L.324). His delegation was therefore withdrawing it.

15. Mr. JAGOTA (India) said that the Committee could choose between the text proposed in the Peruvian amendment (A/CONF.39/C.1/L.305) and the new text of article 55, paragraph 2, proposed by Austria, Canada, Finland, Poland, Romania and Yugoslavia (A/CONF.39/C.1/L.321 and Add.1) and adopted at the first session of the Conference. He personally would like to see the Conference keep the wording proposed for paragraph 2 in the joint amendment, which had been adopted by 82 votes to none, with 6 abstentions. With the Peruvian amendment it would not be clear what would happen if the other parties notified, or any other States, raised an objection to the suspension of the operation of certain provisions of a treaty. It would be better to keep the most flexible wording possible.

16. With regard to the text adopted at the first session (A/CONF.39/C.1/L.321 and Add.1) he wished to submit a few suggestions for the Drafting Committee's consideration. The legal question raised in article 55 was similar to that raised in article 37, since it turned on the suspension of legal obligations deriving from a treaty. The two articles should therefore be drafted on similar lines. Article 37 dealt with three cases; the first where a multilateral treaty itself prohibited any agreement on the modification of any of its provisions; the second where the treaty specifically permitted the modification of some of its provisions; and the third where the treaty contained no specific provision concerning modification. Article 55 as at present drafted covered only two of the cases: the case where the treaty prohibited the suspension of the operation of some of its provisions, and the case where the treaty did not contain any specific provision to that effect. In order to meet any difficulty, the third case should also be covered, namely the case where the treaty specifically permitted the suspension of the operation of some of its provisions, so that the compatibility test would not apply to such a case.

17. The CHAIRMAN said that the Drafting Committee would no doubt bear those suggestions in mind.

18. He suggested that article 55, as amended at the first session, be referred to the Drafting Committee together with the Peruvian amendment.

It was so agreed.[7]

Article 66 (Consequences of the termination of a treaty) [8]

19. The CHAIRMAN said that the French amendment (A/CONF.39/C.1/L.49), which was the only amendment to article 66, had been withdrawn by its sponsor at the 84th meeting.[9] He suggested that article 66 be referred to the Drafting Committee.

It was so agreed.[10]

The meeting rose at 11.40 a.m.

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

[5] For earlier discussion of article 55, see 60th meeting, paras. 1-42.

[6] See 84th meeting, para. 3.

[7] For the resumption of the discussion in the Committee of the Whole, see 99th meeting.

[8] For earlier discussion of article 66, see 75th meeting, paras. 1-8.

[9] See 84th meeting, para. 3.

[10] For the resumption of the discussion in the Committee of the Whole, see 99th meeting.

EIGHTY-SEVENTH MEETING

Monday, 14 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 2 (Use of terms) [1]

1. The CHAIRMAN invited the Committee to consider the amendment to draft article 2 submitted at the first session and still before the Committee of the Whole

[1] For earlier discussion, see 4th, 5th and 6th meetings.

(A/CONF.39/C.1/L.19/Rev.1),[2] together with the amendments submitted at the second session.[3] The French delegation had withdrawn that part of the amendment it had submitted at the first session (A/CONF.39/C.1/L.24) which related to the term " restricted multilateral treaty ".[4]

2. Mr. FRANCIS (Jamaica) suggested that the subject matter of article 5 *bis* should be considered at the same time as article 2.

3. The CHAIRMAN said that the USSR representative had informed him that he wished to make a proposal similar to that of the Jamaican representative. The USSR representative had agreed that consideration of the definition of general multilateral treaties might be deferred, but had said that he would if necessary raise the problem after the substance of article 5 *bis* had been examined.

4. Mr. SINCLAIR (United Kingdom) said that when the Committee examined article 5 *bis* it might take into consideration the definitions of general multilateral treaties previously proposed and the new definition submitted by the Syrian delegation.

5. Mr. SHUKRI (Syria) said he would comment on his delegation's amendment (A/CONF.39/C.1/L.385) when article 5 *bis* was considered.

6. The CHAIRMAN suggested that the Committee take up article 2, paragraph 1.

7. Mr. ESCUDERO (Ecuador), introducing his delegation's amendment (A/CONF.39/C.1/L.25/Rev.1), reminded the Committee that his delegation had submitted an amendment (A/CONF.39/C.1/L.25) at the first session. In view of the objections made at that time, it had decided to simplify the text of its amendment by including in the definition of the term " treaty " the essential element of the free consent of the parties at the time of conclusion of the treaty.

8. His delegation was firmly convinced that among the essential elements of a treaty the free consent of the parties to it was what established its validity most securely. The other essential elements were implied in or emerged implicity from the notion of " treaty ".

9. To omit the words " freely consented to " from the definition might give the impression that the words " governed by international law " applied only to the conditions for the formal validity of a treaty in international law and excluded the conditions for its essential validity.

10. The legal and logical necessity of including free consent in the wording emerged more plainly from the *pacta sunt servanda* rule set forth in article 23, which read: " Every treaty in force is binding upon the parties to it and must be performed by them in good faith." In his delegation's view, and as had been implied by the Chairman of the Drafting Committee at the first session, the expression " treaty in force " was there equivalent to " valid treaty ", in other words a treaty combining the conditions of formal validity and essential validity.

11. The omission of the element of good faith from the *pacta sunt servanda* rule would be tantamount to saying simply that treaties must be performed by the parties, which would not exclude the possibility of their being performed in bad faith. Similarly, an element essential to the validity of a treaty would be lacking if there was no reference to freedom of consent in the definition in sub-paragraph 1 (*a*). The result would be a paradoxical situation where treaties which had not been freely consented to would have to be performed in good faith.

12. Mr. NETTEL (Austria), introducing his delegation's amendment (A/CONF.39/C.1/L.383), said that the amendment submitted by the French delegation (A/CONF.39/C.1/L.24) at the first session was not precise enough and did not draw a clear enough distinction between authentication and adoption. The Austrian delegation's amendment was intended to make the terms used in the draft convention clearer.

13. Mr. BINDSCHEDLER (Switzerland) said that his delegation's amendment (A/CONF.39/C.1/L.384/Corr.1) was intended to rectify an omission. Sub-paragraph 1 (*a*) established a distinction between international treaties governed by international law and agreements between States which were governed by municipal law. The sub-paragraph, however, was silent on agreements concluded between States at the international level but not constituting treaties, such as declarations of intent, political declarations and "gentlemen's agreements ", which played a very important part in international politics and inter-State relations. Examples of such instruments were the three-Power declaration on Moroccan affairs made at Madrid in 1907, the Atlantic Charter, the 1943 declaration of the Allied Powers concerning looted property, and the " gentlemen's agreement " of 1947 concerning the allocation of seats in the United Nations Security Council. Such political declarations raised certain legal problems and were governed by international law. The definition should therefore be made more precise in order to exclude that kind of agreement.

14. The International Law Commission had considered the problem in the early stages of its work, but had decided not to pursue it.

15. The Chilean amendment (A/CONF.39/C.1/L.22) submitted at the first session was quite similar to the Swiss amendment, but the words " which produces legal effects " lacked precision.

16. The amendment by Mexico and Malaysia (A/CONF.39/C.1/L.33 and Add.1), likewise submitted at

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[2] This amendment had been submitted by Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic, and United Republic of Tanzania.

[3] The following amendments had been submitted at the second session: Belgium, A/CONF.39/C.1/L.381; Hungary, A/CONF.39/C.1/L.382; Austria, A/CONF.39/C.1/L.383; Switzerland, A/CONF.39/C.1/L.384/Corr.1; Syria, A/CONF.39/C.1/L.385. In addition, Ecuador had submitted a revised version (A/CONF.39/C.1/L.25/Rev.1) of an amendment it had presented at the first session.

[4] See 84th meeting, para. 3.

the first session, was not clear enough, for the consequence of any agreement and any declaration was necessarily to establish a relationship between the parties; and the relationship might be legal or political. An international treaty was an instrument which, provided for legal rights and obligations for the parties.

17. Mr. DENIS (Belgium) explained that his delegation's amendment (A/CONF.39/C.1/L.381) was purely a drafting matter.

18. The CHAIRMAN said the Drafting Committee would consider the Belgian amendment.

19. Mr. TALLOS (Hungary) said that his delegation's amendment (A/CONF.39/C.1/L.382) concerned the English text only; its purpose was to change the word order. The amendment merely raised a point of drafting and could therefore be referred to the Drafting Committee. It did not affect the amendment submitted by his delegation at the first session (A/CONF.39/C.1/L.23).

20. Mr. TALALAEV (Union of Soviet Socialist Republics) said that the most important of the new amendments were those concerning the definition of the very notion of a treaty, since the course followed would determine the solution to many other problems which arose in connexion with the draft articles. In principle, as it had stated at the first session, the Soviet Union delegation subscribed to the definition of a treaty proposed by the International Law Commission in article 2, paragraph 1 (*a*). It had also stated that it was in favour of the amendment submitted at the first session by Ecuador (A/CONF.39/C.1/L.25), because it seemed obvious that a genuine international agreement must have " a licit object " and be " freely consented to " principles of international law which were bound to enter into an international agreement. The Ecuadorian delegation had advanced very sound arguments on that point. In the revised version of its amendment (A/CONF.39/C.1/L.25/Rev.1), the Ecuadorian delegation had deferred to the views of those who thought it pointless that the definition in article 2 should, for example, contain the important idea of the " licit object " of a treaty. He regretted it had done so, although he still supported the Ecuadorian amendment unreservedly, even in its simplified form.

21. He also supported the Austrian amendment (A/CONF.39/C.1/L.383), concerning the terms " adoption " and " authentication ", since it clarified the amendment submitted on the same point by France (A/CONF.39/C.1/L.24) which had already been referred to the Drafting Committee; the two notions of adoption and authentication, which, moreover, were the subject matter of two separate articles — articles 8 and 9 — needed to be distinguished. He might, however, wish to amend the Russian version of the Austrian amendment, since the term " adoption " was used in two senses in Russian: for the adoption of a text and for the adoption of a treaty.

22. The Soviet delegation also supported the drafting amendments submitted by Belgium (A/CONF.39/C.1/L.381) and Hungary (A/CONF.39/C.1/L.382). On the other hand, it categorically rejected the amendment submitted by Switzerland (A/CONF.39/C.1/L.384/Corr.1), which in any case reproduced the substance of a Chilean amendment submitted at the first session (A/CONF.39/C.1/L.22); his delegation had not accepted that either. By limiting the notion of a treaty to agreements which provided for rights and obligations, the Swiss amendment unduly restricted the scope of the draft articles by excluding from their sphere of application important international agreements, such as the Atlantic Charter, the Yalta and Potsdam Agreements and many political declarations which not only provided for " rights and obligations " but also laid down very important rules of international law and had governed international relations since the end of the Second World War. Such political agreements were vitally important sources of contemporary international law, of undeniable legal force and validity and the draft articles could not ignore them. Acceptance of the amendments by Switzerland and Chile would mean that agreements of great importance providing for the struggle against aggression and colonialism would be deprived of their binding force and validity, and that was something that no one could accept. As to the amendment submitted by Mexico and Malaysia at the first session (A/CONF.39/C.1/L.33 and Add.1), although it perhaps suffered from the disadvantage of complicating the definition of a treaty, it could be said that it had the virtue of precision and accuracy, and the Soviet Union supported it.

23. Mr. RODRIGUEZ (Chile) said that the Committee had to find a definition of " treaty " for the purpose of the convention in course of preparation; in other words it had to devise a concise form of words to describe an international agreement, as distinct from other agreements between States. It was a legal and technical task and the definition must not include any extraneous elements, however important they might be. That was why it was inadvisable for the definition of a treaty or an international agreement to embrace the question of the validity of international agreements, which was a matter of international norms and was dealt with further on in the draft articles. It would also be inadvisable for the definition of a treaty to restate notions of public law which were peculiar to certain States or were political in nature. The Ecuadorian amendment, however, both in its first version (A/CONF.39/C.1/L.25) and in its revised version (A/CONF.39/C.1/L.25/Rev.1), introduced elements into the definition of a treaty which, although perhaps appropriate somewhere in the draft articles, were out of place in the definition, since the notion of the free consent of the parties to a treaty was bound up with the conditions of validity of the agreement, a point which should not arise as early as in the definition of an agreement.

24. In the Swiss amendment (A/CONF.39/C.1/L.384/Corr.1), a treaty was regarded as an international agreement providing for rights and obligations. The Chilean amendment submitted at the first session (A/CONF.39/C.1/L.22) stated that a treaty was an agreement which produced legal effects. Both amendments therefore

gave prominence in their definitions to elements which would make it possible to distinguish international agreements constituting treaties from international agreements which merely recorded identical views, similar political opinions or wishes, or general aspirations. Like the Swiss representative, he was convinced that the definition of a treaty should contain elements of that kind, otherwise all international agreements alike, whatever their purport, would be governed by the draft articles, with the result that in the future Governments might hesitate to take a definite stand in writing when expressing their common political views or long-term wishes. Governments should not be inhibited in that way, because general political declarations were the driving force in the life of the international community and, as events proceeded, they facilitated the conclusion of more formal international agreements, which were binding on States and constituted genuine treaties providing for rights and obligations.

25. In addition to advancing that argument, he had also proposed that anything that was superfluous should be deleted from the International Law Commission's definition. It was pointless, for example, to say that a treaty was an " international " agreement governed by international law " embodied in a single instrument or in two or more related instruments ", or to speak of a " particular designation ". The Chilean delegation still held that view.

26. Mr. ROMERO LOZA (Bolivia) said that, as he had done at the first session, he supported the amendment by Ecuador to paragraph 1 (*a*) of article 2 (A/CONF. 39/C.1/L.25/Rev.1) because it emphasized certain elements that were essential to the validity of treaties and thereby made it possible to define with precision the subject-matter of the legal rules which the Conference was called upon to codify. Clearly, treaties must rest on certain fundamental principles such as the free consent of the parties and good faith and must have " a licit object ". Some representatives thought that the introduction of those particulars made the definition much too detailed, especially as the ideas in question were considered elsewhere in the draft articles; but in his view it was better to repeat them than to run the risk of omitting them, all the more so as the principles in question were already incorporated in the internal law of many countries. From that point of view the first version of the Ecuadorian amendment (A/CONF.39/C.1/L.25) had been preferable because it was impossible to over-emphasize the fact that the legitimate character of an international treaty was derived from the very principles which made universal co-existence possible.

27. The Swiss amendment (A/CONF.39/C.1/L.384/Corr.1) was incomplete precisely because it did not state the fundamental principles on which the rights and obligations created by international agreements depended.

28. Mr. BOLINTINEANU (Romania) said that, although it was true that article 2, paragraph 1 (*a*), referred to " an international agreement . . . governed by international law ", a reference to freedom of consent as an essential condition of the life of a treaty would seem to introduce a further element of precision and would moreover be in keeping with the prominence given in the system of the convention to consent: articles 10-14 referred to consent to be bound by a treaty, article 21 to consent as an essential element for entry into force, articles 30-32 to the consent of third States, articles 35 and 36 to consent to the amendment of treaties, articles 45-49 to defects of consent, article 51 to termination or withdrawal of a treaty by consent of the parties, and so on. Accordingly, his delegation supported the Ecuadorian amendment.

29. The Romanian delegation also supported the Austrian amendment (A/CONF.39/C.1/L.383) which would be a useful addition to article 2; the Drafting Committee should also take into account the amendments by Belgium (A/CONF.39/C.1/L.381) and Hungary (A/CONF.39/C.1/L.382).

30. The amendment by Switzerland (A/CONF.39/C.1/L.384/Corr.1) was unnecessary because the International Law Commission's wording fully covered all the elements constituting the legal substance of a treaty.

31. Mr. OSIECKI (Poland) said that, in principle, he favoured the retention of the Commission's text of article 2 because there was a risk that any attempt to render the definition of a treaty more complicated would make it uncertain whether a particular treaty fully complied with the requirements stipulated. His delegation agreed, however, that the Ecuadorian amendment deserved careful consideration.

32. Some of the other amendments were purely of a drafting character and should be referred to the Drafting Committee. In particular, his delegation supported the amendments by Belgium (A/CONF.39/C.1/L.381), Hungary (A/CONF.39/C.1/L.382) and Austria (A/CONF.39/C.1/L.383).

33. In reply to a question by Mr. HAMZEH (Kuwait), Mr. BINDSCHEDLER (Switzerland) explained that, according to the Swiss amendment, an international agreement could either create entirely new rights and obligations or set out in written form rights and obligations which already existed in customary law. The Swiss delegation, however, preferred to use the expression " providing for " which had a broader meaning than " creating ".

34. Mr. SINCLAIR (United Kingdom) said that in his view the Swiss amendment (A/CONF.39/C.1/L.384 and Corr.1) should be considered in conjunction with the amendments by Chile (A/CONF.39/C.1/L.22) and by Mexico and Malaysia (A/CONF.39/C.1/L.33 and Add.1). At the first session, the United Kingdom delegation had already stated that it favoured those two amendments and it also viewed with sympathy the Swiss amendment. Sir Gerald Fitzmaurice, in the definition included in his first report to the International Law Commission,[5] had incorporated the elements contained in the amendments of Switzerland and of Mexico and

[5] See *Yearbook of the International Law Commission, 1956*, vol. II, p. 107.

Malaysia. The United Kingdom delegation would find no difficulty in expanding the definition of the term " treaty " to incorporate those elements. In any event, they were already implicit in the Commission's draft by virtue of its reference to " international agreement ".

35. With regard to paragraph (2) of the Commission's commentary to article 2, the United Kingdom delegation considered that many " agreed minutes " and " memoranda of understanding " were not international agreements subject to the law of treaties because the parties had not intended to create legal rights and obligations, or a legal relationship, between themselves. In that respect his views did not correspond with those of the representative of the USSR, who had expressed too broad a view of the concept of a treaty within the framework of the draft convention. International practice had consistently upheld the distinction between international agreements properly so-called, where the parties intended to create rights and obligations, and declarations and other similar instruments simply setting out policy objectives or agreed views. The views of the USSR representative were not shared by all Soviet jurists, since in the work " International Law " prepared by the Academy of Sciences of the USSR, the term " international treaty " was defined as " a formally expressed agreement between two or more States regarding the establishment, amendment or termination of their reciprocal rights and obligations ".[6] The notion of rights and obligations formed an integral part of any definition of the term " treaty ".

36. In his delegation's opinion, the amendment by Ecuador (A/CONF.39/C.1/L.25/Rev.1) introduced an element which it was not appropriate to include in a definition; the Chilean representative's comments were very much to the point.

37. Mr. PINTO (Ceylon) said he was not convinced that it was necessary to introduce into the definition of the word " treaty " one particular element relating to the validity of treaties, as was done by Ecuador in its amendment. The International Law Commission had sought to set out under the heading " Use of terms " only the formal and external aspect of certain terms, not to define them; it had not touched upon the important question of the validity of treaties dealt with in other provisions of the draft articles. That was a very prudent attitude. His delegation understood the reasons which had induced the Ecuadorian delegation to submit its amendment, but it would have to abstain in the vote on it.

38. Mr. NASCIMENTO E SILVA (Brazil) regretted that the term " definition " recurred so often during the discussion; it was not very accurate, since it was rather a question of indicating the meaning given to the expressions frequently used in the Convention, in order to avoid repetition. Articles 8 and 9, however, expressed very clearly the idea on which the Austrian amendment (A/CONF.39/C.1/L.383) was based.

39. The amendments by Chile (A/CONF.39/C.1/L.22) and Mexico and Malaysia (A/CONF.39/C.1/L.33 and Add.1) had the same purpose as the Swiss amendment (A/CONF.39/C.1/L.384/Corr.1). Perhaps the sponsors of those amendments could meet and reach an agreement on a single text.

40. It was obvious that all the principles referred to in the Ecuadorian amendments (A/CONF.39/C.1/L.25 and Rev.1), namely that a treaty must have a " licit object ", be " freely consented to " and be " based on justice and equity ", should be observed in concluding an international treaty, but he did not think that they should be mentioned in article 2 (*a*). Those ideas should be carefully studied by the Drafting Committee when it drafted the preamble.

41. Mr. DE CASTRO (Spain) said he thought that the International Law Commission's text would serve to define the term " treaty " for the purposes of the convention. It was unnecessary to provide any general definition of that word; it was enough to explain the meaning it was intended to have in the convention. But since the Committee had several amendments before it, his delegation wished to state its position with respect to them.

42. His delegation fully supported the Ecuadorian amendment (A/CONF.39/C.1/L.25/Rev.1): a treaty was not valid unless it was freely consented to. However, it should not be forgotten that articles 23, 48, 49 and 50 already emphasized the fact that a treaty could only be valid if it was freely consented to. Nevertheless, inasmuch as some delegations to the Conference had not shown any great enthusiasm for Part V, of the Convention, there would perhaps be no harm in stressing such a fundamental aspect of the treaty as that of free consent. In that respect the Swiss amendment (A/CONF.39/C.1/L.384/Corr.1) was justified, inasmuch that it showed that the effect of an international agreement was to create rights and obligations. But if that agreement was governed by international law, it would be merely repetitious to say that it provided for rights and obligations. In the light of the doubts expressed by the Soviet Union representative, it would perhaps be better not to adopt that amendment, which tended to restrict the scope of the convention.

43. The Belgian amendment (A/CONF.39/C.1/L.381) improved the text, and the Austrian amendment (A/CONF.39/C.1/L.383) filled a gap. His delegation would have no difficulty in accepting those two amendments.

44. The CHAIRMAN suggested that the amendments by Belgium and Hungary, which were of a drafting nature and could not give rise to any controversy, should be referred to the Drafting Committee.

It was so agreed.

45. The CHAIRMAN invited the Committee to take a decision on the amendments by Ecuador, Switzerland and Austria.

46. Mr. ESCUDERO (Ecuador) said he realized how difficult it was to define accurately the terms used in the convention, but the Conference had a heavy responsibility in that respect. The text submitted by the

[6] English edition, p. 247.

International Law Commission was inadequate where the term " treaty " was concerned. The only element of substance to be found there was the expression " governed by international law". It was essential to include in the rules governing international law the rule concerning the freedom of consent of contracting States at the time of the conclusion of the treaty. Such freedom was essential for the existence of treaties. It was hardly possible to define a concept as complex as that of " treaty " in a few succinct words and at the same time omit any reference to the element of freedom of consent. In law, it was essential to have a clear idea of the various concepts, in order to avoid possible misunderstandings. His delegation, in presenting the revised version of its amendment, had retained only the essential element, namely, freedom of consent, because it had been anxious to meet the wishes of delegations which had not wanted too long a text.

47. In accordance with the decision taken by the Conference the previous year, his delegation hoped that its amendment would be referred to the Drafting Committee, which should make a careful study of the revised version and consider the possibility of retaining the reference to the notion of freedom of consent. The Chilean delegation had criticized the Ecuadorian amendment on the ground that it raised a question of substance concerning treaties, but the Chilean amendment (A/CONF.39/C.1/L.22), which proposed the addition of the words "which produces legal effects " also raised a question of substance. Logically that amendment should therefore also be considered as unacceptable.

48. Mr. BINDSCHEDLER (Switzerland) suggested that the Swiss amendment be referred to the Drafting Committee. The Chilean amendment (A/CONF.39/C.1/L.22), which was based on the same idea, had already been referred to the Drafting Committee, which could then choose between the two texts, or combine them in order to arrive at a better formulation.

49. The CHAIRMAN suggested that the Ecuadorian amendment (A/CONF.39/C.1/L.25/Rev.1) and the Swiss amendment (A/CONF.39/C.1/L.384/Corr.1) be referred to the Drafting Committee.

It was so agreed.

50. Mr. NETTEL (Austria) suggested that his delegation's amendment (A/CONF.39/C.1/L.383) be also referred to the Drafting Committee.[7]

It was so agreed.[8]

The meeting rose at 12.45 p.m.

[7] The amendment by Syria (A/CONF.39/C.1/L.385) to article 2 was taken up in connexion with article 5 *bis* (see 88th meeting).

[8] For the resumption of the discussion in the Committee of the Whole, see 105th meeting.

EIGHTY-EIGHTH MEETING

Monday, 14 April 1969, at 3.20 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)*

Proposed new article 5 bis (The right of participation in treaties) [1]

1. The CHAIRMAN invited the Committee to consider the proposed new article 5 *bis* (A/CONF.39/C.1/L.74 and Add.1 and 2), which had not been formally introduced at the first session, when its consideration had been deferred.[2] The Committee would also remember that it had decided at its 80th meeting to defer consideration of all amendments relating to " general multilateral treaties ".[3]

2. Mr. WYZNER (Poland) said that the concept of universality, or the right of every State to participate in general multilateral treaties, was based on principles of international law embodied in the Charter of the United Nations and, in particular, on the principle of the sovereign equality of States. It was also closely linked with the undertaking by every State, formulated in the United Nations Charter, to fulfil in good faith the obligations assumed by it under the Charter. That undertaking could not be fully carried out if certain States were prevented from participating in treaties concluded in the interest of the community of States as a whole.

3. Poland's attitude towards those basic concepts of contemporary international law was evident from its sponsorship of an amendment to article 2 proposing a definition of the term " general multilateral treaty " (A/CONF.39/C.1/L.19/Rev.1). That attitude was based on the conviction that the principle of universality benefited not only individual countries but the community of States as a whole. It was only fair that a State whose participation might help towards the attainment of the aims of a general multilateral treaty should have the right to become a party to the treaty. Since participation in a treaty often imposed obligations which limited the freedom of action of States parties to the treaty, it was both unreasonable and harmful to debar from participation in a general multilateral treaty a State which wished to become a party thereto, particu-

[1] The proposal for a new article 5 *bis* (A/CONF.39/C.1/L.74 and Add. 1 and 2) was submitted at the first session by Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia. It read:

" Insert the following new article between articles 5 and 6:

' The right of participation in treaties

'All States have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality.' "

[2] See 13th meeting, paras. 1 and 2.

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