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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)*

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; and article 26, paragraph 4 (*b*), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(*a*) Be considered as a party to the treaty as amended; and

(*b*) Be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

44. At the first session, the Committee of the Whole had referred article 36 to the Drafting Committee with the amendments by France (A/CONF.39/C.1/L.45) and the Netherlands (A/CONF.39/C.1/L.232). The French amendment had been withdrawn at the 84th meeting.

45. The Drafting Committee had adopted the Netherlands amendment to replace in paragraph 2 the words " to every party, each one of which " by the words " to every contracting State, each one of which ". It had also made a number of drafting changes, in accordance with rule 48 of the rules of procedure.

Article 36 was approved.[14]

Article 37 (Agreements to modify multilateral treaties between certain of the parties only) [15]

46. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text proposed for article 37 by the Drafting Committee read:

Article 37

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(*a*) The possibility of such a modification is provided for by the treaty; or

(*b*) The modification in question is not prohibited by the treaty and:

(*i*) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(*ii*) Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

47. At the first session, the Committee of the Whole had referred article 37 to the Drafting Committee with the amendments submitted by Czechoslovakia (A/CONF.39/C.1/L.238) and by Bulgaria, Romania and Syria (A/CONF.39/C.1/L.240). Amendments by France (A/CONF.39/C.1/L.46) and Australia (A/CONF.39/C.1/L.237) had been left in abeyance.[16] At the 84th meeting the French amendment had been withdrawn. The Australian amendment had been rejected at the 86th meeting.

48. The Drafting Committee had taken the view that the amendment by Czechoslovakia was unnecessary because its substance was already contained in the text. On the other hand, it had adopted with a slightly altered wording the joint amendment by Bulgaria, Romania and Syria. It had also made certain drafting changes in accordance with rule 48 of the rules of procedure.

Article 37 was approved.[17]

The meeting rose at 5 p.m.

[14] For the adoption of article 36, see 16th plenary meeting.

[15] For earlier discussion of article 37, see 86th meeting, paras. 2-12.

[16] See 37th meeting, paras. 55 and 56, and footnote 5 to the record of that meeting.

[17] For the adoption of article 37, see 16th plenary meeting.

NINETY-SECOND MEETING

Thursday, 17 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 articles 62 bis, *62* ter, *62* quater *and 76* [1]

1. The CHAIRMAN invited the Committee to consider together the four proposed new articles, numbered 62 *bis,* 62 *ter,* 62 *quater* and 76.

2. In the case of article 62 *bis,* the thirteen-State amendment (A/CONF.39/C.1/L.352/Rev. 2) originally submitted at the first session had now been replaced by a nineteen-State amendment (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2),[2] while there was also before the Committee the proposal by Switzerland (A/CONF.39/C.1/L.377). The amendments to article 62 submitted at the first session by the United States (A/CONF.39/C.1/L.355) and Uruguay (A/CONF.39/C.1/L.343) had been withdrawn on the understanding that the sponsors reserved the right to resubmit them at the second session in connexion with the proposed new article 62 *bis.* The Japanese amendment to article 62 (A/CONF.39/C.1/L.339) would be considered in connexion with the proposed new article 62 *bis,* as requested by the Japanese delegation.

[1] For the texts of these and related proposals, see the report of the Committee of the Whole on its work at the second session (A/CONF.39/15 and Corr.2), paras. 98, 108, 115 and 131.

[2] The sponsors were Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia and Uganda.

3. At the present session Spain had submitted a proposed new article 62 *bis* (A/CONF.39/C.1/L.391), Thailand had submitted a proposed new article 62 *ter* (A./CONF. 39/C.1/L.387), permitting reservations to article 62 *bis,* while Switzerland had submitted a proposed new article 62 *quater* (A/CONF.39/C.1/L.393/Corr.1).

4. Switzerland had submitted a proposed new article 76 (A/CONF.39/C.1/250) at the first session, while at the present session Spain had also submitted a new article 76 (A/CONF.39/C.1/392).

5. Mr. ESCHAUZIER (Netherlands) said the Committee would remember that towards the end of the first session thirteen delegations had jointly submitted a proposal for a new article 62 *bis* (A/CONF.39/C.1/ L.352/Rev.2) concerning the settlement of disputes in cases governed by Part V of the draft convention.[3] It had been stressed during the discussion that such disputes did not relate to the implementation of the treaty, but rather to the preliminary question of whether the treaty was valid. Disputes relating to Part V involved matters of great importance for the stability of treaty relations and, consequently, for peaceful and friendly relations and co-operation between States. Those aspects of Part V had led many delegations to conclude that a special, compulsory procedure was both justified and necessary for settling disputes arising under the articles in question.

6. The sponsors of the proposal had recognized, however, that owing to pressure of time, the text of their amendment was imperfect and might be improved by drafting changes or even by substantive modifications, provided the basic principles remained intact. Comments and suggestions received in the past month had been useful, and further consultation among the sponsors had resulted in a new proposal (A/CONF.39/C.1/ L.352/Rev.3 and Corr.1 and Add.1 and 2), submitted by the same thirteen delegations, who had been joined by six others. The revised proposal had been drafted in French, and the versions in the other languages would be brought into line with the French text, where necessary.

7. It would be seen that the essence of the proposal had not been changed and that the object of article 62 *bis* and its annex was still to include in the convention a procedure for conciliation and arbitration, as a complement to article 62. The proposed new article in no way impaired paragraphs 3 and 4 of article 62, as adopted by the Committee at the first session. The sponsors' intention was to offer a procedure for the final settlement of a dispute which would come into operation only in the event of failure to reach a solution through the means set out in Article 33 of the United Nations Charter, or through any other provisions binding between the parties.

8. It had been suggested that, in order to speed up the procedure, some of the time-limits in the annex to the proposal should be reduced. It was therefore now proposed, in paragraph 2, that the conciliators and the chairman should be appointed within sixty days instead of within three months. If those appointments were not made within the prescribed period, a time-limit was now laid down for action to be taken by the Secretary-General of the United Nations; comparable provisions now also applied to the arbitration procedure set out in paragraph 5.

9. On the other hand, the nature of a conciliation procedure made it appropriate for the parties to be entitled to extend the time-limits for the appointment of conciliators by mutual agreement, and that was now provided for in the penultimate sub-paragraph of paragraph 2.

10. In deference to observations made by some delegations, it was now stipulated in paragraph 3 that a decision by the conciliation commission could only be taken by a majority vote of all the members. Another new element was the provision in paragraph 4 that the conciliation commission might recommend the parties to a dispute to adopt, pending the final settlement, any measures which might facilitate a friendly solution. Moreover, in the final stage of the conciliation procedure, the parties were free to extend by mutual agreement the period during which the commission's report remained under consideration. The sponsors had also given due consideration to the objection that the wording of their original proposal seemed to apply to bilateral treaties only, and in paragraphs 2 and 5 explicit reference was now made to " a State or States constituting one of the parties to the dispute ".

11. With regard to the role assigned to the Secretary-General of the United Nations under article 62 *bis,* the original draft merely stated that a party might request the Secretary-General to set in motion the procedures specified in annex 1, but the revised text of the article and of paragraphs 2 and 5 of the annex made it clear that the Secretary-General had to act for the benefit of the parties. With regard to paragraph 5, one of the sponsors had suggested that any of the parties should be entitled to object, once only, to the nomination of an arbitrator or of the chairman of the tribunal by the Secretary-General, and that a second choice by the Secretary-General would be binding upon all parties. An exchange of views on that suggestion, however, had resulted in a decision to leave the matter to the discretion and impartial judgment of the Secretary-General.

12. The important question of the rights of third parties had also been raised during the consultations. Some delegations had been in favour of granting third parties the right to submit oral or written statements to the commission if they considered that their interests were affected, while others had preferred to make third party intervention dependent on the consent of the parties to the dispute. After due consideration, and in a spirit of compromise, the sponsors had decided to include the condition of the consent of the parties to the dispute, in paragraphs 3 and 6 of the proposal.

13. Those were the principal changes made in the revised proposal. As to its basic philosophy, the sponsors considered that the inclusion of an article based on the fundamental concepts of the amendment was an essential prerequisite for making the convention acceptable to the largest possible number of States. Under Part V of the draft, unilateral claims of invalidity,

[3] See 68th meeting, para. 29.

termination and suspension of a treaty could be made, for which there were few if any precedents and no clear jurisprudence; many of the provisions of Part V lent themselves to different interpretations and even to deliberate misuse. The provisions of article 62 were clearly inadequate as a safeguard against such hazards and ensuing disputes, and the proposed new article and its annex were therefore essential additions, designed to make Part V acceptable.

14. The fundamental characteristics of the proposal were twofold, entailing, first, a conciliation procedure and, secondly, the right to resort to arbitration only if the failure of conciliation had been clearly established. In the opinion of the sponsors, those two stages were indissolubly linked.

15. Mr. DE CASTRO (Spain) said that the results achieved at the first session had been most encouraging and it would indeed be unfortunate if the Conference now failed to adopt a convention on the law of treaties. At the first session, a number of delegations had objected to Part V of the draft on the ground that, in their view, its adoption would upset the stability of treaty relations. On the other hand, at least one important delegation had indicated that it could not support the convention unless provision was made for the compulsory settlement of disputes about the validity of international treaties. The two-thirds majority required for adoption of the convention might not be secured unless some formula which met those two points of view were included in the convention. Those were the considerations which had prompted the Spanish delegation to submit its own proposal for a new article 62 *bis* (A/CONF.39/C.1/L.391).

16. Agreement on a procedure for the settlement of disputes likely to satisfy a majority of States would be difficult to achieve, since States were naturally reluctant to submit to an international body matters of vital concern to them, particularly if they were not convinced that the international body concerned would act impartially in settling disputes. Moreover, care would have to be taken to separate purely legal disputes from essentially political controversies.

17. States truly interested in the development of international law should be prepared to make the necessary sacrifice for the good of the international community, and in the knowledge that adequate machinery for the settlement of disputes was the best way to overcome the reluctance of some States to forgo the advantages they derived from treaties which were invalid in law. The smaller and weaker States could be expected to receive the greatest benefit from a procedure for compulsory jurisdiction, while the more powerful States might raise objections and decide not to ratify the convention. It was therefore essential that any international body set up to settle disputes should satisfy the parties as to its objectivity. Its findings should not perpetuate injustice but provide equitable solutions likely to further the cause of an improved international legal order.

18. The Spanish delegation had taken into consideration the views expressed by other delegations, and ventured to suggest that the best course might be to entrust the United Nations with control over the application of the legal norms embodied in the convention. The General Assembly would be asked to set up a permanent organ, to be known as the " United Nations Commission for Treaties ", which would be truly representative of the international community. If other means of settling a dispute between parties failed, the dispute could be brought before that commission, which would deal with it in two stages. It would first make proposals with a view to an amicable and equitable settlement, and might set up a special conciliation commission for that purpose. If that method failed, the second stage would involve arbitration. The commission would decide whether the dispute was to be regarded as a legal dispute: if so, it would be submitted to an arbitral tribunal, whose award would be final and binding.

19. An important feature of the Spanish proposal was its procedure for the selection of the chairman of the arbitral tribunals and the special conciliation commissions. They would be selected by the United Nations commission for treaties, a method which ensured the highest degree of objectivity and impartiality in the appointments.

20. The Spanish delegation submitted its proposal in a desire to reconcile the various positions taken at the Conference and in the hope that the institutional framework thus provided for the settlement of disputes would increase the effectiveness of the convention.

21. Mr. AMATAYAKUL (Thailand) said that international relations should be based on the principle of the sovereign equality of States. Any effort to make the machinery for settling disputes compulsory must be subject to the prior acceptance of the parties concerned. International practice had so far supported that argument. Compulsory means for settling disputes had been provided for, not in any of the conventions codifying rules of international law but in separate optional protocols. Moreover, States parties to the Statute of the International Court of Justice were not *a priori* obliged to accept the jurisdiction of the Court and an acceptance could be accompanied by reservations which limited the jurisdiction of the Court to the will of the States parties.

22. His delegation considered that if article 62 *bis* were incorporated in the convention, the reservation clause proposed in its amendment (A/CONF.39/C.1/L.387) should be inserted in order that both the States opposed to article 62 *bis* and the States in favour of it might be able to become parties to the convention. That would also pave the way for the subsequent adoption of the article by States which had entered a reservation to it. The reservation could be withdrawn when the conditions which had prevented the State from accepting the article at the time of its accession to the convention no longer obtained.

23. Mr. BINDSCHEDLER (Switzerland), introducing his delegation's proposal for a new article 62 *bis* (A/CONF.39/C.1/L.377), said that since Part V of the draft convention contained several new provisions and it was not yet clear how they would be applied or

interpreted, some compulsory procedure was required to settle disputes arising out of that part of the draft. Some such procedure was needed in order to maintain the principle of *pacta sunt servanda,* ensure the stability of the system of treaties, and avoid possible abuses in the application of Part V. It was essential to avoid lengthy litigation over Part V, since that was calculated to poison international relations. In the history of law, recourse to tribunals or courts of arbitration had always preceded written legislation.

24. Some States considered that the principle of compulsory settlement of disputes conflicted with the principle of the sovereignty of States, and as a consequence they felt misgivings over any form of international jurisdiction. Such doubts were understandable; nevertheless, a truly objective system for the settlement of disputes was the best guarantee of the independence and sovereignty of States, especially of small and weak States, of which Switzerland was one. Switzerland had accepted a number of procedures for the international settlement of disputes, and had found that they worked well. In any free negotiation between States, the stronger was likely to achieve its aims, but that was not true of disputes submitted to an independent and objective body.

25. The Swiss proposal was intended to provide a procedure that was simple, that was not costly, and that was effective. It had the merit of not requiring any new international machinery that might overlap with the activities of existing organizations and thereby lead to confusion. The Permanent Court of Arbitration at The Hague already provided machinery for the settlement of disputes that was quite independent of the International Court of Justice; more use should be made of it, because its procedures were very simple.

26. The Swiss proposal provided that it was for the party that wished to end a treaty to begin the conciliation or judicial procedure, in accordance with the general principle that it was the responsibility of the claimant to initiate the judicial procedure. It also made clear the status of the contested treaty, which would remain in force until the dispute had been settled. That provision in paragraph 3 might appear too rigid, but the text specified that it would apply only in the absence either of any agreement to the contrary between the parties, or of provisional measures ordered by the court of jurisdiction. Such provisional measures were very important in all international litigation, since they could maintain the stability of the existing situation and provide some flexibility in meeting any new situation that might arise.

27. The Swiss proposal provided two means of settling disputes: either proceedings before the International Court of Justice, or proceedings before an *ad hoc* commission of arbitration; the choice rested with the party questioning the validity of the treaty. He did not deny that some decisions of the International Court had been open to criticism, but its existence could not be overlooked. In the United Nations Charter, the International Court was described as the principal judicial organ of the United Nations, and Article 36, paragraph 3 of the Charter provided that the Security Council should take into consideration that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice. Nevertheless, the Swiss proposal left it open to the parties to the dispute to refer the case to an *ad hoc* commission of arbitration if they so wished. Paragraph 2 (*a*) of the proposed new article provided that each party should appoint only one member, out of the total of five, the other three being appointed jointly by the parties from nationals of third States. That was a more satisfactory arrangement than the one proposed in the nineteen-State amendment (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2), which provided that the majority of the members of the conciliation commission should be appointed by the individual parties, so that in effect only one person, the Chairman, would decide the issue, a rather dangerous procedure. An arbitration commission with three neutral members was more likely to achieve a just settlement, and Switzerland regarded that as a very important point.

28. Although the Swiss proposal did not expressly mention conciliation, the expression used in paragraph 2, " unless the parties otherwise agree ", showed that conciliation was not excluded. However, he was doubtful about the usefulness of conciliation procedures in the type of litigation that was likely to arise out of Part V of the draft. The points at issue were likely to be legal points that would not lend themselves to conciliation. Furthermore, conciliation procedures could be lengthy and costly. But the parties were free to resort to conciliation if they so wished.

29. For many countries the cost of the proceedings was an important consideration, and the parties should exercise moderation in selecting their agent or counsel. The proposed procedure before an arbitration tribunal was flexible and simple and would enable the parties to keep costs at a low level. He favoured the idea that the United Nations might in future meet all procedural costs involved; a special fund to cover such costs could be established, and Switzerland would be ready to contribute to such a fund.

30. His delegation had another proposal of a purely formal nature to make; it was for a new article 62 *quater* (A/CONF.39/C.1/L.393/Corr.1). The text of the proposed new article was the same as that of article 62, paragraph 4; if the new article 62 *bis* were adopted, a similar provision would be required for that article, and consequently, instead of the paragraph appearing in both article 62 and 62 *bis,* it would be preferable to include it as a new article 62 *quater.*

31. For Switzerland, the adoption of some procedure for the settlement of disputes was a *sine qua non* for the acceptance of Part V of the draft convention, which it would otherwise regard as containing too many pitfalls.

32. Mr. IRA PLANA (Philippines) said he wished to refer to certain aspects of the proposals before the Committee for the establishment of an acceptable procedure of conciliation and arbitration. It had been proposed that, in the event of a dispute, a conciliation body should be set up, composed of five persons, each party appointing two conciliators, one of whom must be a national of the appointing State, and a chairman to be

chosen by the conciliators thus appointed. The reason for the mandatory provision that each party must appoint a person of its own nationality was not altogether clear, although it might be supposed that each party ought to have a national representative on the conciliation body. It would not therefore matter much if the parties were given no choice, since they might be expected to appoint one of their nationals. The mandatory provision might be accepted, considering the early stage of the proceedings envisaged, the number of persons composing the conciliation body and the fact that the main purpose of that body was to seek common ground and to bring about an amicable settlement between the parties.

33. It was further proposed that, in the event of the failure of efforts at conciliation, an arbitral tribunal of three persons, having the power to make a final and binding decision, should be established, each party appointing one arbitrator, whether of its own nationality or of some other nationality, with a chairman chosen by the two arbitrators thus appointed. A party to a dispute would invariably appoint an arbitrator of its own nationality if that were permitted, and in such cases two of the members of the three-member tribunal would be active partisans. They would not be impartial adjudicators, but advocates of their respective causes; their nationality, their natural sentiments and the fact that they would be appointed by their governments would afford them little chance of being unbiased judges. Thus, the impartiality that should properly pertain to the whole arbitral body could correctly be imputed only to the chairman. That arrangement obviously called for reappraisal and modification.

34. While it was generally logical and understandable that the various proposals contemplated two sides to every dispute, cases might arise in connexion with multilateral treaties where there were not two but three sides. That eventuality might well be taken into account in the final draft of article 62 *bis*.

35. Another proposal was concerned with referring disputes to the International Court of Justice. During the first session, the Japanese delegation had submitted a proposal (A/CONF.39/C.1/L.339) that disputes relating to *jus cogens* under articles 50 and 61 should be referred to the Court at the request of either of the parties. The Philippine delegation saw substantial merit in that proposal, for the International Court of Justice, as the principal judicial organ of the United Nations, was the most authoritative agency to decide whether or not a given rule or principle constituted a peremptory norm of international law from which no derogation was permitted. A provision to that effect would undoubtedly enhance the value of article 62 *bis* and its contribution to the orderly settlement of disputes.

36. Mr. GALINDO-POHL (El Salvador) said that invalidity and the other matters dealt with in Part V were among the most important subjects in the draft convention. Since free consent was of the essence of a treaty, the system of safeguarding consent was of primary importance. In order to be effective, the clauses dealing with invalidity, termination and suspension required that, failing agreement between the parties, some impartial institutional authority should have the final say in the matter. Otherwise Part V would be weakened and would be a source of controversy rather than of international stability.

37. Article 62 laid down that " the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations "; but it did not ensure that questions of invalidity, termination and suspension would be duly considered and settled with the consequent freeing of the parties from specific contractual obligations. The system for the settlement of disputes laid down in Article 33 of the Charter represented some progress towards a well-organized international community, but in recent years its inadequacies had made it necessary to reconsider the problem in the United Nations.

38. The proposals for an article 62 *bis* were intended to establish a compulsory jurisdiction for the settlement of disputes regarding the invalidity, termination and suspension of treaties. Arbitration had a long history as a method of solving international disputes when other means had failed. In view of the fact that the other methods for the peaceful settlement of disputes were feeble and merely optional, failure to resort to arbitration would only lead to lengthy arguments and counter-arguments with all their resulting uncertainty.

39. In the view of his delegation, in the case of a dispute concerning a treaty, arbitration, with the establishment of a compulsory tribunal, was particularly appropriate. The proposals before the Committee would of course have to be perfected in order to ensure a reasonably rapid procedure and impartial awards. The time-limits laid down in the proposed drafts were of particular importance. The parties could be given the right to object to a certain number of arbitrators without having to give reasons. Also, both the number and status of the members of the tribunal required careful consideration. His delegation supported the composition proposed in the Swiss amendment (A/CONF.39/C.1/L.377).

40. The proposals before the Committee appeared all to be conceived on the basis of a dispute between two parties; in the case of multilateral treaties, if one party impeached the validity of the treaty and the remaining parties opposed such impeachment, the latter might act as a single party in order to simplify the procedure.

41. The adoption of an article 62 *bis* might involve difficulties inasmuch as the fate of national interests would be subjected to the decision of an alien. But there was no State which had not at some time or other submitted to arbitration or brought a case before the International Court of Justice, and many treaties provided for compulsory arbitration. Everything involved some risk, and compulsory arbitration was no exception to that rule, but the balance of advantage was in favour of arbitration and, in the case of Part V, arbitration was the keystone of the structure. No State could be permitted to impose its will unilaterally upon another, because all States were equally sovereign. Arbitration did not impair sovereignty, but harmonized

it, when sovereign States were on terms of reasonable co-existence and co-operation.

42. The Committee could either leave the question as it was covered by article 62 of the draft, with its reference to Article 33 of the United Nations Charter, or take a step forward by adopting an article 62 *bis*. In the latter event, it could either confine itself to conciliation or go further and accept compulsory arbitration. It was obviously in the interests of the convention itself that the clauses dealing with invalidity, termination and suspension should be effectively enforced.

43. His delegation did not at that stage favour any one in particular of the various drafts before the Committee but it did support the substance common to all of them. It would be helpful if the sponsors of the various drafts, in the light of the comments and suggestions made during the discussion and of the ideas expressed in the other proposals, would try to draw up a consolidated draft based on the nineteen-State proposal (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2).

44. Mr. CASTRÉN (Finland) said that during the debate on article 62 *bis* at the first session, his delegation, which had been a sponsor of the thirteen-State amendment (A/CONF.39/C.1/L.352/Rev.2), had explained why it considered that the procedure laid down in article 62 was not satisfactory and should be supplemented.

45. His delegation was also a sponsor of the nineteen-State amendment (A/CONF.39/C.1/L.352/Rev.3 and Add.1 and 2 and Corr.1), which differed from the original amendment only on certain minor points. Most of the changes made in the revised amendment were intended to clarify and supplement the original text.

46. It seemed to him that during the lengthy discussions on article 62 and article 62 *bis* all views had been fully canvassed; he would therefore merely recapitulate a few of the arguments in favour of the nineteen-State amendment. Several delegations had rightly stated that article 62 was a key article of the draft. However, the machinery proposed by the International Law Commission for the settlement of disputes regarding the application of the provisions of Part V of the draft was defective in that it admitted the possibility that such disputes might remain unsolved. Those disputes might concern questions of vital importance for the stability of treaty relations and for peaceful relations between States. The aim of the proposed amendment was therefore to improve the position by filling the gaps in the International Law Commission's text.

47. In the majority of cases the compulsory conciliation provided for in the amendment should be adequate and it should not be necesary to have recourse to arbitration. The knowledge that the arbitration procedure was the final resort would tend to induce parties to settle the dispute without recourse to it. If the parties so preferred, they were free to choose any method of settlement they wished. But there could be no question of allowing measures to be taken unilaterally in respect of the treaty which was the subject of dispute. It was generally admitted that the draft convention contained some new principles as well as a number of provisions expressed in very general terms. In case of disagreement, the interpretation of those principles and provisions could be entrusted only to an international tribunal whose impartiality was guaranteed.

48. Attention had also been drawn to the fact that the strengthening of the safeguards against unilateral action in treaty relations would be of particular importance to small and weak States.

49. It was true that many international conventions did not provide for the compulsory settlement of disputes arising from their application. The convention on the law of treaties was, however, unique because of its constitutional nature. Disputes concerning its application and interpretation would in most cases be legal disputes which would have to be settled finally by adjudication. But the conciliation commission would also have to pronounce, in case of need, on the legal elements of disputes.

50. For those reasons, his delegation hoped that the nineteen-State amendment would be favourably received by those delegations which had so far opposed it. His delegation would support the amendments by Japan (A/CONF.39/C.1/L.339) and Switzerland (A/CONF.39/C.1/L.377), which had the same purpose as the nineteen-State proposal, namely, to provide additional guarantees for the settlement of disputes concerning the application of the convention. It could not support either the Uruguayan amendment (A/CONF.39/C.1/L.343) which did not, in his view, satisfy the minimum requirements, or the Spanish amendment (A/CONF.39/C.1/L.391) which laid down an unduly complicated procedure that would be difficult to apply in practice. He would comment on the amendment by Thailand (A/CONF.39/C.1/L.387) at a later stage.

51. Mr. HAYTA (Turkey) said that his delegation's views on machinery for the settlement of disputes, which had been expressed in the Sixth Committee of the General Assembly [4] and at the first session of the Conference, remained unchanged. In particular, his delegation maintained the view that the parties to a treaty should be protected against arbitrary action by another party and that the best protection and the most appropriate guarantee would be submission of the dispute to impartial settlement, either by the International Court of Justice, the supreme judicial organ of the United Nations, or by a commission of arbitration, composed as provided in paragraph 2 of the Swiss amendment (A/CONF.39/C.1/L.377).

52. To submit disputes to compulsory jurisdiction would ensure justice for the parties, the integrity of treaties and the stability of treaty relations. As a procedure it would be preferable to any other, because the tribunal would be non-political, and could examine the questions dispassionately and in an atmosphere of serenity; that was more than could be said for international political or administrative organs, which, moreover, already had

[4] See *Official Records of the General Assembly, Twenty-second Session, Sixth Committee*, 980th meeting, paras. 19 and 20.

so many obligations and responsibilities that they should not be burdened with additional legal or semi-legal functions. And the creation of new bodies within the United Nations should be avoided, since there was a general feeling against the proliferation of those organs.

53. The Turkish delegation could see no reason why the international community should not benefit by the experience acquired by the International Court of Justice over many years, and also from the Court's moral authority, which was recognized almost universally. The Turkish delegation noted with satisfaction that it was not alone in holding that opinion of the Court, and felt that special attention should be drawn to the statements by the Japanese representative at the 68th meeting of the Committee, during the first session, and to the similar views expressed by the Swiss representative and others during the current meeting.

54. The Turkish delegation reserved the right to comment in detail later on the various proposals relating to the machinery for the settlement of disputes, in the light of the views he had just expressed.

The meeting rose at 5 p.m.

NINETY-THIRD MEETING

Friday, 18 April 1969, at 10.50 a.m.

Chairman: Mr. ELIAS (Nigeria)

Tribute to the memory of Mr. Emilio Arenales Catalán

1. The CHAIRMAN said he had received an official communication from the Chairman of the delegation of Guatemala informing him of the sudden death of the President of the twenty-third session of the United Nations General Assembly, Mr. Emilio Arenales Catalán, who had likewise been the Guatemalan Foreign Minister. He felt sure that all the members of the Committee of the Whole would have learned with deep distress of the death of so eminent a figure, whose fine qualities were known to all.

On the proposal of the Chairman, the Committee observed a minute's silence in tribute to the memory of Mr. Emilio Arenales Catalán.

2. Mr. MOLINA ORANTES (Guatemala) thanked the Chairman warmly for the condolences he had expressed on behalf of the Committee. On that day of mourning, such an expression of sympathy was particularly comforting for Guatemala.

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 articles 62 bis, *62* ter, *62* quater *and 76*
(resumed from the previous meeting)

3. The CHAIRMAN invited the Commitee to resume consideration of the proposed new articles 62 *bis*, 62 *ter*, 62 *quater* and 76.

4. Mr. PINTO (Ceylon), introducing his delegation's amendment (A/CONF.39/C.1/L.395), said that his country had consistently been in favour of setting up a mechanism for the settlement of disputes arising out of the application of Part V of the draft articles. At the first session of the Conference, his delegation had stated that any mechanism for the compulsory settlement of disputes should be qualified by a provision leaving States completely free to exclude the application of the mechanism to any particular treaty by agreement between them.

5. The amendment submitted by his delegation was designed to make it clear that the compulsory mechanism was not *jus cogens* and to legitimize any action by the parties differing from that provided for in article 62 *bis*. The procedure for compulsory settlement must be flexible, and his delegation's amendment did not prejudge the form in whith article 62 *bis* would finally be adopted.

6. The nineteen-State amendment (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2), and the Japanese amendment (A/CONF.39/C.1/L.339) had much to commend them and they deserved serious consideration by the Committee.

7. His delegation sympathized with the motives which had led the delegation of Thailand to put forward its amendment (A/CONF.39/C.1/L.387), but it felt that the insertion of a clause authorizing reservations to article 62 *bis* would have the effect of destroying the object and purpose of having a compulsory settlement mechanism. In addition, the amendment raised a question on which the Conference had yet to take a decision, namely whether reservations to the convention would be permitted. In that connexion, his delegation would favour any suggestion designed to produce a reservations clause which would enable a State, when negotiating a particular treaty, to declare its unwillingness to apply the compulsory settlement mechanism to that treaty, rather than a clause which would allow a State to exclude all treaties concluded by it from the operation of the compulsory settlement mechanism by a single reservation.

8. It would also be desirable to state clearly that the compulsory mechanism would apply only to treaties entering into force after the entry into force of the convention on the law of treaties. In his delegation's view, the same principle should apply to all the provisions of the convention. There was of course nothing to prevent States from applying the provisions of the convention retrospectively by agreement between them.

9. In the great majority of cases, States not in a position to fulfil their treaty obligations would negotiate a settlement. If that was not possible, recourse to third-party settlement to end a dispute should not cause any misgivings. His Government would welcome the establishment of a just and efficient system for settling disputes which might have a salutary effect on the durability of treaty relationships.

10. Mr. MARESCA (Italy) said that article 62 *bis* was absolutely vital to the economy of the convention on