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Twenty-fifth plenary meeting

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)*

Article 74 [8]

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentification of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(*a*) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) By executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(*a*) No objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(*b*) An objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. (*a*) The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

(*b*) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 74 was adopted by 105 votes to none.

Article 75 [9]

Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the United Nations Secretariat for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

Article 75 was adopted by 105 votes to none.

Proposed new article 76

33. Mr. RUEGGER (Switzerland) asked at what stage it would be appropriate for his delegation to introduce its proposal for the addition of a new article 76 (A/CONF.39/L.33).

[9] For the discussion of article 75 in the Committee of the Whole, see 79th and 82nd meetings.

34. The PRESIDENT said that the Swiss delegation would be invited to introduce its proposal immediately before the Conference undertook the consideration of the final clauses.[10]

The meeting rose at 5.35 p.m.

[10] For the discussion of this proposed new article, see 29th plenary meeting.

TWENTY-FIFTH PLENARY MEETING

Thursday, 15 May 1969, at 10.45 a.m.

President: Mr. AGO (Italy)

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)*

ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE *(continued)*

Statement by the Chairman of the Drafting Committee on articles 62 and 62 bis, *annex I to the convention, and articles 63 and 64*

1. Mr. YASSEEN, Chairman of the Drafting Committee, introduced the text submitted by the Drafting Committee for the articles in Part V, Section 4, and for annex I to the draft convention.

2. The International Law Commission had entitled article 62 " Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty ". Some representatives had suggested that the expression " in cases of invalidity " might give the impression that article 62 would apply only to cases in which the invalidity had already been established. To remove any chance of misunderstanding, the Drafting Committee suggested the title: " Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty ".

3. No change affecting all the language versions had been made to the text of article 62 itself, but the Drafting Committee considered it necessary to make the following point clear. Since denunciation was mentioned in certain articles in Part V, the Committee had considered whether it ought to be mentioned in article 62, paragraph 1. It had concluded that that was not essential, since it was quite clear from the Commission's text and commentary that paragraph 1 applied to all claims brought under the preceding articles in Part V.

4. Article 62 *bis* was a new provision, for which the Drafting Committee proposed the following title: "Procedures for conciliation and arbitration ". In paragraph 1 of the text of article 62 *bis* approved by the Committee

of the Whole the word " settlement " had been repeated three times in two lines; the Committee had revised the passage to read: " or if they have agreed upon some means of reaching a solution other than judicial settlement or arbitration and that means has not led to a solution accepted. . . "

5. No change affecting all the language versions had been made in articles 63 and 64.

6. The Drafting Committee had tried to improve the wording of annex I to the draft convention in several places. It had considered that the last two sentences of paragraph 3, which dealt with a new subject, namely the expenses of the conciliation commission and the facilities it might need, should form a separate paragraph, now paragraph 4 in the text submitted by the Committe. The position of the corresponding sentences concerning the arbitral tribunal had been changed and they now constituted paragraph 9 of the Drafting Committee's text.

7. The first sentence of the former paragraph 4, now paragraph 5 in the new text, provided that the conciliation commission might draw the attention of the parties to a dispute to any measures likely to facilitate an amicable settlement. Some members of the Drafting Committee had suggested that a clause should be added specifying that attention might be drawn to the measures in question at any time before the commission's report was deposited. The Committee had concluded that that was self-evident and that there was no need for an explicit statement.

8. The Committee had carefully examined the last phrase in the former paragraph 5, now paragraph 6. In the text approved by the Committee of the Whole it had been specified that if the conciliation procedures had not led to a settlement, " any one of the parties to the dispute may request the Secretary-General to submit the dispute to arbitration ". But it was not the Secretary-General who submitted the dispute to arbitration, it was the parties themselves, in accordance with the express terms of the annex. Further, a party to the dispute might well comprise several States, a situation covered in paragraph 2 of the annex. The expression " any one of the parties to the dispute " would give the impression that a request by a single one of the States comprising the party concerned might suffice to set the machinery in motion; but the request for arbitration must be made by all the States comprising the party acting by unanimous agreement. The Drafting Committee had therefore thought it better to word the provision as follows: " either of the parties to the dispute may submit it to arbitration through notification made to the Secretary-General to that effect ". The Committee had amended the first sentence of the following paragraph consequentially.

9. With regard to paragraph 7 of the text as approved by the Committee of the Whole, he reminded the Conference that he had stated at the 105th meeting of the Committee of the Whole that the Drafting Committee would consider whether some provision should be included in annex I regarding the taking of provisional measures by the arbitral tribunal, and on the question which body was competent to interpret the awards of the tribunal.[1] The Committee had considered that it should be specified — as was done in the new paragraph 10 of the annex — that the arbitral tribunal might, pending its final decision on the question, and at the request of any party to the dispute, indicate such measures as might be appropriate and ought to be taken in the circumstances of the case. Some representatives had suggested that a clause should be added to the paragraph stipulating that, nevertheless, the suspension of the operation of a treaty, in whole or in part, could only be prescribed to prevent irreparable damage. The Drafting Committee had decided that a clause of that kind involved a question of substance and that it was for the Conference itself to take a decision on it. The Committee had added in paragraph 10 a provision relating to the right of the tribunal to construe its award, modelled on the terms of Article 60 of the Statute of the International Court of Justice.

Article 62 [2]

Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

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

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

10. Mr. KRISHNA RAO (India) said that article 62 had already been examined in detail by the International Law Commission, which had considered the question from 1963 to 1966; by Governments, which had submitted observations on the subject; by the Sixth Committee of the General Assembly; and by the first session of the Conference, when more than eighty speakers had spoken in the Committee of the Whole. His own delegation had expressed its views at the 73rd meeting of the Committee of the Whole.

11. The International Law Commission, Governments

[1] See 105th meeting of the Committee of the Whole, para. 57.

[2] For the discussion of article 62 in the Committee of the Whole, see 68th to 74th, 80th and 83rd meetings.

and the Conference itself were anxious that treaty obligations solemnly entered into should be implemented in good faith. They must not be denounced unilaterally by a State which, for that purpose, arbitrarily asserted a ground for invalidating or terminating the treaty. Without such principles, there would be no security or stability in treaty relations.

12. In order to dispel the anxiety, which was shared by all, the Commission had proposed a three-fold solution. First, the convention as a whole revolved around article 23, which provided that a treaty in force was binding upon the parties to it and must be performed by them in good faith. Secondly, the provisions governing the invalidity, termination and suspension of the operation of treaties had been drafted with great care, with the result that the conditions for invoking the various grounds for invalidation and so forth had been defined as precisely and objectively as possible, as was shown by such crucial provisions as articles 50 and 61, 57 and 59. Thirdly, procedural safeguards had been laid down in article 62, under which no State could unilaterally terminate or suspend a treaty, since any State which invoked a ground for invalidating, terminating or suspending the operation of a treaty had to notify the other party or parties, in order to allow them an opportunity to examine the claim or ground invoked. In the event of an objection by the other party or parties, the dispute was to be settled by the means indicated in Article 33 of the United Nations Charter, which included arbitration and recourse to the International Court of Justice. If there was no objection within three months following the notification, the claimant State could take the measure it had proposed, but article 63 provided an additional procedural safeguard, namely that the claimant State must communicate its intention to the other party or parties by an instrument duly executed.

13. That being so, it might well be asked what would happen if recourse to the procedure indicated in Article 33 of the United Nations Charter achieved no positive result and the delinquent State was thus able to act as it wished and imperil treaty obligations. There again, the Commission, Governments, and the Conference itself had examined the question in detail. They had found that the present state of international opinion was unfavourable to the idea of compulsory jurisdiction, whether by arbitration or adjudication. The jurisdiction of the International Court of Justice continued of course to be optional, and the rules on arbitral procedure proposed by the Commission [3] had been adopted by the General Assembly in 1958 as model rules rather than as part of a convention. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had been closely studying the question of dispute settlement procedures since 1964, but had not so far recommended any rules for compulsory arbitration or adjudication. The reasons why States were not yet ready to accept compulsory arbitration or adjudication were well known: such procedures entailed expenditure which had to be voted by legislatures; the necessary technical resources — the arbitrators and experts — were at present available mostly in the developed countries, with the result that the venue of arbitration would generally be in the West; and the institutional structure of the International Court of Justice still did not command universal respect. With time and experience, institutions would improve, but until they did it would be wise to allow States to resort to arbitration or to the International Court of Justice at their own choice rather than by compulsion.

14. The Commission had therefore considered that it should emphasize the general obligation of States under international law to settle their disputes by peaceful means, as laid down in Article 2(3) of the Charter. At the same time, it had thought it right to specify that if, after recourse to the means indicated in Article 33, the parties should reach a deadlock, it would be for each government to appreciate the situation and to act as good faith demanded. There would also remain the right of every State, whether or not a Member of the United Nations, under certain conditions, to refer the dispute to the competent organ of the United Nations.

15. The International Law Commission, which consisted of twenty-five eminent jurists representing all the legal systems of the world, had expressed the opinion in paragraph (6) of its commentary that the procedure prescribed in article 62 would " give a substantial measure of protection against purely arbitrary assertions of the nullity, termination or suspension of the operation of a treaty ".

16. The Indian delegation endorsed the Commission's reasoning and unreservedly supported the text of article 62 as proposed by the Commission.

17. U BA CHIT (Burma) said he wished to state his delegation's position on article 62 and indirectly on article 62 *bis*.

18. The Conference was deeply divided on the question of the settlement of disputes dealt with in those two articles. At the previous meeting, his delegation had voted for the immediate discussion of those articles, believing that a solution must be found as soon as possible.

19. Article 62 proposed by the International Law Commission was probably the best possible compromise on the method of settling disputes that might arise from the application of the provisions of Part V of the draft convention. Moreover, the Commission itself had reached the conclusion that the article represented the highest measure of common ground that could be found among Governments on the question.

20. The article in no way prevented those who favoured compulsory settlement of disputes from having recourse to arbitration or adjudication, either from the start or after the failure of other possible procedures. Since those States were already convinced that settlement by means of arbitration or adjudication was desirable, there was no need for any compulsion in their case. Consequently, article 62 in no way prejudiced their position.

[3] See *Yearbook of the International Law Commission, 1958*, vol. II, pp. 83-86.

21. Similarly, it would be wrong to impose compulsory settlement on those who opposed any such procedure but who might, voluntarily and by mutual agreement, have recourse to arbitration or adjudication when the nature and circumstances of the dispute so required. Their attitude was entitled to just as much respect as that of the advocates of compulsory settlement.

22. It was not perhaps unduly optimistic to believe that treaties might well be concluded between advocates and opponents of the compulsory settlement of disputes. The only thing that mattered was good faith in the performance of the treaty and in the settlement of any disputes which might arise. It was not in the interest of any States to lose its good name in that respect. The advantage which a State might obtain from arbitrarily invoking a ground for the invalidity or termination of a treaty would be very slight in relation to the damage it would suffer as a State which did not loyally fulfil its treaty obligations. For that reason his delegation did not believe that failure to provide for a means of compulsory settlement of disputes in the convention on the law of treaties would be as dangerous as some representatives claimed it would be.

23. On the other hand, there was some ground for fearing that the ease with which a party could have recourse to conciliation or arbitration under article 62 *bis*, with all costs borne by the United Nations, might give untoward encouragement to States to embark upon disputes on the slightest pretext, thus involving the United Nations in serious financial difficulties. What was even more important was that it would soon be found that States were renouncing diplomacy, negotiation and the effort to achieve mutual understanding and compromise; yet that was essential if States were to compose their differences in such a way that international peace and security, as well as justice, would not be endangered. His delegation attached more importance to the development of such a spirit in international relations than to the establishment of an automatic procedure for the compulsory settlement of disputes. For those reasons it would again vote for article 62 and against article 62 *bis*.

24. Mr. NAHLIK (Poland) said that in studying article 62, which was the first article in Section 4 of Part V of the draft convention, it was necessary to have in mind all the articles of Sections 2 and 3 of Part V, which dealt respectively with the invalidity of treaties, and with the termination and suspension of the operation of treaties.

25. The statements made by some representatives conveyed the impression that there were quite a number of provisions relating to the invalidity of or termination of a treaty and that some of them were essentially new.

26. As to the first point, he would remind the Conference of the general rule set forth in article 39 according to which only such grounds as were listed in the articles that followed could be invoked for invalidating, terminating or suspending the operation of a treaty. It followed logically that all such grounds must be expressly mentioned, as each of them was an exception to the general rule. It was common knowledge that no exception allowed of extensive interpretation.

27. Did those provisions really introduce anything essentially new? Of the nineteen articles in question, four — articles 51, 54, 55 and 56 — merely stated the obvious: either the treaty itself or the mutual consent of the parties might terminate a treaty or suspend its operation. Three articles — 44, 52 and 60 — confined themselves to ruling out the possibility of improperly invoking certain grounds. One article, article 61, was simply a logical corollary to another article, namely article 50. Thus there were only eleven articles stating a distinct ground in each case for invalidating or terminating a treaty. But of those eleven, article 43 merely restated a well-known practice of States; articles 45, 46 and 48 corresponded to old established principles inherent in any legal system; article 47 elaborated the principle stated in more general terms in article 46; article 49 was based on a principle which had been making its way in international law for quite some time, until it had found its present, mature expression in the United Nations Charter; article 50 dealt with a principle which, after the adoption of the Charter and of a number of other generally accepted norms, could no longer be doubted; articles 53, 57 and 58 referred to rules which were generally known in State practice and which furthermore had been formulated in a way that limited rather than extended already existing customary law. Only article 59 was to some extent new, in that it chose one of the possible approaches to the problem.

28. Thus none of the possible grounds listed in Part V, Sections 2 and 3 were as new as some representatives claimed they were. It was therefore not at all necessary to establish new procedures for cases of disagreement relating to any of those grounds. It would be logical to keep those procedures within the limits set by the present stage of development of the international community and international law. That being so, it was normal to refer to the provisions of Article 33 of the Charter, which were in fact the only ones to which all States could subscribe without hesitation. To go beyond those provisions would constitute too great a leap forward, which might seriously endanger the convention on the law of treaties; a large number of States would find it impossible for that reason to become parties to the convention. His delegation therefore strongly supported article 62 as submitted to the Conference, without its being supplemented in the manner proposed in article 62 *bis*. Article 62 by itself adequately reflected the present stage of development of the international community and international law.

29. Mr. STREZOV (Bulgaria) said that it was absolutely necessary that the convention should provide some effective procedure for settling disputes arising out of the application of provisions of Part V of the convention.

30. Article 62, which was thus a fundamental element in the convention, had been drafted with great care by the International Law Commission and had been approved by the Committee of the Whole of the Con-

ference. By establishing a procedure to be followed by any party claiming that a treaty was invalid or alleging some ground for terminating or suspending its operation, article 62 had the merit of giving the parties adequate protection against arbitrary unilateral decisions. It was also a realistic provision because, by referring to the means of settlement provide for in Article 33 of the United Nations Charter, it referred to a formula which took into account the legitimate interests of all States and had already proved successful in international practice.

31. Since his delegation was convinced that article 62 was a useful safeguard for the *pacta sunt servanda* principle and the stability of treaties, and that at the present stage in international relations and in the development of international law it would be neither wise nor useful to attempt to establish supplementary procedures of a compulsory and automatic nature, it would vote for article 62 as proposed by the Committee of the Whole.

32. Mr. YASSEEN (Irak) said that article 62 was indispensable in the draft convention. At the same time it was adequate for the purpose.

33. As drafted by the International Law Commission, article 62 met an essential need, since it guaranteed the stability of treaty relations. The *pacta sunt servanda* principle was sacrosanct: it was impossible for a State to free itself unilaterally from treaty obligations. Moreover, in invoking a ground of nullity or termination that was valid in international law, it was necessary to observe the provision of article 62, which was based on the undisputed international principle that all disputes should be settled by peaceful means. If the parties did not manage to settle their dispute by those means, the treaty remained in force, and the *status quo* was assured. That was the indispensable safeguard.

34. Furthermore, article 62 corresponded to the realities of international life: Article 33 of the United Nations Charter listed the peaceful means of settlement which should be resorted to, and, up to the present, that Article of the Charter had given satisfactory results. In the light of those facts, article 62 of the draft convention served its purpose.

35. His delegation would vote for the article.

36. Sir Francis VALLAT (United Kingdom) said he wished to explain why his delegation would vote for article 62.

37. If, as certain representatives argued, the world was not yet ready to adopt the necessary procedures for dealing with the legal questions that might arise out of the provisions codified by the convention on the law of treaties, there was good reason for asking whether the world was really ready for the degree of codification embodied in the draft convention. The advance in international law which the convention embodied called for a similar advance in procedures. Law required justice. The matter had now become one for governments, rather than jurists, to decide.

38. His delegation's position was that articles 62 and 62 *bis* with annex I, as submitted to the plenary Conference, constituted an organic whole. Both articles were indispensable in the context of the convention as a whole. They must also be read in conjunction with article 77. At that stage, his delegation, which was opposed to article 62 standing alone unaccompanied by article 62 *bis* and annex I, would vote for article 62 in the hope and expectation that article 62 *bis* and annex I would be adopted in due course.

39. Mr. HUBERT (France) said that, though his delegation would vote for article 62, it considered that article to be clearly inadequate and it would only approve it because it anticipated that the Conference would adopt article 62 *bis*.

40. Mr. KEARNEY (United States of America) said that he would vote for article 62 in the expectation that the procedures provided for in article 62 *bis* would be approved by a large majority of the Conference.

41. Mr. KOVALEV (Union of Soviet Socialist Republics) said that his delegation would vote for article 62. It considered that the article was satisfactory and took account of the present state of international relations.

42. His delegation would vote for that article in the hope that all the complex problems to be tackled by the Conference would be solved in due course in a satisfactory way.

43. The PRESIDENT invited the Conference to vote on article 62.

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

Monaco, having been drawn by lot by the President, was called upon to vote first.

In favour: Monaco, Mongolia, Morocco, Nepal, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sudan, Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Ghana, Greece, Guatemala, Guyana, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico.

Against: None.

Abstaining: Turkey, Central African Republic.

Article 62 was adopted by 106 votes to none, with 2 abstentions.

44. Mr. DIOP (Senegal) said that his delegation had voted in favour of article 62 in the hope that article 62 *bis*, which was the necessary complement to it, would also be adopted by the Conference and that its provisions would apply wholly or partly to Part V of the convention.

45. Mr. N'DONG (Gabon) said that his delegation had voted for article 62, but on the assumption that article 62 *bis*, which was an essential complement to it, would be adopted, since article 62 was distinctly insufficient to safeguard international public order, and hence the security of treaty relations. If the plenary Conference rejected article 62 *bis*, his delegation would obviously have to reconsider its position with regard to the convention.

46. Mr. SINHA (Nepal), explaining his vote in favour of article 62, said that his delegation was fully convinced of the wisdom and value of the article, which was so worded as to enable the aims of the convention to be realized. Article 62 was a complete whole and provided for arbitral and adjudication procedure, since it expressly referred to Article 33 of the United Nations Charter.

47. With regard to article 62 *bis*, on which the Conference was deeply divided, and whose adoption could cause many States to refuse to accede to the convention, his delegation thought that after article 62 had been in operation for a while the time would then be opportune to take steps of the kind provided for in article 62 *bis*, if they proved necessary. Since article 62 *bis* went against the principle of universality, his delegation would be unable to vote in favour of it.

48. Mr. SPERDUTI (Italy) said that his delegation had voted in favour of article 62 in the hope that article 62 *bis* would also be adopted by the Conference.

49. The Conference had already adopted article 65, the first sentence of which read : " A treaty the invalidity of which is established under the present Convention is void ". That meant the invalidity would have to be duly established; thus a procedure should be laid down for determining the merits of the grounds invoked.

50. Article 62 was supplemented by article 63, paragraph 1 of which covered the case of a declaration of invalidity based on paragraphs 2 and 3 of article 62. But paragraph 2 of article 62 provided for the case where no objection was made to the notification, and paragraph 3 for the case where a dispute arose between the parties. The dispute would obviously have to be settled if article 63 was to operate.

51. His delegation thought that a procedure for the settlement of disputes between the parties should be indicated in the convention itself.

52. The procedure laid down in article 62 *bis* was essential, and his delegation would reconsider its position with regard to the convention if article 62 *bis* was not adopted.

53. Mr. SMALL (New Zealand) said that his delegation had been absent when article 62 had been voted on, but it supported the article.

54. Mr. YAPORI (Ivory Coast) said that his delegation had voted in favour of article 62, which was the complement to article 62 *bis*, in the expectation that the Conference would adopt article 62 *bis*.

55. Mr. KABBAJ (Morocco) thought that article 62 was necessary and sufficient. The safeguards laid down in paragraph 3 were satisfactory. Article 62 *bis* would establish a system on which the Conference was divided and which could not be applied by small States.

56. Mr. BILOA TANG (Cameroon) said that his delegation had voted in favour of article 62 in the hope that the complement to it, article 62 *bis*, would be adopted by the Conference.

Article 62 bis [4]

Procedures for conciliation and arbitration

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

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

Annex I to the Convention

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

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

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

(*a*) One conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

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

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within

[4] For the discussion of article 62 *bis* in the Committee of the Whole, see 80th, 92nd to 99th, and 105th meetings.

sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

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

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

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

3. The Commission thus constituted shall establish the facts and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

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

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

6. If the conciliation procedure has not led to a settlement of the dispute within six months following the date of deposit of the Commission's report, and if the parties have not agreed on a means of judicial settlement or an extension of the above-mentioned period, either of the parties to the dispute may submit it to arbitration through notification made to the Scretary-General to that effect.

7. When a notification has been made to the Secretary-General under the preceding paragraph, an arbitral tribunal consisting of three arbitrators shall be constituted. One arbitrator shall be appointed by the State or States constituting one of the parties to the dispute and one other arbitrator shall be appointed by the State or States constituting the other party to the dispute.

The two arbitrators chosen by the parties shall be appointed within sixty days following the date on which the notification is received by the Secretary-General.

The two arbitrators shall, within sixty days following the date of the last of their own appointments, appoint the third arbitrator, who shall be the chairman; the chairman shall not be a national of any of the States parties to the dispute.

If the appointment of the chairman or of either of the arbitrators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period.

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

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

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

10. The arbitral tribunal may, pending its final decision on the question, and at the request of any party to the dispute, indicate such measures as may be appropriate and ought to be taken in the circumstances of the case.

The award of the tribunal shall be binding and definitive. In the event of dispute as to the meaning or scope of the award, the tribunal shall construe it upon the request of any party.

57. Mr. KRISHNA RAO (India) noted that the delegations which had insisted that the Committee of the Whole should vote on article 62 *bis,* arguing that that would be a method of " testing the temperature ", had adopted a totally different attitude in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, an organ concerned with the progressive development and codification of some of the most important legal principles embodied in the United Nations Charter. The Rapporteur of that Committee, the representative of Sweden, had stated at the 871st meeting of the Sixth Committee of the General Assembly in 1965 that " in seeking to codify and develop principles of that nature, it was not possible to work by majority rule. Customary international law was not created by majority rule, nor were conventions. " [5] And the representative of the United Kingdom had stated in the Sixth Committee shortly afterwards that " international law was not made by majority decisions, it had evolved as a result of general acceptance by States ".[6] That had been the notion that had prevailed when the terms of reference of the Special Committee had been drawn up by the General Assembly, since it had been stated there that the Committee should first try to reach general agreement.

58. The Indian delegation was certainly not asking the Conference to adopt the general agreement method *in toto.* But since it was a crucial matter, his delegation would have thought that those in favour of establishing a compulsory arbitration procedure would have spared no effort to secure general agreement. Unfortunately, that had not been the case and the Committee of the Whole had been called upon to vote immediately on a highly controversial provision, on which the International Law Commission had taken a contrary view.

59. In that context, the Afro-Asian States, which had willingly refrained from pressing their point of view in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States on crucial issues such as the right of legitimate defence against colonial domination, to mention only one example, could certainly take note of the methods employed to secure the adoption of article 62 *bis.* There were other contexts in which the temperature had not yet been tested, and the delegations of the Afro-Asian countries were impatiently looking forward to the opportunity for doing so.

60. The Indian delegation had opposed article 62 *bis* because it believed that it was not correct to decide

[5] See *Official Records of the General Assembly, Twentieth Session, Sixth Committee,* 871st meeting, para. 7.

[6] *Ibid.,* 881st meeting, para. 16.

that in the future the two means of compulsory settlement provided for in that article should apply to all treaties. The application of such a procedure of compulsory settlement was a very far-reaching measure which was not justified in present circumstances.

61. In that connexion, it should be remembered that several plans for a compulsory settlement procedure had failed. Only six States were parties to the Revised General Act for the Pacific Settlement of International Disputes [7] despite the appeals by the General Assembly of the United Nations for widespread acceptance of that convention. Then there was resolution 268 D (III) in which the General Assembly had set up a Panel for Inquiry and Conciliation. Twenty years after the establishment of the Panel, less than twenty States of the 126 Members of the United Nations had been willing to nominate a member to the Panel. Yet the conciliation machinery in article 62 *bis* made provision for a similar procedure, namely the nomination of members of a commission by States.

62. The General Assembly at its twenty-second session had set up another fact-finding panel [8] on the initiative of the representative of the Netherlands. It was true that all those bodies had a wider field of competence, whereas the conciliation procedure under article 62 *bis* was confined to disputes arising out of the application of Part V of the convention. But the existing machinery was more than adequate if States wished to resort to conciliation procedures with regard to the field of application of Part V of the convention. Furthermore, those advocating a system of compulsory conciliation did not always believe in its efficacy. In that connexion, it was enough to recall that the representative of the United Kingdom had stated at the 816th meeting of the Sixth Committee of the General Assembly in 1963: " Although provision was made in numerous bilateral and regional treaties for conciliation commissions, the value of that method of settling inter-State disputes was somewhat questionable. " [9]

63. With regard to arbitral procedure, he recalled that the draft on arbitral procedure drawn up by the International Law Commission, which had been considered by the General Assembly at its tenth session in 1955, had been subjected to considerable criticism. The Special Rapporteur on that topic had stated when summarizing those criticisms in his report to the Commission that " the General Assembly took the view that the international Law Commission had exceeded its terms of reference by giving *preponderance* to its desire to promote the development of international law instead of concentrating on its *primary* task, the codification of custom ".[10] The Commission had noted that it had been " clear from the reactions of Governments that this concept of arbitration, while not necessarily going beyond what two States might be prepared to accept for the purposes of submitting a particular dispute to arbitration *ad hoc* . . . did definitely go beyond what the majority of Governments would be prepared to accept in advance as a general multitateral treaty of arbitration to be signed and ratified by them, in such a way as to apply automatically to the settlement of all future disputes between them ".[11]

64. An article by a distinguished American lawyer on the time element in proceedings before arbitral tribunals and the International Court of Justice [12] showed that *ad hoc* arbitration took much longer than adjudication, and was also far more expensive. On that point, article 62 *bis* made the United Nations responsible for financing the compulsory settlement procedure. The Conference would be signing a blank cheque on behalf of the United Nations, and his delegation did not think it had the capacity to impose such a burden on the United Nations. Those delegations which had followed the work of the General Assembly's Fifth Committee would recall the statements made by the major Powers and others on the grave financial position of the Organization. His delegation understood that the representatives of France, the United Kingdom, the United States of America and the Union of Soviet Socialist Republics had submitted memoranda to the Secretary-General suggesting that budget ceilings be fixed for 1970 and 1971, yet some of those States were supporting a provision which could increase the United Nations budget by several million dollars each year. It was rather strange that while on the one hand efforts were being made to curtail United Nations expenditure on development, on the other the Conference was being asked to impose additional charges on the United Nations for the operation of article 62 *bis*. His delegation would appreciate a statement by the Secretariat on the financial implications of the procedures stipulated in article 62 *bis* and an indication from it as to whether the proposal was compatible with United Nations financial arrangements.

65. A pertinent question was whether the international community was ready for a provision for compulsory arbitration. The freedom of choice of the parties in settling a dispute must remain unfettered. That was the raison d'être of Article 33 of the Charter. The Charter also envisaged that legal disputes should be referred to the International Court of Justice, but article 62 *bis* made no mention of the Court and placed the emphasis on arbitration.

66. Recourse to the International Court of Justice would not entail any additional expenditure for the United Nations, unlike the system proposed in article 62 *bis*. Despite the disappointment felt at recent trends in the jurisprudence of the Court, his delegation considered that resort to unknown arbitrators might be an even more extreme step. It was true that the International Court of Justice did not command universal

[7] United Nations, *Treaty Series*, vol. 71, p. 101.

[8] General Assembly resolution 2329 (XXII).

[9] See *Official Records of the General Assembly, Eighteenth Session, Sixth Committee*, 816th meeting, para. 36.

[10] See *Yearbook of the International Law Commission, 1957*, vol. II, document A/CN.4/109, para. 7.

[11] See *Yearbook of the International Law Commission, 1958*, vol. II, p. 81, para. 14.

[12] Leo Gross, " The Time Element in the Contentious Proceedings in the International Court of Justice ", in *American Journal of International Law*, vol. 63, No. 1 (January 1969), pp. 74-85.

respect, whatever the reason, but it was no solution to build up arbitration machinery in order to avoid recourse to the Court. A better course would be the gradual restoration of confidence in the Court, so that States accepted its jurisdiction of their own free will.

67. Article 62 emphasized the duty of States to settle their disputes, while recognizing their freedom to choose whichever means of settlement they wished. That provision accorded with the basic concepts laid down in the United Nations Charter. Any restriction on that freedom of choice would be a grave and undesirable step.

68. With regard to the jurisdiction of the Court, he believed that only forty-three countries had accepted it and that only sixteen of them were developed countries of Western Europe and North America, which had a long experience of international arbitral and judicial procedures. Many of their declarations of acceptance of the Court's jurisdiction were accompanied by all kinds of reservations. It was surely for those States to set an example to others.

69. His delegation thought that if a choice had to be made between *ad hoc* arbitration and the International Court of Justice, the latter would be preferable. Despite the disappointment aroused by the Court's recent decision, his delegation regarded that principal organ of the United Nations, whose practice and procedures were well established, and which was now more representative of the main legal systems and different forms of civilization, as likely to serve the international community better than *ad hoc* arbitration.

70. The Indian delegation would therefore vote against article 62 *bis*.

71. Mr. RAMANI (Malaysia) said he did not believe that article 62 *bis* supplemented article 62. The Malaysian delegation supported the main principles embodied in article 62, but considered that article 62 *bis* in no way improved on those principles and that the mechanism devised in it even ran the risk of impeding the implementation of article 62. The arguments advanced by the representatives who were in favour of article 62 *bis* had not convinced his delegation that the article was acceptable. The Malaysian delegation upheld the ideal of tolerance and good-neighbourly relations among States. It considered that all States should try to understand each other's problems; they should be able to enter freely into treaty relations and, if necessary, to withdraw from them without recrimination and without damaging existing friendly relations. The Government of Malaysia was convinced that in a rapidly changing world those principles must serve as a basis for any treaty. When treaties ceased to subserve their objectives, States should undertake negotiations to amend them or terminate them.

72. It might well be asked whether article 62 *bis* would advance or impede the cause of good relations among States. Article 62 urged them to seek a solution through the means prescribed in Article 33 of the Charter. Article 62 *bis* was a kind of threat obliging States to resort compulsorily to involuntary legal procedures. It should be borne in mind that the International Court of Justice was the principal judicial organ of the United Nations and that it had been established by the Charter. It did not enjoy any jurisdictional competence which was not formally accepted by States. The United Nations was not a super-State; if it were, it would have been stillborn. The General Assembly had occasionally tried to set itself up as a world parliament, but had failed.

73. The principles of domestic jurisdiction, on which the new approach in article 62 *bis* was based, completely ignored the procedures provided for in the Charter, for it should be noted that, in referring to the peaceful settlement of disputes, the Charter used very circumspect language. The procedure proposed in article 62 *bis* was the very negation of the process of persuasion and conciliation, which should allow for a dialogue between States. Of course, the pursuit of an ideal was essential to international progress, indeed, to all human progress, but the hard facts must be borne in mind. Perhaps the objectives of article 62 *bis* were attainable in the near future, but the international community had enough real troubles today which it would ignore at its peril.

74. Mr. BIKOUTHA (Congo, Brazzaville) said that while article 62 *bis* clearly showed its sponsor's concern to find a solution to the judicial settlement of disputes, in his opinion, as had already been said, compulsory arbitration was a blank cheque and would be an obstacle to the free choice of methods. After several years of work, the International Law Commission had considered that article 62 represented the highest measure of common ground to be found among very divergent opinions. The weaknesses of the existing international legal system where the judicial settlement of disputes was concerned arose not from the system itself but rather from its application by judges who had not always been impartial. It must, however, be recognized that the Court was capable of handing down judgements entirely devoid of partiality. The delegation of Gabon had drawn attention to the difficulty encountered by some new States in finding competent jurists among their nationals, and his delegation entirely shared that view.

75. The sponsors of article 62 *bis* wished to make the convention a prototype of progressive law, but that must not prevent the Conference from considering practical matters. It must beware of unduly bold innovations, and his delegation had great difficulty in accepting the arguments put forward in favour of the article. It might have supported certain compromise proposals, such as that of Ghana, which actually had not been officially submitted, and the Saudi Arabian proposal for an optional protocol [13] which would form part of the convention. His delegation thought that article 62 *bis* did not by any means represent present-day realities and did not constitute a satisfactory method for the judicial settlement of disputes. It would therefore vote against the article.

76. Mr. TUFIGNO (Malta) said that his delegation was in favour of article 62 *bis*, which in his view was essential for the successful operation of the law of

[13] See 97th meeting of the Committee of the Whole, para. 7.

treaties. The law of treaties must formulate clear and precise rules which would make it possible to interpret and apply the provisions of a treaty in such a way as to eliminate uncertainties and not to enable States to choose the interpretation which best suited their interests. The absence of adequate machinery for reaching an impartial decision would be at variance with the very purpose of the law of treaties and would enable the strongest States to impose their will. The provisions of Part V were such that any dispute concerning their applicability might give rise to arguments not only on questions of law but also on questions of fact. His delegation had abstained on articles 50 and 61 not because it did not approve the principles embodied therein but because the articles contained uncertainties which could only be remedied by the introduction of compulsory arbitration to settle disputes arising from them. Speaking as a representative of a small State which had to rely on justice and fair play, he considered that a dispute arising between two countries on a provision of Part V of the convention should not become a tug of war in which obviously the weaker State would be the loser and the stronger State the winner.

77. Mr. AMATAYAKUL (Thailand) said he was disturbed by the fact that the entire system of international practice in respect of settlement of disputes might be changed by the inclusion of a clause on compulsory jurisdiction. In his opinion, the settlement of disputes did not give rise to any serious problems because, so far, important international conventions had been concluded without embodying any provisions for the compulsory settlement of disputes and had functioned smoothly. The principle of good faith was the keystone of all international relations, and if it was not sincerely observed it was doubtful whether the system of compulsory arbitration would prove effective. On the other hand, if the machinery for the settlement of disputes was accepted by the parties concerned, as had been provided by the International Law Commission in conformity with the United Nations Charter and the Statute of the International Court of Justice, the chances of upholding the principle of good faith and settling disputes would be enhanced.

78. It would indeed be regrettable if the very object of the Conference, namely standardization of the law of treaties, were to be jeopardized by the inclusion of a clause on compulsory jurisdiction, which could mean that countries which had followed United Nations practice hitherto would decline to ratify the convention. There would then be two sets of treaty rules in force in connexion with the problem of compulsory jurisdiction, which in fact was not a major problem. The result would be worse than if the reservation clause had been accepted, as his delegation had proposed (A/CONF.39/C.1/L.387). At the 98th meeting of the Committee of the Whole, the United States representative had rightly pointed out that the proposal for making settlement procedures optional went even further than the proposal by Thailand, since that procedure would not merely allow the parties to enter a reservation against the application of a compulsory settlement procedure, but would also make article 62 *bis* inapplicable unless a party had taken the affirmative step of declaring that it accepted the provisions of article 62 *bis*.

79. His delegation had done its utmost to offer a compromise solution, but in view of the difficulties that had arisen it would abstain in the voting on article 62 *bis*.

80. Mr. HU (China) said that some delegations had stated that their acceptance of Part V of the convention depended on the eventual adoption of article 62 *bis*. His delegation's position was different. China had been the victim of the régime of unequal treaties for a century and it did not wish to see its experience repeated elsewhere in the world. For that reason, his delegation strongly supported all the articles in Part V and wished to make it clear that its support was unconditional. In other words, whether the provisions of article 62 *bis* were included in the convention or not, his delegation would support the articles in Part V.

81. The inclusion of those articles was an important step towards the progressive development of international law. The Conference was not merely codifying existing rules of international law; in a sense it was ahead of its time, but it must proceed with caution. Certain safeguarding clauses should be provided lest some States might be tempted to invoke the articles in Part V in order to avoid inconvenient contractual obligations and thereby adversely affect the security of treaty relations.

82. In his delegation's view, article 62 was far from adequate and should be complemented by article 62 *bis*, which it would support.

83. Mr. NASCIMENTO E SILVA (Brazil) said that his delegation had already stated at the 96th meeting of the Committee of the Whole that its attitude towards article 62 *bis* was fairly flexible. In its view, the new article 77 was a sufficient safeguard against abuse of the compulsory jurisdiction clause in article 62 *bis*, since compulsory jurisdiction would not apply to treaties signed before the conclusion of the convention. So far as future treaties were concerned, the parties were at liberty to adopt other rules on the settlement of disputes; they could even stipulate that the provisions of the convention would not apply. For treaties in force, arbitration or recourse to the International Court of Justice was always possible and, in future, States which wished to have recourse to that body might include a provision to that effect in their treaties. Article 62 *bis* therefore did not hold any terrors.

84. His delegation had always declared itself against over-all arbitration clauses, but it had frequently had recourse to that system of settlement of disputes and regarded it as very useful in certain specific cases. His delegation had voted for article 62, which in its view represented the best solution and was in keeping with existing international relations. Article 62 *bis*, however, had obtained 54 votes against 34 in the Committee of the Whole, and that vote could not be ignored. Moreover, some delegations of Western countries, when voting for the articles in Part V, had said that those

articles were only acceptable to them if article 62 *bis* were adopted.

85. His delegation thought that article 62 *bis* was acceptable provided the final clauses as approved were not amended. In the Committee of the Whole, the proposal on the final clauses had obtained 60 votes to 26, in other words it had obtained a two-thirds majority. That vote too could not be ignored. Any attempt to introduce a new article to amend the final clauses, particularly an article which did not contain a reservation clause, would be unacceptable. Brazil, like the majority of Latin American countries, must submit the convention to its Parliament, and if the convention did not contain any reservation clause, Parliament might refuse to ratify it. In principle, Brazil was traditionally against the formulation of reservations, but every country was free to make reservations if it thought fit.

86. In general, Brazil was not over-enthusiastic about article 62 *bis*, but considering that the convention was an organic whole in which all the articles were interlinked, it would not raise any objection to that article.

The meeting rose at 1.5 p.m.

TWENTY-SIXTH PLENARY MEETING

Thursday, 15 May 1969, at 3.15 p.m.

President: Mr. AGO (Italy)

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)*

ARTICLES APPROVED BY THE COMMITTEE OF THE WHOLE *(continued)*

Article 62 bis (Procedures for conciliation and arbitration) *and annex I to the convention* (continued)

1. Mr. SECARIN (Romania) said that his delegation had already stated in the Committee of the Whole its reasons for supporting article 62 and for opposing the so-called supplementary machinery proposed in the form of article 62 *bis*.

2. The arguments put forward by the supporters of pre-established machinery to which one party to a dispute could resort independently of the other had demonstrated the complex character of the issues involved and had given his delegation additional reasons for supporting the International Law Commission's system set out in article 62, which was in keeping with the present stage of development of international relations and of international law. The flexible system which the Commission had adopted almost unanimously reflected the highest measure of common ground among governments and in the Commission itself. The International Law Commission had acted wisely and realistically in avoiding any formula for compulsory machinery that would tend to give one party a right of action against another.

3. The allegation by the critics of article 62 that there was a gap in the system embodied in the article was based on the assumption that one of the parties would be acting in bad faith. But experience showed that States were concerned to promote good faith in treaty relations and, despite all the difficulties of international life, those relations tended increasingly to strengthen the principles of morality, justice and the rule of law. No procedural system could avail against a party acting in bad faith.

4. It was always open to States to include an arbitration clause in a treaty; in doing so, they would take into consideration the special circumstances of the treaty and would accept the clause with foreknowledge of the type of disputes to be settled. If, however, the parties had not included an arbitration clause in their treaty, they had freedom of choice of peaceful means of settlement. They were under a legal obligation to make patient and responsible efforts in good faith to arrive at a peaceful settlement of their dispute.

5. If the hands of the parties were tied by adopting a pre-established system of procedure, they would no longer have the same freedom of choice with regard to means of settlement when they concluded a particular treaty, or when a dispute arose. There was also the danger that the existence of a pre-established procedure would encourage one of the parties to choose the line of least resistance and fall back immediately on that procedure, instead of making efforts to arrive at a peaceful settlement.

6. It had been claimed that under the provisions of article 62, a State would be both a judge and a party in its own dispute. That claim ignored both the fundamental differences between legal relations in private law and public law, and the differences between internal and international relations. Principles which were peculiar to private law could not be transferred bodily to the realm of international treaty relations. States were the best judges of the matters which concerned them and an amicable settlement based on the agreement of the parties and arrived at on the basis of the rules of international law was always preferable. Naturally, if the parties themselves decided to resort to adjudication or arbitration, they took the decision *in concreto* and bearing in mind the circumstances of the case.

7. The position with article 62 *bis* was completely different. It was proposed to include it in a treaty on treaties: the procedural machinery set forth in it would not apply to events or facts but to legal instruments — in fact to all treaties. It would be most unrealistic to establish in that way a procedure *in abstracto* and before the event.

8. Mr. PHAM-HUY-TY (Republic of Viet-Nam) said that his delegation had not been convinced by the arguments of the opponents of article 62 *bis* and would continue to support it. It did so because it believed that the International Law Commission's draft was lacking in balance.

9. The International Law Commission had carefully