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Twenty-seventh plenary meeting

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referred to conciliation or arbitration. Nevertheless, as contingent expenses were involved, it would be necessary for the General Assembly of the United Nations to undertake expressly to assume the responsibility for such expenditure.

72. If article 62 *bis* and its annex were adopted by the Conference, it would be necessary to place an item on the agenda for the next session of the General Assembly to enable the Assembly to reach a decision. That could be done by a resolution of the Conference requesting the Secretary-General to do so; if the Conference did not agree to such a resolution, the Secretary-General himself would have to place such an item on the agenda in order to clarify the issue, and at that time the question of how to calculate the expenses would have to be answered to some extent by giving the General Assembly an idea of their scale.

73. Mr. HAYTA (Turkey) said that his Government's attitude, which had remained consistent throughout, had been stated by him at the 92nd meeting of the Committee of the Whole. For the reasons he had there given he would vote against article 62 *bis* and for the same reasons he had abstained in the vote on article 62.

74. Mr. FATTAL (Lebanon) said that some representatives had asked why a mere reference to Article 33 of the United Nations Charter should not be sufficient.

75. The congenital weakness of Article 33 of the Charter was that it placed negotiation on the same footing as other procedures for the peaceful settlement of disputes, whereas negotiations was in fact only a preliminary procedure which should be compulsory in all cases. What happened in practice was that, under Article 33, States contented themselves with undertaking negotiations, and if those negotiations broke down, no further efforts were made and the treaty was unilaterally denounced. If negotiation had been considered only as a preliminary phase, then when it failed, the parties in dispute would have been obliged to have recourse to a proper procedure for settlement. Under such conditions, a mere reference to Article 33 of the Charter would have been sufficient.

76. Mr. KRISHNA RAO (India), thanking the representative of the Secretary-General for his statement, said that if article 62 *bis* were adopted, it would be the first time that a plenipotentiary conference had adopted an article which would have financial implications for the General Assembly. He wondered what the status of the article would be if the General Assembly declined to accept those financial implications.

77. Mr. YAPOBI (Ivory Coast) said he would like to remind the representative who had stated that the supporters of article 62 *bis* appeared to be totally ignorant of United Nations procedure, that the supporters of article 62 *bis* were, like that representative, experienced lawyers and distinguished representatives of their Governments. The attitude they had adopted to article 62 *bis* was based on the most rigorous cartesian logic; that was crystal clear and undeniable.

78. In order finally to remove all misunderstandings, it must be made absolutely clear that article 62 *bis* had been proposed not just by western States, by strong and wealthy nations, but that its supporters were in the main the little, weak countries. Support for the article had nothing to do with considerations of wealth, politics or sentiment.

79. His own country had suported article 62 because it represented an essential stage in the procedure for the friendly settlement of disputes arising in connexion with international agreements. But article 62 failed to achieve its specific objective. The Indian representative had asked what would happen if no result was achieved by the application of the provisions of Article 33 of the Charter and had himself replied that if such an impasse were reached, each State must act in good faith. That was what the Indian representative called being realistic and other speakers had maintained the same pretence. In his view, it was quite ridiculous and utterly unrealistic to expect that, if the provisions of Article 33 of the Charter did not lead to a satisfactory result, then an amicable settlement could be reached merely by relying on the parties to the dispute to act in good faith.

80. It had been suggested that article 62 maintained the *status quo* and thus helped to safeguard peace and stability. But if, because national interests were at stake, a country decided to invoke a formal defect in a treaty and, acting solely in accordance with its own wishes, refused to seek agreement under Article 33, it might claim that it was maintaining the *status quo;* that could hardly be described as safeguarding peace and stability.

81. It was inconceivable that the Conference should permit the small nations thus to be left at the mercy of the strong. His country knew from its own experience that love among nations was not the general rule; good faith was not enough, and without a police force there would be a return to the law of the jungle. The small countries desperately needed and yearned for safeguards and guarantees and that was why it was essential to adopt article 62 *bis.*

82. In his view, certain nations were determined that article 62 *bis* should not be adopted and it was by those nations that no real attemps at compromise had been made.

The meeting rose at 6.10 p.m.

TWENTY-SEVENTH PLENARY MEETING

Friday, 16 May 1969, at 12.15 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. SEATON (United Republic of Tanzania) said that his delegation had expressed its views on article 62 *bis* at the 72nd meeting of the Committee of the Whole at the Conference's first session. At the second session the representative of the United Republic of Tanzania had pointed out at the 98th meeting of the Committee of the Whole that a victory by the supporters of article 62 *bis* gained solely by parliamentary manœuvre would lack any real meaning. Despite all efforts to reach a compromise which might have been universally acceptable, it was now obvious that article 62 *bis* would be put to the vote in the form in which it had been submitted. That being so, the Tanzanian delegation could do no more than state that it would vote against the article.

2. Mr. KABBAJ (Morocco) said the Moroccan delegation was not basically opposed, from the purely legal point of view, to the actual principle of compulsory adjudication. But article 62 *bis,* on which the Conference was about to vote, introduced into the law of treaties a very complex system of compulsory and automatic settlement which developing countries such as Morocco would find difficult to apply owing to their scanty administrative, technical and financial equipment. Whereas the procedures provided for in article 62 furnished sufficient safeguards to remove all danger in the application of the provisions of Part V of the convention, article 62 *bis* would compel States to decide *a priori* and to agree automatically to submit differences relating to all treaties, whatever their nature, to compulsory adjudication. That would be an infringement of the sovereign equality of States, because they would not be able to judge with complete objectivity in what cases they could resort to some other arrangement, by agreement with the other parties.

3. It would have been possible to allay the apprehensions of the supporters of article 62 *bis* by inserting a provision strengthening article 62 and, in particular, paragraph 3 of that article; a provision might have been included, for example, stating that in no case could a State unilaterally take any kind of measure to set in motion its claim to invoke grounds for the invalidity, withdrawal or suspension of the operation of a treaty. The means provided for in Article 33 of the United Nations Charter, especially those which would attract the support of all countries, might also have been set out. It might thus have been possible — and that would have allayed the concern expressed by the Lebanese representative at the previous meeting — to specify that negotiations would be only a preliminary stage in the settlement procedure and that they would be followed by the other means laid down in Article 33 of the Charter. A provision that would prevent arbitrary action by States tempted to invoke the provisions of Part V of the convention and compel them to resort to the means for the pacific solution of disputes would thus provide wholly adequate safeguards for all. A provision of that kind might indeed be included in any arrangement giving a choice between resort to arbitration and resort to adjudication, in the form of an additional protocol to the convention.

4. The Moroccan delegation was making those suggestions in the hope of saving the convention on the law of treaties and of bringing about the consensus that was essential; it appealed to delegations to display a more understanding attitude towards the small States which were unable, for technical reasons, among others, to accept compulsory and automatic adjudication or arbitration.

5. The PRESIDENT asked the representative of Morocco whether his suggestions constituted a formal amendment.

6. Mr. KABBAJ (Morocco) said he left that point to the President to decide.

7. The PRESIDENT said he concluded that the Moroccan delegation was not submitting any formal proposal for the time being.

8. Mr. DE LA GUARDIA (Argentina) reminded the Conference that the Argentine representative had stated at the 95th meeting of the Committee of the Whole that his delegation regarded article 62 as a satisfactory means of settling disputes arising out of the application of Part V of the convention. His delegation had also stated on that occasion that it would assume a flexible attitude towards any proposals submitted for an article 62 *bis.*

9. From the strictly legal point of view, his delegation had in fact no basic objection to article 62 *bis.* Although the proposed arrangement was not ideal, it was nevertheless workable, particularly since article 77 provided a sound guarantee that the convention would not have retroactive effect.

10. Nevertheless, it was apparent that the wording proposed for article 62 *bis* was difficult for many delegations to accept. Even if the article were to be adopted by a majority, it would not represent a consensus. The Argentine delegation would therefore be unable to vote for article 62 *bis* and would abstain if it was put to the vote.

11. Mr. KHLESTOV (Union of Soviet Socialist Republics), speaking on a point of order, pointed out that over a hundred delegations had already given their views on article 62 *bis.* It might be wise at that stage to limit the time allowed to speakers for explanations of vote.

12. Mr. MUUKA (Zambia) said that, as soon as the Conference had been confronted with the question of a procedure for settling disputes arising out of the application of provisions of the Convention, the Zambian Government had stated that it supported the principle of compulsory arbitration. Zambia had voted for article 62 itself, in the belief that compulsory intervention by an impartial third party would strengthen that article and would further protect the important principles set out in Part V of the Convention. Those views were set out in the summary records of the

56th, 72nd and 96th meetings of the Committee of the Whole.

13. Unfortunately, as a number of delegations had already pointed out, article 62 *bis* as now drafted was unwieldy. In particular, it established settlement procedures which were so slow that they were unlikely to achieve the desired results.

14. More serious still was the existence of a very sharp division in the Conference over that article. Some representatives had seen fit to declare that unless article 62 *bis* was adopted, they would not sign the convention on the law of treaties. Similarly, some of the opponents of article 62 *bis* had threatened that they would not accede to the convention if the article was adopted. In those circumstances, did not wisdom dictate, even at that late hour in the work of the Conference, a continuation of the search for a compromise based, for example, on the enumeration of some of the important provisions of Part V? No one should blind themselves to the fact that, unless article 62 *bis* was acceptable to the great majority of the delegations to the Conference, its adoption would be but a Pyrrhic victory.

15. Accordingly, although Zambia continued firmly to support the actual principle of compulsory arbitration, it could not continue to support article 62 *bis,* because it did not meet the requirements necessary to make the convention a success.

16. The PRESIDENT asked the Zambian representative whether he was submitting a formal amendment to the Conference.

17. Mr. MUUKA (Zambia) said he would confine himself to appealing to all delegations which thought it possible to do so to reconsider their positions on the basis of the suggestions he had made.

18. Mr. OGUNDERE (Nigeria) said that his delegation would vote against article 62 *bis* because it was convinced that certain unofficial proposals with which it was associated offered a reasonable basis for a satisfactory settlement of the problem dividing the Conference, and that the adoption of article 62 *bis* in its present form would eliminate any prospect of achieving a negotiated settlement.

19. Mr. DADZIE (Ghana) said that when the Committee of the Whole had considered articles 62 and 62 *bis* at the first session, his delegation had stated its position unambiguously at the 74th meeting and had made it known that his Government, after lengthy consideration of the matter, had reached the conclusion that article 62 was incomplete and that it would be necessary to provide for a more effective system for the settlement of disputes. The position of his delegation had not changed.

20. However, Ghana was faithful to the attitude it had always adopted at international conferences of that kind, and his delegation had tried to be open-minded so as to help to bring about an acceptable compromise on that controversial question.

21. Contrary to its basic position, his delegation had voted against article 62 *bis* in the Committee of the Whole, in the belief that, at that stage in the Conference's work, the rejection of the article would facilitate the search for a compromise.

22. It had unfortunately not been possible to reach a compromise and, to be consistent with its position, his delegation should have voted in favour of article 62 *bis.* But it would abstain, not only out of courtesy to the countries with which Ghana had certain ties, but also because it still hoped that a compromise solution would be found that would command overwhelming support. His delegation would continue to devote itself to the search for such a solution. However, if an acceptable compromise meant that the majority should take a step towards meeting the minority view, it also required to an even greater extent that the minority should agree to take steps to meet the wishes of the majority.

23. His delegation hoped that, even after the vote on article 62 *bis,* it would still be possible to reconsider the matter if a solution could be devised that would meet with general or almost general agreement.

24. Mr. BRODERICK (Liberia) said that his delegation accepted in principle the procedure set out in article 62 *bis.* His delegation thought, however, that its Government should be left free to choose for itself the means it wished to use to settle disputes arising from the application of Part V of the convention.

25. His Government reserved the right to decide, according to circumstances and if no solution could be found by way of negotiation or by other means of peaceful settlement, whether it would submit a dispute to the International Court of Justice, to a conciliation commission or to an arbitral tribunal. For that reason, his delegation would abstain in the vote on article 62 *bis.*

26. Mr. KEARNEY (United States of America) said that his delegation had refrained from taking part in the debate so far because it had hoped, like many other delegations, that it would be possible to produce a proposal which would muster a large number of votes in the Conference on the difficult problem of the settlement of disputes. A number of proposals had been presented, but they had not received the majority support hoped for. It appeared necessary, therefore, to proceed to the vote. His delegation hoped that all those who considered it essential to have some adequate system for the settlement of disputes, with a view to eliminating the difficulties which might arise from the application of the convention, would support article 62 *bis.* Although it did have certain defects, the article nevertheless constituted a useful device which had been drawn up painstakingly and at the cost of much compromise. At the present stage, to abstain from voting on article 62 *bis* or to vote against it would presumably not simplify the task of finding suitable procedures for the settlement of disputes.

27. The PRESIDENT invited the Conference to vote on article 62 *bis* and annex I to the convention.

28. Mr. ESCHAUZIER (Netherlands) asked to be allowed to make a few comments before the vote was taken.

29. Mr. KHLESTOV (Union of Soviet Socialist Repu-

blics), speaking on a point of order, said that under rule 39 of the rules of procedure, when the President had announced the beginning of the voting, no representative was allowed to interrupt the voting procedure unless he was speaking on a point of order relating to the actual conduct of the voting.

30. The PRESIDENT confirmed that under rule 39 of the rules of procedure, the Netherlands representative could not speak except on a question connected with the voting.

31. Mr. ESCHAUZIER (Netherlands) said that it had not been his intention to speak on a point of order but to make a few comments on article 62 *bis*. Among other things, he had wished to express his sincere regret to the representatives of India, Nigeria and Ghana, with whom he had co-operated closely, at not having been able to reach an agreement. He would still like to make a few comments, but would refrain from doing so because of rule 39 of the rules of procedure.

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

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

In favour: Australia, Austria, Barbados, Belgium, Bolivia, Cameroon, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Costa Rica, Cyprus, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Holy See, Honduras, Iceland, Ireland, Italy, Ivory Coast, Jamaica, Japan, Lebanon, Lesotho, Leichtenstein, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Ethiopia, Hungary, India, Indonesia, Iran, Iraq, Kenya, Kuwait, Malaysia, Mongolia, Morocco, Nepal, Nigeria, Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Afghanistan, Algeria.

Abstaining: Argentina, Brazil, Ghana, Israel, Liberia, Libya, Singapore, Thailand, Trinidad and Tobago, Zambia.

The result of the vote was 62 in favour and 37 against, with 10 abstentions.

Article 62 bis *and annex I to the convention were not adopted, having failed to obtain the required two-thirds majority.*

32. Mr. BADEN-SEMPER (Trinidad and Tobago), explaining why his delegation had decided to abstain on article 62 *bis*, said that during the last few days, sincere efforts had been made to arrive at a compromise which might have obtained wide support in the Conference. In spite of those efforts, the Conference had had to vote on a provision which failed to take into account the negotiations held. His delegation had not been prepared to vote in favour of a provision which might have divided the Conference and had threatened to exclude a large minority of the international community from a very important convention.

The meeting rose at 1 p.m.

TWENTY-EIGHTH PLENARY MEETING

Friday, 16 May 1969, at 3.35 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. The PRESIDENT invited representatives to continue their explanations of vote on article 62 *bis*.

2. Mr. BINDSCHEDLER (Switzerland) said that the explanation of his delegation's vote would have been the same had article 62 *bis* been adopted. Switzerland had voted in favour of article 62 *bis* only because it was better than nothing at all. It did not wish to become identified with the content of an article which was inadequate in a number of important respects, as the representative of Sweden had pointed out. First, there was the composition of the conciliation commission or arbitral tribunal. Under the article, the power of decision was left to a single person, the chairman. That might be satisfactory in interpreting technical conventions, such as air navigation agreements, but would hardly do for more important disputes. Secondly, the article would have led to the establishment of additional organs for which there was really no need. Thirdly, the procedure proposed for the settlement of disputes would have hampered the consistent development of international law; a particular arbitral tribunal might find that a specific norm constituted *jus cogens* while another tribunal might decide that the same norm constituted *jus dispositivum*.

3. Again, the article made no mention of the International Court of Justice. Had article 62 *bis* been adopted, the Court would have been quietly bypassed. Some of the Court's judgements might be open to criticism, but that did not mean that the institution itself should be condemned. It was, after all, a principal organ of the United Nations. Moreover, some thought should be given to the future. The Court had the advantage of being an institution whose composition was known. The States parties to its Statute were free to appoint the judges with the best qualifications; they could even amend the Court's Statute and rules of pro-