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## Twenty-ninth 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)*

means of establishing the obligation and the third State expressly accepts that obligation in writing.

*Article 32* [7]

*Treaties providing for rights for third States*

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in corformity with the treaty.

49. The PRESIDENT said that the Conference had already adopted articles 31 and 32, but consequential redrafting had been made necessary by the definition of " third State " adopted in article 2, paragraph 1(*h*). He proposed that the Conference therefore decide to treat the texts of articles 31 and 32 as revised by the Drafting Committee as having been adopted.

*It was so agreed.*

The meeting rose at 4.50 p.m.

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## TWENTY-NINTH PLENARY MEETING

*Monday, 19 May 1969, at 10.30 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)*

*Article 62* bis (Procedures for conciliation and arbitration) *and annex I to the convention* (resumed from the previous meeting)

1. Mr. JAGOTA (India) said he had been instructed to emphasize or two points in the statement made at the 28th meeting by the Chairman of the Indian delegation, who was at present absent. Mr. Krishna Rao had appealed to certain delegations to adopt a constructive attitude towards the convention, even though some articles to which they attached great importance had not secured the necessary majority. He had expressed his gratitude to the representatives of the Netherlands, Sweden, Nigeria, the United States of America and the Union of Soviet Socialist Republics, who had striven to find a compromise solution, and had regretted that their efforts had not been successful. He had expressed the hope that participants in the Conference would continue to search for a compromise. In paying a tribute to those delegations, Mr. Krishna Rao had not intended to overlook the efforts made by other delegations, such as those of Ghana and Afghanistan, and by the President. Negotiations with a view to a compromise were continuing, and it was to be hoped that the Conference would soon be considering a proposal which would be acceptable to a large majority of States.

*Article 22* (Provisional application) *(resumed from the 11th plenary meeting)*

2. Mrs. WERNER (Poland) reminded the Conference that at the 11th plenary meeting [1] the Polish representative had suggested that paragraph 2 should be amended to read: " . . . the provisional application of a treaty . . . shall be terminated six months after that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty ". That suggestion had been intended to safeguard the interests of States which applied a treaty provisionally and were then faced with the case where one of them suddenly decided to terminate the provisional application. In that connexion, her delegation had thought that the amendment submitted by Yugoslavia (A/CONF.39/L.24) was also justified. It indicated clearly that the *pacta sunt servanda* principle laid down in article 23 was likewise valid for treaties applied provisionally. In international practice, treaties were often applied provisionally, and her delegation thought it necessary to provide suitable guarantees to safeguard the security of treaty relations.

3. Since those suggestions had not been accepted by the Drafting Committee,[2] she wished to state that, according to the Polish delegation's interpretation and in the light of the explanations given by the Chairman of the Drafting Committee, the *pacta sunt servanda* principle was fully applicable to the case where a treaty was applied provisionally; and that the principle of good faith should likewise prevail when the provisional application of a treaty was terminated. It was on that understanding that her delegation had voted in favour of article 22.

*Statement by the Chairman of the Drafting Committee on articles 4, 7, 10* bis, *18, 19 and 20*

4. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had examined the amendments relating to articles 4, 7, 10 *bis* and 19 referred to it by the Conference. In accordance with the Conference's instructions, it had also revised the text adopted by the Conference for article 20. After reviewing the articles, the Committee had made no changes except in article 20 and, consequentially, in article 18.

5. With regard to article 4 (Treaties constituting international organizations and treaties adopted within an international organization), the Conference had referred to the Drafting Committee [3] a Romanian amendment (A/CONF.39/L.9) to replace, in article 4, the expression

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[1] Para. 88.

[2] See 28th plenary meeting, para. 46.

[3] See 7th plenary meeting, paras. 31 and 32.

" within an international organization " by " within such organization " and, in the French text, the words " *de l'Organisation* " by " *de celle-ci* ". Although that amendment would have avoided repetition of the phrase " international organization " in the French text, it would not have made the article easier to understand since anyone reading the French version would have had to remember that " *celle-ci* " referred to " *une telle organisation* " which itself referred to " *une organisation internationale* ". Moreover, the expression " *une telle organisation* " was not very satisfactory in French. For those reasons, the Drafting Committee had decided to make no change in article 4.

6. In the case of article 7 (Subsequent confirmation of an act performed without authorization), the Conference had referred to the Drafting Committee [4] a Romanian amendment (A/CONF.39/L.10) whereby the last phrase of the article would have read: " unless afterwards confirmed by the competent authority of that State ". The Committee had decided not to adopt that amendment because it had considered that it was unnecessary, in an international matter, to say that States should act through their competent authorities.

7. The Conference had referred to the Drafting Committee [5] the text of article 10 *bis* which it had adopted; it had also referred to the Committee a Belgian amendment (A/CONF.39/L.14) to replace, in the introductory part of the article, the expression " treaty constituted by instruments exchanged between them " by the words " treaty concluded by an exchange of letters or notes ". A similar change was proposed in sub-paragraph (*a*). The amendment further proposed that in sub-paragraph (*b*) the word " those " before " States " should be replaced by the definite article " the ". The Committee had studied the Belgian amendment not only in the context of article 10 *bis*, but also in that of article 9 *bis*, the drafting of which it had been invited to review. The Committee had come to the conclusion that it could not accept that amendment, since it would have narrowed the scope of article 10 *bis*: the meaning of the expression " letters or notes " was more restricted than that of the term " instruments ".

8. The Conference had invited the Drafting Committee to reconsider a proposal submitted to the Committee of the Whole by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.157 and Add.1) to amend paragraph 1 of article 19.[6] The Drafting Committee had expressed appreciation of the concision and elegance of the wording proposed in that amendment; but some of its members had questioned whether the text would be as clear for a reader without expert knowledge as the text adopted by the Conference. The Committee had accordingly thought it best to leave the text unchanged.

9. When it adopted article 20 at the 11th plenary meeting the Conference had taken into account two amendments submitted by Hungary (A/CONF.39/L.17 and L.18) and a suggestion made orally during the discussion. After considering the text adopted, the Drafting Committee had taken the view that the expression " in writing " in paragraphs 1 and 2 might give rise to difficulties of interpretation. That expression was related to the verb " may ". It might therefore mean that, if a State intended to withdraw a reservation or an objection, it was permitted but not compelled, to do so in writing, which was obviously not the meaning that the Conference had intended to give to the text. In order to avoid any misunderstanding, the Committee had decided to delete the expression " in writing " in article 20 and to add to article 18 a paragraph 4 to the following effect: " The withdrawal of a reservation or of an objection to a reservation must be formulated in writing ".

10. The Drafting Committee had made two other changes in article 20. In the title it had added the words " and of objections to reservations ", and it had redrafted paragraph 3 (*a*) to read: " the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State ". The Committee had taken the view that the withdrawal of a reservation in relation to a contracting State might become operative immediately that State had received notice of it, without waiting for the notification to reach all the other contracting States.

11. Lastly, the Drafting Committee had considered that once the new paragraph 4 had been added, article 18 should be placed at the end of Part II, Section 2, since the article, was entitled " procedure regarding reservations " and thus applied to all the matters dealt with in that section. The Committee would transfer article 18 to the end of section 2 when it gave the articles of the draft convention their definitive numbers.

12. The PRESIDENT said that articles 18 and 20 now read:

*Article 18*

*Procedure regarding reservations*

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

*Article 20*

*Withdrawal of reservations and of objections to reservations*

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

[4] See 8th plenary meeting, paras. 61-66.

[5] See 10th plenary meeting, paras. 2 and 3.

[6] See 11th plenary meeting, paras. 6-10.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(*a*) The withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(*b*) The withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which has formulated the reservation concerned.

13. Articles 18 and 20 had already been adopted at the 11th plenary meeting. In the absence of any objection he would assume that the Conference approved the changes made by the Drafting Committee.

*It was so agreed.*

*Proposed new article 76*

1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

14. The PRESIDENT invited the Swiss representative to introduce the new article 76 (A/CONF.39/L.33) proposed by his delegation.

15. Mr. RUEGGER (Switzerland) said that during the first session, at the 80th meeting of the Committee of the Whole, his delegation had submitted a proposal (A/CONF.39/C.1/L.250) to include in the convention a new article 76 dealing with a subject to which the Swiss Government attached great importance. On that occasion he had given the reasons for submitting the proposal, and he would accordingly now confine himself to certain additional arguments in support of the new article.

16. As the Swiss delegation had pointed out at the 103rd meeting of the Committee of the Whole, the Swiss proposal was different from that appearing in article 62 *bis* which had given rise to a lengthy debate. Article 62 *bis* laid down procedures relating to the provisions of Part V of the convention, whereas the new article 76 provided for the settlement of disputes arising out of the interpretation and application of the convention itself. If the special machinery for Part V was not adopted, despite the present efforts to that end, the proposed new article would obviously fill a gap.

17. It was hardly conceivable that there should be no reference either in the convention or in its annexes to the role of the International Court of Justice as the supreme mediator of the international community and the only body in a position to make decisions in accordance with uniform and consistent criteria. All too often there was a tendency to think that the adoption of a very detailed jurisdictional clause represented something revolutionary, in that it implied the relinquishment of sovereign prerogatives. That might be true up to a point, and for that reason the acceptance of compulsory adjudication should be a considered act. And that considered act had taken place not only in connexion with the acceptance of many multilateral agreements of lesser consequence, but also in connexion with the acceptance of international treaties of fundamental importance. Many States had agreed to be bound by compulsory clauses included in multilateral conventions such as the Convention on the Prevention and Punishment of the Crime of Genocide,[7] the Supplementary Convention on the Abolition of Slavery,[8] the International Convention on the Elimination of All Forms of Racial Discrimination,[9] and the 1965 Convention on Transit Trade of Land-locked States.[10]

18. Or again, there was the Constitution of the International Labour Organisation (ILO), which had a universal character which the convention on the law of treaties could not hope to achieve in the near future. That Constitution provided that any dispute relating to its interpretation should be referred for decision to the International Court of Justice. It was difficult to see how a legal conference such as the Conference on the Law of Treaties could refuse to consider invoking the jurisdiction of the Court in respect of the texts it had approved, when that jurisdiction was provided for in an instrument of as universal a nature as the Constitution of the ILO.

19. Immediately after the First World War, even before the adoption of the Covenant of the League of Nations, Switzerland had announced that it supported judicial settlement and arbitration. Although his country fully respected the position of those who did not share that point of view, it had learned from experience that it could achieve satisfactory results through the application of that principle when concluding bilateral agreements with other States. More recently, Switzerland had concluded further agreements providing for conciliation and arbitration procedures with certain African States, such as the Ivory Coast, Cameroon, Liberia, Niger and Madagascar, as well as with States in Latin America and Asia. Those precedents were an encouragement to Switzerland to continue to follow that course.

20. In 1958, at the time of the first great codification conference, it had been Switzerland which, after other proposals had failed to win approval, had spon-

[7] United Nations, *Treaty Series*, vol. 78, p. 277.

[8] United Nations, *Treaty Series*, vol. 266, p. 3.

[9] For text, see annex to General Assembly resolution 2106 (XX).

[10] United Nations, *Treaty Series*, vol. 597, p. 42.

sored the additional optional protocol,[11] in the desire that there should be some link, however tenuous, between law-making codification conventions and the supreme judicial authority called upon to apply the law. The Swiss delegation had noted with regret that that link had proved too weak. It was true, as one delegation had observed during the discussions, that the fact that a very small number of countries had so far signed the optional protocol was not a strong argument in support of compulsory jurisdiction. What the Swiss delegation had intended merely as a transitional formula had, despite its intentions, become a standard clause.

21. Hence much remained to be done — much more than had been achieved as yet in the case of bilateral agreements, for example. There were some who believed that very little progress was likely as long as the body to which reference was to be made was the International Court of Justice. In their opinion a point of crisis had been reached regarding the jurisdiction of the Court, despite the hope and enthusiasm aroused when the Statute had first been drawn up in 1921. Yet the idea of the compulsory jurisdiction of the International Court of Justice continued to gain ground in spite of everything, as was shown by the fact that in 1968 the United Kingdom had withdrawn most of the reservations that it had made previously when it had accepted the optional clause in Article 36 of the Statute of the Court. Again, the Swiss delegation had noted with great satisfaction that some delegations, including the Indian delegation, had stated during the debate on article 62 *bis* that they would prefer adjudication by the Court to arbitration. That was undoubtedly a promising sign. The strength of the Court lay more especially in the willingness of the States that would sign the convention to resort increasingly to the organ best equipped to settle a large number of disputes.

22. The criticisms made of the Court should be directed rather at the indifference of States and their reluctance to act. It was to those shortcomings that a remedy had to be found, since that was one of the conditions of future development. New cases should be brought before the Court, of which far too little use was made. The most distinguished jurists should not be discouraged from spending some time in the service of the Court. In the long run there was a danger that the Court might wither away, a development that none could desire. One of the tasks of the Conference, and of each individual State, was to support the International Court of Justice, for if it was desired that the law should be applied objectively, then there should also be support for the organ which existed for that purpose.

23. Mr. MENDOZA (Philippines) said he supported the new article 76 proposed by Switzerland and designed to include some machinery for compulsory adjudication in the convention. Such machinery must necessarily go hand in hand with the clear and comprehensive rules of law laid down in the convention.

24. To a large extent, article 62 *bis* would have served that purpose. It had not been adopted by the Conference, but in comparison with the votes which had been taken on similar questions at previous conferences, the numerical result of the vote on article 62 *bis* was heartening.

25. His delegation had not forgotten that the International Court of Justice had been the subject of unfavourable comments, at the second session as well as the first. Nevertheless, it was to be hoped that the Conference would not come to an end without having established some method of third party adjudication. In considering the proposed article 76, the Court should not be judged merely on the strength of one or two of its decisions but by the totality of the work it had so far accomplished under the jurisdiction — regrettably emasculated by reservations and non-accessions — which the framers of its Statute had conferred upon it.

26. It would not be idle to recall that the International Court of Justice was the principal judicial organ of the United Nations, that under Article 36 of its Statute it was vested with competence to consider the matters contemplated under the proposed article 76, and that at the present time it seemed to be principal source of uniform rules in international relations.

27. Mr. HADJIEV (Bulgaria) said he was firmly opposed to the Swiss proposal for a new article 76. At the 103rd meeting of the Committee of the Whole, his delegation had stated the reasons why it was opposed to the idea of the compulsory adjudication of disputes between the parties to a treaty. In his opinion, the wide range of means of peaceful settlement set forth in Article 33 of the Charter, to which the parties to a treaty could resort in order to settle their disputes, was perfectly adequate. Compulsory adjudication did not guarantee a just settlement. Nor, contrary to what its supporters claimed, did it guarantee that the interests of small and weak countries would be safeguarded. Furthermore, the fact that the Swiss proposal had been rejected by the Committee of the Whole [12] was certainly no accident.

28. Mr. MARESCA (Italy) said that at the moment when its work was drawing to a close, the Conference found itself compelled to go back to the very sources of legal problems.

29. The rules codified in the convention on the law of treaties were legal rules based solely on legal foundations. The most important characteristic of a legal rule was the guarantee which accompanied it, for if the rule was not accompanied by a guarantee it was not a legal rule. The guarantees in question were first of all indirect, involving the voluntary procedure by which rules were drawn up, the legal conscience of States, and their status as legal entities; but it was also necessary to resort to direct guarantees, since

[11] i. e. the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes adopted by the Conference on the Law of the Sea (for text, see United Nations, *Treaty Series*, vol. 450, p. 170).

[12] 104th meeting.

indirect guarantees might be lacking. Such direct guarantees were partly diplomatic procedures, especially negotiation, and partly non-diplomatic procedures such as arbitration and recourse to judicial bodies. All such direct guarantees were based on the agreement of the parties, failing which it would be impossible to institute any procedure at all.

30. The rules codified in the convention on the law of treaties could give rise to all kinds of legal problems. The Conference thus had a unique opportunity to solve the problem of procedure. However, while it already had reason to congratulate itself on having made tremendous progress in substantive law, progress with respect to procedure had so far been nil. In the event of a dispute concerning any part of the convention, at the present stage the convention provided no guarantee at all. Nevertheless, the work of codification undertaken by the Conference could not remain purely passive; there must be a willingness to extend it into the future. Could there be anything more "progressive" for the Conference than to provide procedural guarantees for the rules it was codifying? The Conference was confronted with a task of fundamental importance which it could not afford to shirk.

31. His delegation was grateful to the Swiss delegation for presenting the Conference with a draft article 76 which rested on a firm foundation. Paragraph 3 of the article proposed that the parties to a dispute should first attempt the traditional procedure of conciliation. If conciliation failed, they would resort either to arbitration or to the procedure before the International Court of Justice, which met every requirement.

32. It was quite wrong to disparage the International Court of Justice, which had crystallized the triumph of international law after both the First and the Second World Wars. If the Court had dashed certain hopes, the blame should be laid on lack of faith and the indifference of the parties.

33. In certain proposals made in 1961 and 1963, at the two great codification conferences already held at Vienna, the same liberal ideas had been advanced. Ultimately, both those conferences had been compelled to fall back on optional protocols, which had proved an illusion. It had to be remembered, too, that in 1963 as in 1961, at the very moment when the conferences concerned found themselves completely divided and in danger of leaving a real legal vacuum, they had not abandoned the attempt to reach a solution; article 37 of the 1961 Convention on Diplomatic Relations and article 34 of the 1963 Convention on Consular Relations, inadequate though they were, had saved both conferences.

34. The article 76 proposed by Switzerland provided a complete solution, which had the great virtue of combining some of the procedural solutions offered in article 62 *bis*. The article might prove to be the crowning success of the Conference. If it should not be adopted, however, it would still be necessary to fill the gap and to produce an article to put in the place of article 62 *bis*.

35. Mr. JAGOTA (India) said he regretted that he would be unable to vote for the new article 76 submitted by Switzerland.

36. Though that proposal left the parties to a dispute the choice between conciliation, arbitration and adjudication, its intention was nevertheless to establish the compulsory jurisdiction of the International Court of Justice as the general rule.

37. India, as was well known, had great respect for the Court. Admittedly it had on occasion confessed its disappointment at some of the Court's decisions, but he could cite many bilateral agreements and several multilateral conventions to which it was a party where there was a clause providing for the compulsory jurisdiction of the International Court of Justice. His country would not, however, be able to accept a procedure for the compulsory settlement of disputes relating to the convention on the law of treaties, if only because of the convention's scope. From the wording of draft article 76, paragraph 1, and the explanations by its sponsor, it was clear that those provisions would apply to the whole convention, and hence to disputes arising under Part V.

38. That being so, he would like to ask the President whether, since the Conference had decided at its 27th plenary meeting not to adopt any compulsory and automatic settlement procedure for disputes relating to Part V of the convention, the proposed article 76 could be put to the vote as it stood without infringing rules 33 and 41 of the rules of procedure, or should it only be put to the vote if disputes relating to the interpretation and application of Part V of the convention were excluded from its application?

39. Mr. ALVAREZ (Uruguay) said that his delegation was in favour of a procedure for compulsory recourse to adjudication for the pacific settlement of international disputes and it supported the Swiss proposal.

40. It was true that some of the advisory opinions and decisions of the Permanent Court of International Justice and the International Court of Justice were controversial from a legal point of view; but it was hard to find a single case in which, in a dispute between a small and a large State when the possibility of recourse to adjudication had not existed, the small State's point of view had prevailed.

41. Mr. TALALAEV (Union of Soviet Socialist Republics) said he was opposed to the Swiss proposal.

42. In any case, the provision it embodied had already been voted down. The proposed new article 76 provided for resort to compulsory adjudication for all disputes arising from the interpretation and application of the convention as a whole; its scope was therefore wider than that of article 62 *bis*. Since there was no article relating to the settlement of disputes arising from the application and interpretation of Part V, the result of the adoption of the Swiss amendment would be that such disputes would lie within the compulsory jurisdiction of the International Court of Justice.

43. Article 76 provided for compulsory recourse to the International Court of Justice, a judicial body which

had become discredited and could not be regarded as an adequate organ for the settlement of disputes.

44. Furthermore, close scrutiny of article 76, paragraphs 2 and 3 revealed that the resort to arbitration and conciliation procedures was in fact mandatory, not optional, since if those procedures failed, the parties would have to accept the compulsory jurisdiction of the International Court of Justice. Article 76 was, therefore, even less satisfactory than article 62 *bis*, and his delegation would vote against it. If certain delegations wished to establish a procedure to supplement article 62, the solution would have to be sought by way of compromise.

45. Mr. RUIZ VARELA (Colombia) said that his delegation supported article 76. At other legal conferences, in particular the Conference on the Law of the Sea, the Colombian delegation had been favourably disposed towards the inclusion of a formula similar to that in article 76.

46. The adoption of the provision proposed by Switzerland would undoubtedly ensure the success of the Conference. What purpose, after all, would be served by codifying the rules of international law unless the codification was accompanied by an adequate procedure for the settlement of disputes arising from the interpretation and application of those rules?

47. His delegation appealed to other delegations to appreciate the scope of article 76, which went some way towards filling the gap caused by the absence of article 62 *bis*.

48. The advantage of the Swiss proposal was that it provided for two other means to which the parties might decide to resort before compulsory recourse to the International Court of Justice, namely arbitration and conciliation.

49. Mr. GALINDO-POHL (El Salvador) said that the new article 76 brought to the convention an essential element of security. The interpretation and application of legal norms could undoubtedly give rise to disputes which could not always be settled by diplomatic negotiation.

50. Article 76 reflected a trend; its purpose was to consolidate and develop international law and it would indicate that the international community had become aware of its existence as an organic whole. The spirit underlying articles 76 and 62 *bis* was the same, but their scope was different.

51. Questions relating to the interpretation of the convention could be settled by the States which had accepted the optional clause for the compulsory jurisdiction of the International Court of Justice, but it would be much more satisfactory if the idea of compulsory recourse to the International Court of Justice were formally incorporated in the convention itself.

52. In any event, States could always make reservations to article 76, if it was adopted, but they would also at all times be able to withdraw their reservations.

53. Mr. TAYLHARDAT (Venezuela) said that the debates in the Committee of the Whole and the plenary Conference had shown that a number of States were firmly opposed to a system of compulsory jurisdiction. His own delegation, indeed, had emphasized on several occasions that the idea of recourse to compulsory jurisdiction had not yet been generally accepted. Venezuela was still opposed to compulsory arbitration and to recourse to the International Court of Justice.

54. For those reasons he would vote against the Swiss proposal, the final result of which would be to establish a system of compulsory adjudication for the settlement of disputes arising from the interpretation and application of the convention as a whole, and consequently of Part V.

55. The PRESIDENT, replying to the Indian representative, said he assumed that the reference was to the first sentence of rule 33 of the rules of procedure, which stated that " when a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides ", and to the fourth sentence of rule 41, which provided that " where the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote ". He himself believed that the point at issue was not a reconsideration of a matter which the Conference had already decided. Article 62 *bis* had referred only to one part of the articles of the convention, those relating to the invalidity, termination and suspension of the operation of treaties. Moreover, its purpose had been to establish a compulsory procedure first for conciliation and then for arbitration.

56. Article 76, however, proposed a procedure for disputes relating to the interpretation and application of the convention as a whole. The proposed procedure provided for the compulsory jurisdiction of the International Court of Justice and other procedures were permitted only as an exception to that principle.

57. The situation referred to in rule 41 of the rules of procedure was not relevant either. Some delegations might have voted against 62 *bis* because they had thought that the article did not go far enough or because they had been opposed to the idea of establishing a procedure for Part V but not for the other parts of the convention. Some delegations might also have voted against the idea of an arbitration or conciliation procedure because they preferred compulsory recourse to the International Court of Justice.

58. Thus it could not be held that the rejection of article 62 *bis* automatically entailed the rejection of the new article 76.

59. Mr. JAGOTA (India) said that he bowed to the President's ruling, although he could not agree with the arguments on which it was based.

60. His delegation wished to point out that the adoption of article 76 would mean that disputes arising out of the interpretation or application of Part V of the convention would automatically come within the jurisdiction of the International Court of Justice, and that if the parties wished to avoid compulsory recourse to the Court, they would have no option but to resort to arbitration or conciliation, both likewise compulsory.

61. For the reasons it had given in the debate on article 62 *bis*, his delegation would vote against article 76.

62. Mr. HAYTA (Turkey) said that his delegation would vote in favour of article 76 because it advocated the establishment of compulsory jurisdiction for the settlement of disputes arising out of the interpretation and application of all treaties.

63. The PRESIDENT invited the Conference to vote on the Swiss proposal.

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

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

*In favour:* Cambodia, Canada, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, El Salvador, Federal Republic of Germany, Finland, France, Guyana, Holy See, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, Pakistan, Panama, Philippines, Portugal, Republic of Viet-Nam, San Marino, Senegal, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Austria, Barbados, Belgium.

*Against:* Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Ethiopia, Hungary, India, Indonesia, Iraq, Kenya, Kuwait, Malaysia, Mexico, Mongolia, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Afghanistan, Albania, Brazil.

Abstaining: Central African Republic, Ceylon, Cyprus, Ecuador, Gabon, Ghana, Greece, Guatemala, Honduras, Iran, Israel, Ivory Coast, Jamaica, Lebanon, Liberia, Libya, Madagascar, Peru, Republic of Korea, Singapore, Spain, Trinidad and Tobago, Tunisia, Yugoslavia, Zambia, Argentina, Bolivia.

*The result of the vote was 41 in favour and 36 against, with 27 abstentions.*

*The Swiss proposal (A/CONF.39/L.33) was not adopted, having failed to obtain the required two-thirds majority.*

The meeting rose at 1 p.m.

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## THIRTIETH PLENARY MEETING

*Monday, 19 May 1969, at 4.5 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)*

*Proposed new article 76* (continued)

1. The PRESIDENT invited representatives who wished to do so to explain their votes on article 76.

2. Mr. PINTO (Ceylon) said that his delegation had abstained in the vote on the new article 76 proposed by Switzerland (A/CONF.39/L.33), but wished to make it clear that that vote should not be taken as implying any unwillingness to support the International Court of Justice. On the contrary, the Ceylonese delegation to the present Conference, to the Sixth Committee of the General Assembly and to other international conferences had expressed the view that the principal organ of the United Nations should be supported in appropriate cases. Although Ceylon was not a signatory of the optional clause in Article 36 of the Statute of the Court, it had frequently accepted the Court's compulsory jurisdiction with respect to disputes under certain multilateral agreements. And the Ceylonese Government, though it believed them to be wrong, did not share the general dissatisfaction with the Court which had followed some of its decisions.

3. His delegation had been unable to support the Swiss proposal only because of certain technical and practical difficulties in determining the real scope of the proposed new article, to which it would, however, continue to give serious thought. The phrase " disputes arising out of the interpretation or application of the Convention " could cover disputes under individual treaties where such a dispute also involved a dispute arising out of the interpretation and application of the convention itself. The implications of that possibility were not entirely clear, and it would seem that further close consideration would be required before a decision could be arrived at.

4. His Government would continue to support the idea of referring appropriate disputes to the International Court of Justice and also the principle contained in Article 36 (3) of the United Nations Charter, under which legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

5. Mr. RODRIGUEZ (Chile) said that his delegation had consistently subscribed to the view that adequate machinery should be established for the settlement of disputes between States parties to a treaty. It had done so in the conviction that something should be done to bring *de facto* situations into line with legal rules. Accordingly, Chile had supported the initiatives taken by Japan and Switzerland in the Committee of the Whole with a view to including in the convention a provision for the compulsory settlement of disputes under Part V. It had subsequently abstained from voting on article 62 *bis* because the article provided not only for arbitration but also for compulsory conciliation, a procedure which was not suitable for disputes relating to the invalidity, termination, withdrawal from or suspension of the operation of a treaty. His delegation had nevertheless voted for the article when it had been submitted to the plenary Conference for a decision, because it considered that some procedure for settling disputes under Part V ought to be included in the convention.

6. At the previous meeting the Chilean delegation had