United Nations Conference on the Law of Treaties

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Thirty-first 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)*

ductory phrase in paragraph 2 (*a*) as now submitted by the Drafting Committee was that the other parties might by unanimous agreement suspend the operation of the treaty in whole or in part or terminate it in whole or in part.

31. The PRESIDENT said that, if there were no objection, he would take it that the Conference agreed to adopt article 57 as amended by the Drafting Committee.

It was so agreed.

Draft resolution relating to article 1

32. The PRESIDENT suggested that, if there were no objection, the draft resolution relating to article 1, contained in paragraph 32 of the report of the Committee of the Whole on its work at the first session (A/CONF.39/14), might be considered as unanimously adopted.

33. Mr. ROSENNE (Israel) said that if the draft resolution were put to the vote, his delegation would abstain because it was not convinced that the matter was really ripe for the further study contemplated by the resolution, and he did not wish to commit his delegation's position in case the matter should be discussed by the General Assembly.

34. Mr. BLIX (Sweden) said that his delegation had no objection to the substance of the draft resolution. A number of points of a drafting nature had, however, been made on behalf of the International Bank for Reconstruction and Development, which had not yet been considered by the Drafting Committee. He therefore moved that a decision on the draft resolution be postponed in order that he might have time to submit a drafting amendment.

35. The PRESIDENT said that the decision on the draft resolution would accordingly be postponed until the following day.[4]

Election of a member of the Credentials Committee

36. The PRESIDENT said that the Conference had to elect a member of the Credentials Committee to replace the representative of Mali, who was absent. He suggested that the representative of the United Republic of Tanzania would be a suitable replacement.

It was so agreed.

The meeting rose at 5 p.m.

[4] See 32nd plenary meeting.

THIRTY-FIRST PLENARY MEETING

Tuesday, 20 May 1969, at 11 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 *(resumed from the previous meeting)*

Statement by the Chairman of the Drafting Committee on the declaration on the prohibition of military, political or economic coercion in the conclusion of treaties and related resolution

1. Mr. YASSEEN, Chairman of the Drafting Committee, said that, at its 20th plenary meeting, the Conference had adopted a declaration on the " Prohibition of the threat or use of economic or political coercion in concluding a treaty " and a related resolution. As the Conference had requested, the Committee had reviewed the wording of the declaration and the resolution and was submitting a new text incorporating the drafting amendments it had made. It read as follows:

Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of the sovereign equality of States,

Convinced that States must have have complete freedom in performing any act relating to the conclusion of a treaty,

Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States,

Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,

1. *Solemnly condemns* the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent;

2. *Decides* that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.

Resolution relating to the declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

The United Nations Conference on the Law of Treaties,

Having adopted the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties as part of the Final Act of the Conference,

1. *Requests* the Secretary-General of the United Nations to bring the declaration to the attention of all Member States and other States participating in the Conference, and of the principal organs of the United Nations;

2. *Requests* Member States to give the Declaration the widest possible publicity and dissemination.

2. With regard to the title of the declaration, the Committee had considered that in the phrase " threat or use of coercion " the word " coercion " alone should be kept since a threat was one form of coercion. Moreover, as operative paragraph 1 referred to pressure in any form, " whether military, political or economic " those three adjectives should be reproduced in the title in that order. Lastly, the word " treaty " after " conclusion of " should be in the plural, since the declaration related to the conclusion of treaties in general, not to the conclusion of a particular treaty.

3. With regard to the preamble to the declaration, the Committee had thought that the ideas formerly expressed in the fourth, fifth and sixth paragraphs might be expressed more concisely in two paragraphs.

4. In operative paragraph 1 of the declaration the Committee had inserted the word " whether " after the words " in any form " for reasons of style.

5. In the resolution the Committee had altered the wording of the preamble so as to incorporate the improvements it had made in the title of the declaration. It had also made some drafting changes in each of the language versions.

6. The PRESIDENT said that, in the absence of objections, he would regard the declaration on the prohibition of military, political or economic coercion in the conclusion of treaties and the related resolution as having been adopted.

It was so agreed.

TEXT OF THE PREAMBLE SUBMITTED BY THE DRAFTING COMMITTEE

Vienna Convention on the Law of Treaties

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principle of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States and of the prohibition of the threat or use of force,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Have agreed as follows:

7. The PRESIDENT invited the Chairman of the Drafting Committee to introduce the text of the preamble to the convention prepared by that Committee.[1]

8. Mr. YASSEEN, Chairman of the Drafting Committee, said that, in accordance with the Conference's instructions, the Drafting Committee had drawn up a draft preamble. The draft was based on two proposals, one submitted by Mongolia and Romania (A/CONF.39/L.4) and the other by Switzerland (A/CONF.39/L.5 and Corr.1), and on suggestions transmitted directly to the Committee by the Australian delegation.

9. Some members of the Drafting Committee had suggested the addition of the following paragraph:

Convinced that the benefits of international co-operation should be ensured to all and that every State has the right to enter into international treaty relations.

10. Agreement could not, however, be reached on the inclusion of that paragraph.

11. Mr. HOUBEN (Netherlands), introducing the amendment (A/CONF.39/L.42 and Add.1) of which his delegation and the delegation of Costa Rica were co-sponsors, said that the sixth paragraph of the preamble submitted by the Drafting Committee, which listed some of the major principles of international law embodied in the Charter, should also expressly mention universal respect for, and observance of, human rights and fundamental freedoms for all.

12. There seemed to be no need to stress the growing importance of human rights in inter-State relations and as a subject-matter of international conventions. Respect for human rights was one of the main foundations of peace and justice. The United Nations Charter was based essentially on the recognition of the equal and inalienable dignity and rights of the human person. That notion appeared in particular in the second paragraph of the preamble to the Charter, in Article 1 (3), in Article 13 (1 *b*) and in Article 55 (*c*).

13. Since the proclamation of the Universal Declaration of Human Rights a large number of instruments had been adopted elaborating on the major principles in the Declaration, in particular, the International Convention on the Elimination of All Forms of Racial Discrimination,[2] the International Covenant on Civil and political Rights [3] and the International Covenant on Economic, Social and Cultural Rights.[4] The unanimous adoption of the last two instruments by the General Assembly was a milestone in the efforts of the United Nations to ensure universal respect for human rights. Other instruments relating to human rights had been adopted within regional organizations. In particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms [5] concluded at Rome within the framework of the Council of Europe, had become a living reality in intra-European relations.

14. The adoption of those instruments showed that the international community was becoming increasingly aware that effective respect for human rights must be

[1] Amendments were submitted by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1); Sweden (A/CONF.39/L.43); Ecuador (A/CONF.39/L.44); Switzerland (A/CONF.39/L.45).

Proposed texts for the preamble had been submitted to the Drafting Committee by Mongolia and Romania (A/CONF.39/L.4) and Switzerland (A/CONF.39/L.5 and Corr.1).

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

[3] For text, see annex to General Assembly resolution 2200 (XXI).

[4] *Ibid.*

[5] United Nations, *Treaty Series*, vol. 213, p. 221.

ensured in State practice. The international community was coming increasingly to consider itself entitled to judge whether States were or were not respecting the norms of the most fundamental human rights. It was perhaps there above all that the area which, under Article 2 (7) of the charter, was essentially within the domestic jurisdiction of States was progressively narrowing. The importance of the relationship between the codification of human rights, their progressive development and the law of treaties scarcely needed stressing. It was to be noted that violation of fundamental human rights had probably been the example most frequently cited during the discussions on article 50. As certain human rights did indeed belong to the notion of *jus cogens,* the Conference would expose itself to justifiable criticism if it were not to embody in the preamble to the convention the principle of respect for human rights, the more so since other principles of international law had been included and certainly not all of them could be regarded as being likely to involve *jus cogens.*

15. It should also be borne in mind that the Conference had adopted the Swiss amendment to article 57 (A/CONF.39/L.31), the effect of which was that the provisions of that article concerning the right to invoke a breach as a ground for terminating a treaty or suspending its operation did not apply to treaties of humanitarian character.

16. Mr. REDONDO-GOMEZ (Costa Rica) said that his delegation had become a sponsor of the Netherlands amendment because respect for human rights was one of the Costa Rican nation's essential beliefs.

17. Mr. EEK (Sweden) said that his delegation served on the Drafting Committee and had participated in the work of the sub-committee on the preamble. Its amendment (A/CONF.39/L.43) did not mean that it disapproved of the Drafting Committee's text.

18. The seventh paragraph of that text contained a reference to the purposes of the United Nations, as set forth in Article 1 (1) of the Charter. One of the purposes enumerated in that paragraph of the Charter was not, however, included in the seventh paragraph of the Drafting Committee's text — the settlement of international disputes by peaceful means. That was because the Drafting Committee had thought that the settlement of international disputes by peaceful means was so important that it should be mentioned in a separate paragraph of the preamble. The principle had therefore found expression in the fourth paragraph.

19. His delegation nevertheless thought that in the fourth paragraph of the preamble the Conference should closely follow the wording of Article 1 (1), of the Charter, which provided that international disputes were to be settled by peaceful means and " in conformity with the principles of justice and international law ". His delegation's amendment was in keeping with the ideas the Drafting Committee had had in mind when drawing up the text of the preamble.

20. Mr. RUEGGER (Switzerland) said that his delegation's amendment (A/CONF.39/L.45) reflected a tradition exemplified in particular by the Conventions on the Law of the Sea and the Conventions on Diplomatic Relations and on Consular Relations. The Swiss delegation thought that consideration should be given to precedents and practice on the subject.

21. Admittedly, the Conference had succeeded in reducing a new and substantial part of customary law to writing; but gaps remained, so that occasionally it was still necessary, in the practice of international relations, to fall back on custom.

22. Mr. ALCIVAR-CASTILLO (Ecuador), introducing his delegation's amendment (A/CONF.39/L.44), said that the legal effect of preambles to international conventions had long been a subject of academic controversy. The opinion had finally prevailed that the preamble was to be considered as an integral part of the treaty, in other words that it became a source of legal obligations. That was his delegation's view of the preamble proposed to the Conference.

23. The third paragraph stated that the principle of good faith and the *pacta sunt servanda* rule were universally recognized; his delegation was glad to see that a distinction had been made between a principle and a rule. Good faith was a principle which governed contractual acts and which must inevitably be reflected in the intentions of the contracting parties, in the nature of the obligations contracted and in the right to insist that they be respected. In the past, the policy of powerful States had been to foster the belief that the *pacta sunt servanda* rule was sacrosanct, so as to consolidate their position of strength. The peremptory norms of international law which, regardless of the will of States, governed the international legal order, limited the legal effect of the *pacta sunt servanda* rule, and that fact was fully recognized in the preamble.

24. His delegation considered, however, that the third paragraph was incomplete. During the debate on article 2 in the Committee of the Whole, it had submitted an amendment (A/CONF.39/C.1/L.25/Rev.1) proposing, *inter alia,* the addition of the words " freely consented to " in the definition of the term " treaty ". The substance of that amendment had met with no objection, and it was therefore generally accepted that freedom of consent was a legal principle which governed contractual acts as a peremptory and fundamental rule. The only objection which had been put forward was that article 2 did not give general definitions, but specified the meaning given to certain terms in the convention. His delegation had accepted that argument at the time, but had reserved the right to revert to the matter when the preamble was discussed. It was convinced that the objection raised in connexion with article 2 was not valid in respect of the preamble, which dealt with general concepts. The purpose of the Ecuadorian amendment was to ensure that the universal recognition of the principle of good faith and the *pacta sunt servanda* rule also covered another legal principle, which unquestionably had mandatory force.

25. With regard to the Swiss amendment (A/CONF.39/L.45), he said that in the international sphere, custom had often been imposed by powerful States; there had

been certain unacceptable practices which it was still impossible to forget. But, with the development of treaty law as a source of general international law, especially after the international community had become legally organized through the League of Nations, customary practice tended to find its source in treaty rules, in other words treaty rules acquired a universal dimension as a result of custom. For those reasons his delegation accepted the Swiss amendment.

26. The Ecuadorian delegation also supported the Swedish amendment (A/CONF.39/L.43); it was of particular importance because it reproduced the rule set forth in Article 1 of the United Nations Charter. That rule had been included in the Charter as a result of the efforts of small States and despite the opinion of the Dumbarton Oaks experts who, on the pretext of political realism, had advocated the maintenance of international peace and security at any price, even at the expense of justice and international law.

27. His delegation further supported the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1), which introduced the idea of the observance of human rights and fundamental freedoms.

28. He hoped that the text of the preamble, as well as the amendments submitted, would be adopted.

29. Mr. PELE (Romania) said that the preamble to an international convention was important, because it was from the preamble that the significance of the provisions and terms of the convention should become apparent. The draft preamble submitted by the Drafting Committee fulfilled that basic function. By its reference to the role of treaties in the history of international relations, the proposed text drew attention to the use which peoples had made of the agreements and conventions to which they had had recourse since the earliest stage of their existence as organized human communities. The development of international society had confirmed the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation between States, whatever their constitutional and social systems. That was bound to be the case, since a treaty was the outcome of the free exercise of the will of States as sovereign entities. It rested on the recognition of certain rules of international conduct, in the absence of which law and peaceful co-operation between States would be impossible. With that in mind, the preamble stated that the principle of good faith and the *pacta sunt servanda* rule were universally recognized.

30. The draft preamble emphasized a fact which was essential for treaty law as a whole, namely that the *pacta sunt servanda* rule represented the application of the principle of good faith to the performance of treaties. That principle held good at all stages in the existence of a treaty, including conclusion, entry into force, interpretation and termination.

31. Treaty relations between States could be built up on the solid foundation provided by the principles of international law embodied in the United Nations Charter. In essence, those principles were the equal rights and self-determination of peoples, the sovereign equality and independence of States, the prohibition of the threat or use of force, and non-interference in the domestic affairs of States. The international personality of States, and hence their capacity to conclude treaties and freely to consent to be bound by treaties, were inconceivable without the strict observance of those principles, which were of universal application. His delegation was convinced that the codification of treaty law would serve the cause of justice in international life and thus help to maintain international peace and security and develop friendly relations and co-operation among States.

32. His delegation noted with satisfaction that the draft preamble took into account certain ideas by which it had been guided when, jointly with the Mongolian delegation, it had proposed a draft preamble for consideration by the Drafting Committee (A/CONF.39/L.4). It nevertheless thought that the preamble should also embody the principe expressed in the text submitted by Mongolia and Romania, namely that every State, in conformity with the principle of the sovereign equality of States, had the right to participate in the conclusion of multilateral treaties of concern to the international community in general. The inclusion of that principle in the preamble would give the convention the breadth which, as an instrument of universal application, it ought to have. His delegation would nevertheless support the additional paragraph whose inclusion had been proposed by some members of the Drafting Committee, which stated that the benefits of international co-operation should be ensured to all and that every State had the right to enter into international treaty relations. In the light of what he had stated, the Romanian delegation approved the draft preamble submitted by the Drafting Committee; it was rich in substance and accorded well with the convention as a whole.

33. Mr. ALVAREZ (Uruguay) said he wished to refer to the considerations that had weighed with the Drafting Committee in drafting the proposed wording. The main point it had borne in mind was that the preamble formed part of the context of the convention and that it was of great importance for the purpose of interpreting the instrument. Consequently a natural legal link must be maintained between the preamble and the actual text of the convention by including only what was strictly necessary, and making a careful choice of the formulas and terms used. The text was accordingly based on the terminology used in the United Nations Charter. In addition, an effort had been made to provide a short, concise and objective text which would bring out as clearly as possible the true meaning of treaties as a source of international law, their importance in the development of international relations, and the significance of the work of codification and progressive development of international law. Consequently there had been a deliberate exclusion of any ideas which, however well-founded, were extraneous to the convention, or which might introduce an element of confusion into its interpretation and weaken the basic principles set forth, or which might be regarded as superfluous. In short, the aim had been to draft an eminently legal preamble for a convention whose content was eminently legal.

It was in the light of those considerations that the delegation of Uruguay had examined the amendments proposed.

34. With respect to the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1), he said that the sixth preambular paragraph listed the principles of international law embodied in the United Nations Charter, which it had been considered appropriate to refer to for the purposes of the convention. The Drafting Committee had therefore followed the text of Articles 1 and 2 of the Charter, which were to be found in Chapter I, entitled " Purposes and Principles ". His delegation had no objection to the inclusion of the words " and of universal respect for, and observance of, human rights and freedoms for all ", but he wished to point out that those words appeared not in Articles 1 and 2 of the Charter but in Article 55, which was part of Chapter IX, " International economic and social co-operation ". It would be better to adhere to the language used in Articles 1 and 2, in order to keep a uniform terminology. He understood that the Drafting Committee had not wished to include that principle because it had no special link with the convention.

35. His delegation would support the Swedish amendment (A/CONF.39/L.43) because it corresponded to Article 1(1) of the Charter, which provided that international disputes should be settled not only by peaceful means, but also " in conformity with the principles of justice and international law ". The amendment introduced a constructive element into the preamble, and faithfully reproduced the language of the Charter.

36. The notion of free consent embodied in the amendment by Ecuador (A/CONF.39/L.44) was undoubtedly well founded, but it would be better to include it in a separate paragraph concerning the conditions governing the validity of treaties. It was a notion that was quite different in character from the principle of good faith and the *pacta sunt servanda* rule referred to in the third paragraph.

37. He regretted that his delegation would be unable to support the Swiss amendment (A/CONF.39/L.45). He did not believe the amendment reflected legal reality, and it would introduce an element of confusion into the preamble. Questions not expressly regulated by the provisions of the convention would continue to be governed by the general rules of international law, regardless of their source, in conformity with Article 38 of the Statute of the Iinternational Court of Justice.

38. Mr. MARESCA (Italy) congratulated the Drafting Committee on its text. All the amendments before the Conference had merits of their own and deserved careful examination.

39. His delegation supported the Swedish amendment (A/CONF.39/L.43), since it believed that it was essential that disputes should be settled by peaceful means and in conformity with the principles of justice and international law. If the Conference succeeded in agreeing on an article to replace article 62 *bis,* the situation would be clearer, but it would be as well to state that principle at the beginning in order to show that it was one of the essential elements in the structure of the convention.

40. There were reasons of tradition and of law, as well as practical reasons, to recommend the Swiss amendment (A/CONF.39/L.45). Tradition had its value and was embodied in such instruments as the Conventions on Diplomatic Relations and on Consular Relations. From the legal point of view, the rules of customary law were of cardinal importance; the Conference had tried to make rules that would cover everything, but even so it had left many matters aside. The rules of customary law existed, and it was desirable to state at the outset that those rules would continue to govern questions which had not been expressly regulated by the provisions of the convention. From the practical point of view, the competent departments in Ministries of Foreign Affairs would find it useful to be able to have recourse to the rules of customary law in cases where the convention gave no guidance. The final paragraph of the preamble to the convention would thus refer to certain rules which remained valid, and the Swiss amendment therefore deserved support.

41. Mr. KOULICHEV (Bulgaria) said the legal importance of the preamble to the convention should be stressed, since it set out the aims agreed upon by the parties when concluding the convention and recited in general terms some of the basic elements on which the law of treaties was based. It would therefore be of great importance for the interpretation of the convention.

42. The merit of the Drafting Committee's proposed preamble was that it laid stress on certain extremely important aspects of the law of treaties, and at the same time its arrangement followed that of the introductory texts of the major instruments of codification drawn up in recent years, such as the Convention on the Law of the Sea and those on Diplomatic and Consular Relations.

43. The draft preamble should, however, be completed by including the principle stated in the proposal by Mongolia and Romania (A/CONF.39/L.4), that every State had the right to establish international treaty relations. It was infortunate that that idea had not been accepted by the Drafting Committee, since it was a basic right of every State and a manifestation of the principle of the sovereign equality of States and of their right and duty to participate in international co-operation. The importance of that element to the law of treaties was evident and it should have a place in the preamble to the convention.

44. His delegation also considered that it should be affirmed in the preamble that the rules of customary international law would continue to govern questions not expressly regulated by the provisions of the convention. That idea had been embodied in the draft by Mongolia and Romania and was reproduced in the Swiss amendment.

45. The Bulgarian delegation had no objection to the amendments submitted by Sweden, by the Netherlands and Costa Rica, and by Ecuador.

46. Mr. DE CASTRO (Spain) said his delegation was highly satisfied with the draft preamble submitted by

the Drafting Committee. As each of the amendments had characteristics of its own, he would examine them in turn.

47. The purpose of the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1) was to complete the list of the principles and rules of a *jus cogens* character listed in the sixth paragraph of the preamble. The new example given was an excellent one and his delegation had no objection to the amendment.

48. The Swedish amendment (A/CONF.39/L.43) was in conformity with the views and wishes of the international community, which held that to proclaim principles was not enough; they must be respected in practice and put into effect by means of appropriate procedures. The Spanish delegation supported the proposal.

49. His delegation could not accept the amendment by Switzerland (A/CONF.39/L.45). The intention in the amendment was apparently to exclude the principles of law referred to in Article 38 of the Statute of the International Court of Justice and also to modify what had already been adopted in article 77; for the reference in article 77 to customary law had been replaced by a reference to the rules of international law because it had been thought necessary to include a reminder of the existence of the general principles of law.

50. The amendment by Ecuador (A/CONF.39/L.44) widened the scope of the convention by a reference to " free consent ". The reference to that notion established a link between the preamble and Part V of the convention.

51. The paragraph which some members of the Drafting Committee had been in favour of adding [6] reproduced an idea put forward by Mongolia and Romania, and mentioned also in the draft resolution proposed by Spain (A/CONF.39/L.38). The Spanish delegation would be glad to see a reference to that principle either in the preamble or in the form of a resolution.

52. Mr. NYAMDO (Mongolia) said that his delegation had tried to participate to the utmost in the Conference's work and, in conjunction with the Romanian delegation, had submitted a draft preamble (A/CONF.39/L.4). It had noted with satisfaction, in reading the draft preamble submitted by the Drafting Committee, that the Committee had adopted almost all the basic ideas set out in the Mongolian and Romanian draft. The preamble was a very important element in a convention, since it gave an indication of the spirit and essential meaning of what had been agreed.

53. His delegation would also support the paragraphs which had not been included in the proposal in document A/CONF.39/L.4 and had been added by the Drafting Committee. In particular, the second paragraph of the preamble was very useful, for it accurately reflected the existing situation with regard to the development of treaty relations. International agreements were indeed an important source of international law. His delegation would not oppose the fourth paragraph of the preamble, since it had always considered that disputes should be settled by peaceful means.

54. Unfortunately, there was one question upon which the members of the Drafting Committee had not been able to agree, namely the right of every State to participate in international treaties. The proposed additional paragraph was a compromise solution, and his delegation of course preferred the wording in the draft preamble proposed by Mongolia and Romania, but it would nevertheless support the compromise formula.

55. So far as the amendments were concerned, his delegation was in favour of the Swiss proposal (A/CONF.39/L.45).

56. Mr. KEARNEY (United States of America) said he supported the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1). His delegation was also of the opinion that the wording of the preamble to the convention should be brought into line with that of the Charter, as proposed in the Swedish amendment (A/CONF.39/L.43).

57. He had been impressed by the logic of the Uruguayan representative's analysis and was convinced by his arguments. He was therefore unable to support either the Swiss amendment (A/CONF.39/L.45) or the amendment by Ecuador (A/CONF.39/L.44).

58. It was not clear to his delegation whether the additional paragraph mentioned by the Chairman of the Drafting Committee was formally before the Conference as an amendment to the proposed preamble. Some speakers appeared to be acting on that assumption. If that was indeed the case, his delegation would oppose the addition of the paragraph, because it considered it to be a political provision introduced from political motives. It added nothing to the text of the preamble and prejudged the whole question to which it related.

59. Turning to the last paragraph of the Drafting Committee's text, he said that it was his firm conviction that " the codification and progressive development of the law of treaties achieved in the . . . Convention will promote the purposes of the United Nations ". He hoped, in particular, that the Conference would solve the problems still to be overcome on the question of the settlement of disputes. In that connexion, it had been suggested at previous meetings that the United States had never really wanted the Conference to be a success and had never really worked towards that end. He wished to state most emphatically that such insinuations were completely baseless. The United States delegation had spared no effort to enable the Conference to solve the problem of the settlement of disputes. That was proof of its sincere interest in a successful Conference and Convention. It still hoped that the efforts to achieve a positive result, towards which it had consistently contributed, would be successful.

60. Mr. NASCIMENTO E SILVA (Brazil) said that the preamble submitted by the Drafting Committee, following a useful initiative by Mongolia and Romania (A/CONF.39/L.4), was most satisfactory.

61. However, from the very outset the Brazilian delegation had been surprised to find that the preamble contained no reference to customary international law,

[6] See above, para. 9.

a basic principle which was constantly mentioned in the preambles to international conventions. His delegation had been about to submit an amendment designed to remedy that oversight, only to find that Switzerland had already done so (A/CONF.39/L.45), as it had in 1961 in connexion with the Convention on Diplomatic Relations and again in 1963 in connexion with the Convention on Consular Relations.

62. Since customary international law had been mentioned in the preamble to those Conventions, it ought to be referred to in the convention on the law of treaties. The absence of any reference to it might create confusion when the convention was being interpreted in the future. If customary international law had not been mentioned in the earlier conventions, it might have been held that there was no need for a reference to it in the present convention. As it was such a reference was unavoidable.

63. Some representatives had argued that there were other sources of international law; reference had been made, for instance, to the 1928 Havana Convention on Treaties. The Havana Convention would continue to apply under article 26 of the convention on the law of treaties. Moreover, under article 34 of the convention on the law of treaties, the Havana Convention would also apply to the many States which had not yet ratified it.

64. He would also remind the Conference that, when article 77 was being discussed in the Committee of the Whole, the representative of Spain had observed that the expression " customary international law " was broad enough to encompass certain supplementary sources of law; the statute of the International Law Commission included among those sources the decisions of national and international courts. The Brazilian delegation considered that the Swiss amendment (A/CONF.39/L.45) should be adopted unanimously.

65. His delegation also supported the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1) for the reasons that had led the Conference to adopt the Swiss amendment which now formed part of the convention as paragraph 5 of article 57.

66. Mr. YASSEEN (Iraq) said he had no objection to the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1) and would vote for it. He would also vote in favour of the Swedish amendment (A/CONF.39/L.43).

67. With regard to the Ecuadorian amendment (A/CONF.39/L.44), the idea which it sought to emphasize was already implicit in the notion of good faith. Moreover, a whole series of articles of the convention were concerned with " consent " to be bound by a treaty. However, the idea was perhaps worth mentioning in the preamble itself and he would therefore vote in favour of the amendment.

68. The paragraph proposed in the Swiss amendment (A/CONF.39/L.45) had been included in the two codification conventions signed at Vienna in 1961 and 1963. The subject in question belonged to the general theory of law and the general principles of international law. There was no great objection to a reference to customary law in the convention on the law of treaties since there were precedents for it, but the wording proposed by Switzerland, which was that used in the two Vienna Conventions, was not sufficiently exact and precise. The word " expressly " was open to criticism, for the rules which applied were subject to interpretation and the questions which arose were settled either directly — in other words, " expressly " — or indirectly, in other words " implicitly ". An implicit rule was as valid as an explicit rule. The word " expressly " would be prejudicial to the convention since it would unduly limit its scope. The Swiss proposal should therefore be amended accordingly.

69. Mr. KHLESTOV (Union of Soviet Socialist Republics) said the Drafting Committee had made a constructive and positive contribution by setting out in the text of the preamble it had submitted to the Conference the most important of the principles on which the law of treaties relied, namely the principle of good faith, the *pacta sunt servanda* rule, the need to settle disputes by peaceful means, and so on.

70. In the same spirit, howerer, it should be possible to include in the preamble a mention of the principle of universality. He did not wish at that stage to rehearse afresh all the arguments in favour of inserting that principle, but he would stress that logic dictated the need to complete the preamble in that way so as to bring it truly into conformity with the purposes of the convention.

71. The Drafting Committee had submitted to the Conference, as it was bound to do, both the text approved unanimously by its members and a paragraph which only some of its members had been willing to accept. The Soviet Union delegation had no doubt that the paragraph had been submitted to the Conference because it was for the Conference to take the final decision. Consequently, the Conference must take a decision both on the text of the preamble submitted by all the members of the Drafting Committee and on the additional paragraph which would ensure that there was a reference to the principle of universality in the preamble to the convention on the law of treaties. His delegation thought that the paragraph might have been better drafted, but it was nonetheless acceptable as it stood.

72. He had no objection in principle to any of the amendments. The wording of the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1), which proposed to reproduce in the text of the preamble the actual language of the Charter, might be brought even closer to the text of Article 1(3) of the Charter; it might read: " . . . and the need to promote and encourage respect for human rights and for fundamental freedoms for all ". The sponsors might perhaps be willing to bear that suggestion in mind.

73. With regard to the Swedish amendment (A/CONF.39/L.43), the reference might be simply to " the principles of international law ", since " justice " had already been mentioned in the fifth paragraph of the Drafting Committee's text of the preamble. There was, however, no real difficulty involved.

74. The Russian version of the Ecuadorian amendment

(A/CONF.39/L.44) called for certain corrections by the Soviet Union delegation, which it would transmit in due course.

75. The Swiss amendment (A/CONF.39/L.45) called for no comment.

76. He noted that the United States representative had assured the Conference of his delegation's desire for compromise and conciliation. The Soviet Union delegation, like many other delegations, considered that a reference to the principle of universality in the preamble to the convention was essential. A mention of the principle in the preamble would cause the Soviet Union delegation to take a certain position on the convention as a whole. A refusal by the Conference to include a mention of the principle would cause the Soviet Union to take a different position on the Conference's work of codification.

77. In the circumstances, he had no objection to an immediate vote on the various amendments (A/CONF.39/L.42, L.43, L.44 and L.45), subject to the drafting suggestions he had made, if their sponsors so wished, but he would ask the Conference to postpone the vote on the Drafting Committee's draft preamble as a whole and on the paragraph inserting a reference to the principle of universality in the preamble.

78. Mr. ROMERO LOZA (Bolivia) said he supported the principle underlying the Swiss amendment (A/CONF.39/L.45), but thought it was too restricted, since it gave the impression that questions which had not been expressly regulated in the convention would continue to be governed by the rules of customary law alone. It should be couched in broader terms.

79. His delegation would vote for the amendment by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1), since Bolivia traditionally supported any proposal calculated to enhance the importance of fundamental freedoms.

80. It also very strongly supported the Ecuadorian amendment (A/CONF.39/L.44); the merits of the principle of freedom of consent were universally recognized. Since it had not been possible to state that principle expressly in article 2, it should be mentioned in the preamble.

81. His delegation would also vote for the Swedish amendment (A/CONF.39/L.43), the purpose of which was to secure closer co-ordination of the sources of international law.

82. Mr. SINHA (Nepal) observed that the conciseness and objectivity of the preamble submitted by the Drafting Committee harmonized perfectly with the convention itself. It was in conformity with the purposes of the United Nations Charter and gave due prominence to the rights and dignity of States, whether powerful or weak. It was well known that the preamble to a treaty contained the key to the interpretation of any obscure or ambiguous provisions. From that point of view the Drafting Committee's text of the preamble met all the conditions required for an introduction to the convention.

83. He wished to make a drafting suggestion for consideration by the Drafting Committee, though he was not submitting it as a formal amendment; in the last line of the second paragraph the phrase " whatever their constitutional and social systems " should be replaced by the words " irrespective of their constitutional and social systems ". The former phrase was not consistent with the dignity characterizing the remainder of the text and put the matter in a rather negative way, whereas the latter would be more suited to the context and was more positive.

84. All the amendments were useful. His delegation would vote for them, but, in any event, whether the amendments were adopted or rejected, it would vote for the text of the preamble submitted by the Drafting Committee. It would, however, have wished the principle of universality to be included in the preamble.

85. The PRESIDENT said that the Nepalese representative's suggestions would be referred to the Drafting Committee.

The meeting rose at 12.55 p.m.

THIRTY-SECOND PLENARY MEETING

Tuesday, 20 May 1969, at 9 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)*

TEXT OF THE PREAMBLE SUBMITTED BY THE DRAFTING COMMITTEE *(continued)*

1. The PRESIDENT invited the Conference to continue its consideration of the preamble submitted by the Drafting Committee (A/CONF.39/18) together with the amendments by the Netherlands and Costa Rica (A/CONF.39/L.42 and Add.1), Sweden (A/CONF.39/L.43), Ecuador (A/CONF.39/L.44) and Switzerland (A/CONF.39/L.45).

2. Mr. ALVAREZ TABIO (Cuba) said that the Drafting Committee's text provided a good working basis for the preparation of the final wording of the preamble, but he had reservations regarding the last paragraph. His delegation could not agree that the purposes of the Charter to which it referred would be promoted by excluding the principle of universality. On the contrary it was a retrograde step which took the Conference further away from the fundamental objective of developing friendly relations among nations and achieving international co-operation.

3. Nor was his delegation convinced that the great task of codification undertaken in the convention would be fulfilled, since the inclusion of article 77 removed from the convention as such the authority to state with immediate effect the *lex lata* rules it contained.