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Thirty-third plenary meeting

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THIRTY-THIRD PLENARY MEETING

Wednesday, 21 May 1969, at 11.55 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)*

Proposal for the reconsideration of article 19 (Legal effects of reservations) *(continued)*

1. The PRESIDENT said that at the previous meeting the Conference had requested the Drafting Committee to review the text of article 19. He asked the Chairman of the Drafting Committee what were the Committee's conclusions.

2. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had accepted the four-State amendment (A/CONF.39/L.49) to article 19, paragraph 3, so that the final phrase in paragraph 3, reading " the reservation has the effects provided for in paragraphs 1 and 2 ", had been replaced by the words " the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation ". It was necessary to distinguish between cases where a State objected to a reservation but agreed that the treaty should nevertheless come into force, and cases in which the reservation was accepted.

3. Sir Francis VALLAT (United Kingdom) said that the matter was a technical one and it was not easy to arrive at a correct decision. The text as adopted by the plenary Conference had been clear and its effects had been evident. As a result of the change made by the Drafting Committee, the question was whether article 19, paragraph 3 produced the following effect: if a reservation was formulated and if an objection was then made to that reservation, but the objecting State did not state that it wished to prevent the treaty's entry into force, would the treaty come into force for the two States concerned, with the exception of the provisions to which the reservation applied? If that was the effect of the provision, to what kind of reservations was it applicable? And what would the effect be if the reservation purported to modify, rather than to exclude, the application of a treaty provision?

4. In the view of the United Kingdom delegation, it was clear that the convention either operated subject to any reservations made, whether or not objections had been raised to those reservations, or did not operate at all. The convention could not be allowed to operate subject to an unresolved dispute as to the effect of a reservation to which objection had been made. That would lead to the kind of confusion which the States meeting in the Conference had been trying to avoid.

5. His delegation was not asking at that late stage in the Conference's work for a vote on the change made in article 19, paragraph 3. However, if the Conference had been asked to vote, the United Kingdom would have voted against the change.

6. The PRESIDENT said he construed the revised article 19 to mean that if a State made a reservation affecting a provision of a treaty and another State objected to that reservation without saying that it was opposed to the treaty's entry into force, the treaty entered into force between the two States, except for the provision to which the reservation had been made.

7. Mr. YASSEEN, Chairman of the Drafting Committee, said that the President's interpretation was correct. It had to be remembered, too, that the question raised in article 19 should be kept distinct from the entirely different question of the formulation of reservations.

8. Sir Francis VALLAT (United Kingdom) said the explanations of the change made in article 19 on the lines of the four-State amendment (A/CONF.39/L.49) confirmed his opposition to it.

9. Mr. KEARNEY (United States of America) said he was still rather puzzled about the meaning of the words " to the extent of the reservation " which apparently would now be used in article 19, paragraph 3.

10. Mr. YASSEEN, Chairman of the Drafting Committee, explained that where, for example, a reservation formulated by a State affected only the first three paragraphs of an article, only those three paragraphs would not operate as between the reserving State which had raised an objection to that reservation without opposing the entry into force of the treaty.

11. Mr. USENKO (Union of Soviet Socialist Republics), speaking on a point of order, asked what decision the Conference was taking on the revised text of article 19.

12. The PRESIDENT noted that no formal objection had been made to the text of article 19, as revised by the Drafting Committee in accordance with the four-State amendment (A/CONF.39/L.49). He suggested that it should therefore be considered as having been finally adopted.

It was so agreed.

Proposed new article

13. Mr. PINTO (Ceylon) said he wished to introduce, on behalf of its twenty-two sponsors representing all regions of the world, the text of a new article (A/CONF.39/L.36 and Add.1), which was identical with that introduced by the Syrian representative at the 89th meeting of the Committee of the Whole (A/CONF.39/C.1/L.388 and Add.1).

14. The proposed article provided that

> Every State has a right to participate in a multilateral treaty which codifies or progressively develops norms of general international law or the object and purpose of which are of interest to the international community of States as a whole.

15. He would not repeat the arguments which the supporters and opponents of that provision had already

had an opportunity of putting forward during the debate on the former article 5 *bis*,[1] but he would like to make certain comments.

16. It was the very essence of international law that any State could participate in developing and codifying norms intended to be of universal application and, in effect, to constitute international legislation. Unlike domestic law, international law was applied not by the action of a central authority with coercive powers, but simply by the consent of States. The logical consequence was that the community of States as a whole had an interest in ensuring the widest possible acceptance of norms of general international law by enabling the greatest possible number of States — all States, in fact — to participate in multilateral treaties, and indeed encouraging them to participate.

17. His delegation believed that the question whether the convention on the law of treaties should include a provision giving effect to the " all States " principle had nothing to do with the question of the recognition of States. There could be no possible doubt that participation by a State in a general multilateral treaty together with an entity which it did not recognize as a State could not mean that it accorded that entity the status of State in any way whatever. That was true regardless of whether the State concerned did or did not make an explicit declaration to that effect in the instrument in which it expressed its consent to become a party to a treaty. Indeed, very many of the States represented at the Conference were already, if only by their attendance at the Conference, parties to multilateral arrangements together with entities which they did not recognize as States. That could not be regarded in any way as a proof of recognition either in the legal or in the political sense.

18. It had been argued that even if it was logical to desire that all States should be able in principle to participate in general multilateral treaties, it would be politically and economically unrealistic at the present stage to state that principle in the convention. But a choice would then have to be made between two kinds of reality. Either it was accepted that there were certain entities so far kept on the fringe of the international community which it would nevertheless be desirable to see acting in conformity with the rules which that community considered it appropriate to adopt; that was the reality of a world governed by law, a world in which law would apply to all entities regardless of their political and economic systems. Or the decision was taken to abide by the transient reality of certain political situations which for the moment were accorded an importance disproportionate to their real significance.

19. Others claimed that the inclusion of an " all States " formula would oblige States to enter into relations with entities whose social system or political philosophy were contrary to accepted moral principles and would even be tantamount to condoning the crimes of which such entities might be guilty. But permission to States to participate in the establishment or development of international law should not be handed out like prizes for good behaviour; from a tactical point of view, it should rather be regarded as a means of converting the minority to the views of the majority and ensuring the widest possible application of the rules of law or, in other words, of safeguarding peace among the nations.

20. It was true that what was known as the " all States " formula might give rise to certain difficulties for depositaries, especially where the depositary was an international organization. But those were technical and mechanical problems which the Conference was certainly capable of solving.

21. In co-sponsoring the new article the Ceylonese delegation had purely practical and technical considerations in mind. It was in no way seeking to promote the acceptance of some particular entity or group of entities by the international community; nor did it wish to cause difficulties for any particular State. The difficulties which had been foreseen and had been adduced as arguments against the " all States " formula were largely illusory and did not weigh heavily in the balance against the usefulness of the " all States " formula to the community of States as a whole and to international law.

22. The rejection of the principle stated in the new article would be a signal failure on the part of the Conference and might even make the entire convention unacceptable to some States.

23. Speaking for the Ceylonese delegation alone, he wished to state that in its opinion the best should not be allowed to become the enemy of the good; if the Conference could not accept the principle of universality in the form of the proposed new article, his delegation would be prepared to co-operate with any other delegations anxious to reach an acceptable compromise on the point, provided that it did no violence to the basic philosophy underlying the principle of universality.

24. Mr. WYZNER (Poland) reminded the Conference that the President, when opening the second session, had drawn attention to the responsibility of the participants towards the international community as a whole. As the President had said on that occasion, the purpose of the convention was " to define and reformulate the general rules by which the conclusion and the life of treaties would be governed in the future ".[2] The Polish delegation fully shared the President's opinion in that respect. The Conference should adopt solutions which would promote the development of international relations, with a view to maintaining and reinforcing international peace and security. Such solutions could not take into account the short-term political interests of different States, which naturally underwent continuous change.

25. His delegation wished to stress the necessity of confirming in the convention the right of every State to participate in multilateral treaties which codified or progressively developed norms of general international

[1] See 89th, 90th, 91st and 105th meetings of the Committee of the Whole.

[2] See 6th plenary meeting, para. 5.

law, or the object and purpose of which were of interest to the international community as a whole. That was the formulation employed in the proposal jointly submitted by twenty-two States, including Poland (A/CONF.39/L.36 and Add.1).

26. In view of the close interdependence of all States in the contemporary world and their common responsibility for the destinies of humanity, his delegation believed that general multilateral treaties should be open to every State without exception. It was with that aim in view that the three-depositary formula had been introduced into some of the most important recent treaties relating to international peace and security and international co-operation in various spheres.

27. The convention on the law of treaties would be incomplete unless it laid down the principle of universality as a means of ensuring respect for the sovereign equality of States. That principle was the very foundation of contemporary international law and international friendly relations. It was not very long since the time when the creation of international law had been the work of only a small group of European States, which had reached arbitrary decisions on the destinies of the world and on the standards to be met by States or by what were called " civilized nations ". Colonialism, however, had been virtually eliminated and many States had attained independence.

28. Yet there were still countries which refused, for political and ideological reasons, to recognize the rights of certain States. In order to justify that policy they maintained that universal participation in general multilateral treaties was incompatible wih the right of every State to choose its treaty partners. That was a very unconvincing argument. Firstly, before the Second World War, the treaties referred to in the proposed new article had generally been open to all States, so the right to choose partners could not be regarded as a crucial or even a valid factor in the case of such treaties. Secondly, it might be asked whether the " old Vienna formula " really ensured freedom in the choice of partners. Its three elements represented over one hundred States, some of which did not recognize each other or lived in a state of continuous tension and conflict. Such States would certainly not choose each other as contracting parties if the choice really lay with them. A closer examination of the " old Vienna formula " showed that the only States excluded from it were certain socialist States. It was thus quite clear that the formula was purely political and discriminatory. Moreover, it did not take account of the provision of article 5, paragraph 1, of the convention, under which every State possessed capacity to conclude treaties.

29. It was not difficult to define the multilateral treaties to which the principle of universality should apply. The question had never given rise to any serious practical difficulties and, if any arose in the future, the proposed new article would provide a clear-cut solution to the problem. Both the categories of multilateral treaties mentioned in the proposal were described in terms of objective criteria. What was more, the terms employed in the article had a well-defined meaning in contemporary international law. The terms " codification " and " progressive development of international law " were not merely used but also defined in the statute of the International Law Commission, and the expressions " general international law " and " object and purpose of a treaty " were to be found in articles of the convention on the law of treaties that had already been adopted. It was therefore clear that the sponsors of the proposed new article were referring only to treaties whose universality derived from the character of the treaty and from its object and purpose.

30. For those various reasons the Polish delegation took the view that the confirmation of the principle of universality in the convention, as proposed in the new article, would serve the cause of the development of international relations and co-operation among States. It went without saying that the convention on the law of treaties itself must be open to all States.

31. His delegation wished to point out that the success of the Conference in general and its own attitude to the convention would depend on the way in which the problem of universality was solved. It therefore appealed to the delegations participating in the Conference to remember, when they took a decision on the matter, that they had a responsibility towards the international community of States as a whole.

32. Mr. STREZOV (Bulgaria) said that his delegation, which was one of the sponsors of the new article, considered that its adoption would fill a gap in the convention by introducing a principle in harmony with the requirements of international life.

33. Participation in general multilateral treaties should be open to all States without any discrimination. The rule of the universality of such treaties derived from certain basic principles of international law set forth in the Charter of the United Nations, such as the principle of the sovereign equality of States, the duty of States to co-operate with each other, and the principle of the self-determination of peoples. It would be unjust and contrary to the principles of law to attempt to make compulsory for all States the rules contained in treaties concerned with the codification and progressive development of international law, and at the same time to prevent some of those States from participating in that kind of treaty. It was completely unreasonable deliberately to exclude those States from treaties which, by reason of their very aim and object, were concluded in the interests of the international community as a whole. Some had advanced the pretext that there must be respect for the freedom of States to choose the partners with which they wished to establish treaty relations; it had been asserted that universality was contrary to the practice of the United Nations and that it would create practical difficulties in connexion with the recognition of States, the functions of depositaries of multilateral treaties, and so forth. The lengthy debates on the subject in the Committee of the Whole had clearly shown that those arguments were unfounded.

34. In the last analysis, the only real motive for such opposition, a motive that the opponents of the principle of universality were not bold enough to state, was that

certain powerful States did not wish to recognize the existence of certain socialist States; in other words, there was a policy of discrimination against those socialist States. Possibly that point of view might have considerable weight in the foreign policy of certain countries, but it had no bearing on international law and the principles of the Charter. It was unacceptable that, on the basis of an argument that had nothing to do with law and justice, the future convention on the law of treaties should fail to embody the principle of universality, which was of special importance in the development of international law and of co-operation among States.

35. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said that the proposed new article, of which his delegation was a co-sponsor, affirmed the principle of universality which was absolutely essential in contemporary international relations.

36. During the Conference, however, some delegations had expressed opposition to that principle, sometimes by drawing tendentious comparisons, as the United Kingdom representative had done. The delegation of the Byelorussian Soviet Socialist Republic did not propose to follow the United Kingdom representative's example, since the aim of the Conference was not to engage in polemics but to attempt to draft an international legal instrument acceptable to all States.

37. His delegation had always subscribed to the principles of international co-operation and mutual respect among States.

38. Representatives who were opposed to the adoption of a principle of universality had failed to adduce sound and valid arguments in support of their position, which was simply based on their current political views. Those States were adopting a dangerous attitude by discriminating against certain States, by refusing to take into account the consequences of the Second World War and by seeking to absorb sovereign States. The States which refused to recognize the changes that had taken place in the world ought to realize that life was an irreversible process and that no one could turn the wheel of history back.

39. The States which adopted a discriminatory policy by preventing certain States from being parties to conventions on general international law and to the convention on the law of treaties would themselves be unable to conclude treaties with those States under the convention. However, that discriminatory policy failed because of the economic interests of States and the relations between the economic powers. The German Democratic Republic, a free and sovereign State which had economic relations with States whose population represented more than two-thirds of mankind, was a case in point. The German Democratic Republic was in diplomatic and consular relations with many States. It had signed numerous international agreements and took part in the work of many international organizations. Every year the German Democratic Republic increased the volume of its international trade and developed its economic, cultural and technical relations with a great many States.

40. It would be illogical not to take that fact into account and the absence from the convention of a provision affirming the principle of universality would reduce its value and effectiveness and give it a discriminatory character.

41. The question of treaties was of great importance to the development of international relations, and the international community took a deep interest in the question of developing international relations, in which international law was of the first importance.

42. The maintenance of peace and the strengthening of the principles of international co-operation and peaceful co-existence were essential to mankind and one of the best ways of achieving those aims was to allow all States to participate in general multilateral treaties.

43. Moreover, international law governed relations at the international level and was therefore of a universal character. The existence of the principle of universality was undeniable; it was reflected in a number of international legal instruments, such as the United Nations Charter. The Preamble of the Charter stated, in its first paragraph, that the peoples of the United Nations were " determined to save succeeding generations from the scourge of war, which . . . has brought untold sorrow to mankind "; the reference was to mankind as a whole and not just to some nations. The Preamble also stated that the peoples of the United Nations were determined to re-affirm their faith in the " equal rights of men and women and of nations large and small ". That was a perfectly clear statement which concerned all States without exception. Again, the Preamble of the Charter expressed the determination of the peoples of the United Nations " to employ international machinery for the promotion of the economic and social advancement of all peoples ". It was therefore surprising that certain States should object to the adoption of the principle of universality, since some general multilateral treaties related precisely to the question of the economic and social advancement of peoples. Moreover, Article 1(2) of the Charter declared that one of the purposes of the United Nations was " to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples "; it made no mention of any limitations in that connexion. States which opposed the adoption of the principle of universality were therefore seriously in breach of the provisions of the United Nations Charter.

44. The principle of universality had been accepted in a series of other legal documents, such as the Nuclear Test Ban Treaty, and had also been accepted in General Assembly resolutions.

45. No legal objection could therefore be raised against the inclusion in the convention of a provision affirming the principle of universality.

46. The delegation of the Byelorussian SSR urged all delegations to vote in favour of the new article and thus to demonstrate their desire to contribute to the

development of relations among all States on a basis of justice and to take part in the consolidation of international peace and security.

The meeting rose at 1 p.m.

THIRTY-FOURTH PLENARY MEETING

Wesdnesday, 21 May 1969, at 4.10 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 (continued)

1. The PRESIDENT invited the Conference to continue its consideration of the new article which had been proposed by twenty-two States (A/CONF.39/L.36 and Add.1).

2. Mr. USTOR (Hungary) said that his delegation was among those which had submitted the proposal for a new article designed to introduce the principle of universality into the text of the convention on the law of treaties. That principle had failed to secure the necessary majority in the Committee of the Whole, although in his opinion it was a basic and valid principle of contemporary international law. The new article would apply mostly if not exclusively to multilateral treaties concluded for the purposes of the codification and progressive development of international law; it would confirm the incontestable right of all States to participate in the process of codification. If the codification of international law was considered to mean the codification of general international law, in other words, of the law which should prevail all over the world, then the requirement of universality logically followed *ex definitione*. His delegation attached the utmost importance to the recognition of that principle in a convention on the law of treaties and would consider it most deplorable failure if the Conference did not recognize that principle and embody it in the instruments to be adopted.

3. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation considered the proposed new article essential for six reasons. First, because the principle of the universality of general multilateral treaties had its source in the very character of contemporary international law; secondly, because that principle had acquired vital importance by reason of the increase in the number of multilateral treaties being concluded at the present time; thirdly, because the right of States to participate in such treaties was derived from a basic principle of contemporary international law, namely, the principle of state sovereignty, according to which no single State could refuse to grant other States the same rights as it enjoyed itself; fourthly, because that principle took on added importance in the light of the objective rules of international law stated in Part V of the draft articles; fifthly, because it was also a necessary consequence of the idea of international co-operation, which was one of the most important principles laid down in the United Nations Charter; and sixthly, because the right of all States to participate in general multilateral treaties followed from the very nature of such treaties.

4. Universal participation in general multilateral treaties did not necessarily imply recognition of all the other parties to them and the establishment of treaty relations between them. The arguments advanced by the opponents of universality, who for political reasons persisted in refusing to recognize the existence of certain States, had therefore no proper foundation either in law or in fact.

5. His delegation wished to make it clear that, unless the principle of universality was embodied in the proposed new article or in some other articles, it would be unable to support the convention as a whole.

6. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that all the considerations and arguments advanced for and against the principle of universality were based on a complex of legal, practical and, unfortunately, political problems. Obviously, neither side could ignore the arguments of the other. The Ukrainian delegation, which was in favour of inserting in the convention a statement of the principle of universality without any restrictions whatsoever, had carefully considered the arguments of the delegations which wished to limit that progressive principle, and had become a sponsor of the proposed new article which now, in its opinion, constituted a golden mean and did not seriously prejudice the position of either side.

7. The participation of all States in multilateral treaties was the only just solution and would open up wide prospects, not least for the convention itself, since it would thereby become an instrument expressing the will of all States, instead of being, at best, adopted by an arithmetical majority. Adoption of the principle of universality, moreover, would enable all States to make their contribution to the common cause of strengthening world peace, developing friendly relations among nations and securing international co-operation in accordance with the United Nations Charter. Admission of a State to participation in multilateral treaties was neither a reward for good behaviour or evidence of goodwill, nor evidence of approval of its political system or its social and economic structure; a treaty was the result of the coincidence of the will and interest of States.

8. In a number of spheres, the interests of some States did not coincide with those of others. That was perfectly natural, for example, in the economic sphere. But there were areas where the interests of all or nearly all States were identical; that fact was borne out by the existence of treaties on the partial prohibition of nuclear tests, on the non-proliferation of nuclear weapons, on the peaceful uses of outer space and, finally, the convention on the law of treaties. Thus, there could be no doubt