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Thirty-fourth plenary meeting

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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

of the existence of treaties, the object and purpose of which were of interest to the international community of States as a whole. For example, European security was an object which could not be achieved without the participation of all the States concerned, and security as a whole was unthinkable unless all the States of Europe participated in its consolidation.

9. At the same time, his delegation understood the misgivings of those who had expressed the wish that participation in multilateral treaties should be unequivocally closed to régimes the very existence of which was illegal. But those misgivings were exaggerated, since the interests of illegal régimes could never by definition be compatible with the object and purpose of treaties which were of interest to the international community as a whole. For example, the interest of a racist régime would always be profoundly hostile not only to the interests of the people subjected to its rule, but to the entire international community.

10. The rules which had already been adopted by the Conference represented a balance of rights and duties in the sphere of the law of treaties. Only States could have rights and only States could carry out duties. The proposal of which the Ukrainian SSR was a sponsor referred not to régimes but to States, or the entities which possessed rights and were capable of assuming obligations. The Ukrainian delegation was sure that the Conference would listen to the voice of reason and adopt a principle which must have its lawful place in contemporary international law.

11. Mr. SMEJKAL (Czechoslovakia) said that the question of the universality of international multilateral treaties concerning general rules of international law, or involving the interests of all States, had been widely discussed during the first session of the Conference and all the arguments in its favour had already been presented. Now that the present session was drawing to a close, however, his delegation wished to emphasize one aspect of the problem which in its opinion deserved special attention.

12. In the interest of the peaceful development of international relations, all States should not only actually participate in creating international law in which international treaties were of paramount importance, but should also assume responsibility for ensuring respect for that law and for those obligations which were in the interest of all. It would be paradoxical if, instead of making greater efforts to persuade States to undertake obligations designed to improve their mutual relations, a situation should arise, merely as the result of certain bilateral relations, where the principle of universality was not reflected in the convention on the law of treaties. For those reasons, he appealed to all delegations to support the principle, which was in the interest of the international community as a whole.

13. Mr. SHUKRI (Syria) said that he wished to associate himself with what had been said by the preceding speakers in support of the principle of universality. No delegation, in fact, had pronounced itself against that principle, which made it all the more difficult to understand the failure so far to include a single article on it in the convention. Some delegations, indeed, had questioned the meaning of the term " every State ", although, ironically enough, they had found no difficulty in accepting that allegedly vague expression in a number of international treaties, such as the Nuclear Test Bar Treaty.

14. Another untenable argument was that the inclusion of an article on universality in the convention would introduce a political question which had no proper place at the present Conference. But since it was obvious, that every international legal question had some political aspects, he appealed to the Conference not to confuse the primarily legal question of the right of every State to participate in general multilateral principles with the primarily political question of the recognition of States. The fact that a State disliked the political or economic system of another State provided no legal ground for preventing that State from exercising its legitimate right of sovereign equality.

15. The right to conclude treaties was one of the aspects of State sovereignty. How was it possible to speak of the progressive development of international law through treaties while at the same time preventing certain States with populations of millions of people from participating in law-making treaties, in particular the convention on the law of treaties itself? In view of the impasse in which the Conference now found itself as the result of the stubborn refusal of some delegations to recognize the principle of universality, it was clear that the convention might fail to receive support from an important group of States. He appealed to all delegations, therefore, to make an effort to reach a satisfactory solution.

16. Mr. BOLINTINEANU (Romania) said that the principle of universality embodied in the proposed new article applied to a category of multilateral treaties which had their substantive source in the objective trends of inter-State relations, in the requirements of international co-operation, as set forth in the United Nations Charter, and in the fundamental principles of international law which governed such co-operation. The existence of multilateral treaties, which were open to the participation of all States, was confirmed by long practice, but the practice followed in the United Nations of restricting the universal application of treaties was hardly normal and reflected a discriminatory policy which was contrary to the principles governing international relations and the requirements for their further development. The lack of any juridical basis for that practice was illustrated, *inter alia,* by the fact that in certain cases it had been abandoned.

17. It should now be abandoned once and for all and the Conference could take the only decision necessary, namely to recognize the principle of universality in connexion with the multilateral treaties referred to in the proposed new article. Adoption of that article would fill a gap in the convention and provide a just solution to a particularly important problem concerning the rule of law in international relations. By acting in support of co-operation and realism, the Conference could thus ensure that the convention would contribute to the progressive development of international law.

18. Mr. BIKOUTHA (Congo, Brazzaville) said that he wished to express his country's concern at the systematic black-out which continued to be imposed on certain members of the international community with which his own country and many others maintained diplomatic relations. His delegation of course was not empowered to speak for any country other than his own, but felt that it was most unrealistic to consider history as static. For that was the only term to describe an approach which amounted to reducing every problem to the limited dimensions of contemporary events, which were unfortunately dominated by nationalistic passions. It was those passions which explained the marginal status which was given to certain geographical entities, although they had all the legal attributes of sovereign States.

19. His delegation was convinced of the need to formulate a convention on the law of treaties on sound foundations rather than on the narrow basis of certain transient political circumstances, and for those reasons it fully subscribed to the principle of universality. Although that principle might seem nebulous to certain other delegations, failure to adopt it could indermine the legal monument which the Conference hoped to erect and which represented the result of years of painstaking effort.

20. The PRESIDENT invited the Conference to vote on the twenty-two State proposal for a new article (A/CONF.39/L.36 and Add.1).

At the request of the representative of the Federal Republic of Germany, the vote was taken by roll-call.

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

In favour: Ghana, Hungary, India, Indonesia, Iraq, Kuwait, Mexico, Mongolia, Nepal, Pakistan, Panama, Poland, Romania, Sierra Leone, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia, Zambia, Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador.

Against: El Salvador, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Honduras, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Lebanon, Liechtenstein, Luxembourg, Madagascar, Malaysia, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, Republic of Korea, Republic of Viet-Nam, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Argentina, Austria, Australia, Barbados, Belgium, Bolivia, Brazil, Canada, Central African Republic, China, Colombia, Costa Rica, Denmark, Dominican Republic.

Abstaining: Ethiopia, Holy See, Iran, Ivory Coast, Kenya, Libya, Morocco, Nigeria, Peru, Philippines, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Spain, Trinidad and Tobago, Tunisia, Chile, Congo (Democratic Republic of), Cyprus, Dahomey.

The proposed new article (A/CONF.39/L.36 and Add.1) was rejected by 50 votes to 34, with 22 abstentions.

Draft declaration proposed by Spain

21. The PRESIDENT invited the Conference to consider the draft declaration on participation in multilateral treaties (A/CONF.39/L.38), proposed by Spain.

22. Mr. DE CASTRO (Spain) said that his delegation had already recognized the importance of the principle of universality during the discussion on the proposal for an article 5 *bis* in the Committee of the Whole. In view of the obstacles, both technical and political, which that proposal had encountered, his delegation had suggested a solution which it hoped would attract general agreement not only on the subject-matter of article 5 *bis* but also on the problems arising from article 62 *bis* and on the question of reservations.

23. In the draft declaration, which his delegation had submitted in the form of a resolution (A/CONF.39/L.38), the preamble stressed the value of the principle of universality and its importance to international co-operation. It stated " that all States should be able to participate in multilateral treaties which codify or progressively develop norms of general international law or the object and purpose of which are of interest to the international community of States as a whole ", and then recommended to the General Assembly " that it consider periodically the advisability of inviting States which are not parties to multilateral treaties of interest to the international community of States as a whole to participate in such treaties ".

24. When he had announced his delegation's intention of submitting a draft resolution on those lines, he had indicated that it was intended as part of a general solution which, it was hoped, would ensure a substantial majority in favour of the convention. Since, however, his delegation's efforts had not met with sufficient support, he would not ask for the draft declaration to be put to the vote, but would again emphasize the importance of the contents of the draft and express the hope that, in more favourable circumstances, the ideas it contained would be recognized by all States.

25. His delegation was prepared to support any reasonable compromise solution that might be put forward for the outstanding issues before the Conference. Nevertheless, it wished to make it clear that it would vote in favour of the convention on the law of treaties even without an article 62 *bis* and without any reference to the principle of universality, because it considered that the draft submitted by the International Law Commission represented a great contribution to the progress of international Law.

Draft declaration on universal participation in and accession to the convention on the law of treaties, proposed new article on procedures for adjudication, arbitration and conciliation and draft resolution

26. The PRESIDENT invited the Conference to consider the draft declaration on participation in the convention on the law of treaties proposed, along with a new article and a draft resolution, by a group of ten States (A/CONF.39/L.47 and Rev.1).

27. Mr. ELIAS (Nigeria), introducing the combined proposal on behalf of the ten sponsors, said that it consisted of three parts but constituted an organic whole. It read as follows:

Draft Declaration on Universal Participation in and Accession to the Convention on the Law of Treaties

The United Nations Conference on the Law of Treaties,

Convinced that multilateral treaties which deal with the codification and progressive development of international law or the object and purposes of which are of interest to the international community as a whole, should be open to universal participation,

Aware of the fact that Article ... of the Convention on the Law of Treaties authorizes the General Assembly to issue special invitations to States not members of the United Nations, the specialized agencies or parties to the Statute of the International Court of Justice, to accede to the present Convention,

1. *Invites* the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations so as to ensure the widest possible participation in the Convention on the Law of Treaties;

2. *Expresses* the hope that the States Members of the United Nations will endeavour to achieve the object of this declaration;

3. *Requests* the Secretary-General of the United Nations to bring the present declaration to the notice of the General Assembly;

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

Proposed new article

Procedures for Adjudication, Arbitration and Conciliation

If, under paragraph 3 of article 62, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

1. Any one of the parties to a dispute concerning the application or the interpretation of article 50 or 61 may, by application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration.

2. Any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the convention may set in motion the procedure specified in annex I to the present convention by submitting a request to that effect to the Secretary-General of the United Nations.

Annex I

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

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

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

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

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

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

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

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

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

3. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The report and conclusions of the Commission shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

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

Draft resolution

The United Nations Conference on the Law of Treaties,

Considering that the provisions in Article . . . concerning the settlement of disputes arising under Part V of the Convention on the Law of Treaties, lays down that the expenses of any conciliation commission that may be set up under Article ... shall be borne by the United Nations,

Requests the General Assembly of the United Nations to take note of and approve the provisions of paragraph 7 of the Annex to Article ...

28. All participants in the Conference realized that there were still two major outstanding issues to settle: the first was that of universality and the second that of the provision of satisfactory procedures for the settlement

of any disputes that might arise out of the various provisions included in Part V dealing with grounds for invalidating, terminating, withdrawing from or suspending the operation of treaties. Some delegations attached the greatest importance to the principle of universality, while others attached equal importance to the question of including in the convention provisions relating to the settlement of disputes. Many efforts had been made, in consultation and negotiation, to find an amicable solution to that dual problem. It was maintained by some that the two issues had no organic connexion and were not necessarily related. The sponsors of the present proposals would readily admit the force of that argument, but the Conference could not ignore the possibility of an agreement based on a simultaneous solution of both problems.

29. The sponsors accordingly now submitted their proposal which, apart from the draft resolution on conciliation expenses which he would describe later, consisted of two parts. The first was a " Draft Declaration on Universal Participation in and Accession to the Convention on the Law of Treaties ". The second was a proposed new article entitled " Procedures for Adjudication, Arbitration and Conciliation ", with an annex setting forth details of the organization of the conciliation procedure. Those two parts constituted a " package proposal " which could not be divided. The sponsors fully realized that no delegation would find the whole package completely satisfactory. Some would object to the terms of the draft declaration, others might not want a declaration at all, still others might be willing to accept the declaration but would not be fully satisfied with certain features of the procedures for the settlement of disputes. The sponsors wished to make it clear that they had not attempted to satisfy any particular group of delegations completely. Their sole aim had been to try to achieve the possible and for that purpose it had been necessary not to insist on the ideal. In the lively and even passionate discussions which had taken place, it had become clear that the gap which separated the advocates and the opponents of the principle of universality was still very wide, but the sponsors thought that the draft declaration now proposed by them represented the maximum measure of achievement possible at the present stage.

30. Two changes had been made (A/CONF.39/L.47/Rev.1) to the original text (A/CONF.39/L.47) of the proposed new article on " Procedures for Adjudication, Arbitration and Conciliation ". The first related to the title and consisted of the insertion of a reference to arbitration. The second was an amendment to paragraph 1, which enabled any of the parties to a dispute concerning the application or the interpretation of article 50 or 61 to submit that dispute to the International Court of Justice for a decision. Apart from clarifying the wording, the sponsors had now added the concluding proviso, " . . . unless the parties by common consent agree to submit the dispute to arbitration ". The third element of the combined proposal was a draft resolution requesting the General Assembly to take note of and approve the provisions of paragraph 7 of the annex to the proposed new article. That paragraph, in addition to specifying that the Secretary-General should provide the proposed Conciliation Commission with the required assistance and facilities, stated that the expenses of the commission " shall be borne by the United Nations ".

31. It should be clearly understood that the proposal which he had thus introduced must be considered as a whole and voted upon as such. The sponsors hoped that the support that it would attract would not be limited to any particular group or groups, and that the proposal would commend itself to the widest possible participation by delegations from all parts of the world. He appealed to those who might be opposed to some parts of the proposal to consider what the alternative would be to the rejection of that proposal. The answer that article 62 would remain was not convincing. Such a provision might be sufficient in other circumstances but, in the present instance, would not be enough for the purpose of arriving at a harmonious solution. The proposal which he had introduced did not give the whole loaf to either of the two groups of delegations to which he had referred at the beginning of his statement, but it did give something to each. He therefore earnestly hoped that it would be accepted in a spirit of conciliation and general harmony.

32. Mr. DADZIE (Ghana) said that his delegation was one of the sponsors of the ten-State proposal. When he had spoken in connexion with the proposed article 62 *bis*, he had pointed out that, for an acceptable compromise to be reached, steps would have to be taken by each side to meet the views of the other. The time had now come to take those steps if the Conference was not to see the results of its labours during the past two years reduced to naught. The proposal before the Conference was an attempt to strike a bargain, recognizing only what was possible and having regard to the interests of all delegations, and he urged representatives to give it their serious consideration. He hoped that the draft declaration and the proposed new article would commend themselves to all and that even those delegations which could not vote in favour of the proposal would at least refrain from casting a negative vote.

33. Mr. ESCHAUZIER (Netherlands) said that he had been favourably impressed by the Nigerian representative's presentation of the new compromise proposal. With regard to the proposed new article, he said that the original sponsors of article 62 *bis* had been in favour of a procedure for the settlement of disputes by the International Court of Justice. Realizing that that would not gain universal acceptance, they had thought it necessary to have recourse to compulsory conciliation and arbitration procedure for disputes arising from Part V of the convention. While there was a considerable difference between the proposed article 62 *bis* and the new proposal, he noted that the idea of compulsory conciliation was retained and he was glad to see that the concept of arbitration was not entirely dropped. One positive feature of the proposed new article was that it proposed a procedure involving the International Court of Justice, though it restricted the cases to be submitted to the International

Court to those arising out of disputes regarding the principle of *jus cogens* as set out in articles 50 and 61. During the negotiations to arrive at a compromise solution, he had done his utmost to persuade the sponsors of the new proposal to include also disputes under articles 49 and 59 for adjudication by the International Court. He was sorry to see that they had not done so and again appealed to them to reconsider their decision on that point.

34. The new compromise proposal might be the best that could be expected in view of the very wide divergence of opinion which had been evident on the subject. His delegation would therefore give serious consideration to the proposed new article. So far as the draft declaration was concerned, the change in its title was probably an improvement. He would give careful consideration to the other amendments proposed, but would like to hear the views of other delegations before committing his delegation. He noted that the draft declaration invited the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations so as to ensure the widest possible participation in the convention. He was not sure that it was within the Conference's competence to issue instructions to the General Assembly but obviously an invitation would not be binding.

35. He would urge delegations to cast aside their prejudices and give favourable consideration to the proposed " package deal " so as to achieve the widest possible measure of agreement.

36. Sir Francis VALLAT (United Kingdom) said he both respected and appreciated the intense efforts which had been made by the delegations which had sponsored the proposals in document (A/CONF.39/L.47/and Rev.1). Although it was dangerous to identify delegations and people in that kind of context, he would nevertheless like to express the appreciation of his delegation for the efforts which had been made personally by Mr. Elias, the Chairman of the Nigerian delegation, to find, even at that late hour, a way to salvage the work of the International Law Commission over the last eighteen years and of the Conference over the last two years.

37. To his mind, a " package deal " was rarely attractive and sometimes turned out in the end to be merely a bitter pill. The present compromise was difficult to accept, since, on the one hand, the draft declaration went further than he would have wished to go and, on the other hand, the settlement procedures did not go far enough. He felt strongly, however, that the Conference should not discard the last opportunity to save the results of its work. He appealed to all delegations to adopt a statesmanlike attitude in their consideration of the new proposal, in emulation of the statesmanlike attitude adopted by its sponsors and, at that stage, to put on one side their wishes in one respect or another.

38. Of course, delegations to the Conference could not bind their Governments to future action, whether in the General Assembly or elsewhere, and it was on that understanding that his delegation would vote for the proposal. It was regrettable that delegations should be forced to support such proposals; however, in a spirit of real compromise, he would lend the support, of his delegation to the proposals in document A/CONF. 39/L.47 and Rev.1.

39. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation wished to express its profound gratitude to all the delegations which had made such great efforts to seek a compromise solution with a view to bringing the Conference to a successful conclusion.

40. It had been interesting to hear that the United Kingdom representative regarded the proposal now before the Conference as a compromise even though, in that representative's opinion, one part went too far and the other not far enough. The Soviet Union delegation had striven for a real compromise throughout the Conference, and now wished to analyse the solution proposed.

41. To begin with the draft declaration, the core of that proposal lay in the invitation to the General Assembly to consider at its twenty-fourth session the matter of issuing invitations so as to ensure the widest possible participation in the convention. But the effect of that proposal was to place the onus of solving the problem on the General Assembly, and the United Kingdom representative had implied that the attitude of delegations to the Conference voting for the draft declaration would not be binding on the delegations of the same States to the General Assembly. Indeed, every Member of the United Nations had the right to raise any question at any session of the General Assembly so that, in practice, the vital paragraph of the draft declaration added nothing to a right that already existed for nearly all the delegations attending the Conference. Of course, the declaration did contain some positive provisions concerning the principle of universality, but its main flaw was that it carried no obligations whatsoever.

42. The draft declaration was followed by a proposed new article on procedures for adjudication and conciliation, which, if adopted, would impose firm obligations on States. Where the compulsory jurisdiction of the International Court of Justice was concerned, no vague provisions for the future and no general phrases were used, but clearly binding, if limited, undertakings were imposed. Thus, any State which supported the proposal must agree in principle to the Court's compulsory jurisdiction and must re-examine its position on compulsory arbitration.

43. In those circumstances, the new proposal could hardly be described as a compromise in which concessions had been made by both sides, since those who could not agree to compulsory jurisdiction were supposed to accept a binding provision, whereas those who disagreed with the ideas set out in the draft declaration, far from being bound by any obligations, would be absolutely free to act as they wished in matters relating to universal participation in the convention. Perhaps that was the reason why the United Kingdom delegation was prepared to support the proposal.

44. If a real compromise were sought, either both sides should agree to undertake binding obligations, or both sides should be given the same freedom of action. Since

some delegations felt that they could not accept binding obligations in respect of the principle of universality, a genuine compromise would be to make the new article an optional protocol to be adopted at the Conference. There might be other technical means of making the second part of the proposal less mandatory: for instance, the words " with the consent of all the parties " might be inserted in paragraph 1 of the proposed article, in connexion with the submission of disputes to the International Court of Justice. In any case, the second part of the proposal should have the same legal character as the first part.

45. The USSR delegation considered that the draft declaration contained certain positive elements, which went some way towards meeting its position. Accordingly, if a separate vote were taken on the draft declaration, it could vote in favour of it, although it could not vote for the proposed new article in its present form. He would suggest that the sponsors consider presenting the new article as an optional protocol: if they could not agree to that suggestion or to a separate vote on the draft declaration, the USSR delegation would be obliged to vote against the proposal as a whole.

46. Mr. SEATON (United Republic of Tanzania) said he was glad that the compromise solution proposed by his own and other delegations had, on the whole, met with a favourable response. It was most gratifying that delegations holding such widely differing views as those of the United Kingdom, the USSR and the Netherlands had all found positive elements in the proposal. The Conference had attempted for weeks to find a solution to meet the widely divergent interests of delegations; those attempts had failed, not for want of effort or goodwill, but owing to the inherent difficulty of the problem. The statements of earlier speakers had shown that the latest endeavour to break the deadlock had been successful to some extent, since the Netherlands and USSR representatives had made a number of suggestions and the United Kingdom representative had not insisted on the incorporation of certain ideas which he had pressed earlier in the debate.

47. The Tanzanian delegation hoped that an understanding would be reached among the great Powers on the principal of universality, which could subsequently be settled in the General Assembly, and that delegations which supported the draft declaration would vote for that principle in the Assembly. The true interests of the Conference would be served if those delegations could find it possible to accept the declaration on that understanding. The draft declaration could be described as very mild, for in its first operative paragraph it merely invited the General Assembly to give consideration to the matter of issuing invitations. In his delegation's opinion, the Conference was fully competent to invite the General Assembly to consider such a matter. The second operative paragraph, however, which expressed the hope that States Members would endeavour to achieve the object of the declaration, constituted an appeal to all States, especially the great Powers, to try to resolve the differences which divided them, so as to achieve the wide consensus without which international law was nothing but an illusion.

48. In his delegation's view, the new proposal was a modest step towards achieving the goal of putting an end to unequal and unjust treaties, while strengthening treaty stability and the *pacta sunt servanda* principle.

49. Mr. PINTO (Ceylon) said that his delegation was perhaps unique in the consistent support it had accorded to the compulsory procedures proposed in article 62 *bis* and the principle of universality set out in article 5 *bis*. When both those proposed new articles had been rejected, his delegation had sought achievement rather than compromise; it was therefore most gratified that the sponsors of the new proposal had been able to submit a document which represented a modest step towards both goals. Although the Ceylonese Government intended to continue working towards the final achievement of these ends, his delegation agreed with others that the ten-State proposal was the only one likely to command the wide measure of consent which would permit the efforts of the International Law Commission and the Conference to be crowned with success.

50. Mr. KEARNEY (United States of America) said that his delegation would vote for the new compromise solution. The sponsors, especially the Nigerian delegation, were to be commended for their strenuous efforts to bring the Conference to a successful conclusion. The United States delegation shared the views expressed by a variety of representatives concerning the interpretation to be given to the draft declaration and also shared the hope of the Tanzanian delegation that the great Powers would succeed in resolving their differences.

51. Mr. HUBERT (France), referring to the second part of the combined proposal, said that although his delegation associated itself with the many tributes paid to the sponsors for their efforts, it found the compromise unsatisfactory.

52. According to paragraph 1 of the proposed new article, the compulsory jurisdiction of the International Court of Justice, if it was indeed compulsory, applied only to articles 50 and 61. But it was well-known how imprecise were the rules referred to in those articles, and France could not accept even the Court's interpretation of peremptory norms of general international law, or agree that the Court should thus become a kind of international legislature. Moreover, the other articles in Part V of the convention were not placed under any compulsory jurisdiction, but were made subject only to a conciliation procedure. Such a procedure was totally inadequate for the settlement of disputes; even if only one party refused to accept the conclusions of a conciliation commission, disputes arising from articles 49 or 59, which were of vital importance, might remain unsettled for an indefinite period, thus poisoning international relations. That serious shortcoming threatened the balance of the entire convention and the French delegation would vote against the ten-State proposal.

53. M. WERSHOF (Canada) said that his delegation would vote in favour of the new proposal if it were

put to the vote in its entirety. Canada greatly appreciated the efforts made by the sponsors, especially the delegation of Nigeria.

54. In voting for the " package deal ", his delegation understood that the new paragraph of the preamble to the draft declaration did not affect the obligation or right of every State Member of the United Nations to treat on its merits any proposal that might be made in the General Assembly in pursuance of the declaration. With regard to the revised version of paragraph 1 of the proposed new article, his delegation understood the sponsors to intend it to mean compulsory jurisdiction of the International Court of Justice unless the disputing parties agreed to submit to arbitration instead.

55. Although his delegation did not consider that the new article provided a fully satisfactory method of settling disputes under Part V, it would vote for the compromise, because the new article was much better than article 62 by itself.

56. Mr. ALVAREZ TABIO (Cuba) said that his delegation had consistently expressed the view that the convention should be open for signature by all States without discrimination and that, where settlement procedures were concerned, the convention could not go beyond Article 33 of the Charter, so that no compulsory conciliation or abitration was acceptable. Since the draft declaration dealt with the problem of universality in an unsatisfactory way and since the notion of compulsory jurisdiction was introduced in the new article, his delegation would vote against the proposal.

57. Mr. USTOR (Hungary) said he was not clear as to the interpretation of the provisions of the draft declaration. The first paragraph of the preamble expressed the conviction of the Conference that multilateral treaties which dealt with the codification and progressive development of international law or the object and purposes of which were of interest to the international community as a whole should be open to universal participation and, in the second operative paragraph, the Conference expressed the hope that the States Members of the United Nations would endeavour to achieve the object of the declaration. The Conference was attended by plenipotentiary representatives of States; the question therefore arose how far the declaration would be binding upon States in the General Assembly. Would the overriding principle of good faith bind them when voting at the twenty-fourth session? Was he right in thinking that the favourable votes which would be cast for the declaration in the Conference would have the effect that the States whose plenipotentiaries had voted in favour of the declaration would be thereby prevented from casting contrary votes on the same question in the General Assembly? Perhaps the President could confirm that States voting for the declaration would be under at least a moral obligation not to vote against the principles of the declaration in the General Assembly.

58. The PRESIDENT said that it was not for him to give an opinion on the matter. The Hungarian representative would no doubt find an answer to his question in the statements made during the debate.

59. Mr. BIKOUTHA (Congo, Brazzaville) said that his delegation always advocated compromise, but only acceptable compromise. The new proposal, however, seemed to be compromise for the sake of compromise, and his delegation would vote against it, unless a separate vote was taken on the draft declaration.

60. Mr. DE LA GUARDIA (Argentina) said that the solution presented to the Conference after great efforts was a satisfactory compromise, for which his delegation would vote.

61. Mr. BILOA TANG (Cameroon) said his delegation supported the proposal for a separate vote on the draft declaration. Cameroon upheld the principle of universality, but could not prejudge what its delegation's position would be when the matter was raised at the twenty-fourth session of the General Assembly. It would therefore abstain in a separate vote on the draft declaration.

62. With regard to the proposed new article, it was indeed a compromise, but not a satisfactory one. Articles 50 and 61 related to very controversial questions, and yet it was proposed that any party to a dispute could apply unilaterally to the International Court of Justice. Moreover, only compulsory conciliation was provided for the settlement of other disputes under Part V. His delegation would therefore vote against the proposed new article.

63. Mr. HAYTA (Turkey) said that his delegation had for years advocated compulsory jurisdiction as an effective and impartial means of settling disputes. It could not therefore lend its full support to the new proposal, but would not oppose it, because at least disputes under articles 50 and 61 were to be submitted to the International Court of Justice. On the other hand, his delegation expressed reservations against the failure to submit other articles in Part V to adequate jurisdictional guarantees, and would therefore abstain in the vote.

64. Mr. GROEPPER (Federal Republic of Germany) expressed his appreciation of the efforts made by the authors of the compromise proposal. His delegation had always held the view that it was not the task of the Conference to seek solutions to general political questions. It was particularly inappropriate for it to go into the purely political problem of the existence of disputed territorial entities in international law. In order to facilitate the work of the Conference, his delegation would not oppose the compromise solution, including the draft declaration on universal participation in the convention, on the understanding, however, that the declaration did not bind the General Assembly to issue invitations to specific entities and did not prejudge the position of States in that respect.

65. The ten-State proposal showed some improvement with regard to settlement procedures, but those procedures were less satisfactory than those proposed in article 62 *bis*.

66. His delegation would abstain in the vote on the proposal.

67. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said that the USSR delegation had suggested that the sponsors might consider submitting the second part of their proposal as an optional protocol. There had been no response to that suggestion, and perhaps that silence implied tacit consent. If the proposal were put to the vote as it stood, his delegation would vote against it; otherwise, it would reconsider its position.

68. Mr. WYZNER (Poland) said that, although his delegation appreciated the efforts made by the sponsors, it unfortunately could see no balance between the first and second part of the " package deal ". His delegation had delayed its explanation of vote, in the hope that some member of the group of States which had long opposed the principle of universality would give some indication of an intention to reconsider their attitude. But no such indication had yet been given; on the contrary, an influential delegation had stated that the declaration would not be binding either on the General Assembly or on States. Poland would therefore vote against the proposal if it were put to the vote in its present form.

69. Mr. N'DONG (Gabon) said that his delegation appreciated the sponsors' efforts, but could not vote for the proposal, because the choice of articles 50 and 61 for submission to the compulsory jurisdiction of the International Court of Justice was injudicious. Neither propounders of legal doctrine nor members of the International Law Commission, nor representatives at the Conference were agreed on what constituted rules of *jus cogens,* and to submit the settlement of disputes concerning such rules to the jurisdiction of the Court was a risk which Gabon refused to take.

70. Mr. BLIX (Sweden) said that his delegation's active endeavours to bring about the solution of the problems of settlement procedures and universal participation in the convention made it particularly appreciative of the difficulties encountered by the sponsors of the proposal now before the Conference. They had not achieved a final solution of either of those vital issues and, indeed, such a solution was impossible at the present time, but although no immediate solution had been found for the problem of universal participation, an opportunity for such a solution in the General Assembly was offered; on the other hand, the problem of settlement procedure had to be solved immediately, for if no appropriate procedure were included in the convention now, it would be difficult to do anything about it in the future. Minimum solutions had been provided for both issues, and it was to be hoped that better ones would be reached subsequently.

71. Mr. ELIAS (Nigeria) said that the sponsors could not accept either the proposal for a separate vote on the draft declaration or the suggestion that the second part of the proposal should become an optional protocol.

72. The PRESIDENT invited the Conference to vote on the draft declaration, proposed new article and draft resolution submitted by ten States (A/CONF.39/L.47 and Rev.1).

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

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

In favour: Nigeria, Norway, Pakistan, Panama, Portugal, San Marino, Senegal, Singapore, Spain, Sudan, Sweden, Switzerland, Trinidad and Tobago, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Yugoslavia, Zambia, Argentina, Austria, Barbados, Belgium, Cambodia, Canada, Ceylon, Chile, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Denmark, Ecuador, El Salvador, Finland, Ghana, Greece, Guyana, Holy See, Honduras, Iceland, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Luxembourg, Malta, Mexico, Morocco, Nepal, Netherlands, New Zealand.

Against: Poland, Romania, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, France, Gabon, Hungary, Madagascar, Malaysia, Mongolia.

Abstaining: Peru, Philippines, Republic of Korea, Republic of Viet-Nam, Saudi Arabia, Sierra Leone, South Africa, Syria, Turkey, Venezuela, Afghanistan, Algeria, Australia, Bolivia, Brazil, China, Dahomey, Dominican Republic, Ethiopia, Federal Republic of Germany, Guatemala, India, Indonesia, Iran, Libya, Monaco.

The ten-State proposal (A/CONF.39/L.47/Rev.1) was adopted by 61 votes to 20, with 26 abstentions.

73. Mr. ROMERO LOZA (Bolivia), explaining his delegation's abstention on the proposed new article, observed that the title of Part V of the draft convention — " Invalidity, termination and suspension of the operation of treaties " — implied the existence of a procedure for carrying out what it proposed. In the absence of such a procedure, it was hard to say why Part V included to many articles which every delegation regarded as necessary but which few of them believed would have to be applied in practice. With the rejection of article 62 *bis* the real force of Part V had been removed, and the elimination of the procedures for arbitration and conciliation proposed in that article undermined the basic purpose of the convention. The non-inclusion of the important article 49 in the compromise proposals showed that no attempt was being made to ensure that the convention would be applied in such a way as to meet the wishes of a large number of States. In fact, Part V, and article 49 in particular, would be purely academic in character and have no practical effect.

74. Nevertheless, his delegation had instructions from the Bolivian Government to sign the convention, subject to placing on record its declaration that, first, the defective terms in which the convention had been framed meant that the fulfilment of mankind's aspirations in the matter would be postponed; and secondly, despite those defects, the rules embodied in the convention clearly represented progress and derived their inspiration from those principles of international justice which Bolivia traditionally upheld.

75. Mr. BINDSCHEDLER (Switzerland) said that, after much hesitation, his delegation had finally decided to vote in favour of the combined proposal, and he paid a warm tribute to the sponsors for achieving a formula which had proved acceptable to the largest possible number of delegations.

76. The Swiss delegation welcomed that proposal as a modest step in the direction of the acceptance of the compulsory jurisdiction of the International Court of Justice. It considered that paragraph 1 of the new article just adopted, in the form in which it now appeared, established a genuine compulsory procedure for adjudication. Under the provisions of that paragraph, every State party to the convention on the law of treaties would have the right to submit, by application, to the International Court of Justice any dispute with another party concerning the application or the interpretation of article 50 or of article 61. That first step which had now been taken gave great promise for the future. His delegation's hopes in that direction were strengthened by the vote at the 29th plenary meeting on the Swiss proposal for a new article 76 (A/CONF.39/L.33), which showed that forty-one States had favoured that proposal and thirty-six had opposed it.

77. At the same time, his delegation did not regard the new article as a satisfactory provision on the settlement of disputes; it had voted in favour of it simply because it was better than nothing. The new article made provision only for a conciliation procedure with regard to disputes arising from the application or the interpretation of the articles of Part V other than articles 50 and 61. Questions of the application and interpretation of the grave provisions contained in such articles as articles 48, 49 and 59 should undoubtedly have been left for settlement by the International Court of Justice. The conciliation procedure embodied in the new article, apart from having the defects to which he had already drawn attention at a previous meeting, provided no assurance of an objective and final decision to such disputes.

78. His delegation wished to place on record that, should Switzerland sign the convention on the law of treaties, it would do so subject to the reservation that the provisions of all the articles in Part V would only apply in the relations between Switzerland and those States parties which, like Switzerland, accepted the compulsory jurisdiction of the International Court of Justice, or compulsory arbitration, for the settlement of any dispute arising from the application or the interpretation of any of those articles.

79. Mr. MARESCA (Italy), explaining his vote in favour of the proposal, said he wished at the same time to pay a tribute to the efforts of its sponsors. The Italian delegation had consistently maintained that a procedure for the settlement of disputes on the lines of article 62 *bis* constituted an essential safeguard in respect of the provisions of Part V. It would therefore have wished for a more strict and more complete procedure than that embodied in the new article. That article nevertheless constituted a remarkable step forward, in that it made provision for the compulsory jurisdiction of the International Court of Justice in respect of disputes arising from articles 50 and 61, and for compulsory conciliation in respect of those arising from all the other articles in Part V. His delegation continued to believe, however, that a settlement procedure was necessary for the application and interpretation of such articles as articles 49 and 59 and expressed the hope that bilateral treaties would make provision for such procedure.

80. His delegation's acceptance of the declaration on universal participation was in keeping with Italy's consistent stand that the General Assembly was alone competent to invite States to participate in the convention. The recommendation made to the General Assembly in that declaration had its value but it also had its limits. It did not commit the General Assembly in any way and the General Assembly remained sovereign to take its future decisions objectively in the light of circumstances. The Italian delegation to the present Conference could undertake no commitment regarding the attitude of the Italian delegation to the General Assembly.

81. Mr. BAYONA ORTIZ (Colombia), explaining his delegation's vote in favour of the declaration and the new article, said that his delegation had consistently maintained that the question of universality was a political issue which fell within the comptence of the General Assembly. Although his delegation had voted in favour of the declaration, it wished to place on record that its vote did not prejudice in any way the position of the Colombian delegation to the General Assembly in any future debate on the question of universal participation.

82. With regard to the new article on procedures for adjudication, arbitration and conciliation, his delegation had accepted it as a compromise solution, solely because it represented the maximum that could be obtained at the present Conference. Its text, however, did not in any way satisfy his delegation's aspirations as one of the sponsors of the article 62 *bis* approved by the Committee of the Whole.

83. Although the new article just adopted represented some progress, his delegation would have preferred provision to be made for the compulsory settlement by the International Court of Justice of disputes relating to the application and interpretation of such articles as article 49 and article 59; the absence of such provision was a gap in the convention which could later create difficulties in treaty relations between States.

84. He was glad to be able to announce that he had instructions from his Government to sign the convention on the law of treaties.

85. The PRESIDENT said that, if there were no objection, he would consider that the Conference agreed to postpone any further explanations of vote until the next meeting and to proceed with the consideration of the final provisions.

It was so agreed.

FINAL PROVISIONS [1]

Article A

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article B

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article C

Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article A. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article D

Entry into Force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the.............. instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the.............. instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article E

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE AT VIENNA, this twenty-fourth day of May, one thousand nine hundred and sixty-nine.

86. Mr. YASSEEN, Chairman of the Drafting Committee, said that the text he was now submitting consisted of the titles and articles which made up what was traditionally known as the Final Provisions. The Drafting Committee had made only one change which affected all language versions. In article C, it had deleted the word " four " before the expression " categories mentioned in article A ", since it considered the word redundant and liable to cause misunderstanding.

87. In the French version of article E, the Drafting Committee had replaced the expression " *faisant foi* " by " *authentique* ". Although " *faisant foi* " was the established expression, the French version of article 9 of the convention had adopted a new terminology which must be followed in the other provisions of the draft.

88. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that Hungary, Poland, Romania, the Union of Soviet Socialist Republics, the United Republic of Tanzania and Zambia had jointly proposed amendments (A/CONF.39/L.41) to articles A and C. The aim of the amendments was clear and was based on a position already familiar to the Conference. His delegation believed that the convention on the law of treaties was of interest to the entire international community and should therefore be open for signature by all States in accordance with the principle of sovereign equality. Moreover, the formula proposed was in accordance with existing international practice.

Article A

89. The PRESIDENT put the six-State amendment to article A to the vote.

The six-State amendment (A/CONF.39/L.41) to article A was rejected by 43 votes to 33, with 17 abstentions.

90. The PRESIDENT put article A as submitted by the Drafting Committee to the vote.

Article A was adopted by 84 votes to 11, with 5 abstentions.

Article B

Article B was adopted by 103 votes to none.

Article C

91. The PRESIDENT put the six-State amendment to article C to the vote.

The six-State amendment (A/CONF.39/L.41) to article C was rejected by 45 votes to 32, with 20 abstentions.

92. The PRESIDENT put article C as submitted by the Drafting Committee to the vote.

Article C was adopted by 83 votes to 13, with 6 abstentions.

Proposed article C bis

93. Mr. DE CASTRO (Spain) said that his delegation had proposed an additional article, at present numbered C *bis* (A/CONF.39/L.39), for inclusion in the final provisions. Since, however, paragraph 2 of the amendment was so closely connected with the original article 62 *bis* which had subsequently been rejected, he

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[1] For the discussion of these provisions in the Committee of the Whole, see 100th to 105th meetings.

Amendments were submitted to the plenary Conference by Spain (A/CONF.39/L.39); Hungary, Poland, Romania, Union of Soviet Socialist Republics, United Republic of Tanzania and Zambia (A/CONF.39/L.41); Afghanistan, Ghana, India, Ivory Coast, Kuwait, Lebanon, Nigeria, Senegal, Syria and United Republic of Tanzania (A/CONF. 39/L.48 and Add.1).

was withdrawing it. His delegation's amendment, therefore, now read simply: " No reservation is permitted to Part V of the present Convention ".

94. His delegation had decided to maintain that part of its amendment with a view to clarifying the provisions of article 16 (*c*). According to article 16 (*c*), a State might formulate a reservation to a treaty unless the reservation was incompatible with the object and purpose of the treaty. His delegation believed that reservations to Part V of the convention would be incompatible with the object and purpose of the convention, and considered that it should be specifically laid down in the final provisions that no reservations to Part V would be permitted.

95. Mr. BLIX (Sweden) said that in his delegation's view, a convention codifying and developing the law of treaties should ideally not be subject to any reservation whatsoever since, if reservations were made, they would detract from the consolidating effect of the convention. He would have liked to see a clause prohibiting any reservation whatsoever to the convention, but he realized that that would not have been acceptable to the majority. Part V contained certain articles of vital importance, and presumably reservations to such articles would be incompatible with the object and purpose of the convention, but in order to avoid any possibility of dispute, his delegation considered that it would be better to include a specific prohibition of reservations to Part V. His delegation therefore supported the Spanish amendment.

96. Mr. NASCIMENTO E SILVA (Brazil) said that a number of delegations considered the Spanish amendment unacceptable at that stage in the Conference's work for several reasons. First, there had already been a more or less substantive vote on the final provisions. Secondly, a number of countries for internal reasons could not accept a reservations clause. Finally, the convention already included five articles on reservations, which covered the subject completely. His delegation therefore strongly opposed the Spanish amendment.

97. Mr. ROSENNE (Israel) said he agreed with the view expressed by the Brazilian representative. The substantive articles concerning reservations in the convention were perfectly adequate and it was preferable not to have a further article on reservations in the final provisions. He would therefore vote against the Spanish amendment.

98. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that it was apparent from the convention that reservations were generally permissible. The assertion that a reservation to Part V would change the whole meaning of the convention was doubtful. Part V might contain provisions, reservations to which would in no way be incompatible with the object and purpose of the convention. Thus, in some cases, reservations to Part V would be permissible and would not have the dire consequences to which the Swedish representative had referred. Article 19, on the legal effects of reservations, enabled other States which might object to reservations to express their attitude. Thus the nature of Part V as a whole was not such as to preclude the possibility of reservations. He therefore agreed with those representatives who had said that the Spanish amendment was superfluous, and he would vote against it.

99. Mr. JAGOTA (India) said that his delegation would oppose the Spanish amendment since the question of reservations was already adequately covered in the convention. He might have supported the amendment if Part V as recommended by the International Law Commission had been adopted, but in view of the controversial draft declaration and proposed new article (A/CONF.39/L.47 and Rev.1) which had just been adopted and on which his delegation had abstained, he wished to reserve his Government's position so that it might, if it so desired, enter a reservation to that article.

100. Sir Francis VALLAT (United Kingdom) said that the Spanish amendment would alter the balance of the delicate compromise just adopted; he agreed with the views expressed by the USSR and Brazilian representatives.

101. Mr. ELIAS (Nigeria) said he agreed that the " package deal " just adopted excluded the acceptance of any article such as that proposed by the Spanish representative.

102. The PRESIDENT put the Spanish amendment to the final provisions to the vote.

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

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

In favour: Ecuador, Guyana, Jamaica, Luxembourg, Netherlands, Spain, Sweden, United Republic of Tanzania, Zambia.

Against: Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran, Iraq, Israel, Italy, Ivory Coast, Japan, Liberia, Liechtenstein, Malaysia, Malta, Mexico, Monaco, Mongolia, Nepal, New Zealand, Nigeria, Peru, Poland, Romania, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Sudan, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Afghanistan, Algeria, Argentina, Australia, Austria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Canada, Chile, China, Colombia, Congo (Brazzaville), Cuba.

Abstaining: Ethiopia, Ghana, Holy See, Iceland, Ireland, Kenya, Kuwait, Lebanon, Libya, Madagascar, Morocco, Norway, Pakistan, Panama, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Sierra Leone, Trinidad and Tobago, Uruguay, Yugoslavia, Belgium, Bolivia, Central African Republic, Ceylon, Congo (Democratic Republic of), Costa Rica, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic.

The Spanish amendment to insert an article C bis *(A/CONF.39/L.39) was rejected by 62 votes to 9, with 33 abstentions.*

Article D

103. Mr. ELIAS (Nigeria) said that ten delegations, including his own, had submitted an amendment (A/

CONF.39/L.48 and Add.1) recommending that the number of ratifications or accessions necessary to bring the present convention into force should be 35.

104. Sir Francis VALLAT (United Kingdom), speaking also on behalf of the Brazilian delegation, said that he was prepared to agree to that figure.[2]

105. The PRESIDENT put the ten-State amendment to the vote.

The ten-State amendment (A/CONF.39/L.48 and Add.1) was adopted by 92 votes to none, with 8 abstentions.

Article D, as amended, was adopted.

Article E

Article E was adopted by 103 votes to none.

Article 49 (Coercion of a State by the threat or use of force) *(resumed from the 23rd plenary meeting)*

106. Mr. KABBAJ (Morocco) said he wished to have it put on record that his delegation was in favour of article 49, although its vote in favour of that article had, no doubt inadvertently, not been recorded during the roll-call vote at the 19th plenary meeting.

Report of the Credentials Committee on the second session of the Conference (A/Conf.39/23/Rev.1) [3]

107. Mr. SUAREZ (Mexico), Chairman of the Credentials Committee, said that his Committee's report on the credentials of delegations to the second session was now before the Conference.

108. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation had already expressed its position of principle with regard to the credentials submitted at the first session of the Conference. Nevertheless, in connexion with the report of the Credentials Committee concerning the credentials submitted at the second session, the USSR delegation considered itself obliged to state once again that it could not recognize the credentials of the persons claiming to represent South Viet-Nam and South Korea. The fact that it would not oppose the approval of the Committee's report should not be interpreted to mean that his delegation recognized those credentials, since it was well known that neither the ruling circles at Saigon nor the Seoul régime could really represent the peoples of South Viet-Nam and of South Korea, respectively.

109. Mr. SAULESCU (Romania) said that his delegation was prepared to approve the report of the Credentials Committee. Such approval, however, should not be interpreted as changing in any particular the position taken by his delegation at the first session, at the 5th plenary meeting. His delegation reaffirmed its profound conviction that the People's Republic of China, the Democratic Republic of Viet-Nam, the German Democratic Republic and the Democratic People's Republic of Korea should be permitted to participate in the work of codifying international law.

110. Mr. BEREKET (Turkey) said that his delegation still maintained the views with respect to Cyprus which it had expressed at the 5th plenary meeting.

111. Mr. JACOVIDES (Cyprus) said that the position taken by the Turkish representative constituted an unwarranted interference in the internal affairs of Cyprus, which was an independent State and represented the population of the country as a whole.

112. Mr. PHAM-HUY-TY (Republic of Viet-Nam) said that he had too much respect for the Conference to enter into polemics. His country was a member State of the specialized agencies and had been invited to participate in the Conference by the Secretary-General under General Assembly resolution 2166 (XXI).

113. Mr. LEE (Republic of Korea) said that paragraph 6 of the Credentials Committee's report (A/CONF.39/23/Rev.1) was phrased in such an offensive way that it could serve no constructive purpose at all. His delegation would, however, accept the report as a whole, since it had no wish, at such a late stage in the proceedings, to introduce arguments which were already familiar to the Conference.

114. Mr. STREZOV (Bulgaria) said that his delegation was prepared to accept the report of the Credentials Committee, although it wished to repeat the reservations which it had made at the 5th plenary meeting.

115. U BA CHIT (Burma) said that his delegation would vote for the report, but without prejudice to its position with respect to South Viet-Nam and South Korea.

116. Mr. MAKAREWICZ (Poland) said that his delegation could not recognize as valid the credentials of South Korea and South Viet-Nam, because the régimes of those two countries could not be regarded as representing the peoples of South Korea and South Viet-Nam. At the same time, it would like to confirm the reservations made by it at the first session of the Conference concerning other credentials as well.

117. Mr. SEATON (United Republic of Tanzania) said that his delegation would vote for the report; but that should not, however, be construed as meaning that it approved the credentials of South Viet-Nam and South Korea.

118. Mr. TSURUOKA (Japan) said that his delegation saw no grounds for challenging the validity of the credentials offered by the Republic of Korea, which had been invited by the Secretary-General of the United Nations to participate in the Conference in accordance with General Assembly resolution 2166 (XXI).

119. Mr. TODORIC (Yugoslavia) said that the attitude of his Government with respect to the admission of certain States had not changed since the first session.

[2] The proposal for the final provisions (A/CONF.39/C.1/L.386/Rev.1) approved by the Committee of the Whole had been submitted by Brazil and the United Kingdom of Great Britain and Northern Ireland.

[3] For the discussion of the report of the Credentials Committee on the first session, see 5th plenary meeting.

120. Mr. USTOR (Hungary) said that his delegation would vote for the report, subject to the same reservations as those expressed in its paragraph 6.

121. Mr. KEARNEY (United States of America) said that in the view of his delegation, it was enough that the countries whose credentials had been attacked had been duly invited to participate in the Conference by the Secretary-General under General Assembly resolution 2166 (XXI).

The report of the Credentials Committee (A/CONF. 39/23/Rev.1) was adopted unanimously.

The meeting rose at 8.20 p.m.

THIRTY-FIFTH PLENARY MEETING

Thursday, 22 May 1969, at 12 noon

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)*

Draft declaration on universal participation in and accession to the convention on the law of treaties, proposed new article on procedures for adjudication, arbitration and conciliation and draft resolution (resumed from the previous meeting)

Explanations of vote

1. The PRESIDENT invited representatives to explain their votes on the draft declaration, new article and draft resolution (A/CONF.39/L.47 and Rev.1) adopted at the previous meeting.

2. Mr. PHAM-HUY-TY (Republic of Viet-Nam) said that, from the legal point of view, there was no link, in his delegation's opinion, between the two quite different questions dealt with in document A/CONF.39/L.47 and Rev.1. But the Conference had had to vote on the two questions together. In the circumstances, his delegation had abstained in the vote on the proposals in the document. On the one hand, it disapproved of the draft declaration on universal participation in and accession to treaties, but on the other, it had already supported article 62 *bis* and was still in favour of the part of the proposal relating to procedures for adjudication.

3. Mr. HU (China) said that the text proposed in document A/CONF.39/L.47 and Rev.1 was in two parts, which were independent of each other. The document had been submitted as a compromise formula. Since it had been impossible to take a vote by division, the Chinese delegation had been placed in a very difficult position, as it was in favour of the second part and strongly opposed to the first. It had therefore decided to abstain, but had reserved the right to explain its vote. Its abstention should in no way be construed as indicating approval of the first part of the proposal, since it was opposed to the declaration on the principle of universality, which it regarded as a mere recommendation with no mandatory force. The General Assembly remained the sole judge. He reserved his Government's right to express its view when the question of universality was discussed in the General Assembly.

4. Mr. SHUKRI (Syria) said he had abstained in the vote on document A/CONF.39/L.47 and Rev.1 because the formula did not go as far as his delegation would have wished where the principle of universality was concerned, and further than it would have wished on the question of the settlement of disputes. It had not, however, cast a negative vote, because it had wished to contribute to the success of the convention and to express its appreciation of the arduous efforts of the representative of Nigeria and his colleagues. If a separate vote had been taken on the declaration, the Syrian delegation would have voted in favour of it; but it regarded the declaration as merely a minimun. The Syrian Government would not only strive to achieve the object of that declaration at the next session of the General Assembly, but would also continue its efforts in all organizations and conferences to bring about the universal recognition of the principle of universality; for his country that was a matter of principle.

5. Mr. KHLESTOV (Union of Soviet Socialist Republics) explained that his delegation had voted against document A/CONF.39/L.47 and Rev.1 as a whole because the vote had not been taken by division. The document was composed of two unbalanced parts, and the second part, which provided for recourse to the International Court of Justice and had serious financial implications, was unacceptable.

6. The declaration contained merely a feeble appeal to the United Nations and the General Assembly to ensure that the question of universality should remain under consideration. Nevertheless, it had been adopted, and sixty-one States, including a large number of delegations of western States, had voted in favour of it. That meant that the Conference recognized the existence of the principle of universality in relation to multilateral treaties. Recognition of that principle was clearly expressed in the first paragraph, and confirmed what the USSR delegation had so often advocated. The USSR delegation supported the principle and the declaration.

7. Mr. CARMONA (Venezuela) said his delegation had already explained its position on the problem of arbitration and compulsory adjudication in the Committee of the Whole. That position had not changed. The Venezuelan delegation had taken the view that it should not intervene to influence the result of the vote on document A/CONF.39/L.47 and Rev.1 at the previous meeting. It had abstained, leaving the final decision to its Government.

8. Mr. FUJISAKI (Japan) said he wished to express his appreciation of the efforts made by those representatives who, until the last moment, had worked so hard to