

# **United Nations Conference on the Law of Treaties**

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## **Thirty-sixth plenary meeting**

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, Second Session (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

the first time, a system entrusted to the International Court of Justice which remained the finest achievement of international law and jurisdiction. Lastly, his delegation had thought that it was not possible to do better in existing circumstances and that the present wording of the compromise formula could always be improved in the future.

43. Mr. YU (Republic of Korea) said that his delegation had abstained because it was not satisfied with the present wording of the compromise formula, which combined two different questions of substance.

44. His delegation could not accept the idea contained in the draft declaration but would have been prepared to vote in favour of the second part of the formula, relating to the compulsory procedures for the settlement of disputes arising from the application of Part V of the convention.

45. Since, however, the vote had been taken on both questions at the same time, his delegation had considered it preferable to abstain.

46. Mr. SMEJKAL (Czechoslovakia), explaining his negative vote, said that his delegation's attitude had been determined mainly by the fact that, although that part of the proposal relating to article 62 *bis* and the proposed declaration on universality did not balance one another, the two proposals had been submitted as a compromise formula.

47. The Czechoslovak delegation appreciated the efforts made by certain delegations and, if a motion for a separate vote had been accepted, it would have voted without hesitation in favour of the declaration. It regretted that it should not have been possible to arrive at a solution generally acceptable to the majority of States and one which would have made it possible to make decisive progress in the field of international relations. Nevertheless, his delegation was optimistic and hoped that the General Assembly of the United Nations would take the necessary measures to create a climate favourable to the work of exceptional importance which the Conference had just completed.

48. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said that his delegation had voted against the proposed solution because it did not regard the proposed formula as a genuine compromise that took the opinions of all parties into account.

49. Since the sponsors of that formula had refused to convert the second part of the text into an optional protocol, his delegation had voted against the proposed solution.

50. If the motion for division had been accepted, his delegation would have voted in favour of the declaration, which proclaimed a principle of vital importance.

The meeting rose at 1 p.m.

### THIRTY-SIXTH PLENARY MEETING

*Thursday, 22 May 1969, at 3.30 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)**

*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 (continued)*

#### *Explanations of vote (continued)*

1. The PRESIDENT said that the representative of Algeria wished to explain his vote on the draft declaration, new article and draft resolution (A/CONF.39/L.47 and Rev.1) adopted at the 34th plenary meeting.

2. Mr. KELLOU (Algeria) said that his delegation's abstention in the vote should not be interpreted as a refusal to accept the compromises necessary to enable the Conference to arrive at a general agreement. His delegation greatly appreciated the efforts made by the delegation of Nigeria to lead the Conference out of an impasse.

3. The draft declaration (A/CONF.39/L.47 and Rev.1) was acceptable to his delegation despite its imperfections, but the new article on procedures for adjudication, arbitration and conciliation was not, since it provided for a compulsory procedure for the settlement of disputes which did not meet the objections put forward by his delegation.

#### *Report by the Chairman of the Drafting Committee*

4. Mr. YASSEEN, Chairman of the Drafting Committee, said that the Drafting Committee had only been able to devote one meeting to the examination of the declaration, new article, annex and resolution adopted at the 34th plenary meeting and, in the short time available, it had not been able to give to those texts the same attention as it had given to other provisions of the convention.

5. The Drafting Committee had therefore confined itself to essential drafting changes, of which he need mention only the change in the title of the declaration. The title in the proposal adopted by the Conference (A/CONF.39/L.47 and Rev.1) was "Declaration on Universal Participation in and Accession to the Convention on the Law of Treaties". The Drafting Committee had taken the view that the adjective "universal" could not be applied to "accession". Accession was only one of several means whereby a State could express its consent to be bound by a treaty. To refer to accession in the title could thus appear to exclude other means of expressing consent to be bound, such as ratification or approval. The Drafting Committee had therefore

amended the title of the Declaration to read: " Declaration on Universal Participation in the Vienna Convention on the Law of Treaties ".

6. The PRESIDENT said that, if there were no objection, he would take it that the Conference confirmed its adoption of the new article 66,<sup>1</sup> entitled " Procedures for judicial settlement, arbitration and conciliation ", and the annex to the convention, in the form in which they had emerged from the Drafting Committee.

*It was so agreed.*

7. The PRESIDENT said that, if there were no objection, he would take it that the Conference also confirmed its adoption of the " Declaration on Universal Participation in the Vienna Convention on the Law of Treaties " and the " Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto " in the form in which they had emerged from the Drafting Committee.

*It was so agreed.*

8. Mr. SHUKRI (Syria) noted that the resolution adopted at the 34th plenary meeting and now confirmed by the Conference provided that the United Nations should bear the expenses of the conciliation commission to be established under article 66 and the annex thereto. He asked the Secretariat whether that provision would cover the case of a non-member of the United Nations involved in a dispute submitted to the conciliation commission.

9. Mr. WATTLES (Secretariat) said that the question of the expenses involved in the conciliation procedure would, under the resolution adopted by the Conference, be submitted to the General Assembly. It would be for the Assembly to lay down how those expenses should be borne. The terms of the resolution made no distinction between Members and non-members of the United Nations.

10. Mr. KHLESTOV (Union of Soviet Socialist Republics) said he wished to place on record that his delegation's position on the declaration, the new article 66, the annex and the resolution was the same as that which had already been placed on record in respect of the ten-State proposal (A/CONF.39/L.47 and Rev.1) which the Conference had adopted at its 34th plenary meeting.

11. Mr. DELEAU (France), referring to the reservations made by his delegation at a previous meeting regarding the financial implications of the conciliation procedure, asked that those reservations should also be placed on record.

#### **Adoption of the Convention on the Law of Treaties**

12. Mr. YASSEEN, Chairman of the Drafting Committee, said that, in pursuance of rule 48 of the rules of procedure, the Drafting Committee submitted to the

Conference the complete draft of the Vienna Convention on the Law of Treaties (A/CONF.39/22 and Add.1 to 6 and A/CONF.39/22/Amend.1).

13. The numbering of the articles was provisional. He suggested that the Conference leave to the Secretariat the responsibility for ensuring, after the adoption of the convention, that all the articles were correctly numbered and for making any corrections to those numbers that might prove necessary.

14. The PRESIDENT invited those representatives who wished to do so to explain their votes before the vote on the convention as a whole.

15. Mr. HUBERT (France) said that, as the Conference was about to conclude its work, his delegation wished first to pay a tribute to the important work accomplished by the International Law Commission. The Commission's draft, which had provided the basis for the Conference's discussions, was the fruit of long, scholarly and frequently successful endeavour. Those parts of the draft which represented codification properly so called merited unanimous approval. The only question was whether, in a commendable desire to achieve perfection, the authors of that draft had not sometimes ended by raising problems of such complexity that they had been a drag on the Conference's deliberations.

16. No one would be surprised if he mentioned first the provisions concerning *jus cogens*; it was no doubt a lofty concept but it was liable to jeopardize the stability of treaty law, which was a necessary safeguard in inter-State relations. On that point, even the best conceived procedures for the settlement of disputes, even recourse to the International Court of Justice, could not make up for the lack of precision in the drafting of the texts. In consequence, the judge would be given such wide discretion that he would become an international legislature and that was not his proper function.

17. If provision had been made for the jurisdiction of the International Court in disputes arising from the other articles of Part V, in particular those relating to coercion by the threat or use of force and to fundamental change of circumstances, that would have gone a long way towards allaying the fears which had been aroused over those articles. But unfortunately, just where it would have been most valuable, the compulsory jurisdiction of the Court had been rejected. And no provision had been made for compulsory arbitration, so that disputes of vital importance would merely be submitted to a conciliation procedure, which must be treated with the utmost reserve and which in any case could always be rendered nugatory by the action of one of the parties alone.

18. With regard to the provisions of the convention outside Part V, no clause had been included on the settlement of disputes to which they might give rise. That omission led to the remarkable situation that, apart from the articles relating to *jus cogens*, any dispute arising out of the interpretation or the application of the convention on the law of treaties could continue indefinitely, thereby causing irremediable harm to the relations between the States concerned.

<sup>1</sup> This was the number allotted to the new article adopted at the 34th plenary meeting when the articles were renumbered.

19. There was nothing to be gained by passing over the disturbing deficiencies of a compromise sought with such zeal and accepted with such reticence. It was illusory to ignore the grave dangers which must inevitably follow therefrom and reckless to court such dangers. That was why the French delegation, while reiterating its country's steadfast adherence to the cause of progress in international law, would vote against a convention which was liable to raise more problems than it would solve.

20. Mrs. ADAMSEN (Denmark) said that her delegation would vote in favour of the draft convention as a whole because it agreed in general with a large number of the articles it contained. Her delegation had on several occasions, and especially as one of the sponsors of the rejected article 62 *bis*, stressed the necessity of establishing a compulsory procedure for the settlement of disputes in connexion with all the articles of Part V. Her delegation was still of the opinion that disputes arising out of any of those articles must be automatically subject to decision by an impartial third party, and the fact that the convention only provided for such a procedure to a limited extent might be expected to influence the final position which the Danish Government would take on the convention.

21. She wished to add that, when voting at the 34th plenary meeting in favour of the ten-State proposal (A/CONF.39/L.47 and Rev.1), the Danish delegation had not interpreted the draft declaration it contained as being decisive with regard to the position which Denmark would in due course take in the General Assembly or elsewhere on the subject dealt with in the declaration.

22. Mr. GALINDO-POHL (El Salvador) said that his delegation would vote in favour of the convention as a whole without prejudice to its reservations regarding some of the articles, reservations in respect of which it had already made an official statement.

23. Contemporary international law abounded in general norms but had few rules on the means of effective application and enforcement of those norms. That situation was bound to affect the convention on the law of treaties. It had, however, at least been possible to make provision for compulsory settlement of disputes arising out of the rules of *jus cogens* and that was a great step forward. Some would consider that the provision went too far; others that it did not go far enough. Viewed in its historical perspective, it could be considered as remarkable progress and would set a precedent for further progress in the same field.

24. The convention which the Conference was about to adopt did not merely codify generally accepted customs and principles; it also kept pace with contemporary changes and contained dynamic elements, such as the rules on *jus cogens*, and it would have a great influence on the international law of the future. In certain matters, such as the clause to the effect that treaty provisions might become binding through international custom, the convention went beyond its proper scope and embodied questionable pronouncements. His delegation shared the view of those who had drawn attention to the dangers arising from the imprecise formulation

of the rules on the subject of *jus cogens*, which was made dependent not on the will of individual States but on that of the international community as a whole. It was true that that community consisted of States, but the various means whereby it adopted its decisions did not always coincide with the will of individual States. His delegation had nevertheless voted in favour of the articles on *jus cogens* because it considered that they introduced a dynamic element of progressive development and recognized the international community itself as a source of legal rules. The provisions on *jus cogens* would provide judges and arbitrators with a sensitive and delicate instrument which, if used with prudence, could serve to reflect the legal conscience of mankind at every stage of its development.

25. Contemporary political issues had affected the work of the Conference, but it had been possible to surmount those difficulties by means of solutions which, although not the best from the strictly legal point of view, were politically viable. The influence which political considerations had thus exerted over a legal instrument was one more demonstration of the fact that the law derived its content from the realities of life and that it would be nothing but an academic exercise to frame rules of law on the basis of pure logic.

26. The convention on the law of treaties was the most complete and progressive example of legal co-operation, and the experience gained with its adoption would facilitate future codification work.

27. Subject to the reservations it had expressed in the course of the discussions, his delegation would vote in favour of the convention.

28. Mr. USTOR (Hungary) said that the work of the Conference and the adoption of the convention on the law of treaties was an outstanding event in the long process of codification. His delegation was glad that most of the provisions of the convention had been adopted unanimously or by large majorities and either reflected rules established in international practice or added new progressive elements to the law of treaties.

29. At the same time, the Hungarian delegation regretted that the Conference had failed to include in the convention a provision to the effect that multilateral treaties which dealt with the codification and progressive development of international law should be open to universal participation. Hungary considered that to be a valid rule of contemporary international law and one which should therefore have been given a place in any convention on the law of treaties.

30. Again, that valid rule had not been reflected in the final provisions. That was a matter which Hungary, as a socialist country, could not pass over in silence, because the final provisions as adopted excluded some socialist countries from participation in the convention, although those countries, like all States in the world, had an equal and inalienable right to participate in the codification and progressive development of international law. His delegation also had misgivings in connexion with the article that had been adopted in place of article 62 *bis*, because that article accepted the

compulsory jurisdiction of the International Court of Justice.

31. Consequently, although the Hungarian delegation appreciated the results of the Conference, it was obliged to state that the great merits of the text were heavily outweighed by the exclusion of the valid and just principle of universality. To its deep and sincere regret, it would be unable to support the convention as a whole; nevertheless, it welcomed the declaration on universal participation in the convention on the law of treaties and hoped that that declaration would be implemented fully and, most important, in good faith.

32. Mr. BRAZIL (Australia) said that his delegation would abstain in the vote on the convention as a whole; it regretted that it could not support the text that had emerged from the long labours of the Conference on the basis of the draft articles prepared by the International Law Commission. The Australian delegation considered that many of the Commission's proposals marked valuable steps in the consolidation of existing law; examples of those were articles 31 and 32<sup>2</sup> on the interpretation of treaties.

33. The fact remained that the Australian delegation had difficulties over a number of basic points. The first of those was the very flexible system of reservations adopted in articles 19 and 20,<sup>3</sup> which was bound to tend towards the erosion of texts of conventions adopted at international conferences. The second difficult point was that of procedures for the settlement of disputes under Part V of the convention. Australia considered that binding settlement procedures were indispensable if the international community was to undertake the major steps in the development of international law proposed in Part V. It must be acknowledged that the commendable efforts of the authors of the "package proposal" went some way to meet that view, but although the Australian delegation understood the satisfaction of the majority of delegations at the compromise that had been reached, which had enabled it to achieve positive results, it had been unable to support the proposal, because it did not go far enough in certain essential respects; for example, compulsory jurisdiction did not cover the sensitive grounds of invalidity set out in articles 52 and 62.<sup>4</sup>

34. Finally, as his delegation had stated at the 19th plenary meeting, articles 53 and 64<sup>5</sup> formulated a doctrine of *jus cogens* of unspecified content, against which Australia had voted for the reasons set out in the summary record of that meeting. In that respect, Australia shared the reservations expressed by the French representative, to the effect that, although disputes under those articles were to be referred to the International Court of Justice, the problems of imprecision had not been eliminated and gave rise to concern with regard to the stability of treaties.

35. All those matters were of great importance, and

the Australian delegation would unfortunately be obliged to abstain in the vote on the convention as a whole.

36. Mr. WYZNER (Poland) said that the text of the convention which had emerged from the Conference's detailed consideration of the draft articles submitted by the International Law Commission was generally acceptable to the Polish delegation and constituted a significant example of codification and progressive development in what was perhaps the most important branch of international law. Nevertheless, some fundamentally important questions had not yet been properly solved.

37. Poland had always considered that the convention should serve the interests of all States, irrespective of their political and economic systems, and his delegation had therefore collaborated closely with many others in search of compromise solutions acceptable to all States, in the belief that the spirit of good will and co-operation would finally prevail over the particular interests of a small group of States. Nevertheless, because of the intransigent attitude taken by some delegations, the Conference had been unable to confirm in the convention itself the right of every State to participate in general multilateral treaties, the universal application of which was in the interests of the whole international community. Moreover, the convention itself had not been made open directly to all States, although the right of universal participation in it was confirmed in a separate declaration.

38. The consultations conducted during the past few days had revealed that it had been chiefly due to the stubborn attitude of one State that a formula could not be found which would make the convention open to all States forthwith. It was deplorable that the short-range political interests of that one State should have prevented the Conference from inserting in the convention a formula which would ensure the legitimate right of all States to enter into international treaty relations.

39. The Polish delegation had therefore decided to abstain in the vote on the convention as a whole and to refrain from signing the instrument. At the same time, it wished to express its confidence that the General Assembly, given a clear mandate under the declaration on universal participation in the convention, would issue the necessary invitations at its twenty-fourth session, thus opening the convention to participation by all States.

40. Mr. KHASHBAT (Mongolia) said that the convention on the law of treaties should reflect the increasing development of treaty relations between countries with different political, social and economic systems. The convention now contained some positive elements and useful provisions, but his delegation regretted that, because the legitimate principle of universality had not been included in the convention itself, the significance and value of the whole instrument was severely restricted. It was unthinkable that such an important instrument as the convention on the law of treaties, which governed the treaty relations of States, should not be open to participation by all States; it could not be denied that the convention was a multilateral treaty, the object and purpose of which were of interest to the interna-

<sup>2</sup> Formerly articles 27 and 28.

<sup>3</sup> Formerly articles 16 and 17.

<sup>4</sup> Formerly articles 49 and 59.

<sup>5</sup> Formerly articles 50 and 61.

tional community of States as a whole. As a socialist State, Mongolia regarded that shortcoming of the convention as extremely serious, and would therefore abstain in the vote on the convention as a whole and would not sign it.

41. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation would be unable to support the draft convention as it stood, for a number of reasons.

42. The convention on the law of treaties had a special character in comparison with other multilateral conventions concluded with a view to codifying rules of international law, such as, for instance, the 1961 Convention on Diplomatic Relations. Since the object of the present convention was to codify rules of international law concerning the law of treaties, and to establish rules by which the entire international community would be guided in concluding international treaties, it must be based on the principle of universality, for it was common knowledge that all States participated in treaty relations and concluded international treaties.

43. The Conference had adopted a declaration on universal participation which confirmed that principle. All delegations were to be congratulated on the emergence of the Vienna Declaration on Universality, which would become a component part of international law and would undoubtedly play a positive role in the development of international relations. Unfortunately, the principle of universality had not been duly reflected in the convention itself, a shortcoming which naturally vitiated the significance of that instrument. The USSR delegation had made great efforts from the outset of the Conference to secure the inclusion of appropriate provisions on universality in the convention, and in doing so had shown all the necessary flexibility and willingness to compromise. Nevertheless, as the result of the attitude of certain delegations which had opposed the inclusion of such provisions, the problem had not been solved satisfactorily.

44. Furthermore, the final provisions of the convention contained a formula which limited the right of all States to participate in the convention, although by rights it should be open to all States, since its object and purpose were of interest to the international community of States as a whole. The existing draft therefore discriminated against a number of socialist States, and that was inadmissible.

45. In the light of those considerations, the USSR delegation was authorized to state that the Soviet Union could not sign the convention in its present form.

46. Mr. MANNER (Finland) said that his delegation would vote for the convention as a whole. The present text of the convention might not meet all the wishes of most delegations, but it still marked a historic advance in the progressive development of international law. Finland hoped that the convention would be adopted and applied by the great majority of States.

47. Mr. HU (China) said that his delegation would vote for the convention, on the understanding that China did not consider the declaration on universal participation to have any binding force.

48. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said that the General Assembly of the United Nations had entrusted to the Conference the great task of preparing a convention which would govern the vitally important problem of the conclusion of treaties among States. Since treaty relations were among the most important means of developing friendly relations among all States, such an instrument should naturally embody the principle of universality in the text itself. Unfortunately, that principle had not been included either in the substantive part of the convention or in the final provisions. The declaration on universal participation in the convention on the law of treaties, although a very important document in itself, could not compensate for the absence of any mention of the principle in the body of the convention and in the final provisions. The convention discriminated against a number of socialist States, and his delegation could not support it. His delegation was authorized to state that the Byelorussian Soviet Socialist Republic could not sign the convention in its present form.

49. Mr. MARESCA (Italy) said that his delegation would vote for the convention as a whole, in the belief that it marked a considerable advance along the difficult road of the codification of international law. Nevertheless, his delegation regretted that the sound legal guarantee of the compulsory jurisdiction of the International Court of Justice had not been extended to all the articles in Part V, particularly to article 52,<sup>6</sup> on the coercion of a State by the threat or use of force. On the other hand, his delegation welcomed the solution of submitting to the International Court of Justice disputes arising under articles 53 and 64,<sup>7</sup> on *jus cogens*, and also the extension of the system of compulsory conciliation to all the provisions of Part V.

50. Mr. FATTAL (Lebanon) said that some delegations could not support the convention because it went too far and others because it did not go far enough. But if too much and too little were weighed against each other, a balance was achieved. His delegation would vote for the draft convention, despite its many shortcomings, because Lebanon, which its geographical position, history and temperament made a natural mediator, regarded the golden mean as a cardinal virtue.

51. The PRESIDENT invited the Conference to vote on the draft convention on the law of treaties as a whole.

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

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

*In favour:* Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Liechtenstein, Luxembourg, Madagascar, Malaysia, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sudan, Sweden, Syria, Thailand,

<sup>6</sup> Formerly article 49.

<sup>7</sup> Formerly articles 50 and 61.

Trinidad and Tobago, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Austria, Belgium, Bolivia, Brazil, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Dahomey, Denmark, Ecuador, El Salvador, Ethiopia, Federal Republic of Germany, Finland, Ghana, Greece, Guatemala, Guyana, Holy See, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast.

*Against:* France.

*Abstaining:* Monaco, Mongolia, Poland, Romania, South Africa, Switzerland, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Australia, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Congo (Brazzaville), Czechoslovakia, Gabon, Hungary.

*The draft convention on the law of treaties was adopted by 79 votes to 1, with 19 abstentions.*

52. Mr. MOE (Barbados) said that his delegation had unfortunately been absent during the vote. If it had been present, it would have voted in favour of the Convention.

53. Mr. PHAM-HUY-TY (Republic of Viet-Nam) said that his delegation had also been absent during the vote; had it been present it would have voted in favour of the Convention.

54. Mr. ANDERSEN (Iceland) said it was clear that no delegation was completely satisfied with the text of the Convention that had just been adopted. From that point of view, it would have been quite reasonable for his delegation to have abstained in the vote, but so much work and patience had been devoted to achieving the results, such as they were, that it had seemed only fair to vote for the Convention. It was, of course, for Governments to take the final decision.

55. Although the Icelandic Government would have liked the principle of compulsory legal settlement to be carried further, it must be admitted that a step had been taken in the right direction. He wished to stress, however, that for smaller States such as his own, the greatest possible protection was the rule of law, the guardian of which should be the International Court of Justice.

56. Mr. SOLHEIM (Norway) said that his delegation had been among the sixty-one which had voted in favour of the "package deal" submitted by ten States (A/CONF.39/L.47 and Rev.1). The Norwegian Government strongly supported the principle of a compulsory system of third-party settlement of disputes, and the ten-State proposal was all that the Conference had left if it wanted some degree of compulsory procedure on certain provisions of the Convention. The article ultimately adopted was far from adequate, but in view of the circumstances in which it had come into being and of the alternative possibility of having no provision at all on settlement procedures, with the consequent danger of a large number of negative votes and abstentions, the end result could not be regarded as insignificant. In particular, the fact that the International Court of

Justice was again mentioned in the Convention was extremely gratifying and held out hopes for the future.

57. Thus, the Norwegian delegation, which had intended to abstain in the vote, had decided, in a spirit of goodwill, in view of the seriousness of the matter and in appreciation of the painstaking efforts of many delegations, to vote in favour of the Convention as a whole.

58. Mr. SECARIN (Romania) said that the problems of universality and procedure raised in the "package proposal" were of vital importance to the whole system of the Vienna Convention. As a "treaty on treaties", that Convention should be a landmark in the process of the codification and progressive development of international treaty law. Romania continued to regard the Convention as an instrument intended to promote the principles of law and justice in relations between States.

59. Nevertheless, the problem of the principle of universality had not been solved in the way which Romania had advocated throughout the Conference. The Convention should have embodied the right of all States to participate in multilateral treaties of universal application and should have been open to participation by all States. Moreover, the solution that the Conference had adopted on procedure represented such an extreme innovation that his delegation had been unable to take a decision on it without weighing the new formula against all the rules set out in Part V and considering all its implications with regard to the application of the Convention. The Romanian delegation had therefore abstained in the vote on the Convention as a whole.

60. Mr. TEYMOUR (United Arab Republic) said that, without prejudging his Government's later attitude towards the Convention in the light of the opportunity open to all States to make reservations, his delegation's abstention in the vote on the Convention as a whole should not be interpreted as evidence of a lack of goodwill. His delegation had abstained in order to allow its Government time for a closer study of all the changes that had been made in the Convention. Everyone must be aware of his Government's co-operation and of its positive contribution to the work of the International Law Commission, and of the efforts it had made to bring about a convention on the law of treaties. The United Arab Republic was fully aware of the importance of such a convention in the development of understanding and friendly relations among members of the international community. It therefore hoped that the Convention would eventually be open to all countries and that all obstacles to the recognition of the principle of universality would be overcome.

61. Mr. REDONDO-GOMEZ (Costa Rica) said that his delegation had voted in favour of the Convention as a whole because it was an instrument of positive progress in the codification of international law and, in particular, would facilitate the development of the international co-operation which mankind so greatly needed. Admittedly, the instrument did not fully satisfy the aspirations of all the countries represented at the Conference, but it was a step towards a more promising future in international relations.

62. With regard to the compatibility of the Convention with Costa Rica's legislation, his country would make the necessary effort to accommodate its constitutional system to the provisions that had been adopted, but its internal law would continue to prevail, particularly with regard to treaty ratification procedure and its connexion with the provisions of the Convention.

63. Lastly, he wished to make it clear that his delegation interpreted the Convention as having a residuary meaning in relation to the provisions and principles of the inter-American system to which Costa Rica belonged.

64. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that his delegation's abstention in the vote should not be interpreted as opposition to the Convention as a whole. On the contrary, the Ukrainian SSR had supported a large majority of the provisions and principles set out in that instrument, such as the principles of observance of international obligations, equality and free consent, and sovereignty. The reasons for his delegation's abstention would be found in the statements it had made during the first and second sessions, which made it clear that the Ukrainian SSR could not support a convention which failed to reflect a basic principle of contemporary international law, the principle of universality, and consequently discriminated against certain socialist States. Nor had his delegation been able to support the principle of compulsory procedures for the settlement of disputes. It had therefore been authorized to declare that the Ukrainian Soviet Socialist Republic could not sign the Convention in its present form.

65. Mr. BILOA TANG (Cameroon) said that his delegation had refrained from voting against the Convention as a whole because that instrument was the result of so many years of painstaking work in the International Law Commission and in the Conference. Nevertheless, it considered that the Convention should have contained stronger guarantees in connexion with the settlement of disputes, and it did not regard the compromise solution as satisfactory. It had abstained in the vote, in the belief that that question should be studied further by Governments.

66. Mr. MUUKA (Zambia) said that his delegation associated itself with all those which had given their approval in principle to the Convention in its final form. In the course of the Conference there had been moments of such despair that, but for the resurgence of goodwill, such as had occurred on the previous day, much might have been lost and very little gained.

67. Although the Conference had not accomplished all that might have been desired, what had been gained constituted a landmark of unprecedented importance in international law. Now that the tumult was over, it was imperative that all Governments should work tirelessly towards closing the gap that still remained; in particular, he hoped that the General Assembly would recognize the principle of universality, since without that principle he feared that several States would not be in a position to ratify the Convention.

68. Mr. MOLINA ORANTES (Guatemala) said that his delegation shared the satisfaction of other delegations at the successful conclusion of the work of the Conference, culminating in the signing of a historic document which would constitute the first chapter in the codification of international law. His delegation also joined in the well-deserved tribute to the International Law Commission for its achievements during the past eighteen years; there could be no doubt that the sound juridical basis of the document prepared by it had contributed greatly to the success of the Conference.

69. His delegation had voted in favour of the Convention in the conviction that it represented an important step forward in the work of codifying international law. During the course of the debate, both in the Committee of the Whole and in the plenary Conference, his delegation had on various occasions referred to those provisions of the Guatemalan Constitution which prevented it from voting in favour of some of the articles of the Convention. Those articles included articles 11 and 12,<sup>8</sup> which related to consent expressed by merely signing a treaty; article 25,<sup>9</sup> which dealt with the provisional application of treaties; article 66,<sup>10</sup> which established procedures for judicial settlement, arbitration and conciliation; and article 38,<sup>11</sup> which contained a norm concerning the application of customary law derived from treaty law, a norm which in the opinion of his delegation lacked validity in existing international law.

70. For those reasons, while approving the text of the Convention as a whole, his delegation wished to put on record that it was compelled to make express reservations with respect to the articles to which he had referred.

71. Mr. CONCEPCION (Philippines) said that his delegation had voted for the Convention, although it had abstained on the compromise proposal (A/CONF.39/L.47 and Rev.1) put to the vote at the 34th plenary meeting. His delegation's vote for the Convention did not mean that it had abandoned the position it had adopted with regard to the major issues raised in the course of the discussions. Although some of those issues had not been met to his delegation's satisfaction, the Convention as a whole constituted a step forward in the delicate task of drafting the law of treaties and promoting the codification and progressive development of international law, as well as strengthening the fabric of peace. Untiring efforts had been made by the Secretariat and by delegations to foster a spirit of conciliation and co-operation during the Conference, and he hoped that every possible encouragement would be given to further efforts at conciliation in the future.

72. Mr. REY (Monaco) said that he had explained at the previous meeting why his delegation had abstained in the vote on the compromise proposal. The same reasons, *mutatis mutandis*, had led it to abstain in the

<sup>8</sup> Formerly articles 9 *bis* and 10.

<sup>9</sup> Formerly article 22.

<sup>10</sup> i.e. the new article adopted at the 34th plenary meeting.

<sup>11</sup> Formerly article 34.



vote on the Convention. Rather surprisingly, the text submitted to the vote had achieved practically unanimous support. It was a pity that it should have been a unanimity of dissatisfaction: the explanations of vote which he had just heard expressed reservations on the part of most delegations. However, in whatever way unanimity had been achieved, the optimists would find in it cause for satisfaction in the existing political context. He hoped that, as a result of the action taken by the United Nations, all States would strive to strengthen the rule of law for the greater happiness of mankind.

73. Mr. ROMERO LOZA (Bolivia) said that his delegation had voted for the Convention because it considered that any step, however imperfect, to improve international relations and mutual understanding should be supported. The Conference had succeeded in approving principles which constituted progress inspired by the principles of justice. The lack of an effective procedure to strengthen Part V, and above all the failure to make article 49 subject to compulsory arbitration, was one of the imperfections of the Convention, but he hoped that such imperfections were merely temporary interruptions in the forward march of humanity.

74. Mr. BRODERICK (Liberia) said that his delegation, in voting in favour of the Vienna Convention on the Law of Treaties, wished to point out first, that its Government did not consider itself in any way committed to vote in favour of the draft resolution submitted by Ghana, Ivory Coast, Kenya, Kuwait, Lebanon, Morocco, Nigeria, Sudan, Tunisia and the United Republic of Tanzania (A/CONF.39/L.47/Rev.1) which had been adopted by the Conference at its 34th plenary meeting by a roll-call vote of 61 in favour, 20 against and 26 abstentions, when it came before the United Nations General Assembly at its twenty-fourth session. Secondly, that his Government reserved the right to decide what action or course it would choose in the exercise of good faith and the *pacta sunt servanda* rule in respect of the new article on procedures for the adjudication, arbitration and conciliation of disputes other than those arising from preemptory norms of *jus cogens* which might be referred to the International Court of Justice or to arbitration.

75. It was his earnest hope that those delegations which had abstained in the vote, or had voted against the adoption of the Convention, would in time reconsider their decision and that their respective Governments would accede to and ratify the Convention.

#### **Tribute to the International Law Commission**

##### **Tribute to the Federal Government and the people of the Republic of Austria**

76. Mr. SINCLAIR (United Kingdom) said he had the honour of introducing the draft resolutions paying tributes to the International Law Commission (A/CONF.39/L.50) and to the Federal Government and the people of the Republic of Austria (A/CONF.39/L.51). A small drafting amendment should be made to the

draft resolution concerning the International Law Commission, where the last phrase should read: "codification and progressive development of the law of treaties". He was sure that the entire Conference would wish to acknowledge the sterling efforts of the International Law Commission over a period of nearly twenty years which had culminated in 1966 in the final set of draft articles codifying the law of treaties. The real tribute to the International Law Commission was not the formal resolution before the Conference, but the fact that the Convention which had been adopted embodied so much of the Commission's original draft.

77. He took some pride in the fact that the four Special Rapporteurs on the topic had all been his countrymen and had contributed, each in his own inimitable way, to the progress of the work. While singling out Sir Humphrey Waldock for special mention, he recognized that every member of the International Law Commission had contributed to the task in hand. Many members of the Commission had participated actively in the work of the Conference and, in that connexion, he wished to pay a respectful tribute to the work done by the President of the Conference, by the Chairman of the Committee of the Whole, by the Rapporteur and by the Chairman of the Drafting Committee. On the pediment of St. Paul's Cathedral, the crowning achievement of the famous English architect, Sir Christopher Wren, was an inscription "*Si monumentum requiris circumspice*". The members of the Commission might justly take a similar pride in their achievement.

78. On behalf of the whole Conference, he wished to express his sincere appreciation of the generous hospitality of the Austrian Government and the warmth, friendliness and humour of its people.

79. The PRESIDENT said that, if there were no objection, he would consider the draft resolution paying a tribute to the International Law Commission (A/CONF.39/L.50) and the draft resolution paying a tribute to the Federal Government and the people of the Republic of Austria (A/CONF.39/L.51) as adopted.

*It was so agreed.*

#### **Adoption of the Final Act**

80. Mr. YASSEEN, Chairman of the Drafting Committee, introducing the draft Final Act (A/CONF.39/21) submitted by the Drafting Committee to the Conference in accordance with its instructions, said it had been modelled on the Final Acts of previous codification conferences. The brackets indicating an alternative, as in paragraphs 14 and 15, and the spaces left blank, as in paragraph 13, were due to the fact that the document had been drawn up before the end of the Conference. The matter would be dealt with by the Secretariat in accordance with the Conference's decisions.

81. The PRESIDENT said that, if there were no objection, he would consider the Final Act adopted.

*It was so agreed.*

### Closure of the Conference

82. The PRESIDENT said that now that the Conference had reached the end of its work, he wished first to express his deep appreciation of the assistance which delegations had so generously given him in carrying out his difficult task.

83. Like many others, their Conference had had its high points and its low points, its moments of confident hope and its moments of discouragement. The previous day had again produced a situation which was not unprecedented — with its morning hours when everything had seemed to be lost and its evening hours when those hopes which refused to be dashed had been crowned with success.

84. Yet he did not think that it was possible, at the present time, to judge the true value of the work which had been accomplished. In that respect, the present Conference differed from many others, since the text which they had just adopted might represent a turning-point in the history of the law of nations. Certainly from now onwards the juridical basis for international contractual relations would take on a different aspect. A written law would be set up side by side with the old customary law; and he did not think that he was being too optimistic in expressing the view that that law would win acceptance throughout an ever widening circle of nations and would one day replace the old rules altogether. Moreover, the success of the Conference's work would provide an exceptional stimulus to the continuation of the work of codification in the other chapters of international law which had not yet been touched upon.

85. Those participating in the Conference had had many problems before them: legal problems and, what were even more complex, political problems. It was primarily the task of diplomats to attempt to solve the political problems and thus make possible the solution of questions of law. Now that the text had been adopted and had acquired its definitive character, he would like to express the hope that the many jurists who would study the articles of the Convention would help to make them clear and effective through their knowledge, their ingenuity and their farsightedness. He hoped that they would succeed in making of that product of a joint effort a living work, a body of rules which really answered the needs of modern life, a genuine contribution to the development — which everyone wished to see more intense, more specific and more closely knit — of the relations between the members of the international community.

86. At the final conclusion of the long-term task of codifying the law of treaties, his thoughts turned with deep appreciation to the number of learned British jurists, and in particular to Sir Humphrey Waldock, who had devoted their studies to that question. He was also grateful to Mr. Elias, who, after presiding with incomparable ability over the work of the Committee of the Whole, had proved himself irreplaceable up to the very last minute. Mr. Elias had also found support in others whom he would not mention at that time, but whose names were familiar to all. No less gratitude however, was due to Mr. Yasseen and to all the mem-

bers of the Drafting Committee over which he had presided with so much ability, firmness and devotion. He considered it a matter without precedent that all the amendments which had been proposed by that Committee had been adopted almost without discussion by the Conference. Equal gratitude was due to the Rapporteur of the Conference, Mr. Jiménez de Aréchaga. Much was also owed to the Secretariat and to the Legal Counsel, Mr. Stavropoulos.

87. Mr. TABIBI (Afghanistan), speaking on behalf of the Asian countries, the United Arab Republic, Libya and Morocco, said the President had guided the Conference's work to a successful conclusion with outstanding ability. The Nigerian representative had also played a distinguished part, while the contribution of the officers of the Conference and the Secretariat could not be overlooked. The Conference had achieved another great milestone in the field of codification and progressive development of international law, and he hoped that in the spirit of *pacta sunt servanda* the Convention would be properly applied for the good of mankind everywhere.

88. Mr. SUAREZ (Mexico) speaking on behalf of the Latin American group of delegations, said that the Conference had wisely chosen to preside over its discussions an eminent lawyer of wide and varied experience, who came from a country as outstanding in the field of law as in that of the arts. He had guided the Conference's work in a most masterly way.

89. Italian jurists had made a great contribution to every branch of law, and the Conference had paid them a well-merited tribute by including in the Convention the *pacta sunt servanda* rule. Like the other branches of law, international law, which derived not only its basic principles but its spirit from Roman law, was drawing further and further away from the parent stem of civil law and establishing its right to an independent existence. It would be too much to say that the Conference had erected a monument more lasting than bronze, but it was safe to say that the Convention which it had adopted would form a worthy part of the code of international law that was being prepared under the auspices of the United Nations.

90. Differences of view on important points had divided the Conference from the beginning and in order to reconcile them it had been necessary to accept the imperfect principles resulting from a compromise. It was possible that, at least in the immediate future, a number of countries might refrain from signing or ratifying the Convention. That, however, should not be considered a reason for discouragement. Search after truth was more important than truth itself, as Lessing had said, and to travel hopefully was a better thing than to arrive. More important than the Convention itself was the fact that all delegations had participated in a phase of the age-old effort to establish law, the noblest aspiration of humanity.

91. Sir Francis VALLAT (United Kingdom), on behalf of the group of west European and other States, Mr. USTOR (Hungary), on behalf of the group of socialist States, Mr. MUTUALE (Democratic Republic of the Congo), on behalf of Ethiopia, Ghana, Liberia,

Nigeria, Sierra Leone, the United Republic of Tanzania and Zambia, and Mr. YAPOBI (Ivory Coast), on behalf of Cameroon, Central African Republic, Congo (Brazzaville), Dahomey, Gabon, Madagascar and Senegal, all expressed their thanks to the President for his skilful and energetic guidance of the work of the Conference and paid tributes to the labours of the Vice-Presidents, the officers of the Committee of the Whole and the Drafting Committee, the Expert Consultant, the members of the International Law Commission and the Secretariat. They further expressed their great appreciation of the warmth and hospitality of the Austrian Government and people.

92. Mr. VEROSTA (Austria) said he associated his delegation with all that had been said by previous speakers in appreciation of the work of those who had contrib-

uted so much to make the Conference a success. His delegation was gratified that the Convention was to be entitled the Vienna Convention on the Law of Treaties and wished to thank all those who had spoken so kindly of the hospitality offered by his Government and the Austrian people.

93. The PRESIDENT said that he was profoundly moved by the speeches which had been made and thanked all those who had paid tribute to his work, a tribute which must be shared with the Vice-Presidents.

94. He declared closed the United Nations Conference on the Law of Treaties.

The meeting rose at 6.55 p.m.

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