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The parties would then have to decide what attitude to adopt in practice. It must therefore be pointed out that each party was entitled to adopt, unilaterally, an attitude that was consistent with the recommendations, and that no objection could be raised on that account.

42. To meet the view of the representative of the USSR that the International Law Commission's paragraph 7 should be reinstated and also the point made by the Turkish representative in connexion with the Swiss delegation's paragraph 1, he proposed that the following text, modelled on the International Law Commission's paragraph 7, should be added to the Swiss draft of article 82:

> "Nothing in this article shall preclude any agreement which may be reached between the parties to the dispute to submit it to a procedure established in the Organization or to any other procedure on which they may agree."

43. Mr. MITIĆ (Yugoslavia) said that after careful consideration of the Swiss amendments (A/CONF.67/C.1/L.145), he had reached the conclusion that the International Law Commission's text of articles 81 and 82 were wider in scope. Disputes arising out of the application or interpretation of the convention under consideration would not be simplified by the exclusion or the diminished role of the organization in their settlement as proposed in the Swiss draft. Any such dispute would of necessity involve the interests and work of the organization and for that reason, in article 81, the ILC rightly gave it the right not only to participate in, but also to initiate, consultations in the event of a dispute.

44. Furthermore, in article 82, paragraph 1, the ILC proposed that disputes unresolved by consultations should first be submitted to any settlement procedure established within the organization. His delegation fully accepted the contention in paragraph 7 of the International Law Commission's commentary to the article (see A/CONF.67/4) that the adoption of that proposal would encourage the development of such a procedure within the organization.

45. It was impossible to compare the problems involved in the settlement of disputes in bilateral relations with the quite different position in multilateral relations, in which there was the advantage, which could be turned to good account, of the existence of a third, impartial party in the shape of the organization. He would be prepared to reconsider his attitude to the proposed Swiss amendments if it took into consideration the concept of the role of the organization underlying the International Law Commission's draft.

The meeting rose at 1 p.m.

44th meeting

Thursday, 6 March 1975, at 3.30 p.m.

Chairman: Mr. NETTEL (Austria).

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (*continued*)

Article 81 (Consultations between the sending State, the host State and the Organization) and *article 82* (Conciliation) (*concluded*) (A/CONF.67/4, A/CONF.67/C.1/L.145)

1. The CHAIRMAN summed up the situation following the consultations which had taken place on articles 81 and 82. Not only was the word "one" to be replaced by the word "two" in the first sentence of the English version of article 81 proposed by the Swiss delegation (A/CONF.67/C.1/L.145), but further, in the second sentence of that provision, the words "or the conference" should be added after the word "Organization", as the Swiss delegation had agreed to the oral subamendment by the Malagasy delegation (43rd meeting). Paragraph 1 of article 82 had been the subject of an oral subamendment by the Turkish delegation (*ibid.*), which the Swiss delegation had taken into account in a new paragraph which would be inserted after paragraph 7 of its text. Consequently, the Turkish delegation did not press for its subamendment to be put to the vote. With regard to paragraph 3 of that draft, the Swiss delegation had agreed to the Soviet subamendment (*ibid.*) that the chairman of the conciliation commission should be designated, not by the President of the International Court of Justice, but by the chief administrative officer of the organization. Paragraph 3 would read as follows:

> "3. The third member of the Commission, who shall be its Chairman, shall be chosen by the other two members. If the other two members are unable to agree within one month from the notification referred to in paragraph 1 of this article or if one of the parties has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of the most diligent party by the chief administrative officer of the Organization. The appointment shall be made within a period of one month. The chief administrative officer of the Organization shall appoint as the Chairman a qualified jurist who is neither an official of the Organization nor a national of any State party to the dispute."

2. The Greek delegation's proposal (*ibid.*) that a time-limit should be set for the appointment was thus no longer pertinent. The Swiss delegation had also accepted the suggestion by the Netherlands delegation (42nd meeting) that the word "conclusions" in paragraph 7 should be replaced by the word "recommenda-

tions". The new paragraph which the Swiss delegation was willing to insert between paragraphs 7 and 8 of its draft article 82 should meet the concerns of the Turkish and Soviet delegations. It would consist of the text of paragraph 7 prepared by the International Law Commission (ILC), supplemented by the following provision: "This article is without prejudice to any agreement which may be concluded between the parties to the dispute to submit the dispute to a procedure instituted in the Organization or to any other procedure on which they may agree."

3. Mr. TODOROV (Bulgaria) endorsed a suggestion made at the previous meeting by the representative of the Federal Republic of Germany that the words "disputes arising in connexion with the conference" in paragraph 7 of article 82 of the International Law Commission's text should be replaced by the words "disputes arising in connexion with this convention".

4. Mr. EUSTATHIADES (Greece) pointed out that the expression "in connexion with this convention" was imprecise. It would be better to take article 81 as the model and draft the last part of the sentence in paragraph 7 of article 82 of the International Law Commission's text as follows: "disputes arising out of the application or interpretation of the present Convention".

5. Mr. MARESCA (Italy) recalled that at the previous meeting he had suggested that draft article 82 in the Swiss delegation's amendment should be supplemented by a sentence, relating to the expenses involved in the conciliation procedure, borrowed from the annex to the Vienna Convention on the Law of Treaties, but that his proposal had not been accepted.

6. Mr. LAVINA (Philippines) said that he, too, would like to receive some explanations on that point.

7. The CHAIRMAN noted that the Swiss delegation had accepted some of the amendments and subamendments submitted, and that the sponsors of the others had decided to withdraw them or not to press for them to be put to the vote. Therefore, he would put to the vote the Swiss amendments (A/CONF.67/C.1/L.145), as revised.

The amendment to article 81, as revised, was adopted by 39 votes to 13, with 12 abstentions.

The amendment to article 82, as revised, was adopted by 63 votes to none, with 2 abstentions.

8. Mr. TANKOUA (United Republic of Cameroon) said that he had abstained in the vote because of the reference made, in paragraph 6, to the International Court of Justice—an organization which, in his opinion, lacked impartiality.

9. Mrs. BUBESHI (United Republic of Tanzania) said that she had abstained for the reasons given by her delegation at the previous meeting.

10. Mr. ATAYIGA (Libyan Arab Republic) said that he had voted for the Swiss amendments, as revised, because he had considered that it represented an improvement on the International Law Commission's text.

11. Mr. MARESCA (Italy) said that he had voted for the Swiss amendments, as revised, but regretted that the question of the expenses incurred by the application of the provisions of the new articles 81 and 82 had been completely disregarded.

New article 82 bis (A/CONF.67/C.1/L.147)

12. Mr. MAAS GEESTERANUS (Netherlands), introducing draft article 82 *bis* (A/CONF.67/C.1/L.147) on behalf of the Swedish delegation and his own delegation, pointed out that it constituted the third element in the mechanism for the settlement of disputes, since the procedures provided for in articles 81 and 82 would serve mainly to solve minor difficulties which might arise and which did arise in practice between a sending State and the host State. From time to time, however, more serious problems arose bearing upon the interpretation of fundamental articles of a convention. By shortening the time-limit originally provided for in the draft article 82 submitted by the Swiss delegation, the possibilities of applying the provisions of that article had been limited to the case where a fundamental problem of interpretation arose.

13. Draft article 82 therefore had a twofold purpose. First, it should facilitate the settlement of disputes concerning interpretation, for any treaty, however well prepared, could contain errors, and in the present instance it was possible that the convention had been elaborated in too short a time and that it might prove defective. Secondly, the presence of that article in the convention should exercise a certain influence over the parties to a dispute during initial stages of consultations and conciliation.

14. His Government had had experience of those two aspects of the settlement of disputes when the International Court of Justice had had referred to it a dispute between the Netherlands and one of its neighbours on the subject of the North Sea continental shelf. On that occasion, the International Court of Justice had thrown light on certain questions of interpretation concerning the 1958 Convention on the Continental Shelf which were of interest not only to the two parties in the dispute but also to the parties to the Convention itself. It had also considerably assisted the parties to the dispute in the course of their negotiations, before, during and after its sessions, and had enabled them to remain on friendly terms.

15. For the settlement of any dispute between a sending State and a host State arising out of the interpretation or application of the convention, the procedures for which provision was made in articles 81, 82 and 82 *bis* comprised three stages: consultations which, in the majority of cases, would lead to a settlement of the dispute; a mechanism for conciliation if the dispute should persist; and lastly, if the mechanism for conciliation failed, and in rare cases only, a procedure for settlement through arbitration or adjudication. In this connexion, he pointed out that bringing a dispute before the International Court of Justice involved no expense, and that the remuneration of the judges was not borne by the parties.

16. He drew the Committee's attention to two important aspects of the settlement of the disputes referred to in article 82 *bis*. The new article proposed by the Swedish delegation and his own delegation was intended to supplement the machinery provided for in

articles 81 and 82, in the interests of the small nations, as there were very few States that were able to rely solely on their power in order to defend their rights. All the other States should be able to invoke the law and to have recourse, in order to defend themselves to arbitration or adjudication.

17. The Committee should realize that, in most cases, any disputes which might arise out of the interpretation or application of the convention would be between a sending State and a host State. Apart from one or two exceptions, the convention imposed legal obligations not on the sending States but on the host States. The new article 82 *bis* was therefore aimed at protecting the rights enjoyed by the sending State under the convention.

18. Mr. PREDA (Romania) said that the provisions of articles 81 and 82 which the Committee had just adopted should suffice for the settlement of any disputes that were likely to arise between a sending State and a host State with regard to the application or interpretation of the convention. For that reason, his delegation did not think it necessary to provide for the compulsory jurisdiction of the International Court of Justice, as was sought by the sponsors of the amendment in document A/CONF.67/C.1/L.147.

19. In his delegation's view, no dispute, whatever its nature, could be brought before the International Court of Justice without the *agrément* of all the parties. It therefore considered unacceptable, in principle, the idea proclaimed in the text under consideration. Moreover, his delegation would have some difficulty in presenting its Government with a text which contained such a provision, and it would therefore vote against the amendment in document A/CONF.67/C.1/L.147.

20. Mr. CALLE Y CALLE (Peru) said that he was gratified by the Netherlands and Swedish amendment, which would supplement the machinery for the settlement of disputes. Without imposing the compulsory jurisdiction of the Court, it made available to States a means of disposing of disputes which it had been impossible to settle through consultations and negotiations. He would therefore vote in favour of that text.

21. Mr. EUSTATHIADES (Greece) said that he, too, regarded the Netherlands and Swedish proposal as a useful complement to articles 81 and 82. He pointed out that, in view of the provisions of the latter article, very few cases would arise where, by one procedure or another, the parties to a dispute failed to reach agreement, but it was nevertheless necessary to enable them to have recourse to the procedure provided for in the new article 82 *bis*.

22. He suggested, however, that the sponsors should shorten the three months' time-limit and replace the words "to resort to an arbitral tribunal" by the words "submit the dispute to arbitration", as the parties might perhaps wish to submit the case to a single arbitrator or to an existing organ.

23. Mr. GÜNEY (Turkey) welcomed the new draft article, as supplementing articles 81 and 82. The Turkish delegation thought that it was right to provide for the compulsory jurisdiction of the International Court of Justice, the highest jurisdictional authority of the United Nations. It would therefore vote for the draft article 82 *bis*.

24. Mr. BADAR (Pakistan) likewise supported draft article 82 *bis* and endorsed the views expressed previously by other representatives. He would, however, prefer to keep the contemplated time-limit at three months.

25. Mr. AVAKOV (Union of Soviet Socialist Republics) said that the International Court of Justice was not the organ before which disputes arising in connexion with the interpretation or application of the convention should be brought. At the request of States, important questions could be referred to the Court, but he wondered whether the latter would act in good faith in the case of a dispute concerning the draft convention under consideration. In addition, not all States had recognized the compulsory jurisdiction of the Court, and there were many that had recognized it but had entered reservations according to the points of law and the circumstances.

26. The compulsory jurisdiction of the Court was incompatible with the sovereignty of States and, although the Soviet Union did not object to international arbitration, which was one of the pacific means for the settlement of disputes provided for in Article 33 of the Charter of the United Nations and in other international agreements signed by the Soviet Union, the USSR delegation associated itself with the Romanian delegation which had raised objections in that respect.

27. Moreover, the arguments adduced by the Netherlands delegation had not convinced the Soviet Union delegation, which could not admit the idea that pressure should be exerted on the parties to a dispute relating to the interpretation or application of the convention. If that text were adopted, the Soviet Union would have some difficulty in signing the convention.

28. Mr. MARESCA (Italy) said he was in favour of the adoption of the text in document A/CONF.67/C.1/L.147 for the legal and historical reasons he had given at the Committee's 42nd meeting. He wished, in addition, to draw the attention of the Committee to a recent precedent, namely, article 66 of the Vienna Convention on the Law of Treaties,[1] which provided a procedure for judicial settlement, arbitration and conciliation for questions relating to articles 53 and 64, and formally and explicitly stipulated that the parties to a dispute might submit it to the Court for a decision. The Italian delegation therefore considered that the draft article 82 *bis* constituted a necessary complement to the international system for settlement of disputes.

29. Mr. RITTER (Switzerland) reminded the Committee that the Swiss Government had always been in favour of the judicial settlement of international disputes and of the inclusion of provisions for that purpose in international instruments, as was demonstrated by the active part played by the Swiss delegation in the elaboration of rules of that nature at the codification conferences. In other words the proposal by the Neth-

[1] See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, p. 287.

erlands and Sweden could not but meet with sympathy from the Swiss delegation, which sincerely hoped that it would be adopted by the Committee.

30. Mr. ESSY (Ivory Coast) said that, without for that matter having adopted a final stand on the proposal in document A/CONF.67/C.1/L.147, although as it was articles 81 and 82 seemed to him to be sufficient, he wished to ask the sponsors of the proposal what effect the words "either party may bring the dispute before the International Court of Justice by an application" would have in practice, and he pointed out that the Ivory Coast had not made a declaration recognizing the compulsory jurisdiction of the Court.

31. Mr. MEISSNER (German Democratic Republic) said that his delegation took its stand on the principle of the freedom of choice of the means for the pacific settlement of disputes enshrined in Article 33 of the Charter; therefore it could not accept the new article 82 *bis* proposed by the Netherlands and Sweden.

32. Mr. RAOELINA (Madagascar) said that the new article proposed by the Netherlands and Sweden gave rise to difficulties for his delegation. Not only did experience show that the decisions of the International Court of Justice were given very late but, moreover, as some delegations had said, it appeared that the Court was not the appropriate organ to deal with disputes concerning the future convention. In article 82, paragraph 7, adopted at the present meeting by the Committee, it was provided that "Nothing in the preceding paragraphs shall preclude the establishment of another appropriate procedure for the settlement of disputes arising in connexion with the conference"; the provisions of articles 81 and 82 therefore seemed amply sufficient.

33. Mr. COULIBALY (Mali) said that the two articles 81 and 82 offered adequate possibilities for the settlement of any disputes that were likely to arise out of the application or interpretation of the convention, and his delegation was opposed to the new article 82 *bis* proposed by the Netherlands and Sweden. However, without prejudging the result of the vote, the Mali delegation proposed that the new article contemplated in document A/CONF.67/C.1/L.147 should appear in the convention as an additional article or as an article signature of which would be optional, so as to facilitate the acceptance of the draft convention by some delegations.

34. Mr. HELLNERS (Sweden) said that, when it had submitted its proposed new article, his delegation had been fully aware that all delegations would not be in favour of it. The representative of Mali had just mentioned two other possible solutions in case delegations should refuse to include the new article, of which the Swedish delegation was one of the sponsors, in the convention. That article could either be contained in an optional protocol concerning the compulsory jurisdiction of the International Court of Justice, as in the case of some of the conventions that had already been adopted, or it could be inserted in the convention, with an option for States that ratified the convention to enter reservations on that article. For the time being, the Swedish delegation hoped that the proposal of which it was one of the sponsors would first of all be put to the vote.

35. Mr. STEPANOV (Ukrainian Soviet Socialist Republic) said that his delegation objected to the new article 82 *bis* proposed by the Netherlands and Sweden. That text included provisions which restricted the freedom of choice of States with regard to the procedure for settling disputes, and the fact of imposing the International Court of Justice as a jurisdictional authority was inconsistent with the present stage of development of international law. That freedom of choice was a universal principle, already recognized in the days of the League of Nations, in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. But for some time past an unjustified tendency had been noticeable to introduce the compulsory jurisdiction of the International Court of Justice. As the representative of the United Republic of Tanzania had stressed in connexion with articles 81 and 82, it was the will of States to collaborate that was the fundamental source of international law.

36. The Ukrainian delegation therefore refused to see included in the convention a rule that was supported neither by law nor by practice. If some States so wished, the article concerned might perhaps be made the subject of an optional protocol, without imposing it on the plenary Conference. Moreover, that was the solution that had been selected in the 1961 Vienna Convention on Diplomatic Relations, in the 1963 Vienna Convention on Consular Relations and in the 1969 Convention on Special Missions.

37. Mr. TODOROV (Bulgaria) asked whether it was a matter of having the draft article under consideration placed in an optional protocol or in the convention.

38. Mr. SURENA (United States of America) recalled, as his delegation had already had occasion to say during the discussion of articles 81 and 82, that his Government was, as in the past, in favour of the pacific settlement of disputes and of the arbitration procedure. The United States delegation accordingly welcomed the fact that the ILC had provided for conciliation and arbitration procedures in the draft convention.

39. With regard to the new article proposed by the Netherlands and Sweden, his delegation saw in it a complementary provision for the settlement of disputes, which was in no way contrary to the principle of freedom of choice, particularly in the context of the provisions of articles 81 and 82. Some delegations had asserted that the International Court of Justice was not the appropriate organ to deal with disputes under the draft convention, but the Convention on the Privileges and Immunities of the United Nations [2] contained provisions very similar to that proposed by the Netherlands and Sweden. Other delegations had also asserted that it was not consistent with the sovereignty of States to bring disputes before the International Court of Justice, but the argument was untenable if reference were made

[2] General Assembly resolution 22 A (I).

to the records of the International Court of Justice. The proposal by the Netherlands and Sweden was therefore well-advised and it aptly supplemented the provisions for the pacific settlement of disputes already laid down in articles 81 and 82 of the draft.

40. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that his delegation had already expressed its oposition to the new article 82 *bis* proposed by the Netherlands and Sweden. Referring, in particular, to the decisions taken with regard to South Africa and Rhodesia, the Soviet Union delegation emphasized the fact that it did not believe in the objectivity of the International Court of Justice. Without being categorically opposed to bringing disputes before the International Court of Justice, it considered that other satisfactory forms of settlement were available which had been approved at previous conferences.

41. Mr. SOGBETUN (Nigeria) said that in his opinion the Committee had spent sufficient time on the consideration of the question, and he proposed the closure of the debate.

42. Mr. MAAS GEESTERANUS (Netherlands) informed the Committee that, in view of the observations made by other delegations, his delegation was prepared to alter a little its original proposal. There was no need to change the time-limit contemplated in the proposed new article 82 *bis* as delegations had not been able to agree on a different time-limit. With regard to the arbitral tribunal, it might very well be composed of only one arbitrator, and it was for the Drafting Committee to change the formulation of the draft article if necessary. Some delegations had asserted that the proposal by the Netherlands and Sweden was inconsistent with the sovereignty of States; on the contrary, the sovereign equality of States was better guaranteed by an arbiration procedure than by negotiations. Other delegations had expressed the wish, if they signed a convention, not to be bound by the proposed new article; the Netherlands delegation therefore proposed that a sentence should be added at the end of the text proposed in document A/CONF.67/C.1/L.147, to read as follows: "Any State, when signing or ratifying the present Convention, or when adhering to it, may exclude the present article from its application".

43. Mr. KUZNETSOV (Union of Soviet Socialist Republics), speaking on a point of order, reminded the Committee that the representative of Mali had suggested that the proposed new article 82 *bis* might be contained in an optional protocol.

44. Mr. MUSEUX (France) said that his delegation was opposed to the motion for the closure of the debate on document A/CONF.67/C.1/L.147, since the Netherlands representative had orally revised the two-Power proposal.

45. Mr. ZEMANEK (Austria) said that, like the French delegation, his delegation would like to have some explanations on the revised text of draft article 82 *bis*, which raised the question of possible reservations to other articles of the convention. In the absence of explanations his delegation would have to abstain in the vote.

46. The CHAIRMAN put to the vote the Nigerian delegation's motion for closure of the debate on document A/CONF.67/C.1/L.147.

The motion was adopted.

47. Mr. KUZNETSOV (Union of Soviet Socialist Republics), said that the oral revision to draft article 82 *bis* worsened the situation, for the revised text implied that the right to enter a reservation was limited to that draft article. His delegation, which had already experienced difficulties in accepting other draft articles, shared the doubts expressed by the Austrian delegation with respect to the new article 82 *bis*.

48. Mr. MAAS GEESTERANUS (Netherlands) agreed that he had not given sufficient explanations in submitting the revised text of proposed new article 82 *bis*, and he agreed with the representative of the Soviet Union that, unless provision were made for a clause on reservations, a certain amount of liberty was left to States to enter reservations or not.

49. The additional sentence to be added at the end of the text in document A/CONF.67/C.1/L.147 was in fact subject to the decision of the Conference; should the Conference decide not to include a clause on reservations in the convention, there was no need for the proposed second sentence to appear in the text of new article 82 *bis*, since the possibility of excluding that article was then covered by the general rules of international law concerning reservations; should the Conference decide, however, to include a clause on reservations in the convention, article 82 *bis* would then appear in the list of articles to which a reservation was allowed. In both cases, therefore, it was not essential to maintain the second sentence in the wording of proposed new article 82 *bis*. It was on the text in document A/CONF.67/C.1/L.147 that the Committee of the Whole had to take a decision and the second sentence read out by his delegation constituted the principle on which the Netherlands and Swedish proposal was based.

50. Mr. EUSTATHIADES (Greece), speaking on a point of order, said that the time had not yet come to discuss the question of reservations. In order to get out of the impasse, he proposed that the sponsors of draft article 82 *bis* should reproduce the formula used in other conventions, which would make it possible to retain the optional character of the article. Under that formula, the article would be maintained but, to be bound by the article, States would have to make a statement of acceptance. In that way, the delicate problem of reservations would be avoided.

51. The CHAIRMAN said that, as the discussion had been closed, it was no longer possible to submit amendments to the text of the Netherlands and Sweden. He therefore invited the Committee to vote on draft article 82 *bis* proposed by the Netherlands and Sweden in document A/CONF.67/C.1/L.147.

The article was rejected by 31 votes to 26, with 13 abstentions.

52. Sir Vincent EVANS (United Kingdom) said that his country had always firmly supported the International Court of Justice. He had, therefore, voted in favour of the proposal by the Netherlands and Sweden

because he considered that it would have been particularly appropriate, in a convention concerning the United Nations and the specialized agencies, to include a clause providing for the judicial settlement of disputes by the International Court of Justice, the principal judicial organ of the United Nations.

53. Mr. HELLNERS (Sweden) regretted that for procedural reasons, it had not been possible at the last minute to find a solution which would perhaps have met with the approval of delegations opposed to the new article. He was convinced, for his part, that an optional clause would have been acceptable and he regretted the Committee's decision, because his delegation had been prepared to examine all suggestions.

Article 1 (Use of terms) (*continued*)* (A/CONF.67/4, A/CONF.67/C.1/L.1, L.10, L.11, L.138, L.146, L.148)

54. The CHAIRMAN suggested that the Committee should examine paragraph 1 of article 1, paragraph by paragraph, bearing in mind the amendments made to the other draft articles.

Paragraph 1, subparagraph 1

55. Mr. YAÑEZ-BARNUEVO (Spain) said that his delegation had submitted an amendment to subparagraph 1 (A/CONF.67/C.1/L.1) because it considered that the future convention should apply not only to international organizations of universal character, but to all types of international organizations. In that connexion, it had based itself on the draft submitted by the Special Rapporteur to the International Law Commission in 1968.[3] With slight changes, his delegation's amendment reproduced the definition proposed by the Special Rapporteur in his 1968 draft. He wondered why the ILC had adopted such a concise definition instead of the original proposal. The definition was taken from the Vienna Convention on the Law of Treaties. That Convention, however, dealt with international organizations only accessorily whereas the present draft related precisely to relations between States and international organizations. A clearer and more comprehensive definition of international organizations—or, at least, of the international organizations to which the convention applied—should therefore be given. But, by adopting article 2 with the United Kingdom amendment (A/CONF.67/C.1/L.15), the Conference seemed to have decided to limit the scope of the future convention to international organizations of universal character. Accordingly, his delegation did not consider that it was necessary, at the present stage, to give a definition of international organizations, and it did not insist that its amendment to paragraph 1, subparagraph 1 of article 1 be put to the vote.

56. Mr. EL-ERIAN (Expert Consultant) said that the Special Rapporteur had, indeed, submitted to the ILC a definition of the term "international organization" which had more or less corresponded to the definition suggested by the representative of Spain and had been based on the considerations explained by that representative. He also recalled that when the ILC had taken up the question of the law of treaties, all the Special Rapporteurs on that question had included a definition of the term "international organization" in the draft convention on the law of treaties because that draft had dealt, although not principally but in some respects, with international organizations. The Commission had decided, however, not to include a definition of international organizations in the draft.

57. The question of the definition of international organizations had arisen again when the Commission had taken up the present topic. That topic was composed of two parts: the topic proposed by the General Assembly, namely, the definition of relations between States and international organizations, and the question of the status of international organizations themselves.

58. In his first report,[4] the Special Rapporteur had suggested a certain approach to the subject, but the ILC had selected another and had decided to give priority to the completion of the codification of diplomatic law concerning the representation of States and to defer until later the question of the status of international organizations themselves. It had considered that the definition of international organizations might give rise to certain theoretical questions concerning the personality of the international organization and its capacity. Although some members of the Commission had shared the Special Rapporteur's point of view, the majority had considered that those theoretical questions should not be examined until the Commission embarked upon the second part of the subject, namely, the status of the international organization itself. That was why, when preparing the provisional draft articles in 1968, the Commission had decided to base itself on the definition of the term "international organization" contained in subparagraph (*i*) of paragraph 1 of article 2 of the draft articles on the law of treaties. It had pointed out, in its commentary to subparagraph (*a*) of draft article 1, that in his third report the Special Rapporteur had proposed the following definition: "an international organization is an association of States established by treaty, possessing a constitution and common organs, and having a legal personality distinct from that of the Member States". It had, however, "thought that such an elaborate definition was not necessary for the time being since it was not dealing at the present stage of its work with the status of the international organizations themselves, but only with the legal position of representatives of States to the organizations", adding that it intended to harmonize, if necessary, the definition contained in subparagraph (*a*) with the corresponding provision of the Convention on the Law of Treaties which was to be adopted by the Vienna Conference.[5] Thus, the Vienna Conference on The Law of Treaties having met and prepared a definition of the international organization, the ILC, when finalizing its draft articles in 1971, had harmonized its definition of

* Resumed from the 5th meeting.

[3] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 124.

[4] See *Yearbook of the International Law Commission, 1963*, vol. II, document A/CN.4/L.161 and Add.1, p. 159.

[5] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

the international organization with the definition contained in the Vienna Convention on the Law of Treaties.

59. The CHAIRMAN suggested that, since the Spanish amendment to subparagraph (1) of paragraph 1 of article 1 had been withdrawn, the Committee should decide to adopt the subparagraph and refer it to the Drafting Committee.

It was so decided.

Subparagraph (2)

60. The CHAIRMAN recalled that the Committee had already adopted subparagraph (2) at its 5th meeting on 7 February.

Subparagraphs (3) to (8)

61. The CHAIRMAN suggested that since there were no longer any amendments to subparagraphs (3) to (8), the Committee should decide to adopt them and refer them to the Drafting Committee.

It was so decided.

The meeting rose at 6 p.m.

45th meeting

Friday, 7 March 1975, at 10.50 a.m.

Chairman: Mr. NETTEL (Austria).

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 *(continued)*

Article 1 (Use of terms) (*continued*) (A/CONF.67/4, A/CONF.67/C.1/L.108, L.138, L.146, L.148)

Subparagraphs (9) and (10) of paragraph 1

1. Mr. MAAS GEESTERANUS (Netherlands), introducing his delegation's amendments to article 1 (A/CONF.67/C.1/L.138), said that the amendment concerned not only the question of definition but also the question of the status of the whole annex to the draft articles. Should the amendments be adopted, the effect would be to broaden the scope of the definition of "delegation to an organ" in paragraph 1 (9) and of "delegation to a conference" in paragraph 1 (10) in such a way that even "passive" observer delegations would henceforth be covered by those two definitions. In consequence, the "passive" observer delegations would be included in the body of the future convention and the whole annex would become superfluous.

2. Since he had first introduced during the discussion on article 59 (Personal inviolability) (29th meeting) his oral proposal now embodied in the amendment in document A/CONF.67/C.1/L.138, the Committee had examined most of the articles of the annex and had adopted them in a form almost identical with that of the corresponding articles of part III, which dealt with delegations and "active" observer delegations. Despite that action by the Committee, it could still adopt his delegation's proposal and thereby dispense with the annex altogether.

3. He noted that the Committee had before it another proposal, sponsored by four delegations (A/CONF.67/C.1/L.146), which would seem to have the effect of distinguishing between two groups of delegations: first, delegations proper and "active" observer delegations, which would be covered by part III of the convention; and secondly, "passive" observer delegations, which would be covered by a new part IV consisting of the articles of the annex. He would welcome an explanation from the sponsors of that proposal regarding their motives for wishing to keep the two categories of delegations separate.

4. The Committee had also before it a proposal submitted by 10 delegations (A/CONF.67/C.1/L.108), to amend subparagraphs (*a*) and (*b*) of article A of the annex and to insert two new subparagraphs in that article. Adoption of that proposal would also affect the status of the annex as a whole. He would welcome an explanation from one of its sponsors concerning their intentions in that regard.

5. Mrs. MIRANDA (Cuba), introducing on behalf of the four sponsors the proposal in document A/CONF.67/C.1/L.146, recalled that articles B to X of the annex had been adopted by the Committee, on occasion with amendments, by substantial majorities. That set of provisions could thus not be considered in any way as superfluous. On the contrary, their adoption justified integration into the body of the future convention, as proposed in the above-mentioned document.

6. Mr. WERSHOF (Canada) said that he favoured the idea behind the Netherlands proposal (A/CONF.67/C.1/L.138). It was important that the Committee should adopt that amendment with a clear understanding of its purpose.

7. In that connexion, he had heard with interest the introduction of the four-Power proposal (A/CONF.67/C.1/L.146) by the previous speaker. In the circumstances, he felt that the sponsors of that proposal owed the Committee an explanation. They had successfully pressed for a treatment of observer delegations which was almost identical with that of the delegations covered by the provisions of part III. Logically, they should now welcome the Netherlands proposal, which completed that process by simply equating those observer delegations to the ordinary delegations covered by part III.

8. He failed to see what purpose would be served by