Montevideo, Uruguay
4–29 April 2016

LAW OF TREATIES
MR. SANTIAGO VILLALPANDO

Codification Division of the United Nations Office of Legal Affairs

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Legal instruments and documents


2. Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986

3. Guide to Practice on Reservations to Treaties, 2011

4. United Nations General Assembly resolution 2166 (XXI) of 5 December 1966 (International conference of plenipotentiaries on the law of treaties)


International conference of plenipotentiaries on the law of treaties

United Nations General Assembly resolution 2166 (XXI) of 5 December 1966
RESOLUTIONS ADOPTED ON THE REPORTS OF THE SIXTH COMMITTEE

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2166 (XXI). International conference of plenipotentiaries on the law of treaties

The General Assembly,

Having considered chapter II of the report of the International Law Commission on the work of its eighteenth session,1 which contains final draft articles and commentaries on the law of treaties,

Noting that the International Law Commission at its first session in 1949 listed the law of treaties among the topics of international law as being suitable for codification, that at its thirteenth session in 1961 it decided to prepare draft articles on the law of treaties intended to serve as the basis for a convention, and that at its fourteenth session in 1962 it included the law of treaties in the revised programme for its future work,

Recalling that in its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1963 it recommended that the International Law Commission should continue the work of codification and progressive development of the law of treaties, taking into account the views expressed in the General Assembly and the comments submitted by Governments, in order that the law of treaties might be placed upon the widest and most secure foundations, and that in its resolution 2045 (XX) of 8 December 1965 it recommended that a final draft on the law of treaties should be submitted to the Assembly by the Commission in its report on the work of its eighteenth session,

Noting further that, at its seventeenth and eighteenth sessions in 1965 and 1966, the International Law Commission, in the light of the observations and comments submitted by Governments and taking into account the relevant resolutions and debates of the General Assembly, revised the provisional draft articles on the law of treaties prepared at its fourteenth, fifteenth and sixteenth sessions, and that at its eighteenth session the Commission finally adopted the draft articles,

Recalling that, as stated in paragraph 36 of the report of the International Law Commission on the work of its eighteenth session, the Commission decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject,

Mindful of Article 13, paragraph 1 a, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that the successful codification and progressive development of the rules of international law governing the law of treaties would contribute to the development of friendly relations and co-operation among States, irrespective of their differing constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter,

1. Expresses its appreciation to the International Law Commission for its valuable work on the law of treaties and to the Special Rapporteurs for their contribution to this work;

2. Decides that an international conference of plenipotentiaries shall be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

3. Requests the Secretary-General to convvoke, at Geneva or at any other suitable place for which he receives an invitation before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969;

4. Invites States Members of the United Nations, States members of the specialized agencies, States Par-

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1 See Official Records of the General Assembly, Twenty-first Session, Supplement No. 9 (A/6309/Rev.1), part II.
ties to the Statute of the International Court of Justice and States that the General Assembly decides specially to invite, to participate in the conference;

5. Invites the States referred to in paragraph 4 above to include as far as possible among their representatives experts competent in the field to be considered;

6. Invites the specialized agencies and the interested intergovernmental organizations to send observers to the conference;

7. Refers to the conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session as the basic proposal for consideration by the conference;

8. Requests the Secretary-General to present to the conference all relevant documentation and recommendations relating to its method of work and procedures, and to arrange for the necessary staff and facilities which will be required for the conference, including such experts as may be necessary;

9. Invites Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit, not later than 1 July 1967, their written comments and observations on the final draft articles concerning the law of treaties prepared by the International Law Commission;

10. Requests the Secretary-General to circulate such comments so as to facilitate the discussion of the subject at the twenty-second session of the General Assembly;

11. Decides to include an item entitled “Law of treaties” in the provisional agenda of its twenty-second session with a view to further discussion of the draft articles in order to facilitate the conclusion of a convention on the law of treaties at the conference of plenipotentiaries convened pursuant to the present resolution.

1484th plenary meeting, 5 December 1966.

2167 (XXI). Reports of the International Law Commission

The General Assembly,
Having considered the reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session,²

Recalling its resolutions 1686 (XVI) of 18 December 1961, 1765 (XVII) of 20 November 1962, 1902 (XVIII) of 18 November 1963 and 2045 (XX) of 8 December 1965, by which it recommended that the International Law Commission should continue its work of codification and progressive development of the law of treaties, State responsibility, succession of States and Governments, special missions and relations between States and intergovernmental organizations,

Emphasizing the need for the further codification and progressive development of international law in order to make it a more effective means of implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations and to give increased importance to its role in relations among nations,

² Ibid., Supplement No. 9 (A/6309/Rev.1).

Noting with satisfaction that at its eighteenth session the International Law Commission adopted the final text of its draft articles on the law of treaties and also made progress in the codification and progressive development of the international law relating to special missions,

Noting further with appreciation that the United Nations Office at Geneva organized in May 1966, during the eighteenth session of the International Law Commission, a second session of the Seminar on International Law for advanced students and young government officials responsible in their respective countries for dealing with questions of international law and that the Seminar, which was made possible by the generous collaboration of members of the Commission, was well organized and functioned to the satisfaction of all,

1. Takes note of the report of the International Law Commission on the work of the second part of its seventeenth session and of chapters I, III and IV of the report on the work of its eighteenth session;

2. Expresses its appreciation to the International Law Commission for the work it has accomplished;

3. Notes with approval the programme of work for 1967 proposed by the International Law Commission in chapter IV of the report on the work of its eighteenth session;

4. Recommends that the International Law Commission should:

(a) Continue the work of codification and progressive development of the international law relating to special missions, taking into account the views expressed at the twenty-first session of the General Assembly and the comments which may be submitted by Governments, with the object of presenting a final draft on the topic in the report on the work of its nineteenth session;

(b) Continue its work on succession of States and Governments, State responsibility and relations between States and intergovernmental organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

5. Expresses the wish that, in conjunction with future sessions of the International Law Commission, other seminars be organized which should continue to ensure the participation of a reasonable number of nationals from the developing countries;

6. Requests the Secretary-General to forward to the International Law Commission the records of the discussions at the twenty-first session of the General Assembly on the reports of the Commission.

1484th plenary meeting, 5 December 1966.

2181 (XXI). Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations

The General Assembly,
Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963 and 2103 (XX) of 20 December 1965, which affirm the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States,
United Nations Conference on the Law of Treaties

Summary records of the first plenary meeting (26 March 1968),
First Session (Vienna, 26 March-24 May 1968),
Official Records, paras. 15-49
UNITED NATIONS
CONFERENCE ON
THE LAW OF TREATIES

First session
Vienna, 26 March—24 May 1968

OFFICIAL RECORDS

Summary records of the plenary meetings
and of the meetings
of the Committee of the Whole

UNITED NATIONS
SUMMARY RECORDS OF THE PLENARY MEETINGS

FIRST PLENARY MEETING

Tuesday, 26 March 1968, at 3 p.m.

Acting President: Mr. STAVROPOULOS
(Legal Counsel of the United Nations, representing the Secretary-General)

President: Mr. AGO (Italy)

Opening of the Conference

(Item 1 of the provisional agenda)

1. The ACTING PRESIDENT said it was his privilege and honour to welcome the Federal President of the Republic of Austria. The United Nations was grateful for the facilities and assistance provided by the Austrian Government, which had made a notable contribution to the success of the 1961 and 1963 Conferences on Diplomatic and Consular relations.

2. On behalf of the Secretary-General, he declared the United Nations Conference on the Law of Treaties open and invited the Conference to observe a minute's silence for prayer or meditation.

The Conference observed a minute's silence.

3. The ACTING PRESIDENT said that his next duty was to welcome participants on behalf of the Secretary-General of the United Nations, who had asked him to express his regret at his inability to be present and to convey to the Conference his best wishes for its success.

4. The present Conference was the sixth in a series of conferences called by the General Assembly for the purpose, laid down in the Charter, of "encouraging the progressive development of international law and its codification". It was the most important, and might also prove to be the most difficult, of those conferences. Since the Second World War, there had been a steady increase in the number of treaties concluded each year, and international relations were now carried out more within the framework of treaties than within that of customary international law. Moreover, international relations themselves were taking on an increasing importance with the growing recognition that the pressing problems of humanity could best be dealt with by cooperation at the international level. The rules of law governing such matters as the conclusion, interpretation, validity and termination of treaties were therefore of fundamental importance and the clarification of those rules and their embodiment in a multilateral convention would have an immense significance for the whole future of international law.

5. The draft placed before the Conference was the result of long years of work by the International Law Commission. The Conference was fortunate in having as its expert consultant Sir Humphrey Waldock who, as that Commission's Special Rapporteur, had helped to bring that work to fruition.

6. Following their adoption by the Commission, the draft articles on the law of treaties had been submitted in 1966 to the General Assembly, which had requested further comments from Governments, and had discussed the draft articles at its twenty-first and twenty-second sessions in 1966 and 1967. The present Conference was thus the climax of long years of work by the Commission, by Governments and by the Assembly. The plans for the Conference which had been adopted by the General Assembly called for the examination at the present session of the entire draft at the committee stage. The Conference would meet again in 1969 for a second session, at which the results of the committee stage would be examined in plenary meeting and finally adopted in the form of a convention.

Address by the Federal President of the Republic of Austria

7. H. E. Dr. Franz JONAS (Federal President of the Republic of Austria) said that in December 1966 the General Assembly of the United Nations had decided that an international conference should be convened to prepare a convention on the law of treaties. The antecedents of that decision of the General Assembly could be traced back as far as 1949. In that year the International Law Commission of the United Nations had placed the problem of the law of treaties on its agenda as a topic suitable for codification, and the Commission had been dealing with the problem ever since 1950. At its eighteenth session the Commission had adopted draft articles on the law of treaties, had submitted them to the General Assembly and had recommended the holding of an international conference of plenipotentiaries to study the draft articles with a view to the conclusion of an international convention on the law of treaties.

8. With the opening of the Conference that day the discussions concerning a convention on the law of treaties entered a decisive phase. Delegates to the Conference had an important and responsible task before them. The United Nations was the competent international body for the consolidation and further development of international law as one of the most important means of maintaining peace and progress.

9. It was no accident that the International Law Commission had taken up the codification of the law of treaties as one of its first tasks. International law without treaties was unthinkable. The principles of the international legal order were based on treaties. Treaties should replace armed force and be recognized as a moral force, the expression of democracy and of peace in international life. Treaties should lay down generally applicable rules for the co-existence of peoples, and endow material ties with moral strength. In cases of doubt, naturally, the authority of a court of arbitration was needed, but the stability and effectiveness of treaties were based on mutual trust between the contracting parties. For the same
reasons the United Nations adhered to the principles of respect for treaties and of the peaceful settlement of disputes, renunciation of the use of force in international relations, and the self-determination of peoples.

10. There was another reason why the codification of the law of treaties was growing more and more urgent and important. The development of trade, of the world economy, of science, of technology and now of space research continually created new legal problems which required to be solved by treaties. In short, international legal relations were growing steadily more concentrated. The development of the family of nations, particularly during the present stormy phase of transition, could not be left to chance. In the interests of the human community, a serious effort must be made, through wise treaties, to make the community of peoples a community of law and justice, of freedom and democracy.

11. Recognizing the great significance of the Conference and appreciating the lofty tasks before it, Austria had decided to invite the United Nations to hold it at Vienna, and to Austria’s great pleasure, the Secretary-General of the United Nations had informed the Austrian Government that the invitation was accepted. That he regarded as an acknowledgement of the efforts of neutral Austria for the furtherance of international co-operation and understanding among peoples.

12. The distinguished representatives of the participating States could rest assured that Austria would do its utmost to make the Conference a success. All Austrian citizens would be proud if the codification of the law of treaties, which would be an important event in the life of the international legal community, were to be associated with the name of the Federal capital. After the successful United Nations Conferences at Vienna in 1961 and 1963, when diplomatic and consular law had been codified, the position of Vienna as the traditional home of diplomacy and international law would be affirmed anew.

13. On behalf of Austria, he welcomed that great United Nations Conference and prayed that the moral force of law might come into its own, and the spirit of understanding and international co-operation prevail. He wished the Conference every success.

14. The ACTING PRESIDENT thanked the Federal President of the Republic of Austria for honouring the Conference by addressing its opening meeting.

The Federal President of the Republic of Austria withdrew.

Question of participation in the Conference

15. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation felt obliged to make a categorical protest against the discrimination that was being practised in the organization of the Conference. It was well known that all States, as equal members of the international community, had the same right to participate in the settlement of problems of common interest. That followed from the principles of the sovereignty and equal rights of States, enshrined in the United Nations Charter, and from generally accepted principles of international law: no State or group of States was entitled to exclude others from participation in the
in such general multilateral agreements as the 1963 Moscow Treaty banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water and the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and many other general multilateral agreements. The convention that was to be prepared was undoubtedly of interest to the German Democratic Republic, and its participation in the Conference would have helped to improve the drafting of the convention, as had been demonstrated by the interesting and significant comments on the draft articles which had been submitted by the German Democratic Republic and which would certainly be found very useful when the articles were being considered.

18. A number of countries represented at the Conference had entered into various treaty relations with the socialist States he had mentioned, and if the latter were disbarred from participating in the preparation of a convention on the law of treaties, it was hard to see what instrument would govern those treaty relations. Clearly, the United States and the United Kingdom and their supporters were prejudicing the interests of the entire international community by their discriminatory action. The Soviet Union, which had always supported the principle of universality and of the development of friendly relations among all States, categorically condemned that action and insisted that all States had equal rights to participate in international conferences on questions of common interest.

19. Mr. KRISHNA RAO (India) said that the work of the Conference was of the greatest importance to the newly independent countries. The codification of the law of treaties would serve to express in writing the contemporary rules of law on the subject and thus release those countries from the need to refer to customary rules of international law; the search for those lawyer-based rules often gave only a picture of what international law had been rather than of what it actually was.

20. Against that background, his delegation reaffirmed its steadfast adherence to the principle of non-discrimination between States. Since the international community was a community of States, no distinction should be made between States, whether based on population, size, importance or power. It was significant that the right of all States to participate without discrimination in multilateral conventions adopted under United Nations auspices had been accepted in the vitally important matters of disarmament and outer space.

21. The present Conference, however, had been convened by the United Nations, and General Assembly resolution 2166 (XXI) set out the basis on which that had been done. Under operative paragraph 4 of that resolution, those invited to participate in the Conference were States Members of the United Nations, States members of the specialized agencies, States Parties to the Statute of the International Court of Justice and States that the General Assembly decides specially to invite. The Conference could not go beyond the terms of reference laid down for it in that paragraph.

22. Consequently, although his delegation supported the idea put forward by the USSR representative, it must insist, with regret, that the Conference was not legally competent to extend participation in the Conference in the manner suggested. The proper time to raise that question had been during the discussion in the General Assembly leading to the adoption of resolution 2166 (XXI). But whatever convention was eventually adopted by the present Conference should be open to accession by all States. At the appropriate time, his delegation would take a firm stand on that issue.

23. Mr. EL-ERIAN (United Arab Republic) said that his delegation had consistently expressed its support of the principle of universality of participation in conferences preparing general multilateral conventions of concern to all members of the international community. In 1966, during the General Assembly debate on the convening of the Conference, the United Arab Republic had supported the proposal that operative paragraph 4 of General Assembly resolution 2166 (XXI) should be so drafted as to ensure that invitations were issued to all the countries of the world. In doing so, it had been guided by the fact that participation in the formulation of general norms of international law was an inherent right of the independent statehood of sovereign members of the community of nations. That was a fundamental rule which no group of States had the right to infringe or curtail. It was most regrettable that that formula had not been adopted and that certain important States had not been invited to participate in the Conference.

24. Sir Francis VALLAT (United Kingdom) said that the problem raised by the USSR representative was fundamentally political and could not properly be debated at a conference of jurists engaged in preparing a convention on the law of treaties. The Conference had been convened under the auspices of the United Nations, and the General Assembly had unequivocally decided what States should be allowed to participate, since Assembly resolution 2166 (XXI) had been adopted by over 100 votes. It could not be maintained, therefore, that the decision had rested with one or two Governments.

25. The Conference was embarking on a task the importance of which to the future of international law could not be overestimated. Controversy would undoubtedly arise on many points, for international law was not an exact science. He would appeal to participants to confine their remarks to issues which concerned them as international lawyers, and not to add to the burdens of the Conference by attempting to interfere with a decision already taken by the General Assembly.

26. Mr. PELE (Romania) said his delegation regretted that all the States of the world had not been invited to participate in such an important conference. It was becoming obvious that the development of international law required the active co-operation of all countries. Codification could not be confined to systematization of existing legal norms, for the progressive development of international law must also be borne in mind. That was why the Romanian delegation considered that the participation of the People's Republic of China, the German Democratic Republic, the Democratic Republic of Vietnam and the Democratic People's Republic of Korea would greatly help the Conference to bring its work to a successful conclusion and to promote peaceful coexistence and friendly co-operation among nations.
27. Sir Lalita RAJAPAKSE (Ceylon) said that the formulation of general multilateral treaties was so universal a task that it should not be carried out by a group of States, however large, but that all States, regardless of their ideology or commitments, should be allowed to participate. The absence of the People's Republic of China, a world power of the first magnitude, and of other States, could only have an adverse effect on the Conference's deliberations and on the value of the ultimate product.

28. Mr. USTOR (Hungary) said that his delegation shared the misgivings expressed by earlier speakers concerning the wording of operative paragraph 4 of General Assembly resolution 2166 (XXI), because it was essential to invite all States to participate in conferences of universal interest. The codification of the law of treaties was of concern to all States, since the convention would govern all subjects of international law, and it was an elementary requirement of democracy that no subject of law should be excluded from its making. That principle had been sacrificed to obvious political aims, and the discrimination practised against the People's Republic of China, the German Democratic Republic, the Democratic Republic of Viet-Nam and the Democratic People's Republic of Korea constituted a violation of the vital principle of the equal sovereignty of States. During the relevant debate in the Sixth Committee of the General Assembly, Hungary had protested that discrimination against those countries was not only illegal, but unjust, inequitable and unfair. His delegation wished again to record its protest against that practice.

29. Mr. KORCHAK (Ukrainian Soviet Socialist Republic) said that contemporary international life showed a general trend towards the co-operation of all States in matters of general interest. That trend was leading to increased observance of the principle of the universality of multilateral treaties, a principle reflected in such important instruments of international law as the 1963 Moscow Treaty banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water and the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. In addition, a number of General Assembly resolutions on questions of general interest contained a formula for the participation of all States without exception. The development of international co-operation predicated the participation of all States in universal conventions, as a basic principle of international law.

30. The wording of operative paragraph 4 of General Assembly resolution 2166 (XXI) was therefore highly regrettable, since it excluded a group of peace-loving States from participation. It had been said that a conference of jurists could not deal with political matters, but it seemed anomalous, in preparing an instrument on the law of treaties, to allow even a shadow of discrimination and a departure from the principle of universality. To take only one example, the German Democratic Republic, which was one of the outstanding industrial countries of the world, which abided entirely by the principles of the United Nations Charter in its foreign policy, and which had concluded a number of international agreements as a sovereign State, should not be excluded from participation. The same applied to the Democratic Republic of Viet-Nam, the Democratic People's Republic of Korea and the People's Republic of China. His delegation therefore strongly urged the observance of the principle of universality in the work of the Conference.

31. Mr. JAMSRAN (Mongolia) said that since the codification and progressive development of rules of international law were of interest to all States, all of them should participate in the process. Moreover, that was required by the principle of sovereign equality on which the Charter was founded. The discrimination applied against some States under General Assembly resolution 2166 (XXI), operative paragraph 4, conflicted with the right of all States to conclude treaties. Universal participation in the present Conference, whatever the political and social system of any State would ensure its success.

32. Mr. SEATON (United Republic of Tanzania) said he deplored the exclusion of certain States; progress and international security depended on the rule of law which all States must take a hand in formulating. Every State had an inherent right to participate in the Conference and the law of treaties could not be codified by a restricted group which then imposed rules on others which had not been taken part. Though the Conference was not competent to revoke a General Assembly decision, he hoped that the discussion would ensure that in future all States contributed to the creation of legal rules.

33. Mr. OSIECKI (Poland) said that during the discussion in the General Assembly of operative paragraph 4 of resolution 2166 (XXI), his delegation had advocated universal participation in the Conference on the ground that depriving certain States of the right to attend was contrary to the principle of equality of States. The outcome of the Conference was of vital importance because the rules adopted would regulate relations between all States. The States excluded supported the aims of the United Nations, took part in some of the work of specialized agencies and were parties to bilateral and general multilateral treaties.

34. Mr. KUDRYAVTSEV (Byelorussian Soviet Socialist Republic) said he endorsed what had been said about the importance of all States taking part in elaborating a convention on the law of treaties which would help promote peaceful relations and economic and social progress. Any attempt at codification could only be fully successful if each State made its contribution.

35. The delegations at the General Assembly responsible for excluding certain States had acted in defiance of Charter principles and their action would diminish the prestige of the Conference. For example, the German Democratic Republic was a full subject of international law and maintained diplomatic, consular and economic relations with countries the population of which represented two-thirds of the population of the world. It had concluded numerous treaties and participated in many international bodies. It had trade relations with over one hundred countries, including some in western Europe. Historic events were irreversible and it was no use blinking facts or ignoring the existence of that State.
36. A policy of discrimination was also pursued by western countries with regard to other socialist countries, namely the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the People's Republic of China.

37. Members of the United Nations must put an end to discrimination and support the principle of universality.

38. Mr. KOUTIKOV (Bulgaria) said he objected to discrimination against certain States, which was a violation of contemporary international law and totally anomalous.

39. Mr. ALVAREZ TABIO (Cuba) said that all States had an inalienable right to participate in a conference that would formulate universally applicable rules. If States were to assume legal obligations, they must take part in defining them.

40. Mr. KEITA (Guinea) said he deplored the absence of some States whose lawyers and experts could have contributed so much in devising generally valid rules for regulating relations between States.

41. Mr. HU (China) said that under General Assembly resolution 2166 (XXI), the Conference had one task only, that of preparing a draft convention on the law of treaties, and it should not discuss extraneous matters. The Republic of China was fully represented, and according to the Charter a State could only possess one vote.

42. Mr. JELIC (Yugoslavia) said he regretted that the principle of universality had been flouted and a number of interested States prevented from attending the conference.

43. Mr. NACHABE (Syria) said that his delegation had consistently upheld the right of all States to attend international conferences and to become parties to general multilateral treaties, and on various occasions it had co-sponsored General Assembly resolutions on the subject, particularly those concerned with the codification and progressive development of international law. The exclusion from the conference of some members of the international community was contrary to the letter and spirit of the Charter and illegal.

44. Mr. MOUDILENO (Congo, Brazzaville) said it was quite wrong to exclude from the conference certain international entities which possessed all the attributes of sovereign States and had treaty-making power.

45. Mr. SMEJIKAL (Czechoslovakia) said that the work of the Conference would suffer from the absence of a group of States which could contribute to the development of international law. That situation was incompatible with the very foundation of international law, which was universality and justice. One group of States was excluding another group from codifying general international law because of their economic and social structure. That was nothing less than discrimination, which was flagrantly at variance with international law.

46. For instance, the German Democratic Republic was a party to general multilateral treaties such as the Moscow Nuclear Test Ban Treaty and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, while other treaties to which it was a party were registered with the United Nations Secretariat.

47. It was equally absurd that the People's Republic of China, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam could not be represented at the Conference.

48. His delegation deeply regretted that the effects of the cold war had also made their appearance at the Conference, which could justifiably be regarded as one of the most important in the history of the United Nations.

49. The ACTING PRESIDENT said that the foregoing statements would appear in the summary record.

Election of the President

[Item 2 of the provisional agenda]

50. The ACTING PRESIDENT said the next item on the agenda was the election of the President of the Conference.

51. Mr. VEROSTA (Austria) proposed Mr. Roberto Ago, an outstanding lawyer with wide experience of work in international organizations which would specially qualify him for the task.

52. Mr. RUEGGER (Switzerland) seconded the proposal.

53. Mr. KRISHNA RAO (India), Mr. EL-ERIAN (United Arab Republic) Mr. SMEJIKAL (Czechoslovakia), Mr. RUDA (Argentina), Sir Francis VALLAT (United Kingdom), Mr. YASSEEN (Iraq), Mr. REGALA (Philippines), Mr. KELLOU (Algeria), Mr. MATINE-DAFTARY (Iran), Mr. KHLESTOV (Union of Soviet Socialist Republics) and Mr. de BRESSON (France) all supported the proposal.

Mr. Roberto Ago (Italy) was elected President by acclamation and took the Chair.

54. The PRESIDENT said he was deeply appreciative of the honour done to his country and to himself by his election and sincerely grateful for the kind words of the representatives who had just spoken. He wished first to pay a tribute to the contribution made by Austria to the success of the 1961 and 1963 Conferences and to the outstanding leadership of those Conferences by Professor Verdross in 1961 and Professor Verosta in 1963.

55. The international community had grown in a remarkable manner during the past two decades and an active role was now being played by new members of that community whose diverse philosophical, religious, legal, social and economic conceptions were often markedly different from those which had formerly prevailed in the world. Those developments made it imperative to adapt international law to the new dimensions and the new requirements of the society of States.

56. The codification of international law in pursuance of Article 13 (1) of the Charter was therefore both urgent and essential. The task before the Conference, however, was the most ambitious ever undertaken within that framework because of the vital importance to international relations of the rules governing the law of treaties.

57. In the preparation of that task in the United Nations over a period of eighteen years, a leading role had been played by the International Law Commission's Special Rapporteurs on the law of treaties; the Secretariat, in
United Nations Conference on the Law of Treaties

Summary records of the thirty-fourth (21 May 1969), thirty-fifth (22 May 1969) and thirty-sixth (22 May 1969) plenary meeting, Second Session (Vienna, 9 April-22 May 1969), Official Records, paras. 1-3, 12-75
UNITED NATIONS
CONFERENCE ON
THE LAW OF TREATIES

Second session
Vienna, 9 April-22 May 1969

OFFICIAL RECORDS

Summary records of the plenary meetings
and of the meetings
of the Committee of the Whole

UNITED NATIONS
New York, 1970
development of relations among all States on a basis of justice and to take part in the consolidation of international peace and security.

The meeting rose at 1 p.m.

THIRTY-FOURTH PLENARY MEETING

Wednesday, 21 May 1969, at 4.10 p.m.

President: Mr. AGO (Italy)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 (continued)

Proposed new article (continued)

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

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

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

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

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

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

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

8. In a number of spheres, the interests of some States did not coincide with those of others. That was perfectly natural, for example, in the economic sphere. But there were areas where the interests of all or nearly all States were identical; that fact was borne out by the existence of treaties on the partial prohibition of nuclear tests, on the non-proliferation of nuclear weapons, on the peaceful uses of outer space and, finally, the convention on the law of treaties. Thus, there could be no doubt
of the existence of treaties, the object and purpose of which were of interest to the international community of States as a whole. For example, European security was an object which could not be achieved without the participation of all the States concerned, and security as a whole was unthinkable unless all the States of Europe participated in its consolidation.

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

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

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

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

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

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

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

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

17. It should now be abandoned once and for all and the Conference could take the only decision necessary, namely to recognize the principle of universality in connexion with the multilateral treaties referred to in the proposed new article. Adoption of that article would fill a gap in the convention and provide a just solution to a particularly important problem concerning the rule of law in international relations. By acting in support of co-operation and realism, the Conference could thus ensure that the convention would contribute to the progressive development of international law.
18. Mr. BIKOUTHA (Congo, Brazzaville) said that he wished to express his country's concern at the systematic blackout which continued to be imposed on certain members of the international community with which his own country and many others maintained diplomatic relations. His delegation of course was not empowered to speak for any country other than his own, but felt that it was most unrealistic to consider history as static. For that was the only term to describe an approach which amounted to reducing every problem to the limited dimensions of contemporary events, which were unfortunately dominated by nationalistic passions. It was those passions which explained the marginal status which was given to certain geographical entities, although they had all the legal attributes of sovereign States.

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

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

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

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

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

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

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

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

Draft declaration proposed by Spain

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

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

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

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

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

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

26. The PRESIDENT invited the Conference to consider the draft declaration on participation in the convention on the law of treaties proposed, along with a new article and a draft resolution, by a group of ten States (A/CONF.39/L.47 and Rev.1).
27. Mr. ELIAS (Nigeria), introducing the combined proposal on behalf of the ten sponsors, said that it consisted of three parts but constituted an organic whole. It read as follows:

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

The United Nations Conference on the Law of Treaties,

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

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

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

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

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

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

Proposed new article

Procedures for Adjudication, Arbitration and Conciliation

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

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

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

Annex I

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

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

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

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

(b) One conciliator of the nationality of that State or of any of those States, who shall be chosen from the list.

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

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

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

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

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

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

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

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

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

Draft resolution

The United Nations Conference on the Law of Treaties,

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

Requests the General Assembly of the United Nations to take note of and approve the provisions of paragraph 7 of the Annex to Article ...
of any disputes that might arise out of the various provisions included in Part V dealing with grounds for invalidating, terminating, withdrawing from or suspending the operation of treaties. Some delegations attached the greatest importance to the principle of universality, while others attached equal importance to the question of including in the convention provisions relating to the settlement of disputes. Many efforts had been made, in consultation and negotiation, to find an amicable solution to that dual problem. It was maintained by some that the two issues had no organic connexion and were not necessarily related. The sponsors of the present proposals would readily admit the force of that argument, but the Conference could not ignore the possibility of an agreement based on a simultaneous solution of both problems.

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

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

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

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

33. Mr. ESCHAUZIER (Netherlands) said that he had been favourably impressed by the Nigerian representative’s presentation of the new compromise proposal. With regard to the proposed new article, he said that the original sponsors of article 62 bis had been in favour of a procedure for the settlement of disputes by the International Court of Justice. Realizing that that would not gain universal acceptance, they had thought it necessary to have recourse to compulsory conciliation and arbitration procedure for disputes arising from Part V of the convention. While there was a considerable difference between the proposed article 62 bis and the new proposal, he noted that the idea of compulsory conciliation was retained and he was glad to see that the concept of arbitration was not entirely dropped. One positive feature of the proposed new article was that it proposed a procedure involving the International Court of Justice, though it restricted the cases to be submitted to the International
Court to those arising out of disputes regarding the principle of *jus cogens* as set out in articles 50 and 61. During the negotiations to arrive at a compromise solution, he had done his utmost to persuade the sponsors of the new proposal to include also disputes under articles 49 and 59 for adjudication by the International Court. He was sorry to see that they had not done so and again appealed to them to reconsider their decision on that point.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53. M. WERSHOF (Canada) said that his delegation would vote in favour of the new proposal if it were
Put to the vote in its entirety. Canada greatly appreciated the efforts made by the sponsors, especially the delegation of Nigeria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

72. The PRESIDENT invited the Conference to vote on the draft declaration, proposed new article and draft resolution submitted by ten States (A/CONF.39/L.47 and Rev.1). At the request of the Nigerian representative, the vote was taken by roll-call.

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

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


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

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

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

74. Nevertheless, his delegation had instructions from the Bolivian Government to sign the convention, subject to placing on record its declaration that, first, the defective terms in which the convention had been framed meant that the fulfilment of mankind's aspirations in the matter would be postponed; and secondly, despite those defects, the rules embodied in the convention clearly represented progress and derived their inspiration from those principles of international justice which Bolivia traditionally upheld.
75. Mr. BINDSCHDLER (Switzerland) said that, after much hesitation, his delegation had finally decided to vote in favour of the combined proposal, and he paid a warm tribute to the sponsors for achieving a formula which had proved acceptable to the largest possible number of delegations.

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 8.20 p.m.

THIRTY-FIFTH PLENARY MEETING

Thursday, 22 May 1969, at 12 noon

President: Mr. AGO (Italy)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 (continued)

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

Explanations of vote

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

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

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

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

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

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

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

8. Mr. FUJISAKI (Japan) said he wished to express his appreciation of the efforts made by those representatives who, until the last moment, had worked so hard to
arrive at the compromise formula submitted in document A/CONF.39/L.47 and Rev.1. Since it was a compromise, it was only natural that that formula did not entirely satisfy anyone and Japan was no exception in that respect. His delegation had voted for the formula, not because it fully supported the contents of the compromise proposal, but solely because it believed that it was the only way of saving the convention as a whole.

9. Mr. ALVAREZ (Uruguay) explained that his delegation had voted for the text submitted in document A/CONF.39/L.47 and Rev.1 because it was anxious that the Conference should reach agreement on the questions that were the subject of controversy. The proposal was a first move towards recognizing compulsory adjudication as a means of settling international disputes, but its scope was too restricted and bore no relation to the position traditionally adopted by his Government for many years, which his delegation had explained on numerous occasions during the discussion. The formula did however make a positive contribution to the progressive development of international law and substantially improved the machinery provided for in article 62.

10. His delegation's attitude towards the principle of universality did not in any way commit his Government with regard to the position it might subsequently adopt when the principle in question was again discussed in the General Assembly.

11. Mr. SAULESCU (Romania) said that his delegation had emphasized from the very beginning of the Conference's work that the convention could only be effective in so far as it contained a provision establishing the principle of universality. For that reason his delegation had joined the other delegations which had submitted amendments to that effect to the Committee of the Whole and to the plenary Conference; it considered that the convention was, by definition, a multilateral treaty of interest to the entire international community. The Conference had unfortunately decided differently by adopting at the previous meeting the draft declaration on universal participation in and accession to the convention on the law of treaties.

12. His delegation realized that the draft declaration had certain merits, although it was still far from what should have been included in a convention of world-wide effect. He therefore desired to express his appreciation to the sponsors of the draft declaration, and in particular to the representative of Nigeria. If the draft declaration had been put to the vote separately, Romania would have voted for it.

13. In the absence of a separate vote, his delegation had had to take a position on the proposals as a whole. It could not support the principle of the procedures for the settlement of disputes included in the compromise proposal. It had on several occasions explained why it supported the procedures provided for in article 62 and why it rejected machinery for compulsory settlement set up in advance. In those circumstances, his delegation had been compelled to vote against the proposals submitted together in document A/CONF.39/L.47 and Rev.1.

14. Mr. SINHA (Nepal) said he had voted for the draft declaration, the new article and the draft resolution. His delegation had, however, voted against article 62 bis: the Conference had been deeply divided on the issue of compulsory arbitration in case of dispute; moreover, the provision proposed in article 62 bis had been defective in respect of many important points. In particular, his Government did not like the idea of ad hoc tribunals giving decisions on vital but nebulous questions of jus cogens. Such tribunals might well have given conflicting decisions, particularly as there was no institution to make them uniform. Moreover, the proposed article 62 bis adopted a negative attitude towards the International Court of Justice which was after all the judicial organ of the world order. Again, the adoption of that provision would have prevented a considerable number of countries from acceding to the convention.

15. On the other hand, the new article just adopted on procedures for adjudication, arbitration and conciliation, although not ideal since it was a compromise solution, at least filled some of the gaps on the institutional side of the convention. It restored confidence in the International Court of Justice; although many delegations had reason to doubt the wisdom of some decisions of the International Court, the Court was an international creation and could not therefore be blamed for its merely congenital weaknesses. In future it was sure to grow in wisdom and stature.

16. His delegation had also voted for the draft declaration contained in document A/CONF.39/L.47 and Rev.1. Although the declaration did not guarantee participation by all nations in multilateral conventions of interest to the international community as a whole, it nevertheless emphasized the principle of universality. For his delegation at all events the declaration was morally binding on States; they would feel themselves called on to bring it to fruition by voting for it in the General Assembly. Nepal, at least, would not fail in its duty in that respect. It was a tragedy that at that stage, when article 1 of the convention made it applicable to treaties concluded between all States and article 5 empowered all States to conclude treaties, the convention did not provide that it was open to all States. It was because of its desire to correct that injustice that his delegation had associated itself with the sponsors of a new article laying down the principle of universality (A/CONF.39/L.36). That article had not been adopted, but he was convinced that the principle of universality would eventually triumph and his delegation would continue to work to that end.

17. His delegation had not voted against the so-called "Vienna formula ", which remained the only one acceptable in the circumstances, and had simply abstained.

18. As a result of the adoption of the compromise proposal (A/CONF.39/L.47 and Rev.1) which had provided a happy solution to the crisis in the Conference's work, the convention on the law of treaties was manifestly a success.

19. Mr. SEOW (Singapore) said that in his view the draft declaration, the new article and the draft resolution contained in document A/CONF.39/L.47 and Rev.1 represented a genuine attempt to bridge differences
of opinion so deep that they had threatened to bring about the failure of the Conference. His delegation had therefore wished to support the proposals in which those efforts had resulted, primarily in order to ensure the success of the convention. He wished to pay a tribute to the sponsors of those compromise solutions.

20. Mr. JAGOTA (India) said he wished to explain exactly why his delegation had abstained in the vote at the preceding meeting on the proposals contained in document A/CONF.39/L.47 and Rev.1.

21. The dissensions that had made themselves felt in the Conference related essentially to articles 5 bis and 62 bis. The Indian delegation had supported the principle of article 5 bis, and its various formulations, without involving itself in any political issue arising from those proposals. As to article 62 bis, his delegation had been opposed to the idea of compulsory settlement procedures, and had been determined to do everything possible to prevent its adoption. The proponents of article 62 bis were equally determined on the opposite course, and had spent the year between the two sessions of the Conference in intensive lobbying to ensure that the article was accepted. In the process the Asian and African States had been deeply divided. When both article 5 bis and article 62 bis had been rejected the Conference had been in a mood of despondency. Yet the Conference had adopted the basic proposal of the International Law Commission by a very large majority, much larger than that by which it had adopted the proposals in document A/CONF.39/L.47 and Rev.1. Thus it could not be said that the seventeen years of work by the International Law Commission had been in jeopardy. All that had been in jeopardy had been the new proposals making additions to the draft articles prepared by the International Law Commission.

22. At that juncture, the Asian and African States, on the initiative of Nigeria and India, among others, had sought to find a fair and reasonable solution. The delegations of Nigeria and India had given shape to certain ideas that were regarded as representing a basis for negotiation, and so document A/CONF.39/L.47 had been born.

23. India had intended to support the proposal if it had received broad support from all groups in the Conference, especially the Asian and African States. Since the proposal, if adopted, would have imposed definite legal obligations upon Governments, the promotion of the proposal had had to be left to those delegations whose Governments were already prepared to go beyond article 62. Consequently the Indian delegation had been unable to join the other delegations concerned in promoting the proposal without consulting the Government of India. But the Indian delegation had decided that in any case it would not oppose it. And if the proposal had received widespread support, his delegation had decided to support it also, and to recommend it to the Indian Government for acceptance. Unfortunately, when the proposal had been put to the Asian-African group, it had not received widespread support, and it consequently became impossible to present it to the Conference on behalf of that group. Thereafter, the sponsors of the proposal had decided to put it to the Conference on their own behalf at the 34th plenary meeting. The Indian delegation's position had remained unchanged. The result of the vote — 61 votes to 20, with 26 abstentions — had clearly indicated the measure of support and the measure of opposition and caution with which the proposal had been received. India had neither supported nor opposed the proposal.

24. His delegation had not wished to oppose it principally because of its close association with the subject-matter of the proposal, and because of its deep respect for the sponsors, the representative of Nigeria and the representative of Ghana. It must also be admitted that the proposal had restored hope to the Conference.

25. The Indian delegation would continue to adopt a positive attitude towards the convention on the law of treaties as a whole, and would vote for it. India would be guided by the convention in its treaty relations, in anticipation of the entry into force of the convention. And if in the near future the sixty-one States which had supported the proposals contained in document A/CONF.39/L.47 and Rev.1 became parties to the convention without any reservation whatever on Part V, the Indian Government might very well be inclined to follow their example.

26. Miss LAURENS (Indonesia) said that her delegation had abstained in the vote on the compromise formula consisting of the draft declaration, the new article and the draft resolution.

27. The Indonesian delegation had come to the Conference prepared to accept in principle the draft articles presented by the International Law Commission after so many years of work. At the first session of the Conference, Indonesia had stated on several occasions that it was quite satisfied with that text and was ready to subscribe to it without major changes. At the second session, her delegation had restated its position, which remained unchanged, on such major unsolved issues as the principle of universality and the compulsory settlement of disputes arising from Part V of the convention and from the interpretation and application of the other articles in general. At the plenary stage, as in the Committee of the Whole, her delegation had voted in accordance with the position it had adopted from the very beginning.

28. However, the compromise formula on which the Conference had taken action at the previous meeting represented something new. Indonesia had unequivocally stated its position, which was that it could not agree to the insertion in the convention on the law of treaties of a provision on the compulsory settlement of disputes. It had nevertheless refrained from opposing the draft declaration, the new article and the draft resolution presented together in document A/CONF.39/L.47 and Rev.1, because that formula represented a final attempt to find a solution acceptable to the great majority. In that connexion, her delegation wished to express its appreciation to those who had carried through the negotiations. Moreover, the draft declaration forming part of the proposal was quite acceptable to Indonesia. That being the case, her delegation had not wished to
stand in the way of the efforts undertaken by a number of friendly delegations and had simply abstained. It wished nevertheless to make it clear that, had there been a separate vote, it would have voted against what was in effect a new article 62 bis.

29. In any case, her delegation considered the convention as a whole to be acceptable and it would therefore vote in favour of it.

30. Mr. RAMANI (Malaysia) said that his delegation had voted against the compromise formula (A/CONF.39/L.47 and Rev.1) because it considered the inclusion of a declaration and a new article in a single proposal to be an unusual procedure.

31. If the sponsors had not objected to a separate vote, the Malaysian delegation would have supported the draft declaration, because the Conference, having been convened by the General Assembly, should leave it to the General Assembly to decide which States should be invited to participate in the convention on the law of treaties.

32. During the consideration of article 62 bis, the Malaysian delegation had already explained why it objected to the procedure laid down in that article. It continued to believe that the world had not yet reached the stage where it could accept a compulsory arbitral procedure or international jurisdiction.

33. The basic principle of international law was that every State must respect the dignity and independence of other States. There was no common ground beyond that principle. Every State applied that principle in its own way and every State had applied it in a different way. The declaration adopted by the Conference at the previous meeting jeopardized that essential principle, on which the United Nations Charter was based.

34. Moreover, adoption of the new article had ipso facto extended the jurisdiction of the International Court of Justice, under Article 36, paragraph 1, of its Statute, to disputes arising from the convention. Accordingly, in the case of a dispute between two States concerning the existence of a norm of jus cogens or on the question whether a new norm had emerged, all the parties to the convention had a right to be heard by the International Court under Article 63 of its Statute. That argument should provide food for thought to those delegations which had expressed undue enthusiasm following the adoption of the compromise formula.

35. When the time came to sign the convention, the Government of Malaysia would reserve its position on that article in order to refuse in advance arguments based on estoppel.

36. Mr. WYZNER (Poland) said that he had voted against the proposals contained in document A/CONF.39/L.47 and Rev.1 simply because, in the opinion of the Polish delegation, they did not represent a really balanced compromise.

37. He noted, however, that the draft declaration on universal participation in and accession to the convention on the law of treaties had been approved by an overwhelming majority. It gave him especial satisfaction that the declaration stated the principle of universality as clearly as it had previously been stated in draft article 5 bis. Moreover, the declaration contained a particularly important element in that it invited the General Assembly to ensure the widest possible participation in the convention. He wished to say that his delegation fully approved of the declaration and would have voted for it if it had been put to the vote separately.

38. Mr. MITSOPOULOS (Greece), explaining his delegation's vote, said that the compromise text adopted at the previous meeting was not satisfactory; the Greek delegation had always considered that the Conference's task was limited to the codification of the law of treaties and that it was therefore not competent to deal with highly political problems such as the status and legal capacity of certain territorial entities which were not recognized by the great majority of States. Moreover, the Greek delegation did not think it possible to trade legal principles against political considerations without impairing the quality and efficacy of the new system of written international law elaborated by the Conference.

39. Nevertheless, in view of the desire of most delegations to safeguard the work accomplished by the Conference, the Greek delegation had voted in favour of the compromise formula. He need hardly say that in approving that formula, his delegation was not entering into any undertaking; moreover, his powers did not permit him to commit Greece with regard to the question dealt with in the first part of the compromise formula. That question must be examined at the next session of the General Assembly, without prejudice to the right of every Member State to decide freely and without any prior obligation.

40. Mr. REY (Monaco), explaining his vote, said that the delegation of Monaco had made considerable efforts to introduce the rule of morality into the international law of obligations, to find a reasonable and clear definition of public order in the form of jus cogens and to make it possible to establish and organise a real system of settlement for any disputes that might arise in the future.

41. The gulf separating the results obtained and the great hopes which had been raised by the opening of the Conference had prevented his delegation from supporting the compromise text submitted.

42. For various reasons, his delegation had not voted against the text. In the first place, most of its sponsors were developing countries, and the formula showed that they were aware of the considerable part played by conciliation in international relations. Moreover, a real system of compulsory settlement—limited, it was true, but of great moral significance—had been devised for
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. SMEIKAL (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, 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. WATTLIES (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 jure 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 jure cogens, any dispute arising out of the interpretation or the application of the convention on the law of treaties could continue indefinitely, thereby causing irredeemable harm to the relations between the States concerned.

1 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 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, 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.

34. Finally, as his delegation had stated at the 19th plenary meeting, articles 53 and 64 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-
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. KHELESTOV (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 52,6 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 64,7 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.

6 Formerly article 49.
7 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 in 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. TELMOUR (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 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, which related to consent expressed by merely signing a treaty; article 25, which dealt with the provisional application of treaties; article 66, which established procedures for judicial settlement, arbitration and conciliation; and article 38, 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
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 peremptory 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 connection, 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 foresight. 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 members 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 Convention 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 contributed 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.


The meeting rose at 6.55 p.m.