

may be arbitrarily asserted as a mere pretext for getting rid of an inconvenient obligation."

It is very hard to imagine that the dispute which cannot be settled by direct contact by the parties can be settled by relying upon the good faith of the parties concerned, important though this naturally is.

The Delegation of Japan wishes to emphasise that if a dispute is thus left unsettled, it is likely to introduce the rule of power rather than the rule of law into international relations. In other words, the questions of invalidity, termination or suspension of the operation of treaties, if not solved by an agreed means between the parties, are then left to power-relationship between the parties rather than a just and objective judgment.

It goes without saying that this is a question of universal application and not in the least something to which we Afro-Asian States can remain indifferent. On the contrary, as the leader of my Delegation pointed out only this morning, "international law from its origin has always been and will continue to be a protector of the small and the weak against the big", and an effective machinery for the settlement of disputes in this regard will undoubtedly be in our own interest. Naturally the way in which the implementation of this may be varied will be discussed and a number of useful suggestions and ideas may be advanced in the course of the present session of this Committee.

My Delegation for one wishes to reserve opportunity to expand its views in concrete and in greater detail at a more appropriate time. Suffice it to say at this juncture that the Delegation of Japan in the spirit of compromise and co-operation will not be taking too rigid a position with regard to concrete way as to how to implement this basic position of my country. It is prepared to listen to the views of distinguished Delegates assembled here and to co-operate with them in order

to arrive at the consensus which will be correctly reflecting the views of the majority and which at the same time will take full account of the essential principle that I have outlined.

When the prospective Convention of the Law of Treaties is adopted and put into force, the provisions contained therein will not simply be mere slogans or political guidelines but will be something which will be applicable to relations between States all over the world and between the States in the Afro-Asian Group *inter se* as positive rules binding upon all of us. For this reason my Delegation would like to appeal to the distinguished Delegates to be keenly conscious of the responsibility that is placed upon us as regards full understanding and the scope and implications of the problems involved. Thank you, Mr. President.

Jordan

I unfortunately did not have the privilege of attending the Vienna Conference. To my mind, I think, the purpose behind this Committee is to see if we can maintain unity among all the Asian-African *bloc*. Although I am not in a position to commit my Government to any particular stand, I can generally say at this juncture that we would certainly go along with the views of the majority in this Committee.

Pakistan

Mr. President, distinguished Delegates and Observers. As the Secretary has stated in his opening remarks, one of the objects of the Tenth Session of the Asian-African Legal Consultative Committee is to try and reach a consensus amongst the Asian-African States members of the Committee on certain controversial draft Articles, which were left over for consideration at the second session of the Conference in Vienna. Those of the distinguished Delegates who attended the first session of that Conference will recall that Article 62

bis introduced by the 13 States will be considered at the next session in Vienna.

The Delegation of Pakistan feels that although in their letters to the Secretariat of the Committee the Governments of India and Pakistan mentioned several Articles for consideration of the Committee, we now feel that the question of procedures for the settlement of disputes regarding the invalidity, termination etc., of treaties is the most important issue and if consensus can be reached at this session of the Committee on this question, we can claim that useful work has been done. In the view of my Delegation, the discussion on the subject of the Law of Treaties would become diffused by dealing with too many articles at the same time and may be restricted, as far as possible, to consider the underlying principles of Draft Articles 62 and 62 *bis*.

In this respect, we feel that draft Article 76 which was introduced by Switzerland at a very late stage in the first session of the Conference in Vienna raises complicated and controversial new issues, which cannot be usefully considered here. Nor is a consensus likely to be reached in respect thereof.

We have suggested earlier that the discussion may revolve around the underlying principles of draft Articles 62 and 62 *bis*. We shall now attempt to define what in our opinion the underlying principles are :

1. Any denunciation of a treaty must only be through written notice to the other State.
2. That in the event of an objection being raised by the other party, the means indicated in Article 33 of the Charter should be followed to reach a solution.
3. Compulsory conciliation through an independent Commission appointed by the parties themselves and

the good offices of the Secretary-General of the United Nations.

4. Suitability of a procedure for compulsory arbitration, where conciliation fails. We feel that the last two principles, as incorporated in Article 62 *bis*, which represents the 13-Power proposal, enjoyed the widest possible support at the Vienna Conference and can form the basis of reaching consensus in this Committee.

We would also like to suggest the inclusion of a principle which already implicit in Article 39, needs to be spelt out clearly in draft Article 62 or 62 *bis*. This principle can be stated in these words :—

“Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by a Conciliation Commission, Arbitral Tribunal, or court of competent jurisdiction, the treaty shall remain in operation between the parties to the dispute.”

We feel that whenever one party alleges termination of a treaty and the other party objects, if there are no objective means of determining whether the treaty is suspended or continues in force, then the continuance or discontinuance of a treaty is made subject to the arbitrary will of the objecting State no less than subjecting it to the arbitrary will of the claimant State. This situation in our opinion works specially to the advantage of the more powerful States.

In the end, the Delegation of Pakistan would like to emphasise the importance of compulsory procedures regarding the settlement of disputes relating to invalidity, termination etc. of treaties. We feel that a large number of Delegations at Vienna would accept the Articles in Part V if objective means of interpretation were available.

Sierra Leone

Mr. President—Our task is to pinpoint the points which we wish to consider at this Session. My Delegation would like to associate itself with the opinions already expressed by the distinguished delegates who have spoken before me. When it is quite clear that we should attempt to deal with all the methods that have been mentioned, we would probably spend the next ten days without really dealing with any one method. We, therefore, suggest as done by the distinguished Delegate from Japan that perhaps we should start considering what appears to be the most crucial method regarding the Law of Treaties, that is to say the settlement of disputes and secondly Article 5 *bis*. There has been the rumour that there is likely to be a package deal in respect of these provisions. It has been said and it has been believed that certain powers who would like to see the provision for the compulsory settlement of the disputes may well be amenable to the views of the Eastern Powers in regard to Article 5 *bis*, if these powers agree to include the provision of compulsory settlement of disputes. We would then like to discuss very briefly the article that has already been considered by the Vienna Conference.

Finally, perhaps we may refer to controversial Articles, although the Delegation of Sierra Leone does not take any flexible stand on the matter of Article 62 *bis*. I would like to state, Mr. President, that we are in favour of keeping Article 62 as it stands for we are not in favour of including any provision for the compulsory settlement of disputes for various reasons, which I hope I shall be able to give when I address this Conference on a latter occasion. On Article 5 *bis* again, the position of my Delegation is flexible and we would like to listen and discuss the matter and to take any stand that appears to win the unanimous approval of this Conference.

Thailand

Mr. President—I am sorry to say that our Delegation from Bangkok has not still arrived. Anyhow I am happy to listen to the views of the Delegates from other countries and we will also give our views at a later stage. Thank you.

U.A.R.

Mr. President—I listened with great interest to the statement made by the representative of the International Law Commission and I would like to express our thanks to him for pointing out the controversial articles which are expected to be discussed during the second session of the Vienna Conference. My Delegation considers that Articles 2, 16, 17, 62, 69 and 76 are to be discussed during this session, and if we have enough time we may also discuss the other Articles. My Delegation will try its best to find the best solution for these problems and my Delegation is going to reserve its right on each of these articles at this stage, and I think it would be preferable to express my opinion at a later stage during this conference. Thank you.

President

The meeting is adjourned to meet at 9.30 a.m. tomorrow, the 22nd January, 1969.

*Meeting held on 22nd January 1969
at 9.30 A.M.*

*Mr. Sharifuddin Pirzada, President of the Committee,
in the Chair*

President

Distinguished Delegates and Observers: The meeting is called to order. I would call upon the distinguished Observer from Nigeria who had asked for the floor.

Nigeria

I thank you Mr. President. We, in Nigeria, appreciate the brotherly feelings of the Delegates of the Asian-African Legal Consultative Committee by inviting their brothers in Africa and Asia as observers to this august assembly. We listened with very great care to the most lucid statement made yesterday by the representative of the International Law Commission, Ambassador Tabibi of Afghanistan. We listened also with equal interest and attention to the statements made by the various representatives in the Committee. We appreciate that the three subjects which are now before the Committee are very important, but we seek the permission of this Committee to emphasise upon the point of time, because the time available for the solution of the various problems, the various questions, arising from the last Vienna Conference on the Law of Treaties appears to be small. This does not mean that the subject matter of refugees or international rivers is not important. Indeed they are very important. We, in Nigeria, would like to submit to this Committee that all of us who are present here and indeed all the Delegations who were present in Vienna had an opportunity and indeed did make use of that opportunity to present their views on the various articles discussed at that Conference. If this meeting of the Committee is to be a success, the areas of discussion

must be very narrow. It will not do us much good if we were to reopen most of the matters that had been settled or if we were to miss the central problem that remains to be solved, and it is with that in mind that we shall concentrate our contribution on two or three of the outstanding problems.

First of all, Mr. President, the question of the right of every State to participate in, or be a party to, general multilateral treaties, which forms the basis of Article 5 *bis*, has been under discussion in various international conferences for a number of years. It was appropriate that the Vienna Conference should be used as a springboard to finalise that problem. We, in Nigeria, as a principle believe that juridically every State is entitled to participate in a general multilateral treaty and our contributions in the various international conferences and organisations show records of this belief of ours. But we know that every State or most States of the world believe in this juridical idea. The point of difference is the definition of what is a State, and that being substantially a political question, various jurists and various schools of thought from various countries have found the problem a little ticklish. It is the belief of Nigeria that just as the Afro-Asian group in Vienna found a compromise solution to the problem of economic and political pressure which we sought to embody in Article 49 and which finally emerged as a resolution of the Conference, it may well be that the sponsors of the amendment in Article 5 *bis* will also, in the same sense of realism, find a compromise position acceptable to all Delegations.

Mr. President, the heart of the problem of the Law of Treaties, at least of the outstanding questions in Vienna, is Articles 62 and 62 *bis*. We all remember in Vienna that the Afro-Asians as a group were indeed a successful group. We maintain the same sense of solidarity which whether we wished it or not, put the other regional groups in disarray. The

solidarity we achieved in Vienna was based on a sense of reality. That realism had as its elements, reasonableness and a sense of compromise. We achieved ultimate success which we may not have dreamed of at the beginning of the Conference. Thus, when we were pressing for the amendment sponsored by several Afro-Asian Delegations on Article 49, we pressed the Conference almost to a breaking point. We exercised legal brinkmanship at its best but instead of throwing the whole Conference over the precipice, we held at a point from where we could return and we got the best that way and over that amendment. The whole question of the Law of Treaties is of the greatest importance to the Third World, the developing countries of Afro-Asians, the Latin Americans and indeed all the small and medium-sized powers. The super powers have lived without the Convention of Law of Treaties for centuries. They have held their sway over the whole world and indeed principally over the Afro-Asian world without a Convention of the Law of Treaties for centuries. We, small countries in Africa and Asia, particularly need the Convention on the Law of Treaties more than the super-powers. Our influence is based on legality and on the rule of law. The super-powers base their stress on their economic dominance and their military power. So, any legal order which tends to reinforce the rule of law is to be encouraged and is to be supported by the small States in Africa and Asia as this is their shield.

The position of Nigeria on Article 62 was well known. We shared the same belief, like our sister countries from Africa and Asia, and stood by our joint reserve to maintain Article 62 based on Article 33 of the United Nations Charter as adequate for our purposes. But the Afro-Asian countries cannot live in isolation in this age when jets connect the world and have created shorter distances and the general economic situation has forged an irresistible link with all the countries of the world, and we have to take into considera-

tion the interests of the other groups that we have to negotiate with in the second session of the Vienna Conference. We know, for instance that since our last conference in Vienna, the Socialist countries have negotiated a compromise solution. The compromise position is that after Article 62, they could move a little further by accepting compulsory conciliation. It is for us in this Committee to examine the whole field and consider whether it will not be in our interest also to formulate a compromise position a little beyond Article 62 as it stands.

We, in Nigeria, are parties to a number of Conventions, multilateral and bilateral in which we accepted compulsory conciliation and compulsory arbitration. In the Convention on the settlement of disputes between States and nationals of other States, to which Nigeria is a party, we accepted compulsory arbitration. And it should be noted that when a State agrees to arbitration not with another State but between itself and the nationals of another State, it not only involves a little derogation from sovereignty, it also shows a very great measure of respect for the rule of law.

We listened to the contribution of the representative of the International Law Commission on this topic yesterday and we urge this Committee to consider whether it will not be in the interest of the Afro-Asian Group at least for purpose of negotiations to move to a position from Article 62 to compulsory arbitration so that at least when the final Article comes to be considered, more of the super-powers will find the entire Convention acceptable to them; and this indeed will help our interest to take this step in the direction of compromise in the sense that efforts for the success of the Conference at Vienna are maintained and we continue with a sense of reasonableness and maintain our solidarity.

The other outstanding point which was mentioned yesterday was Article 59. There again, Nigeria would wish to

sound a note of warning and of caution. As we said earlier, it is in our interest as much as possible to refrain from opening issues which have been substantially decided because unless we work hard at this second conference and bring the Convention into being, it may not be possible to conclude the Convention in the foreseeable future.

The States in Africa which are a party to the Organisation of African Unity have by treaty and convention put in their word for maintenance of existing national boundaries. We found in Africa that the Colonialists and the Imperialists divided brother from brother, clan from clan, and tribe from tribe by the arbitrary boundaries which they drew in their scramble for Africa, for its natural resources, and in order to exploit Africa for the benefit of Europe. But we also know that to try to re-draw national boundaries could only lead to chaos—the very thing which the Imperialist Powers would want, so that they establish for ever new colonialism all over Africa. That is why, Mr. President, the States of Africa by subscribing to the O.A.U. Charter resolve to live alone and to leave the boundaries as they exist. When the various States attained independence, the respect for and the maintenance of the territorial integrity of every State of Africa is one of the most profound political aims of the members of the Organisation of African Unity. What we in Africa have done because of our history and special circumstances of our case is not necessarily the solution to the problems arising in other continents or in other areas, but we believe that where problems exist there is nothing that cannot be solved by negotiations and the spirit of brotherhood. Mr. President, we in Nigeria wish the deliberations of this Committee a huge success and seize this opportunity, Sir, through you to convey the best wishes of Dr. Elias, the Attorney General of the Federation and the Commissioner of Justice of the Republic of Nigeria, to this august Committee,

Cyprus

Mr. President—I take this opportunity to thank the Asian-African Legal Consultative Committee for its kind invitation and acceptance of my country as an observer to this important meeting and to congratulate and thank the Secretary of the Committee, Mr. Sen, for the very thorough and lucid brief prepared by the Secretariat of the Committee on the first session of the U.N. Conference on the Law of Treaties, which should be regarded as a *sine qua non* for every Afro-Asian Delegation here and in Vienna next April. I have listened to and followed carefully the statements of the distinguished Delegates and Observers who have already spoken yesterday and today and they have confirmed my view and conclusion that the main and foremost topic which should mainly concentrate the attention of these meetings, insofar as the draft Convention on the Law of Treaties is concerned, is that of settlement of differences arising under the draft Convention of the Law of Treaties. My Delegation during the last session of the Vienna Conference, got opportunity to express its views on this topic, both during the deliberations of the Committee of the Whole and the Afro-Asian Group meetings as well. We have been happy to see through despite the difficulties and vicissitudes in front of us, and that was mainly due to the spirit of unity among our Group and the untiring efforts of some who are with us again today, such as Dr. Tabibi of Afghanistan, Mr. Dadzie of Ghana and Mr. Sen of India, to mention only a few. We succeeded in remaining together bypassing at such stage a collision course which was threatening the very success of the Conference in Vienna, and we decided that at this meeting in Karachi, we will all meet again as a Group, some as observers, and on the basis of the analysis of the conclusions of the First Vienna Session which the Secretariat of the Asian-African Legal Consultative Committee so admirably has put before us, we will try and decide on a concrete consensus of opinion.

From the analytical conclusions of the Secretariat of this Committee contained at page 49 of the Secretariat's supplementary Brief, now before us, the fact is disclosed that on the question whether there should or should not be certain compulsory procedure for the settlement of disputes arising out of the Draft Convention on the Law of Treaties, there are differences even amongst the Asian-African countries. But from the further elaboration of these views at pages 49 to 51 of this document or from what has been stated so far by the distinguished Delegates and the Observer from Nigeria, it seems that this division cannot in the long run be sharp and consensus can be reached and should be reached. My delegation, for one, was among those States which in the present climate of the international opinion regarding the compulsory settlement of disputes and procedure thought that going beyond Article 62 of the International Law Commission draft would be plainly unrealistic. But we felt also that moderate proposals such as in Article 62 *bis*, which seek to supplement Article 62 of the International Law Commission draft, contained some interesting ideas, and by going further in providing compulsory conciliation and arbitration, were nevertheless based on equality within the framework of the United Nations. Any proposal such as contained in Article 62 *bis*, for instance, where it is envisaged that the Secretary-General makes the appointment of a conciliation or arbitration panel in the absence of agreement, has a positive element; and so is the provision that the expenses in each case are to be borne by the United Nations, even though on the latter point the view of the United Nations Fifth Committee may prove not to be identical with those of the sponsors of such a proposal. Mr. President, my Delegation has an open mind on the suggestion such as this one combined with the clarification such as presented yesterday by the distinguished representative of the International Law Commission, Dr. Tabibi. Dr. Tabibi believes that efforts for a compromise towards that

direction for cautious and careful approach to compulsory settlement of disputes, in the sense of conciliation and perhaps arbitration, is distinct from compulsory adjudication in general by the International Court of Justice, for which no basic occasion to elaborate our strong objections can and should be exerted. Then one more reason why we should from now on act as a group with a consensus. We believe, Mr. President, that with the necessary spirit of mutual co-operation the points of difference, which existed at the first session in Vienna between the various groups, can be removed if we can achieve a broad consensus here. While these differences may appear substantial, it is not, we trust, beyond legal ingenuity to devise techniques and mechanisms which would prevent these difficulties from forcing the next Vienna Conference into a collision course. If we work here with an open mind and formulate a consensus, the efforts can more easily be exerted to smoothen out the way at the Vienna Session and to iron out difficulties for the successful outcome of perhaps the most serious effort of codification undertaken by the United Nations. The seriousness of this codification effort is particularly evident, by the fact that our States, which have recently attained statehood, have contributed in it too.

Iran

I have nothing to state at the moment.

Kenya

Mr. President, I would like to state my views sometime later, but not just now.

Mongolia

Mr. President, I am sorry, I did not ask for the floor, Thank you.