

which are also important but we should primarily concentrate ourselves on these questions.

Pakistan :

No suggestions.

Sierra Leone :

My Delegation is primarily concerned with what is already contained in the First Sub-Committee. That if I may suggest topics for consideration by the Second Sub-Committee, I think my Delegation is incompetent with the suggestion put forward by the distinguished Delegate from Ceylon.

Thailand :

I will make statements later on.

U. A. R. :

I suggest to discuss Article 2 and other Articles, e. g., Articles 16 and 17 concerning reservations.

President :

As regards the Observers, if they wish to attend any of the meetings of the Sub-Committee they can do so with the permission of the Chairman concerned. Yesterday some of the Delegates had observed that they would like to supplement certain discussions later on. If any Delegate wishes to make statements he can do so right now.

International Law Commission :

I asked the floor for two reasons. Firstly, to express my gratitude to you and the Secretary of the Committee and the Committee as a whole for giving me the time to speak not as a representative and Observer of the International Law Commission, but also in my personal capacity. While taking the floor I would like to express the thanks of the members and the Chairman of the International Law Commission and their

wishes for the success of the Committee during its deliberations. In the meantime in my personal capacity, I would like to put a suggestion before the Committee, to express a vote of thanks and the appreciation of the Committee to the distinguished Minister of Justice of Nigeria for his able leadership of the Afro-Asian *bloc* during his presidency of the Committee of the Whole at the Vienna Conference. We are grateful to him that he deputed Mr. Ogundere for this Conference who brought with him his wishes for the success of this Conference. It will be appropriate for us to send the greetings and good wishes of this Committee to Judge Elias and wish him success in the second part of the Vienna Conference, because it was due to his leadership that we succeeded as he held the Afro-Asian Group united all along the Conference. Since I might leave tomorrow, I want to thank you again and the Committee for the opportunity that they gave me both as Observer and the representative of the International Law Commission and also in my personal capacity.

India :

Mr. President, I want to fully associate myself with Dr. Tabibi with regard to the observations he made regarding the very important role which the Judge Elias played in the Vienna Conference. We should send a message thanking him as proposed by Dr. Tabibi. May I submit, Mr. President, that we thank the International Law Commission through the Chairman for sending Ambassador Dr. Tabibi, who has made valuable statements. Thank you, Sir.

*Meeting held on the 30th of January, 1969
at 2 P. M.*

*Hon. Syed Sharifuddin Pirzada,
President of the Committee,
in the Chair.*

President :

The report of the First Sub-Committee on the Law of Treaties is to be introduced by the Chairman.

Indonesia :

(Chairman of the First Sub-Committee): As the Committee may recall, the First Sub-Committee was requested to take up the questions of Articles 62 *bis*, 76 and 5 *bis* together with the connected or related questions of the terms "general multilateral treaties" and "restricted multilateral treaties" and the final clauses. As it was considered by the First Sub-Committee that it would be the biggest problem to be solved, we decided to take this up as a first item, and it is, therefore, reported as the first question in our draft report. We then decided to follow the following procedure in discussing this question first to see what the basic situation was of all the Delegates and Observers. This should not have been mentioned in the first. We considered all this later on. We would go beyond this that this should be so and we then ventured to see to what extent the countries will go, and whether some consensus formula could be found. When you would read paragraphs 5, 6 and 7 of this Report together, it will give a picture of how the fields and stands were at the beginning to try within which a compromise formula and how we then decided to submit this for further consideration to our Governments so that they might base an eventual effort to try this compromise formula along these lines. Thereupon, we proceeded to take Article 76 and it was the general opinion that the Article as it is phrased in the proposed text at the Vienna Conference

would be very difficult to accept. We then proceeded to see what would be an acceptable solution and you will find the majority opinion and the minority opinion stated in the Reports. When we had finished Article 76, we took Article 5 *bis* and you will see in the report that every one pronounced himself practically in favour of the universality clause as such and the majority could support in principle inclusion of that kind in the Convention. As to the question "general multilateral treaties" we reached the consensus that we should not try to include the definition of this term in Article 2 of this Convention although there was no objection raised in favour and against the use of this term in Article 5 *bis* as adopted. We then proceeded to the final clauses and it was then that we took the question of participation in the Convention and with the few exceptions we all believed that this should be open to all States and that eventual difficulties which might arise in the implementation of such a clause could be solved by either adopting multilateral system or by adopting a non-recognition clause. As to the question of prospective force, we all agreed that Article 62 *bis* and Article 76, if adopted, are another solution that may be adopted, and the last question was ratification that would be required before that Convention could come into force. I think this is all I have to say on this matter.

Ceylon :

Mr. President, as the first speaker gave reference to the Report which is now before us for consideration, I think I must congratulate the members of the Sub-Committee and the individuals who participated in the discussions in this House. I think that the individual members of this Committee have sacrificed a great deal of time and pleasure in order to proceed on the work of the Committee. Even a brief reading of the Report of the Sub-Committee makes it quite evident that the members of the Sub-Committee have striven as far as possible not only to consider all the different proposals which have

been made concerning the problem but also to set out in a very clarified form the different alternative solutions which had been considered. I am not myself aware of what the next step should be, but I am sure the next step will be that the Member Governments will have the opportunity of considering this Report before the next Vienna Conference. I have no doubt that opportunity should be availed of by all the Member Governments with a view to seeing that our Member Countries as well as other countries of the Afro-Asian Group will be able in some at least of these matters to present a single view with regard to these problems. I think, Mr. President, that is all I need say because it is apparent from the Report of the Sub-Committee that how far anxious the members of the Sub-Committee were to attain unanimous view that they unfortunately have not been able to do so. It would appear that the value of the Report will be found after Member Countries have opportunity to consider it.

Ghana :

Mr. President, I fully endorse the Report as introduced by the distinguished Chairman of the Sub-Committee and I have no other comments to make. My feeling is the same as stated by my distinguished neighbour, Chief Justice of Ceylon. I think that the Member Governments should have the opportunity to study the Report specially in view of the coming session of the Law of Treaties which will benefit them when the matter is taken up at the Vienna Conference, that will take place in April. I have only to add that in view of this Report the Secretariat is already burdened. I think that the Secretariat will try to make these particular records available to the Member Governments as soon as possible. There will be a big margin of time for Member Governments to study them. If that happens, it would appear that all the efforts which we have put in here in Karachi would be helpful to our brother countries in Africa and Asia, and they will learn a great deal. With this plea that the records should be made available

specially on the Law of Treaties as soon as the Secretariat could afford to do so, I conclude. Thank you, Sir.

India :

Thank you, Mr. President. We are very happy to endorse the Report of the First Sub-Committee in its entirety.

Iraq :

Thank you, Mr. President. In endorsing this Report, I only wish to congratulate the Chairman for all the hard work and industrious efforts put in to produce this excellent Report.

Japan :

Thank you, Mr. President. My Delegation also endorses fully the Report of the First Sub-Committee. We are in full agreement with the views expressed by previous speakers with regard to the efforts put into this work and we should thank the distinguished Chairman of the Sub-Committee whose efforts have been remarkable. My Delegation also thanks the Secretariat. The Delegation of Japan is also hopeful that the exchanges of views have been very useful and the Report would no doubt give rich material for Member Governments to digest and to consider this difficult and dangerous problem at the Vienna Conference.

Jordan :

I have no remarks to make save to thank the Chairman and Members of the Sub-Committee for this useful piece of work.

Pakistan :

My Delegation endorses the Report of the Sub-Committee and hopes that when the Secretariat will make the records available to the Member Governments, it will receive consideration by each Member Government, and I am glad to join

the other Delegates in thanking the Chairman of the First Sub-Committee which produced this Report by tiring efforts made in the successive meetings. We have had sometimes late sittings and we have been able to produce this report.

Sierra Leone :

In endorsing the Report of the First Sub-Committee, Mr. President, I would like to congratulate the Chairman of that Sub-Committee for her very expert guidance which she has given during the meetings of that Sub-Committee. Thank you, Mr. President.

Thailand :

My Delegation would endorse the Report of the First Sub-Committee but I have some questions to ask. I wish to draw your attention to pages 7 and 8 of the Report, last line of p. 7 and the first line of p. 8. I think that the First Sub-Committee has taken a decision to delete the clause of "while reserving its position" in the Convention. I would like to be enlightened by the distinguished Chairman if our memory is correct.

Indonesia :

(Chairman of the First Sub-Committee) : I am afraid, it was not deleted. Better ask the Secretary-General.

Thailand :

My Delegation fully supports the Report of this Sub-Committee. Thank you, Mr. President.

U.A.R. :

I fully endorse the Report of the First Sub-Committee and I have no other comments to add. I would like to congratulate and thank the Chairman of the Sub-Committee for her hard work and efforts in the preparation of the Report.

President :

Distinguished Chairman. If she wishes to say something again.

Indonesia (Chairman of the First Sub-Committee) :

Mr. President. Thank you for the opportunity you are giving me to thank my distinguished colleagues in thanking me. As I already stated this morning in the Sub-Committee I was able to do what I could mainly due to the cooperation and friendly spirit I found in my Sub-Committee and I wonder in thanking you instead of you thanking me.

President :

As there are no other remarks, the Report as presented by the First Sub-Committee on the Law of Treaties is adopted unanimously.

We will now take up the Report of the Second Sub-Committee on the Law of Treaties. The Chairman of the Sub-Committee to introduce the Report.

U.A.R. (Chairman of the Second Sub-Committee) :

Mr. President, our Sub-Committee studied the items referred by the Committee, and the first point was with regard to Article 2. In this respect we have had four sectional elements to discuss. First one was the definition of the term "treaty" and the majority of the Delegates arrived at the conclusion that there was no need to introduce into the definition of the term "treaty" substantive elements which are to be covered in Part V of the Convention. On the other hand, the UAR Delegate was in favour of the amendment because it would be more precise to define the term "treaty" as an international agreement which establishes a legal relationship between the parties in order to exclude explicitly the category of gentlemen's

agreement, and was therefore more in favour of the definition given by the draft Convention.

The second point concerned the definition of the term "general multilateral treaty" and here the Sub-Committee was of the view that although there was no doubt about the important role played by treaties, it would be preferable not to include it in Article 2 A of the term "general multilateral treaty".

Third point was the definition of the term "reservation" and here most of the Delegates raised no objection against maintaining the draft Convention as it exists and rejecting the Hungarian amendment which was intended to include in the concept of reservation a totally different category of legal acts which are mere declarations.

The fourth point concerning Article 2 was the term "restricted multilateral treaties" and here again most of the Delegates thought that the implication of the French conception intending to amend Article 2 in order to bring in a definition of this category of so-called restricted multilateral treaty is not clear and would detract from the uniformity of the draft Convention, and so it would be unwise to introduce in Article 2 the definition of the term "restricted multilateral treaty".

These have been the main points concerning Article 2 and the conclusions arrived at by the Second Sub-Committee.

As for Article 12 *bis*, there is no objection at all because all the Delegates were of the opinion that Article 12 *bis* would be adopted without any change.

In regard to Articles 16 and 17, the first point was if it would be better to maintain Article 16 as it had been adopted at the first session of the Vienna Conference and here the Delegates were in favour of maintaining the draft and in the mean time they are in favour of the Japanese amendment

providing for the creation of a system under which the views of parties to the question of contractability are on a collateral basis, which it would be preferable to introduce.

The other point discussed by the Second Sub-Committee was to introduce in respect of Article 17 the terms "general multilateral treaty" and "restricted multilateral treaty" and here in view of the opinion expressed concerning Article 2, they are more in favour of not to introduce such a concept in the drafting of Article 17.

Article 69 *bis* was discussed in the Second Sub-Committee, and although it was of the opinion that this proposed new article confirms the existing international practice but some Delegates were of the opinion that it would be preferable to include it in the Law of Treaties and other Delegates were of the opinion that there is no need for the inclusion of Article 69 *bis* because its substance is irrelevant to the Law of Treaties.

The final point which was discussed by the Second Sub-Committee was the question of a provision for contracting out of the Convention, and here the main ideas expressed and approved by the Delegates were that the Convention of the Law of Treaties should be considered as a law making treaty and that it should govern all the treaties to be concluded between the parties to the convention, and accordingly it would be highly desirable to insert in the Convention a provision to the effect that no reservation in principle could be admitted except in respect of those articles in respect of which reservations are explicitly or impliedly permitted in this Draft Convention. These had been the main conclusions and the ideas expressed by the Delegates on the Second Sub-Committee. Thank you very much.

President :

Distinguished Delegate from Ceylon.

Ceylon :

Here again, Mr. President, it is my privilege to be the first to express appreciation of the valuable work which has been done by the members of the Second Sub-Committee. They have set out the matters which have been considered in connection with the need for amendments or alterations or additions to the draft Convention and they have also set out quite clearly the alternative views which would now be open for the consideration of our Member Governments. I am happy to note that in this case the Committee has been able on some points to make definite recommendations for adoption. My Delegation is happy to support the adoption of the Report.

Ghana :

Mr. President, my Delegation also supports the adoption of this Report and agrees with the remarks which the distinguished Delegate of Ceylon has just made. I would also like to reiterate what I said in regard to the other Report on the Law of Treaties that this Report also be made available to Member Governments in time to study them and to help them to formulate their policies before going to Vienna. I would like to add my Delegation's appreciation for the very hard work which the Chairman of this Sub-Committee put in to make this Report possible. Thank you, Sir.

India :

Thank you, Mr. President. Our Delegation would like to join in the tribute paid by our friends from Ceylon and Ghana in commending the comprehensive Report that the Second Sub-Committee has prepared on the various subjects that were referred to them for study. We fully support this Report and would like to offer our appreciation to the Sub-Committee and to its Chairman for giving us in a crisp and comprehensive manner its conclusions on these subjects.

There are some minor typographical mistakes to which my attention has been invited and I would offer these to the Secretariat a little later. May be one I could make right at this time : at page 10, 5th line from the bottom I think if we can delete coma and put a full stop and the next sentence could start with capital words, so that the two ideas are separate and not combined; that would appear to convey the sense in which these were intended so that the two sentences will deal with two different subjects : one relating to opting out or contracting out of the obligations or provisions of the Convention and the other relating to compulsory automatic review after ten years after the Convention has been adopted.

Indonesia :

Mr. President, I would like to associate myself with the previous Delegations in thanking the Chairman of the Second Sub-Committee for the hard work that he and other members of the Sub-Committee have put in in their deliberations. There are a couple of typographical errors which I will later on refer to the Secretariat. We fully endorse the Report.

Iraq :

My Delegation also endorses the Report.

Japan :

It is indeed a pleasure for my Delegation to associate itself in endorsing the work of the Second Sub-Committee. There is a minor correction at p. 8—in the second line from the bottom. It says : "Delegates of Ceylon, Pakistan and . . ." I believe we also expressed this view. I would like the name of Japan to be included, so that it may read: "Delegates of Ceylon, Japan and Pakistan . . .".

Jordan :

My Delegation, Mr. President, is also glad to associate itself with the appreciation expressed by the other distinguished

Delegates of this Committee for the good work done by the Second Sub-Committee.

Pakistan :

Mr. President, my Delegation has no hesitation in accepting the Report of the Second Sub-Committee. In particular, we would like to congratulate the Chairman of this Sub-Committee for his able guidance and also the distinguished Delegates from India and Ceylon who had put in arduous labour to draft this report, and they have made many corrections without which it would otherwise have been very difficult. Thank you very much, Mr. President.

Sierra Leone :

The Delegation of Sierra Leone was unable to participate in the work of the Second Sub-Committee, and although I have in fact not been able to examine this Report, I have no hesitation whatsoever in joining the other Delegations in extending thanks to the Chairman of the Second Sub-Committee and Members of that Sub-Committee for the very good work that they have done.

Thailand :

Mr. President, my Delegation also wishes to express thanks to the Chairman and Members of the Second Sub-Committee on the Law of Treaties for the admirable work they have done. My Delegation has no objection to the Report of the Second Sub-Committee and we fully accept the Report.

U.A.R. :

My Delegation also fully supports the Report of the Second Sub-Committee and has no comments.

President :

The report is adopted unanimously.

(X) REPORTS OF THE SUB-COMMITTEES
APPOINTED AT THE TENTH SESSION,
KARACHI

Report of the First Sub-Committee on the Law of Treaties

PART I

1. The First Sub-Committee on the Law of Treaties at its first meeting considered the question of admission of Observers to its meetings and agreed to allow the Observers from the Asian-African countries attending the Tenth Session to participate fully in its deliberations.

2. At its first, second, third and fourth meetings the Sub-Committee considered the question of Article 62 *bis*, proposed by 13 Powers at the First Session of the Vienna Conference for inclusion in the Convention after Article 62.

3. The Sub-Committee first took up the question whether it was sufficient to have just Article 62, or whether it was necessary to go beyond the said article. Opinion was evenly divided between those who regarded Article 62 to be sufficient and those who were prepared or considered it necessary to go beyond.

4. The Sub-Committee then considered the possibility that circumstances at the Second Session of the Vienna Conference might make it necessary to go beyond Article 62, and what the position of the States should be if the circumstances so require. It was the unanimous opinion of the Sub-Committee that under such circumstances all the States should be prepared to go beyond Article 62.

5. Thereupon the Sub-Committee considered the question to what extent, and in what form, a provision beyond Article 62 would be acceptable.