Commission would continue along the lines advocated by Syria.[44]

UNITED ARAB REPUBLIC

In elaborating its draft articles, the International Law Commission had sought to orient them towards a universal community of nations whose supreme law would be the U.N. Charter. That desire had been reflected in the Commission's decision, explained in paragraph 24 of its report (See A/6309) to adopt the formula of a draft convention rather than that of a code. The same reasons had governed its decision to abandon the traditional doctrine of unanimity in regard to reservations to treaties; the rapid expansion of the international community made it likely that the principle of unanimity wolud lose its relevance and utility.[45]

Article 19

OBSERVATIONS IN THE SIXTH COMMITTEE

SYRIA

See Article 18 above.

Article 23

OBSERVATIONS IN THE SIXTH COMMITTEE

CHINA

The principle *pacta sunt servanda*, which had long been honoured by the Chinese people, was essential to the legal order of the international community and China was gratified to see it reaffirmed in article 23. China's support of that principle, however, should not be construed as meaning that it opposed any change in the status quo; it had no desire to

44. 906th meeting, 1966, paras 22 and 23, A/C.6/SR.206, pp. 29-30.

45. 911th meeting, 1966, para 24, A/C.6/SR.911, p. 60.

perpetuate any unreasonable international situation, and in view of the swiftness with which the modern world was changing, it favoured the application of the doctrine *rebus sic stantibus* whenever and wherever the demand for equity was justified. Almost all modern jurists, however, reluctantly, admitted the doctrine's existence in international law; it served to balance the principle *pacta sunt servanda* and China considered that in article 59 the Commission had the right approach to the matter.[46]

GHANA

See General above.

MONGOLIA

It wished to stress the importance of reaffirming in draft article 23 the fundamental principle, *pacta sunt servanda*. The obligation to perform treaties in good faith had never been more essential than at present when the U.S.A. in flagrant violation of the 1954 Geneva Agreements, had unleashed against Vietnam a murderous war of aggression in which it was resorting to the wide-spread use of poison gases and other chemical products, in defiance of the Washington Treaty of 1922 and the Geneva Protocol of 1925. The fact that a country had not ratified some of those agreements in no way exempted it from complying with their provisions, for the U. N. Charter itself provided in the most general terms that States should ensure respect for the obligations arising from treaties and other sources of international law. Moreover, disregarding the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations and of the Convention on the Privileges and Immunities of the U. N., the U. S. A. had recently allowed some of its nationals to launch an attack against the Syrian mission to the U.N.[47]

46. 909th meeting, 1966, para 2, A/C.6/SR.909, p. 43.

47. 911th meeting, para 33, A/C 6/SR. 911, p. 61.

PAKISTAN

Although the principle *pacta sunt servanda* was important and essential to orderly relations among States, it could not be denied that public international law recognized the doctrine of *rebus sic stantibus*. In that connection, Pakistan wished to suggest two additions to the text. First, a new clause (c) should be added to article 57 paragraph 3 to read as follows :

> "Changes of the circumstances which have not been foreseen by the parties but which have been deliberately brought about or created by one of the parties to the treaty."

Secondly, a paragraph should be added to Article 58 to read as follows :

> "A party to a treaty may not plead impossibility of performance if such alleged impossibility is based on a change of circumstances deliberately brought about by that party. Such a party should restore the status quo and carry out its obligations under the treaty."[48]

SIERRA LEONE

The wording of draft articles 11, 12 and 13 emphasized the importance of the free consent of States becoming parties to a treaty; such consent was essential to the equitable application of the rule of *pacta sunt servanda*.[49]

TANZANIA

The Conference of Plenipotentiaries would have to decide whether to spell out the more prominent concepts invoked by the Commission e. g., *pacta sunt servanda*, good faith and peremptory norms of international law, or leave that content to be worked out in State practice and the jurisprudence of international tribunals. In so doing it would have

48. 911th meeting, para 17, A/C.6/SR.911, p. 59.
49. 911th meeting, para 45 of A/C.6/SR.911, p. 62.

to strike the balance between over-elaboration and vagueness. Further analysis might reveal that some concepts, such as the "good faith" clause, were redundant and even harmful. In its view those concepts might be a subject of special study.

With regard to the matter of unequal treaties, Tanzania which had suffered from colonialist exploitation, contended that the principle *pacta sunt servanda* should never be used to oppress new States. That was in conformity with the policy set forth in the letter of 9th December 1961 from President Julius Nyerere to the Secretary General of the United Nations (Official Records of the Security Council, 16th year, supplements for October, November and December 1961, document S/5018).[50]

Article 25

OBSERVATIONS IN THE SIXTH COMMITTEE

ALGERIA

34. With regard to Article 25, they regretted that the I.L.C. had made the treaties applicable to the entire territory of the signatory parties, since that might result in the application to subject peoples of the clauses and effects of treaties to which they had not consented. On attaining sovereignty, those people would be compelled to denounce such treaties, a consequence that followed, moreover, from article 30, which provided that a treaty did not create either obligations or rights for a third State without its consent.[51]

MALI

40. With regard to the application of treaties to the entire territory of each party (draft article 25), Mali wished to draw attention to the case of colonial Powers that forced

50. 912th meeting, 1966, paragraphs 46 and 47 of A/C.6/SR.912, p. 70.
51. 908th Meeting, 1966, paragraph 34 of A/C.6/SR. 906, pp. 41-42.

subject peoples to sign treaties designed to defend the selfish interests of the metropolitan country. The colonized peoples would declare those treaties void as soon as they attained their independence, and they hoped it would be possible to achieve general and complete decolonization before the conference of plenipotentiaries which had been convened.[52]

SIERRA LEONE

45. It emerged from article 25, dealing with the application of treaties to territory, and article 30 which stated that a treaty did not create either obligations or rights for a third State without the latter's consent, that the I.L.C. had repudiated the so-called colonial clause by which certain obligations under treaties concluded by some States were extended even after those territories had become independent.[53]

Article 26

OBSERVATIONS IN THE SIXTH COMMITTEE

INDIA

4. It was a source of satisfaction to India that articles 26, 49 and 50 of the draft together with the commentaries on them, proclaimed the pre-eminence of the Charter in relation to the law of treaties, in view of the important part the U.N. could play in promoting the future development of world order.[54]

UNITED ARAB REPUBLIC

25. The underlying thought, as well as the purpose of the draft articles was to adapt the traditional rules of international law to the U.N. Charter and to the fundamental principles and modern trends that it enshrined. The primacy

52. 914th meeting, 1966, paragraph 40 of A/C.6/SR 914, p. 83.
53. 911th meeting, 1966, paragraph 45 of A/C.6/SR 911, p. 63.
54. 906th meeting, 1966, paragraph 4 of A/C. 6/SR.906, p. 27.

of the Charter was particularly apparent in the provisions of articles 26, 42 and 50 and in those of article 62, paragraph 3 of the draft. That primacy was self-evident, since the Charter, the product of the most profound and most durable historical development of modern times, gave practical form to the fundamental principles of general and universal international law, which voided those rules of international law which were incompatible with them. Some of those principles were explicitly stated in the Charter; others were implicit, but essentially present. Some had already been recognized in traditional law and had been given wider scope in the Charter; others might be regarded as entirely new. [55]

Article 27

OBSERVATIONS IN THE SIXTH COMMITTEE

UNITED ARAB REPUBLIC

27. The I.L.C. had conscientiously taken account of the observations offered by various Governments. That, for instance, had been its approach to the matter of the interpretation of treaties, when it had reversed its previous position of referring to the rules of law in effect at the time of the conclusion of the treaty and had introduced a broader application of the so-called inter-temporal law [article 27, para 3(C)][56]

Article 30

I. OBSERVATIONS IN THE SIXTH COMMITTEE

ALGERIA) See Article 25 above.
MALI)

NIGERIA See General above.

55. 911th meeting, 1966, paragraph 25 of A/C.6/SR.911, p. 60.
56. 911th meeting, A/C.6/SR. 911, para, 27, p. 60.

SIERRA LEONE See Article 25 above.

TUNISIA See General above.

UGANDA See General above.

UNITED REPUBLIC

OF TANZANIA See General above.

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN

The Government of Afghanistan fully supports the principles underlying articles 30, 31 and 32 in regard to the rights and obligations of third States, with the understanding that these rules are based on "*pacta tertiis nec nocent nec prosunt*" and thus agreements neither impose obligations nor confer rights upon third parties and that a right for a third State cannot arise from a treaty which makes no provision for such a right.[57]

Article 31

WRITTEN COMMENTS OF GOVERNMENTS, 1967

AFGHANISTAN See Article 30 above.

Article 32

WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN See Article 30 above.

Article 34

OBSERVATIONS IN THE SIXTH COMMITTEE

SYRIA

24. With regard to the question of the rules in a treaty becoming generally binding through international custom

57. A/6827/Add. 1 of 27th September, 1967.

which the Commission had dealt with in article 34 of its final draft, his delegation had pointed out at the twentieth session of the General Assembly that the Commission, in its commentary on article 34, had stressed the fact that those rules did not become binding on third States unless they were recognized by those States as rules of customary law (see A/6309). In their view, that was an essential point that ought to be expressly mentioned in the text of article 34.[58]

Article 38

WRITTEN COMMENTS OF GOVERNMENTS 1967

JAPAN

Although there can possibly be cases where a treaty is modified by subsequent practice, the Government of Japan cannot agree to the inclusion of the explicit provision on this matter in the draft articles because of its constitutional problems. It is therefore suggested that this article be deleted.[59]

Article 40

WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN

The Government of Afghanistan notes with satisfaction that articles 40, 47 and 49 have laid down the principles of justice and declare that international treaties concluded through personal coercion of representatives of a State or through coercion of a State by the threat or use of force are null and void.

It is understood that the act of coercion too by a State against another State or its representative, in order to procure

58. 906th meeting, 1966, paragraph 24, A/C. 6/SR.906, p. 30,

59. A/6827 of 31st August, 1967, p. 22.

the signature, ratification, acceptance or approval of a treaty will unquestionably nullify that treaty. In the view of the Government of Afghanistan the draft Article 49 should be broadened in order that coercion as defined in this article should include not only "the threat or use of force" but also other pressures such as economic pressure including economic blockade.[60]

Article 41

WRITTEN COMMENTS OF GOVERNMENTS 1967

JAPAN

Since articles 46 and 47 should be deleted as proposed below (vide articles 46 and 47) paragraph 4 of article 41 for which there remains no reason for existence, should also be deleted.[61]

Article 43

I. WRITTEN COMMENTS BY GOVERNMENTS 1967

JAPAN

It is a matter for the State concerned to avoid, in concluding treaties, any violation of its internal law regarding competence to conclude them. Therefore, the phrase beginning with "unless" should be deleted.[62]

II. COMMENTS IN THE SIXTH COMMITTEE 1967

CEYLON

Some of the draft articles dealt with very complex questions and, as drafted, would leave too much uncertainty

60. A/6827/Add. 1 of 27th September, 1967, p. 3.
61. A/6827 of 31st August, 1967, p. 22.
62. A/6827 of 31st August, 1967, p. 22.

to gain general acceptance. In the case of article 43, which referred to the "manifest" violation of the internal law of a State, could well be asked to whom the violation should be manifest, and at what point in time, and whether the violation could be remedied, for example, through ratification by the State concerned.[63]

Article 45

OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN

3. The draft articles invoked certain juridical notions, such as that of peremptory norms and that of fundamental change of circumstances; and their provisions referred to ideas, such as the object and purpose of treaties, fraud, error and coercion. But some of those ideas, although the draft articles invested them with important legal effects, were not defined with the necessary precision. Also, in connexion with the settlement of conflicts which might be caused by the application or interpretation of those provisions, the text went no further than to state that the parties should seek a solution by the means indicated in Article 33 of the U.N. Charter, which would not appear to be enough to ensure objective solution. The provisions concerning an aggressor State were similarly inadequate. Japan, therefore, would prefer to remove from the draft any ideas or provisions that might upset the balance of the text as a whole or introduce an element of uncertainty. In that connection they drew attention to their comments (A/6309/Add. 1) and to the observations they made at the 844th meeting.[64]

Article 46

I. OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN

See Article 45.

63. A/C. 6/SR.969, 17th October, 1966, p. 6.
64. 911th meeting, 1966, paragraph 3, A/C.6/SR.911, p. 57.

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

JAPAN

As the commentary to this article also admits, fraud lacks both the theory and precedents in international law and, even in the field of domestic laws of various countries the concept of fraud (or those similar to it) is not the same. Such being the case, it is likely to disturb international legal order to provide for fraud in an international convention before any international convention concerning it develops and constitutes a well established rule of international law. This article should, therefore, be deleted.[65]

Article 47

I. OBSERVATIONS IN THE SIXTH COMMITTEE

IRAQ

7. They welcomed articles 47, 48 and 49 on defective consent but regretted that the draft articles did not make it clear that economic and political pressures also constituted coercion and, as such, vitiated consent, inasmuch as they were currently as frequent and as dangerous as the threat or use of force.[66]

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN See Article 40 above.

JAPAN

The concept of corruption is not established in international law. This article should also be deleted for the same reason as the one for article 46.[67]

65. A/6827 of 31st August, 1967, p. 22.
66. 913th meeting, paragraph 7, A/C. 6/SR. 913, p. 73.
67. A/6827 of 31st August, 1967, p. 73.

Article 48

OBSERVATIONS IN THE SIXTH COMMITTEE

IRAQ See Article 47.

JAPAN See Article 45.

Article 49

1. OBSERVATIONS IN THE SIXTH COMMITTEE

ALGERIA

33. It would base its position at the diplomatic conference on the law of treaties on two main principles—the strict equality of States and the free will of States in the conclusion of treaties. Algeria considered that some of the articles required further attention and should be given greater substance. In Article 49, for example, rather than the words "the threat or use of force", it would have preferred a categorical and imperative formula excluding any form of coercion. Other forms of pressure, such as economic forms, should be mentioned as covered by the idea of coercion. Unequal treaties, which were a source of conflict and inherently invalid, could not serve the cause of peace and progress. As they conflicted with a peremptory rule of general international law they should be expressly defined as void. Equality of parties to treaties was, after all, a corollary of the sovereign equality of States. [68]

CHINA

3. It noted with interest the inclusion in article 49 of the principle that a treaty was void if its conclusion had been procured by the threat or use of force in violation of the principles of the Charter of the U.N. That idea, which was comparatively new, was quite different from the traditional

68. 908th meeting, paragraph 33, A/C. 6/SR.908, p. 41.

concept. China had not reached any decision on that article but would be only too happy to see would-be aggressors deprived of any advantage acquired through the illegal threat or use of force. [69]

IRAQ — See Article 47.

JAPAN — See Article 45.

MALI

It agreed with Algeria's suggestion that in draft article 49 the concept of the threat or use of force should be widened to include economic and other forms of pressure.[70]

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN — See Article 40 above.

Article 50

I. OBSERVATIONS IN THE SIXTH COMMITTEE 1966

ALGERIA — See Article 49.

CEYLON — See General above.

DAHOMEY — See General above.

INDIA — See Article 26.

IRAQ

7. It believed in the existence of certain overriding rules which were essential to safeguard the interests of the international community. In that connexion, the Commission's draft articles 50 and 61 were particularly important because they codified existing principles that were vital to a harmonious legal order.[71]

69. 909th meeting, paragraph 3, A/C.6/SR.909, p. 43.
70. 914th meeting, paragraph 39, A/C. 6/SR.913, p. 83.
71. 913th meeting, paragraph 7, A/C. 6/SR.913, p. 73.

JAPAN — See Article 45.

MONGOLIA — See Article 49.

PAKISTAN

The principles of the U.N. Charter prohibiting the use of force constituted a conspicuous example of the rule *jus-cogens*. As other members of the Sixth Committee had also suggested, the following examples might be given : (a) a treaty contemplating an unlawful use of force contrary to the principles of the Charter ; (b) a treaty contemplating or conniving at the commission of such acts as trade in slaves, piracy or genocide ; (c) treaties violating human rights, the principle of self-determination and so forth.[72]

PHILIPPINES

23. The draft articles on the law of treaties were progressive and challenging. That applied particularly to articles 50, 61 and 67 and by accepting the principles underlying those articles, the conference participants would demonstrate their profound desire that the rule of law should govern relations among sovereign States and their faith in the development of international law. The I.L.C. had refrained from giving examples of peremptory norms of international law in its draft articles ; but the conference participants could discuss that thought-provoking question at the appropriate time.[73]

TUNISIA — See General above.

TURKEY — See General above and Article 59 below.

UNITED REPUBLIC OF TANZANIA

See Article 23 above.

72. 911th meeting, paragraph 18, A/C. 6/SR 911, p. 59.
73. 913th meeting, 1966, paragraph 23, A/C.6/SR 913, p. 76.