The third group of articles are those that the First Vienna Conference have not discussed and which will be raised first in the Committee and later on in the Plenary.

I do not want to go into details of or comment on those articles which have been adopted for there is no need now because of the little time of ten days at your disposal. We should go and devote our time to those articles on which we might achieve agreement in Vienna. We should concentrate, in my view, on the crucial and important articles, upon which the success or the failure of the next Conference depends.

The most important section of the draft of the International Law Commission is Chapter V, on the question of validity. The Afro-Asian Conference should do their utmost that these articles on the question of validity should be adopted by the Conference because actually the change in International Law could be seen within these set of articles which makes the modern International Law different from the old International Law. We should do our best, in my view, to make the adoption of this set of articles possible for the benefit of mankind as a whole and to succeed in finding some kind of agreement between the various groups who had different views thereon, at the next Vienna Conference.

You may ask why the International Law Commission did not express a view in this regard. The question was quite clear : because we left it freely to the will of the parties—which is important. And also because various treaties and subjects of treaties are different from each other, we thought it better to leave it to the parties themselves to decide about the establishment of different kinds of machinery.

But since now there is a view and a strong view on the part of many countries that, if the Conference wants to adopt the convention, there must be a machinery; to accept a machinery, the easiest way is to adopt the text which has been

prepared by the International Law Commission. We should try our best not to take up a position that since there is no machinery, we do not want to ratify or apply the Convention, which will be of no use without the same. Actually, we should find a way and a compromise to satisfy all the parties in order to make the Convention universally acceptable to all.

Now, there are, in private meetings and also in the minds of all of us, different approaches to the machinery. Of course, some people are in favour of compulsory adjudication by the International Court of Justice, but we all know, unfortunately, that now the public opinion is in such a way that nobody fully trusts the decisions of the International Court of Justice, to which reference was made this morning by speakers. Particularly after the question of South West Africa, they are afraid : saying that if we go to the Court, may be the interest of the parties will be overlooked. There might be one way possible and that is the only way : that the structure of the International Court of Justice be changed, and its policies be brought in line with the interest of the humanity as a whole. May be, we are hopeful that that day will come and the International Court of Justice will be a real instrument for settlement of disputes and a real machinery and a real centre of hope for mankind.

Then there is the question of arbitration. There is fear also on the part of many countries that arbitration is a long and slow process, and the election of members of an arbitral tribunal is not an easy question. Particularly, Afro-Asian countries have some fear that mainly they have to find the members of the tribunal not from their own area, but from outside, for which reason sometimes they do not trust the decisions which will be made by those tribunals. And also economically some are afraid that the procedure is very expensive.

So, all these fears are in the minds of everybody for one reason or the other, for political reasons, for economic reasons and for many other factors. Particularly, one main factor is : they do not want to bind themselves in advance. Since the bases of various treaties are different, the machinery which is needed for each treaty should be different. Therefore, to establish one set of machinery for all treaties might bind the countries in advance which later on they cannot come out of. So, this is also the main fear in the minds of many of the countries. They do not want to bind themselves.

Anyhow we should find a solution for this purpose. It is possible to accept the compulsory conciliation in my view and leave it to the parties. If conciliation fails within the specific time, they should be transferred into arbitration. Or, may be in between arbitration and conciliation, if they feel necessary, they may refer the dispute to the Secretary-General of the United Nations for a specified period, in order that he may give some suggestion or make the parties to come to some agreement. If this also fails, the parties may try to agree on arbitration. If that, within the period of time, fails they should be made to go to compulsory arbitration.

It is possible to have a permanent panel of arbitrators. It is possible also to maintain it permanently if it is for the good of the mankind. It is possible to make some provision within the budget of the United Nations in regard to expenses of the panel. If the parties to the dispute wanted, they could select from this wide range of panel. The appropriated money by the United Nations and the settlement machinery should be at their disposal.

Now the suggestion in the last Vienna Conference was to leave this matter to the General Assembly, in order that the member countries might consult thereon. But, unfortunately, in the last Assembly there was no time, the agenda was heavy and no agreement was reached in the matter. Between

now and the next Vienna Conference, we should arrive at some kind of agreement. But, in my view, the Vienna Conference would be decisive in finding a solution and adopting a machinery by adopting the convention as a whole. Therefore, I request that we should be very careful since the success of the whole conference and the success of the programme for the International Law Commission now under consideration of the Vienna Conference depends on the vigilance and careful consideration and approach of the Afro-Asians. We should work as we did in the last Vienna Conference, very closely, and in full cooperation with each other in the interests of all the parties, in order to find a solution. If we are divided, we might jeopardise the interests of the Afro-Asians and small nations, and endanger the whole work of the Conference. So, the only way that is now before us, is that we approach the matter very carefully and maintain our unity. If we can find a common ground between various groups of States and particularly between western groups and eastern groups and also to maintain the interests of the Afro-Asians and other small nations in other continents, we should follow this line. It is very difficult for me to define one kind of machinery. That is why I referred to the complexity of the question and also referred to various kinds of approach that we might make between now and the next Session. But as I said, we should maintain our unity and co-operation intact, now during this meeting, and also in the Vienna Conference in order to make that Conference a success.

There is another controversial item, and that is Article 5 *bis*, many sponsors of which belong to the Afro-Asian group. That is the question of all States having the right to participate in general multilateral treaties in accordance with the principle of the sovereign equality of States. Since there is a political element involved, this question has been facing objections in the United Nations Organization. And, in my view, this is not as difficult a problem as Article 62, which is the machinery

we can find. If there are two or three depositaries for a multilateral treaty, the solution that we can expect, in the interest of universality of treaties to give full opportunity politically to any State is that if the parties reject the acceptance of any State to the treaty, for this objection the latter can go to some depositary that they wish. This solution, which may be considered by the Afro-Asian Conference as a whole, might solve this problem.

Of course, there is also Article 8 on the question of the adoption of the text of a treaty by two-thirds vote. I think the suggestion in this respect which has been made by the Secretariat in its paper is worthwhile to consider, and I think it is very useful that we should maintain this general idea which has been supported by the International Law Commission.

In regard to Article 17, which is acceptance of or objection to reservations, I think on the first paragraph the compromise has been reached in regard to implied reservations. That part which has been drafted by the International Law Commission has already been rejected and, I think, this paragraph which has been adopted already by the Committee of the Whole should be supported by the Afro-Asian participants. The Article, as suggested by the International Law Commission, in my view, is a sound one.

There are two other questions to which I want to draw your attention. One is that of Article 49. It was during the first Session of the Vienna Conference that Article 49 of the draft was amended. The amended draft has been accepted, which, I think, we should support. But I must state here that some of the members of the Afro-Asian States strongly supported the text which was adopted last year by this Committee. Among the forces used, not only the use or threat of force but also the political and economic forces should be included as a whole. I think that the only two proposals or amendments in this respect, in line with your decision and

that of the other participants who are here from Afro-Asian countries, make provision in favour of this position that you have adopted last year. I must tell you the background of the question, a delicate question now. We are mostly small and underdeveloped countries. The main objective, that we have, is to raise the standard of living of our people. Further, we have economic relations with the big powers. It was possible in the last Vienna Conference because we reached to that stage to force all big powers to give two-thirds votes for inclusion of the economic and political force. But we found that if that was adopted, there was a fear that all the great powers, I think East and West alike, might not ratify the convention. We accepted a compromise to the effect that a declaration should be adopted by the Vienna Conference, denouncing all kinds of force including economic and political in a very strong term and that the declaration should be a part of the Final Act of the Conference. If the Committee wishes that we should reintroduce its stand of the last year, we can do it. But since this is a delicate question and there is a fear that it may be thought that it is better to set aside this declaration, there remain two things to be done whether it should be part of the Final Act or to find some other alternative solution to this declaration.

There is one last point which I personally put before you, the distinguished colleagues and friends. The distinguished member of the International Law Commission, the leader of the Indian Delegation, knows my view. I want to put on record before you that it is not the view of the Commission or my view as a member of the Commission or of my own country. I want you to reflect and to draw your attention to one point, which is the exception that has been introduced lately in various documents, and that is the exception in regard to Article 59. I want only to draw your attention and I request you to take position one way or the other. Under that exception we accept the fundamental change of circumstances.

But acceptance in the case of some frontiers is the question of self-determination. I want to say this for one thing that since many treaties about the territories or territorial treaties as well and some colonial acts and unequal treaties have been accepted by the parties, in the interest of the stability they should be retained. But we should think very carefully that if we introduce an element from the back door, is it acceptable because the title is different. So I do not want to argue to take position one way or the other, but I am not only explaining my view as a member of the Commission or as a representative of my country, but this is an exception that as a jurist also I accept a large number of colonial treaties under this title, because a boundary is not a line of demarcation and it is not a means of separation of millions and millions of people. So that comes under the principle of self-determination. So these are the general points which in my view I wanted to refer in regard to some important issues in relation to the text which is now before the Vienna Conference. But as a whole, I appeal again that we should maintain our unity and we should cooperate with each other closely as we did in the First Session in order to make the Vienna Conference a success in the interest of the mankind as a whole.

Ceylon

Having regard to the opinion which we have derived from the valuable speech we urge the adoption of some compulsory procedure for the settlement of disputes. The draft convention which has been prepared after many years of labour because of the complexity of the subject and because of different views that are available on the troublesome question, it seems to us that many disputes are likely to arise even in regard to the implementation of various provisions and perhaps for that reason more than for any other reason, in the matters of termination. For the very reason that difficulties in interpretation may arise, it seems to me that some compulsory procedure by which disputes concerning interpretation in particular as well should

be adopted. There is a risk that the convention itself might not serve as well the purpose for which it is intended. As I said this morning, our Delegation will be prepared if necessary to agree on any terms even on this matter, and I do not wish to take time at this stage. I would like to listen to the observations of the other delegates which they may put forward and which may be worthy of consideration as a compromise proposal to attain at least the idea of arbitration. We are interested also in Article 5 *bis*, the right of all States to participate in multilateral treaties. In this regard, I think my own view differs from the views which were expressed previously. My own view is that if Article 5 *bis* is to be included in the Convention, there must be a very careful and precise definition of what is a multilateral treaty. But while we support the inclusion of Article 5 *bis*, we think that the mere inclusion of that Article would give nothing and would only cause displeasure and difficulties unless there is a precise definition of the nature and scope of the treaty to which the States could of their own accord enter. As I said, Mr. President, if you will permit me, I shall put the proposal to other Delegates who also should have time to study. Perhaps you will allow me to offer my few observations later on. Thank you.

Ghana

Mr. President, in many respects the views of my Delegation correspond to the views and the position which was so ably propounded by my distinguished friend Dr. Tabibi in what he said in his capacity as Observer of the International Law Commission. I agree entirely with his analysis as to the situation which faces us. He has quite ably put this in through, particularly the case of articles which achieved unanimity. In these we have no problem. The articles which received majority decision but not unanimous will have, I am sure, to be considered again, as we all know. At the Conference which we have had in Vienna, these majority decisions were achieved in the face of violent opposition from some quarters, and I think

our Secretary has already enlightened us in the brief to help us to be in readiness to meet the situation. I think, our duties here will be to look at these particular articles and more or less retain our unity and strength to be able to stand on these articles when they come up for discussion again. Those articles which have been deferred to the next session of the Conference, ultimately we will have to deal with them in our next session, and here again we will serve a very useful purpose if we look into and take a common stand on them. Apart from this, I think it appears to my Delegation that the main thing which we have to concentrate on will be the settlement of disputes and Article 5 *bis* which my Delegation have reasons and other delegates have reasons too as regards compulsory jurisdiction as such. But we share the views to some extent which the distinguished Delegate of Ceylon has just proposed that it will be unfortunate to adopt this Convention on the Law of Treaties without the means of settling disputes arising out of the Convention. I am sure, we can also aim at and at least hope for a situation in which no dispute would arise. But even in a perfect society, and I am sure the world has not achieved that perfection at the present time, we can envisage disputes arising from any convention, and therefore we may have to consider seriously this point.

The view which we will take is that the two parties should thus find some means like mediation and conciliation, and if they failed, then go to arbitration. And in the final analysis, there should be some provision when every thing has failed which would help them to have their disputes settled. This does not necessarily mean that we should compulsorily have adjudication in the International Court of Justice. We have already seen the possibilities which have been put together in Article 62 *bis*. I think perhaps during this session we will examine this document so that we may be able to find out our own ways and means. Unfortunately the resolution was proposed originally by one of our members and supported by some

Africans and Asians. We will in the course of this session like to examine all these possibilities and come out with a definite stand on this question.

Now the next point is for supporting Article 5 *bis*. This has been a perennial question. We have year after year biggest debates in the United Nations about participation even at International Conferences not only in treaties or conventions and year after year we have propounded two schools of thought—those who agree only to United Nations formula allowing only the members of the United Nations and parties to the Statute of International Court of Justice and specialised agencies so far. I think one step forward has been taken in recent years. We feel that in a world of today, it is unfortunate that certain States through no fault of their own be left out of International Conferences or the participation in multilateral treaties, especially one country. Consider the importance of some of these States, and I am sure that all of you will agree with me that of the numerous examples which have been cited quite often is that of the Peoples Republic of China. The one very important example that faces us is countries participating in treaties or conventions or in any conference without participation of nearly 800 million people. This does not mean that the smaller ones are not important. All these are the States which are left out regrettably. We would like also here that we should spend a little time to decide how this is to be done, and one of the ways in which this can be done is not to insist in the future as we have seen in the past that these parties or these States should take part in this Conference. It is unfortunate that the doors should be closed to the participants and the fruits of our labour are denied. And in the course of deliberations we would like to work together with other nations to find the best means in which we can make a provision. Today, we the Afro-Asians hold a very great sway in the affairs of the nations of the world, and in the United Nations we command a certain majority. That

is very useful. But usefulness can only bear fruit if we sit together today and in the next few days. Thereby we will be doing great service not only to individual and respective countries but to the world. These are opening remarks which I would like to make and in the course of further discussions my Delegation will take the floor and will like to make concrete proposals.

India

The views of my Delegation as to how this session of the Committee may consider the question of the Law of Treaties within the few days at our disposal are generally in accord with those expressed by the distinguished representative of the International Law Commission, Mr. Tabibi, and the distinguished Delegates of Ceylon and Ghana. Our task in selecting items for discussion here has to be taken in the context of a general survey of the achievements of the International Law Commission and the First Session of the United Nations Conference on the Law of Treaties in registering progress on the codification and development of the law on the subject. The Committee's Ninth Session held in New Delhi in December 1967 focussed the attention of the Member States on significant questions arising from the ILC draft on the Law of Treaties. The ILC draft was examined in three sub-committees, two of them dealing with the questions relating to the conclusion, maintenance and amendment of treaties, namely Articles 1-38 and 68-75, and the third dealing with the invalidity, termination and suspension of treaties, namely, Articles 39-67. It is a matter of great satisfaction to us that these discussions and exchanges of views were helpful at the deliberations of the Vienna Conference held in March-May 1968. We might, for example, recall the discussions at New Delhi on such matters as the scope of the Convention on the Law of Treaties, definitions of basic concepts, presumptions as to whether the consent of a State to be bound by a treaty should be in favour of signature or ratification, if this was not

specifically indicated therein; interim obligations of good faith pending the entry into force of a treaty; application of successive treaties; interpretation of treaties; amendment and modification of treaties by subsequent practice; invalidity of treaties imposed by the threat or use of force in whatever form or concluded in such a manner that they conflicted with peremptory norms of general international law, that is, *Jus Cogens*; procedure of settlement of disputes arising from the application of the provisions regarding the invalidity and termination of treaties, and so forth. These were the very issues which consumed most of the time at the Vienna deliberations.

The question now is as to how we may proceed with our work at this session. We should perhaps spend some time on a review of the work completed by the first session of the Conference, because in any case the relevant articles which were adopted at the first session only in the Committee of the Whole have yet to be adopted in the plenary at the second session. It may be useful to review the substantive changes made in the articles proposed by the International Law Commission.

Secondly, some articles have been left over for discussion at the second session. Some of these were those which were already included in the ILC draft. Others were new proposals. It would be useful to consider both types of questions.

Thirdly, we should also discuss certain basic issues which are likely to come up at the second session for the first time, namely, those relating to the final clauses.

It is not possible, and it may not even be desirable, to go into all the issues that might come up at the second session. Many of these issues can be discussed in our informal meet-

ings or among Governments through diplomatic channels or even at the Vienna Conference.

If this approach were generally agreeable to the distinguished colleagues, we could further propose some subjects which might be discussed at this session.

As regards the first category, that is, articles already considered and adopted at the first session, we may review the question of reservations (Articles 16 and 17 in particular), general provisions on invalidity etc., of treaties (Articles 39 to 42), invalidity of treaty concluded by the threat or use of force (Article 49 and the Declaration proposed for adoption by the Conference), *Jus Cogens* (Articles 50, 61 and 67), particularly the question whether only a part of a treaty which conflicts with *Jus Cogens* could be held to be void and not the entire treaty, and whether Articles 50 and 61 should continue to be at two different places; termination or suspension of treaties as a consequence of material breach (Article 57); the question whether the settlement procedure prescribed in Article 62 would apply to all treaties, void or voidable; the question whether a treaty could be suspended pending the continuation of the settlement procedure (relations between Articles 62, 63 and 57, for example).

As regards the second category, namely, questions the consideration of which was postponed to the second session, the following subjects may be considered; whether the concept of "restricted multilateral treaties", proposed by France at the first session, should be accepted in relation to general multilateral treaties, which will have implications for various provisions of the draft, e.g., Article 17 (reservations) and Article 36 (amendment); whether we should subscribe to the all States formula regarding the capacity of States to conclude treaties by participating in Conferences and acceding to the Conventions adopted therein which subject was proposed by the U.S.S.R. (Articles 5 and 12 *bis*); whether the procedure for the settlement of disputes should go beyond Article 62 (Articles 62 *bis* and 76).

I should like to say a few words about the last mentioned point. The Hon'ble Delegates are aware that this question raised an acute controversy at the first session of the Vienna Conference. Although there were differences of opinion even among the Asian-African States, they generally took the position that for the present, Article 62 as proposed by the ILC should be adopted, and the question of extension of these procedures by including compulsory third-party settlement provisions in the Convention. Such compulsory settlement procedures might apply either to all disputes relating to the interpretation or application of the Convention or only to disputes relating to the provisions regarding invalidity, termination and suspension of treaties should be considered at the second session. The Asian-African Legal Consultative Committee Secretariat has prepared an admirable background material indicating State practice on the question. This supplementary brief was circulated only a few days ago. In this document, data has been collected from the various Conventions adopted at the U.N. Conferences, regional multilateral treaties, as well as bilateral agreements concluded during the past twenty years or so. Based on this data, some tentative conclusions have been formulated which would serve as the basis of useful discussions at the present session of the Committee as well as at the second session of the Conference.

Mr. President, I do not wish to move into the substantive arguments of whether or not we should go beyond Article 62. We will make our submissions on the subject at the appropriate time. All I wish to emphasise is that this subject which is bound to have a crucial place in the deliberations of the second session of the Vienna Conference should be fully discussed by us here in all its aspects.

As regards the third category, namely, consideration of new questions which will come up before the second session for

the first time, we should discuss two or three questions. These questions may be as follows :

> Whether the Convention should apply prospectively or retrospectively and in either case, what will be its implications on the substantive provisions of the Convention on the validity of treaties such as where Articles 49 and 50 apply. The relevance of this question to the distinction between Articles 50 and 61 might also be considered. The Articles make a distinction between existing peremptory norms and new peremptory norms ; whether reservations could be made to any provisions of the Convention ; and whether it will be necessary to devise such a system of depositaries for solving the question of widest adherence of States to the Convention.

In conclusion, I might add that we have no suggestion on the procedure for discussing these subjects, namely whether they should be discussed in the plenary or the Sub-Committees —whether Sub-Committees should be appointed immediately or after the general discussion is over, and also as to how we may invite observers to make their comments on the points under discussion.

Indonesia

I would like to thank the distinguished Observer of the International Law Commission, my good friend, Dr. Tabibi for the very lucid exposition he has given us. If my Delegation had to go and analyse the specific considerations of the various problems that were and are still facing us, I think I will almost have to wade through all that he has said and that is why I am very grateful because it makes it very easy for me to limit myself to just a few remarks.

In the first place, in regard to how we should proceed with our work, I think we might consider giving priority to those articles that were left over and then to those articles that

have been proposed or will still be proposed during the course of the debate for special consideration because the rest I think will not create many difficulties. As for the question whether we should have first extensive discussion and then have a Sub-Committee, my remark is that since most of us were present at the Vienna Conference and we had already had a chance to speak very lengthily and extensively there, even general discussion would not take too much time.

Then in regard to the problem articles, if I may say so, of course the biggest problem is the last one, that is 62 *bis* and 76. I do not want to repeat all the considerations that were making it very difficult for many Delegations to accept a compulsory procedure for adjudication for the settlement of disputes. My Delegation is one of those who have found it very difficult indeed to have such a compulsory procedure included in this Convention specially in view of the fact that this Convention would cover too wide a range or other treaties and agreements to be made. I think we should have a very flexible formula so that it will enable, if not all of us, then at least an overwhelming majority of us, to accept a formula like that and my Delegation is fully willing and ready to co-operate in trying to find such a formula. To work backwards, in regard to Article 49, should any Delegation move again the question for a move appropriate way of achieving the use, my Delegation as it has ever been, will of course support such a move.

Then Article 5 *bis*—I can only say that my Delegation has never had any difficulty really in accepting this formula. However, we do appreciate the difficulties other Delegations may have, and I think that Dr. Tabibi mentioned a very wise compromise in indicating the possibilities of appointing two or more depositaries formula. Of course, there are other possibilities which might be discussed in the course of the debate.

In regard to the question of general multilateral treaties, the definition of Article 2 to restrict multilateral treaties—I

think my Delegation will have no difficulty because it has been so often used during the debates in the U.N. General Assembly that really I cannot see any difficulty in that.

In regard to the question of restrictive treaties, I think we should have a very close look on the subject and be careful in finding a definition which does not go beyond our requirements.

Mr. President, since we will have a chance to discuss and debate these articles one by one when they come up, I would not like to take up any more time of the Committee.

Thank you very much.

Japan

The Delegation of Japan attaches the greatest significance to the fact that the present session of the Asian-African Legal Consultative Committee is concentrating on the outstanding problems of the achievements of the United Nations Conference on the Law of Treaties at Vienna amongst others.

Of all the outstanding problems, my Delegation places a particular importance on questions concerning Part V, and specially on the question of procedure for the settlement of disputes arising thereunder, namely the question of Article 62. My Delegation believes that in the present session of this Committee we would be advised to concentrate particular attention to this question which in our view is a key problem of the whole question of the Law of Treaties. If we succeed in achieving a concensus, it will be a lever to help through the *impasse* that the First Vienna Conference had fallen into ; it will be a great achievement of this Committee and a constructive contribution that this Committee will be making to the cause of rule of law and the peace of the world. For this reason I should like to confine to expanding the views of my Delegation on this particular question.

Mr. President, Part V of the Draft Articles which deals with the invalidity, termination and suspension of operation of treaties is the most important and the most problematical part of the whole set of Articles. When the Draft Articles are adopted and come into effect by Convention, Part V will produce different effects on that part of International Law. If one looks at the provisions of Part V, one will easily realise that there are a number of articles which provide grounds for impinging the validity of treaties which although understandable in abstract theory will be likely to cause difficulty in application, and therefore some possible disputes.

I shall not go into the details of the problems of which I am sure all the Delegates assembled here are well aware. Making these provisions a little more precise and objective would certainly help to reduce the possibility of disputes arising out of these Articles. However, one cannot hope to arrive at a satisfactory solution by that means alone. My Delegation believes that it is important to provide in the Convention on the Law of Treaties a certain effective procedure for settling disputes arising out of interpretation or application of Part V. Creating law-making provisions which are likely to bring about disputes without preparing any effective means for settling them is indeed unbalanced legislation, and is apt to incur an adverse effect of confusing international legal order and undermining stability of international relations rather than developing them.

When examined in the light of these considerations, it seems to my Delegation that Article 62 in itself falls far short of the aim that the International Law Commission itself had in mind when it said, and I quote : "The Commission considered it essential that the present Articles should contain certain procedural safeguards against the possibility that the nullity, termination or suspension of the operation of a treaty