(a) A majority of the Delegates and Observers were of the opinion that a machinery for settlement of disputes arising under Part V of the Convention should be provided in an optional protocol.

(b) Some Delegates and Observers were of the view that there should be an obligation to choose at least one compulsory method of settlement.

(c) Some Delegates and Observers were of the view that a formula could be sought along the lines of the proposed Article 62 *bis*, with the possibility of entering reservations, opting out or contracting out.

(d) A few others found Article 62 *bis* acceptable as it was, and

(e) A few expressed the view that the jurisdiction of the International Court of Justice should also be included.

6. Various proposals and views were then put forward and discussed in the Sub-Committee in order to bring together the different viewpoints. The proposals that were submitted are annexed hereto and may be summed up as follows :

(i) There should be an optional protocol providing for compulsory settlement of disputes (conciliation, arbitration and adjudication by the International Court of Justice), together with an optional or a reservation clause enabling the parties to this Convention to specify, or to exclude, any particular compulsory mode of settlement.

(ii) An article should be included in the Convention on the Law of Treaties imposing an obligation on the parties to settle any disputes arising from the application of Part V of the Convention on the Law of Treaties by choosing any one method of compulsory third-party settlement, namely, conciliation, arbitration or adjudication, to cover those cases where the parties have been unable to agree, as provided in Article 62, upon any means of reaching a solution. The choice should be specified in the relevant treaty.

(iii) Article 62 *bis* should be included in the Covention on the Law of Treaties subject to the following provisions :

(a) Parties may *opt out* of its provisions, in full or in part, by making a declaration at the time of signing, ratifying or acceding to the Convention on the Law of Treaties to that effect, or at the time of concluding a treaty.

(b) Parties may *contract out* of its provisions, in whole or in part, with respect to a particular treaty. (The parties would thus be bound by Article 62 *bis* if they were not able to agree to any modification thereof).

All the aforesaid formulae referred to future treaties alone and sought to exclude the existing treaties.

7. The Sub-Committee then agreed that these formulae be submitted to the Governments of the Member States to be considered by them in their efforts to find a compromise formula on the matter at the coming Second Vienna Conference.

Article 76

8. At its fifth meeting the Sub-Committee took up the question of the proposed Article 76 dealing with settlement of disputes relating to interpretation and application of the provisions of the Convention. With a few exceptions, it was the

opinion of the Sub-Committee that the proposed article, in its present form, was unacceptable.

9. Some Delegates and Observers were in favour of distinguishing between Part V disputes, and those relating to interpretation and application of other provisions of the Convention. Others were of the view that both categories of disputes could be settled in an identical manner.

10. A large majority was of the opinion that machinery for settlement of disputes relating to the interpretation and application of the provisions of the Convention other than those arising from Part V, should be provided in an optional protocol providing for a single machinery or one consisting of two parts providing for different machinery depending upon whether or not a distinction was to be made between Part V disputes and those relating to interpretation and application of other provisions of the Convention. Some Delegates and Observers also referred to the need to exclude adjudication by the International Court of Justice from such a protocol, or to include in it a reservation clause or an opting out clause.

11. A few Delegates and Observers emphasized the necessity for compulsory settlement of disputes relating to interpretation and application and considered inclusion of compulsory adjudication by the International Court of Justice necessary.

12. Three Delegates reserved their respective Government's position on the proposed Article 76.

13. All the Delegates and Observers, however, recognised the inter-dependence of solutions in regard to Articles 62 *bis* and 76, and the influence of either of them upon the other.

PART II

Article 5 bis

14. The Sub-Committee discussed the proposed Article 5 *bis* at its 6th and 7th meetings.

15. Virtually all Delegates and Observers supported the principle of universality. A majority of the Delegates and Observers supported the inclusion of the principle only of present Article 5 *bis*, while some could accept Article 5 *bis* as presently drafted. Some Delegates and Observers were not in favour of Article 5 *bis* or a variant thereof, on the ground that it would create practical difficulties.

16. A large majority of Delegates and Observers were willing to accept the term "General Multilateral Treaty". Some of these Delegates and Observers would like to see a clearer definition of the term, while some others made it a condition of acceptance that a clearer definition be arrived at.

17. A majority of the Delegates and Observers, while recognising the existence of restricted multilateral treaties had reservations regarding the inclusion of a provision in the Convention on the subject. Some Delegates and Observers were opposed to the definition of this term on the ground that it was redundant.

18. The views referred to above may be summed up as follows :

(i) that the Convention should include a provision in regard to universal participation in general multilateral treaties, with or without definition of a general multilateral treaty ;

(ii) that the Convention should include such a provision, without a definition of a restricted multilateral treaty.

(iii) that the Convention should include such a provision together with a definition of general multilateral treaty. A few of the Delegates and Observers in this category found the definition proposed by eight powers at the first session of the Vienna Conference to be acceptable, while others preferred to have a clearer definition ;

(iv) that there should be only a clearer definition of restricted multilateral treaty. One Observer reserved the position of his Government in the matter of definition of restricted multilateral treaty;

(v) that the Conference should adopt a declaration on the principle of universality and that in each specific treaty, a solution could be provided in the relevant final clauses, depending on the intention of the parties ;

(vi) that the Convention should neither include a provision in regard to universal participation in general multilateral treaties, nor a provision regarding restricted multilateral treaties.

19. Without prejudice to their respective positions on article 5 *bis*, all Delegates and Observers reached the consensus that no definitions of general multilateral treaty and restricted multilateral treaty should be included in Article 2 of the Convention.

PART III

Final clauses including the question of applicability of the Convention

20. The Sub-Committee first discussed the question whether it should be open to all States to become parties to the Convention on the Law of Treaties, which was a question apart

from that of including in the Convention a provision on the lines of present Article 5 *bis*.

21. With a few exceptions all Delegates and Observers were in favour of including a provision in the final clauses whereby it would be open to all States to become parties to the Convention on the Law of Treaties. In this context, two suggestions were made for avoiding any practical difficulties that might be raised by the inclusion of such a provision. One suggestion was to have a system of multiple depositories. The other was that, while providing for only one depository—the United Nations Secretary-General, the Convention should also include a declaration or proviso to the effect that recognition of one State by another would not be implied solely from the fact that both were parties to the Convention. Most of the delegates who supported the inclusion of an all States formula in the Convention had an open mind on the two suggestions, with several delegates tending to favour the multiple depositories system. Some delegates expressed the view that a provision regarding non-recognition (contained in the second suggestion) was superfluous since under the existing international law, recognition could not be implied from common participation in a multilateral treaty of this character.

22. One delegation supported a multiple depositories system linked with a non-recognition provision. Two delegations formally reserved their positions. Another delegation indicated that it had no time to consider the question and thus could not express its view at the present time.

23. One delegation favoured the incorporation of the "Vienna formulae" in the Convention (i.e. leaving the Convention open only to States members of the United Nations, specialised agencies and the I.A.E.A., States parties to the Statute of the International Court of Justice and those

States invited by the U.N. General Assembly to become parties thereto).

24. The question whether all the provisions of the Convention would be prospective in application was raised. Without prejudice to the application of other provisions of the Convention it was the general opinion that Articles 62 *bis* and 76, if adopted, would be prospective in application.

25. The number of ratifications required for the entry into force of the Convention was also discussed briefly and there was general agreement that in this regard the customary practice with regard to multilateral Conventions concluded under the auspices of the United Nations should be followed.

ANNEXURE

PROPOSALS SUBMITTED BEFORE THE FIRST SUB-COMMITTEE ON THE QUESTION OF ARTICLE 62 AND THE PROPOSED ARTICLE 62 *BIS*

1. There should be an optional protocol on the question of settlement of disputes under Part V of the Convention drawn along the lines of the proposed Article 62 *bis* as set out in the 13-power proposal, and also providing for compulsory adjudication by the International Court of Justice. The said optional protocol should provide for an option enabling the State to specify any of the three modes of settlement (compulsory conciliation, compulsory arbitration and compulsory adjudication) at the time of signing the protocol.

2. There should be optional protocol on the question of settlement of disputes under Part V of the Convention. The contents of the protocol should be exactly along the lines of Article 62 *bis* as proposed by the 13 powers.

3. **62 *bis* as contained in the 13-power amendment, together with the following proviso ;**

"Provided that in any treaty any contracting party may expressly indicate its unwillingness to be bound by Article 62 *bis* or any part thereof, or with the agreement of the other party or parties agree on any of the methods specified therein for compulsory settlement of disputes."

4. Article 62 *bis* should be included in the Convention on the Law of Treaties subject if necessary to the following provisions :

(a) Parties may *opt out* of its provisions, in full or in part, by making a declaration at the time of signing,

ratifying or acceding to the Convention on the Law of Treaties to that effect.

(b) Parties may *contract out* of its provisions, in full or in part, while concluding a treaty. (This would imply that parties will be bound by Article 62 *bis* if they are not able to agree to any modification thereof.)

5. An article providing for compulsory conciliation should be included in the Convention. In addition, there should be an optional protocol providing for compulsory arbitration and adjudication.

6. (i) (a) If the parties have been unable to agree, as provided in Article 62, upon any means of reaching a solution to their dispute within four months following the date on which the objection was raised, they shall solve the dispute, by any one of the following methods :

Conciliation, arbitration and adjudication by the International Court of Justice.

(b) The parties shall choose one of the above methods by mutual consent. This method shall be specified by the parties in their treaty at the time of concluding such treaty though they may have recourse to any of the remaining two methods at any time subsequently if the parties so wish.

(c) The parties or any of them may then request the Secretary-General of the United Nations to set in motion the relevant procedure specified in the 13-power proposal on Article 62 *bis*.

(ii) If no choice was specified in the treaty, the parties shall be bound to settle their dispute by reference to compulsory conciliation. By agreement, however, they may refer their dispute to compulsory arbitration or adjudication. Alternately, on failure of a choice by the parties the provisions of the Annexure to the proposed Article 62 *bis* will apply.

The procedure regarding compulsory conciliation or arbitration shall be on the lines of the Annexure to Article 62 *bis* or any acceptable variant thereof. In the case of compulsory adjudication the dispute shall be referred to the International Court of Justice on the application of any of the parties within *four* months of the date on which objection was raised.

7. Paragraph 6 to be added to Article 62 bis as proposed in 13-Power proposal

Notwithstanding the provisions of previous paragraphs, where in any treaty it is expressly provided that any dispute arising therefrom shall be settled by any one of the means of compulsory settlement specified in this Article, the contracting parties shall settle their disputes in the manner so specified in the treaty.

8. The Convention on the Law of Treaties should include an article along the lines of the 13-Power draft of Article 62 *bis* providing for the automatic conciliation and arbitration of disputes arising under Part V of the Convention, and for the payment by the United Nations of the expenses of conciliation commission and arbitral tribunals.

The aforesaid article could, in addition, contain two other provisions :

(a) The settlement mechanism would apply only to treaties that enter into force after the entry into force of the Convention on the Law of Treaty, subject, however, to the right of parties to a treaty concluded prior to entry into force of the Convention, to apply the mechanism to disputes in relation to that treaty, by unanimous agreement.*

(b) the parties to any treaty may by unanimous agreement decide :

(i) to exclude from operation of the settlement mechanism, all or any specified disputes arising out of a particular treaty, and to subject them to some other specified mode of settlement; and

(ii) to vary, in relation to that particular treaty, the mode of constitution of the commission or tribunal provided for under the article.

*May be omitted if the principle is covered in a more general provision of the Convention.

REPORT OF THE SECOND SUB-COMMITTEE ON THE LAW OF TREATIES

The Second Sub-Committee on the Law of Treaties was set up by the Committee at its second plenary meeting to consider the question of Law of Treaties. It consisted of the representatives of Ceylon, Ghana, India, Indonesia, Japan, Pakistan and the United Arab Republic. The representative of the United Arab Republic acted as its Chairman. The Second Sub-Committee's terms of reference comprised consideration of Articles 2, 12 *bis*, 16, 17, 69 *bis* and the question of a provision for contracting out of the Convention. It held four meetings and arrived at the following conclusions :

1. *Article* 2 : The Sub-Committee had extensive discussions on Article 2. The principal points of agreement which emerged may be stated as follows :

(i) The definition of the term "treaty" in sub-paragraph (a) of paragraph 1 of Article 2, as drafted by the International Law Commission should be maintained. The amendment tabled by Ecuador (L.25) seems unnecessary because the conditions of validity are fully covered by other Articles of a substantive nature providing that the treaty must be "freely consented to", "concluded in good faith", and that its object is "licit". While agreeing that the amendment by Ecuador was necessary, the Delegates of Japan and the United Arab Republic stressed that they did not favour the introduction into a definition of the term "treaty" of substantive elements which are to be covered in Part V of the Draft Convention. The Delegate of Pakistan, while agreeing that the amendment in question was unnecessary, emphasised

the importance of this amendment in case Articles 49 and 50 of the Draft Convention are not finally adopted. In his opinion, the inclusion of the words "freely consented to", "concluded in good faith" and "licit" object are essential elements for the existence of a valid treaty in accordance with the general principles of law. As regards the amendment by Malaysia and Mexico (L. 33 and Add. 1), the Delegate of the United Arab Republic pointed out that his delegation was in favour of this amendment because in his opinion 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" which is not binding legally even though concluded between States. But the majority of the members of the Second Sub-Committee considered that the Malaysian and Mexican amendment added nothing new to the text, and consequently there is no need to include in the text an explicit reference to the intention of creating a legal relationship.

(ii) The definition of the term "general multilateral treaty" in a new sub-paragraph to be inserted between sub-paragraphs (a) and (b) of paragraph 1 of Article 2 was proposed at Vienna by an amendment (L. 19 Rev. 1) moved jointly by 8 States including 3 Asian and African States (Democratic Republic of Congo, United Arab Republic and the United Republic of Tanzania). In the view of the sponsors of this amendment, the inclusion of a definition of the term "general multilateral treaty" is necessary in order to take into account the increasingly important role played by these treaties, which

are constantly increasing in number and importance and relate to matters of concern to the whole community of States.

Most of the Delegates emphasised that they are not yet convinced as to whether any useful purpose will be served by including in the Draft Convention a definition of the term "general multilateral treaty". First of all, such a definition may raise the question of distinguishing it from a "restricted multilateral treaty" which may not be so easy to do. Secondly, if the purpose is to emphasise that the conclusion of certain treaties may be open to all States, this is an independent subject and can be taken care of by adopting Article 5 *bis*. The Indonesian Delegate expressed the view that his Delegation had no objection to the definition of the term "general multilateral treaty". The majority of members of the Second Sub-Committee took the view that although there is no doubt about the existence of such treaties relative to the world public order, it would be perferable not to include in Article 2 a definition of the term "general multilateral treaty". Even if the principle of universality embodied in Article 5 *bis* was adopted, it does not necessarily imply that the category of treaties to which it refers must be previously defined in Article 2. Such a definition can hardly be formulated precisely in the Draft Convention, as there is no accepted criterion to distinguish between the three categories of treaties viz., the general multilateral treaties, multilateral treaties, and restricted multilateral treaties. The concept of "restricted multilateral treaty" had been introduced by the French Delegation at Vienna as a particular concept in contradistinction to the concept of

"general multiateral treaty". The distinction is mainly of a doctrinal nature, and it would be more appropriate to improve the drafting of Article 5 *bis* (if the First Sub-Committee agrees that it should be adopted) without defining in Article 2 the category of treaties in which all States have the right to participate. (This question should be considered along with the Report of the First Sub-Committee on Article 5 *bis*.)

(iii) The definition of the term "restricted multilateral treaty" to be inserted in a new sub-paragraph between sub-paragraphs (d) and (e) of paragraph 1 of Article 2 was proposed at Vienna by the Delegate of France (L. 24) and was supported by some Asian-African States e.g. Syria, Kenya, Central African Republic and Mali. During the discussion on this question in the Second Sub-Committee the Delegates noted that the proposed French amendment to Article 2 and to other subsequent articles, tended to generalise a concept which was impliedly adopted by the International Law Commission in paragraph 2 of Article 17. This paragraph stipulates : "When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties." The derogation from the general rule as formulated in Article 17 was justified on the ground that the treaties in question constitute a particular category which by their vary nature are restricted to a limited number of States and regulate matters of special interest to those States only. The importance of this category of treaties in the emerging new patterns of regional cooperation and integration is self-evident, and the French amendment could be regarded from that point of view as useful in adapting international law to the realities of the changing world community. However, the French Delegate at Vienna went too far in his attempt to create within the general frame of the Draft Convention a special legal regime applicable only to the so-called new category of "restricted multilateral treaties". Consequently, the French Delegate wanted to exclude systematically the general rules laid down in Articles 8, 12, 26, 36, 37, 55 and 66. The implications of the French conception are not clear beyond doubt and it would detract from the uniformity of the Draft Convention. The necessary flexibility can be achieved by introducing in these Articles a phrase "unless the treaty otherwise provides". In view of the foregoing reasons, the Second Sub-Committee unanimously concluded that it would be unwise to introduce in Article 2 a new sub-paragraph defining the term "restricted multilateral treaty". The adoption of Article 17, paragraph 2 does not necessarily require the insertion of a generalised definition, which may create further difficulties.

(iv) The definition of the term "reservation" in sub-paragraph (d) of paragraph 1 of Article 2 may be maintained as drafted by the International Law Commission. The amendment moved by Hungary (L.23) at Vienna was unacceptable as it is intended to include under the concept of "reservation" a totally different category of legal acts which are mere "declarations". The Delegate of the United Arab Republic pointed out that declarations do not exclude or vary the legal effect of certain pro-

visions of a treaty and that interpretative statements clarifying a State's position cannot be considered as "reservations" within the meaning of the original text. The other Delegates raised no objection against the Hungarian amendment.

II *Article 12 bis*

After a careful study of the new Article 12 *bis* proposed by Belgium (L.111) the purpose of which was similar to the new Article 9 *bis* proposed by Poland and the United States in a joint amendment (L.88 and Add.1), namely, to take into account methods other than those specified in Articles 10, 11 and 12 by which States expressed their consent to be bound, the Sub-Committee was unanimously of the view that this Article as adopted by the Committee of the Whole at the first session of the Vienna Conference, should be adopted without any change. The said article reads as follows :

"The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, approval, acceptance or accession, or by any other means if so agreed."

III *Articles 16 and 17*

Considering the important and complex questions raised by Articles 16 and 17 and keeping in view the necessity of maintaining a balance between the principle of integrity of treaties and the principle of freedom of State to make reservations, the Sub-Committee agreed as follows :

(i) Article 16, as unanimously approved by the Committee of the Whole at Vienna, is acceptable. The Second Sub-Committee considered the amendment submitted by Japan, Philippines and the Republic of Korea (L.133/Rev.1) proposing a collegiate system

for determining the compatibility of a reservation with the object and purpose of a treaty, as containing a useful innovation in the law of treaties. The majority supported this amendment in principle. The Delegate of India was, however, not clear as to how it will function in view of the provisions of Article 17 (4) (a).

(ii) With regard to Article 17, the Second Sub-Committee supported the deletion of the words "or impliedly" from paragraph 1 as they introduce a subjective element and could give rise to uncertainties.

(iii) The majority of the members opposed the amendment moved at Vienna by Czechoslovakia (L.84), seeking to replace the words "the treaty" where it first occurs, by the words "a general multilateral treaty or other multilateral treaty, with the exception of cases provided for in paragraphs 2 and 3" on the ground that such formulation would re-introduce the doctrinal and unnecessary distinction between "general multilateral treaties" and "restricted multilateral treaties."

(iv) The Second Sub-Committee is not in favour of the joint amendment tabled at Vienna by France and Tunisia (L.113) seeking to replace the original text of Article 17, paragraph 2 by another formulation referring explicitly to the concept of "restricted multilateral treaty" which requires, as in the case of reservations to a bilateral treaty, acceptance by all the contracting States. The non-acceptance of the joint French-Tunisian amendment is a logical consequence of the afore-mentioned attitude of the Sub-Committee regarding the inadvisability of

introducing a definition of the term "restricted multilateral treaty" in Article 2.

(v) The majority of the members of the Second Sub-Committee is not in favour of the joint amendment moved at Vienna by Switzerland (L.97) and by France and Tunisia (L.113) to delete paragraph 3 of Article 17 dealing with reservations to treaties which are constituent instruments of international organisations. The provisional text of paragraph 3 as suggested by the Drafting Committee and as amended by the Committee of the Whole, is acceptable.

(vi) The majority of the Second Sub-Committee is not in favour of the proposed amendment to paragraph 4 of Article 17 submitted by Czehoslovakia (L.85), Syria (L.94) and the Soviet Union (L.115) and embodying the principle that a treaty enters into force between a reserving State and an objecting State, unless the objecting State expressly declares to the contrary. The original text of paragraph 4 (b) avoids the creation of a complex situation with regard to the application of treaties by assuming that the objection to a reservation precludes, in principle, the entry into force of the treaty between the objecting and reserving States.

(vii) The Second Sub-Committee unanimously approved the amendment submitted by the Delegate of the United States of America (L.127) at Vienna to insert the words "unless the treaty otherwise provides" in paragraph 5 of Article 17. This amendment introduces a certain flexibility missing in the International Law Commission's text, as it gives to the negotiating States the power of stipulating

in the treaty itself a period shorter or longer than twelve months.

IV *Article 69 bis*

The Delegates of Ghana, India and Indonesia approved the adoption of the proposed new Article 69 *bis* stipulating that "the severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. . . ." According to them, this Article confirms the existing international practice and reaffirms the principle adopted in Article 60 by extending it to cover not only pre-existing treaties by also agreements to be concluded in spite of severance or absence of diplomatic or consular relations.

The Delegates of Ceylon, Japan, Pakistan and the United Arab Republic expressed 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 Delegate of the United Arab Republic further expressed the view that the rule stated in Article 69 *bis* concerns mainly the questions of diplomatic relations and the legal effect of non-recognition, which could better be left to the State practice.

The Observer from Cambodia pointed out that in spite of the fact that his country used to conclude international agreements with non-recognised States or Governments, he would be more favourable to the deletion of Article 69 *bis* for the reasons mentioned by the majority of members of the Second Sub-Committee.

V. The Question of a Provision for Contracting out of the Convention

After a lengthy discussion in which Observers from Cambodia, the American Society of International Law and

the German Branch of the International Law Association participated, the Second Sub-Committee expressed the following views :

(i) The Convention on the Law of Treaties is to be considered as a law-making treaty which is intended to govern future treaties to be concluded between the State parties to the Convention.

(ii) It would be desirable to emphasise that treaties concluded between States parties to this Convention may derogate from the rules laid down therein only in so far as such derogation is expressly or impliedly permitted in the respective Articles of the Convention.

The Delegates of Ghana and Japan emphasised that the word "impliedly" should be interpreted to cover the cases where derogation is permitted in the light of the nature or the object and purpose of the particular provisions of the Convention.

The Delegate of India pointed out that the Convention on the Law of Treaties embodied two types of provisions viz., fundamental provisions and provisions of a procedural nature. The question of contracting out in regard to fundamental provisions should normally not arise. Such provisions should be mentioned in a separate Article. The provisions may include for example, Article 23 and Part V of the Draft Convention. The obligations in regard to the fundamental provisions of the Convention could be enlarged by agreement but they could not be restricted, unless the Convention allows it expressly or impliedly such as in an article on reservations. The Convention should also contain a review clause providing for review of the Convention after ten years at the request of a specified number of States.

(XI) TEXT OF THE VIENNA CONVENTION ON THE LAW OF TREATIES[1]

The States Parties to the present Convention

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedom for all,

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1. A/CONF. 39/27-23 May 1969.

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the puposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows :

PART 1

INTRODUCTION

Article 1

Scope of the present Convention

The present Convention applies to treaties between States.

Article 2

Use of terms

1. For the purposes of the present Convention :

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) "full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(d) "reservation" means a unilateral statement, however, phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(e) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(f) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(h) "third State" means a State not a party to the treaty;

(i) "international Organisation" means an intergovernmental organisation.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to meanings which may be given to them in the internal law of any State.

Article 3

International agreement not within the scope of the present Convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect :

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) The application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4

Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5

Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization

and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART II

CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1 : CONCLUSION OF TREATIES

Article 6

Capacity of States to conclude treaties

Every State possesses capacity to conclude treaties.

Article 7

Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if—

(a) he produces appropriate full powers; or

(b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;