9. The draft articles based the law of treaties on the sovereign will and free consent of States, thus reaffirming the principle of the equality of States. The articles stated clearly that all States possessed the capacity to conclude treaties; in their view, it followed logically that all States should be able to participate in general multilateral treaties. International law could not discriminate in that respect, and it was regrettable that the draft articles were silent on that point.

10. His delegation also regretted the omission of any provision relating to the succession of States and Governments and the responsibility of States with regard to the non-fulfilment of treaty obligations. It was to be hoped that the Commission would consider both subjects at the next session, particularly the former, which was of special interest to his country. The Commission should, without delay, suggest some juridical means of terminating unjust treaties, the application of which had been extended to, or even imposed on, former colonies that were currently sovereign States.[4]

GHANA

9. It noted that the I.L.C. had stated in its report on its eighteenth session (A/6309, paras 23 and 24) that its draft articles, which at some time it had thought of producing in the form of an expository code, had been intended to serve as the basis for a convention. It had changed its scheme of work because it had felt that an expository code, however well formulated, could not be as effective as a Convention; the codification of the law of treaties, however, was of particular importance at the current time when so many new States had recently become members of the international community. The conclusion of a multilateral convention would give those States the opportunity to participate directly in the formulation of the

4. A/C. 6/SR.912, 912th Meeting, Sixth Committee, 1966, pp.65-66.

law, which was extremely desirable if the law of treaties was to be placed on the widest and most secure foundations.

10. The Commission could not have found a better justification for its work and all the countries that had just shaken off the colonialist yoke were delighted with its achievement, for they saw in it proof that international law was becoming a set of legal principles that applied to all countries and not simply to a few favoured States. In that connexion, he pointed out that most African countries had been colonized as a result of "gin-bottle" treaties concluded between African Chiefs and the colonial powers, which, whenever it suited them to do so, elevated those treaties to the status of solemn international agreements or reminded their luckless partners that the agreements which they had thus concluded had no standing in international law.

11. In its draft articles, the Commission had aimed primarily at the stabilization of the international legal order. Ghana fully appreciated the limitations that the Commission had to place upon itself and the difficulties it had encountered in trying to draft articles that would meet with general approval. To achieve that end, it had to decide, as it stated in paragraph 28 of its report, to limit its draft to treaties concluded between States, to the exclusion of treaties between States and other subjects of international law, treaties between such other subjects of international law and international agreements not in written form. It was in that decision that both the success and failure of the Commission lay. Thus, the latter had shelved certain controversial areas of treaty law, such as the effects of the outbreak of hostilities on treaties, the question of State responsibility and the application of treaties providing for obligations or rights to be performed or engaged by individuals. Ghana, however, has been particularly disturbed by the absence of any provisions on the succession of States and Governments as were doubtless also the delegations of all other newly independent countries, which were presumed to have accepted

obligations under treaties concluded on their behalf by the former metropolitan Powers, often against the interests of those countries.

12. On the credit side, however, the Commission's work on the draft articles constituted both codification and progressive development of international law. For example, in article 17, paragraph 4, on reservations, the Commission taking into consideration the prevailing trends on that subject, had decided against the unanimity rule in favour of a more flexible system. Furthermore, in Article 11, on the ratification of treaties, the Commission had started from the premise that the question of ratification should depend on the intention, expressed or implied, of the negotiating States. Ghana approved the non-committal stand taken by the Commission on that question, since it shared the view that ratification was an optional procedure intended to facilitate agreements between States whose executive branches could not conclude treaties without the approval of the legislature. In its view, however, it would have been more satisfactory if the draft articles had included a provision on unratified treaties. It would also have liked the draft to specify whether ratification was necessary when a treaty was silent on that point. Furthermore, the Commission ought to have stated whether ratification was required in the case of a treaty that did not come under either Article 10, para 1, or Article 11.

13. In Article 12, the Commission had taken current trends in international law into account by deciding not to make an accession to a treaty dependent on its entry into force. However, possibly in order to avoid political controversy, the Commission had left undecided the question of participation in multilateral treaties. Ghana, nevertheless, thought that the international community might have derived some benefit from recommendations on that point. Similarly, Article 55, on the temporary suspension of the operation of a multilateral treaty by consent between certain of the parties

only was a bold but perhaps dangerous step on the part of the Commission, as it did not seem possible to rely on the practice of the States in that matter. Ghana, which praising the Commission's efforts to stabilize the international legal order, would like to fill in the lacunae to which it had just drawn attention and take a position on the controversial points of the law of treaties.[5]

IRAN

24. The Commission's decision to deal only with treaties concluded between States, to the exclusion of those concluded between States and other subjects of international law, and not to deal with international agreements that were not in written form was understandable. It was in conformity with the principles of international law and the established practice of the International Court of Justice, since an agreement could not constitute a treaty for the purposes of Article 36 of the Statute of the Court and of the declarations of acceptance of the Court's jurisdiction unless it was in written form, it created a commitment, viz, a new obligation governing public international relations, and it was registered in accordance with Article 102 of the Charter.

25. On the other hand, the omission from the draft articles of provisions relating to the succession of States and State responsibility with respect to failure to perform a treaty obligation was regrettable, for those two questions were closely bound up with the general concept of contractual obligations between States. Iran was glad that at least they were included in the proposed provisional agenda for the next session of the I.L.C. It was noted, in that connexion, the Commission's decision that a Special Rapporteur who was re-elected should continue on this topic (See A/6309 paras 72-74).

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5. A/C. 6/SR. 905, 905th Meeting, Sixth Committee, 1966, pp. 24.

26. Although the question of rights and obligations created for third States was dealt with in the draft (articles 30-33), the most-favoured-nation clause had been omitted, for the reasons given by the I.L.C. in its 1964 report. (See Official Records of the General Assembly, 19th Session, Supplement. No.9) That clause was of great importance to his country, which had frequently had to contend with it in its treaty relations and even had to protect itself before the International Court of Justice in 1952 in the case of the Anglo-Iranian Oil Co. against the United Kingdom's request for its application. [See I.C.J. Pleadings, *Anglo-Iranian Oil Co. case* (U.K. V. Iran) Judgment of July 22nd, 1952]

27. In that particular case, Iran had raised an objection *ratione temporis* to the Court's jurisdiction because in order to terminate the previous capitulatory treaties it had so drafted its declaration of acceptance of the jurisdiction of the Permanent Court of Justice in 1932 as to exclude from that jurisdiction treaties signed before that date. The United Kingdom had then argued that the Treaty of Friendship, Establishment and Commerce, and Final Protocol, concluded in 1934 between Iran and Denmark [See League of Nations, Treaty Series, Vol. CLVIII (1935-36) No. 3640] provided a basis for the Court's jurisdiction. That treaty was *res inter alios acta* with respect to the United Kingdom, but the latter invoked it by virtue of the most-favoured-nation clause contained in the 1857 and 1903 Treaties concluded between Iran and Great Britain. The Court did not uphold the United Kingdom's plea. In its judgment of 22nd July, 1952, it stated : "A third-party treaty, independent of and isolated from the basic treaty, cannot produce any legal effect between the U.K. and Iran : it is *res inter alios acta*". It added : "If the U.K. is not entitled to invoke its own Treaty of 1857 or 1903 with Iran, it cannot rely upon the Iranian-Danish Treaty, irrespective of whether the facts of the dispute are directly or indirectly related to the latter treaty." [See Anglo-

Iranian Oil Co. Case (Jurisdiction), Judgment of July 22nd, 1952, I.C.J. Reports 1952, pp. 109-110].[6]

IRAQ

5. It would be desirable to carry forward as quickly as possible the work on succession of States and Governments and on State responsibility, for both questions were of immediate importance to the international community, as well as the work on relations between States and inter-governmental organizations . . .

6. The Commission's most significant contribution to the codification of international law and its progressive development was its draft articles on the law of treaties. They were of particular importance at a time when the international community had taken into its ranks new members to which the conclusion of a multilateral convention would offer an opportunity to participate directly in the formulation of the law of treaties.

7. ...The failure to deal with the major problem of participation in general multilateral treaties was a serious omission. Any multilateral treaty, particularly where codification and progressive development of international law were involved, should be open to all States, because otherwise not only international co-operation but the very objectives of the treaty, in question would be endangered.[7]

KENYA: See Article 69 below.

KUWAIT

39. The Commission had been right to give its draft articles (See A/6309) the form of a single convention, which

6. A/C.6/SR. 913, 1966, 21st Session, 913th Meeting, Sixth Committee 1966 p. 24.
7. 913th meeting, 1966, A/C.6/SR 913, paragraphs 5-7, page 73.

would carry greater authority than a mere expository code. The Commission's work was not yet complete, however. Not only had it decided to treat separately the question of the succession of States and that of the international responsibility of States, but it had failed to include in its draft a topic of growing importance: that of treaties concluded between States and other subjects of international law or between subjects of international law other than States. The Commission should give priority to that matter if its work was to be complete.[8]

LIBERIA

2. Liberia had hoped that the draft articles would include many matters partially considered by the Commission. In particular, it would have liked the treaties of international organizations to be included in draft article 1. The codification of the law of treaties should be broad enough to include all forms of treaty. It seemed cumbersome to have two conventions—one on treaties concluded between States, and the other on treaties concluded by other subjects of international law—when one convention could cover all such treaties. If no second convention was contemplated, Liberia wished to know what rules would govern treaties between international organizations and States. If it was lack of time which had prevented the Commission from including the matter in the draft articles, Liberia would prefer to have the Commission continue its consideration of the topic until all aspects of treaty law were contained in one set of draft articles. Liberia did not favour the fragmentation of a topic among a number of Conventions.

3. Liberia also felt that the effect of the outbreak of hostilities on treaties, State responsibility, the succession of States, and participation in multilateral treaties should have been adequately provided for in the draft articles. Although

8. A/C. 6/SR. 911, 1966, 21st session, 911th mtg., Sixth Committee, p. 62.

those issues were politically explosive, they would have to be regulated sooner or later.

4. Liberia considered that the use of reservations, dealt with in draft articles 16-20, did not contribute to the progressive development of international law, and it therefore supported the French representative (910th meeting) in the view that recourse to reservations should be kept to a minimum.[9]

MALI

36. Mali congratulated the International Law Commission on the draft articles on the Law of Treaties which would constitute a solid basis for a general convention reflecting modern trends in international law. The progressive development of international law, which was of great importance to all States was of particular interest in the newly independent States. The Law of Treaties must be based on the sovereign equality of States, in order to guarantee that inalienable rights would be respected. In a world constantly menaced by nuclear catastrophe, where the interdependence of peoples was a reality and co-existence of different social and economic systems a necessity, where the strong threatened the weak and colonialism and imperialism sought to stifle the voice of the peoples who were fighting for freedom, it would be unrealistic to try to maintain a static system of international law opposed to the evolution of legal phenomena. Mali therefore considered that the proposed Convention on the law of treaties should be designed to further the cause of peace and loyal co-operation between all States, irrespective of their political, social and economic systems. In its view, participation in general multilateral treaties should be open to all States without discrimination.

37. In view of the emergence of new States as a result of the decolonization process, Mali regretted that the Com-

9. A/C.6/SR.912, 1956, 21st session, 912th mtg., p. 65.

mission had been unable to complete its consideration of such important topics as...responsibility of States and succession. It was to be hoped that the Commission would conclude its work on those questions at the next session and propose specific solutions.

38. Mali hoped that the Commission and the proposed conferences of plenipotentiaries would devote special attention to the most-favoured-nation clause, which was of great importance in both bilateral and multilateral treaties, especially those of an economic nature and of particular interest to the developing countries.[10]

MONGOLIA

34. The principle of the universality of general multilateral treaties was the corner-stone of the collective work of codifying international law; it was by means of such treaties that the general principles of international law were being formulated at present, and it was therefore a *sine qua non* of the universality of modern law that every State should have the opportunity to participate in all such treaties. It was regrettable that the matter was not mentioned in the draft articles and it would be for the conference of plenipotentiaries to remedy that omission.[11]

NIGERIA

12. It was disappointed to find in the draft articles no provisions concerning the succession of States and Governments in respect of treaties. It appreciated the reason for the decision to postpone consideration of that subject, but it hoped that the Commission would give the matter due attention at its next session. It also noted the absence of provisions concerning the most-favoured-nation clause—a matter of great

10. 914th mtg., 1966, paragraphs 36-38. A/C.6/SR.914 p. 83.
11. 911th mtg., 1966, A/C.6/SR.911, paragraph 34, p. 59.

importance to developing countries which had succeeded to a considerable number of treaties having such a clause.[12]

PAKISTAN

16. Treaties had undoubtedly become the primary source of international law, and custom could no longer ensure the rule of law, the enforcement of which was more necessary than ever, given the current expansion and increasing diversity of the international community and the rapidly changing circumstances. It was not enough to adhere to the principles that had been established a decade or even half a decade ago. The problems posed by the emergence of new nations, their needs and their development had to be taken into account, as several delegations, including that of Nigeria, had emphasized in requesting, *inter alia*, that draft articles should be completed by provisions concerning the succession of States.[13]

SIERRA LEONE

46. Sierra Leone said it was regrettable that the Commission had been unable, or had not wished, to make a clear exposition of certain aspects of treaty law, such as the effect of agreements not in written form, the question of agreements concluded by or with subjects of international law other than States or the outbreak of hostilities on treaties. In the view of the new States, the greatest omission was that of the succession of States. Many of the new States, shortly before or after attaining independence, had in fact been obliged to accept, by exchange of notes, the obligations resulting from treaties concluded by their colonial masters. It was to be hoped that the Commission would give early consideration to the highly controversial question of the legal effect of such agreements.[14]

12. 904th mtg., 1966, paragraph 12 of A/C.6/SR.904 at p. 20.
13. 911th mtg., paragraph 16, A/C.6/SR.911, p. 59.
14. 911th mtg., 1966, p. 63, A/C.6/SR. 911.

SUDAN : See Article 69 below.

SYRIA

23. It was anxious to encourage the accession of as many States as possible to general mutilateral treaties inasmuch as they were usually concluded in the interest of the international community.[15]

TANZANIA

45. It was generally agreed that treaty law and the proposed conference of plenipotentiaries were of the greatest importance; therefore, in examining the draft articles due attention should be paid not only to what they contained but to what they omitted. The Commission had already arranged to discuss at its next session some of the subjects omitted – e.g., State succession, State responsibility and the relationship between States and international organizations—but there were other topics that it had excluded without suggesting when and how they should be dealt with. Those topics included oral agreements, the effect of the outbreak of hostilities upon treaties, the most-favoured-nation clause, the application of treaties providing for obligations or rights to be performed or enjoyed by individuals and treaty law in relation to international organizations and insurgent communities. Tanzania did not wish to suggest that the proposed Conference should be postponed pending fuller exploration of those topics, but the Committee should consider them and make appropriate recommendations at the present session.....

46. The Conference should pay special attention to the Commission's commentaries on the draft articles which, if left in their present form, might be accorded a higher status than that of a supplementary aid to interpretation. Some articles were indeed meaningless without the commentary;

15. 906th mtg., 1966, paragraph 23, A/C.6/SR.906, p. 30.

redrafting might, therefore, be necessary, although that would lengthen the articles.

49. ...Tanzania advocated universal participation in general multilateral treaties, particularly in the proposed convention on the law of treaties. It was inadmissible that certain Powers should, when it served their purpose, seek universal participation in certain multilateral treaties, such as the nuclear test ban treaty or an agreement on the non-proliferation of nuclear weapons, and for purely selfish reasons, try to prevent certain countries from sharing the advantages of other general multilateral treaties. Tanzania had repeatedly criticized that double-dealing policy which was deterimental to the integrity of the U.N. system and the interests of the World Community. Many States members of the U.N. had concluded treaties with non-member States and the imperatives of world order made it essential for all States to the parties to the proposed Convention on the law of treaties.[16]

TUNISIA

38. It was gratified at the clarity, precision and excellent organization of the draft articles. Those were necessary qualities in a legal document that was to govern relations between States and would, therefore, be subject to interpretation. Some ideas which had been left fairly vague could, no doubt, have been better defined or supplemented, but that might have given rise to controversy. For example, the concept of a peremptory norm of general international law (*jus cogens*) mentioned in article 50, could have been stated more precisely. On the other hand, the scope of some other concepts had been limited, in particular that of coercion, which in article 49 had been reduced to the threat or use of force. The draft articles should have mentioned other cases of coercion that constituted grounds for the nullity of treaties.

16. 912th mtg., paragraphs 45, 46 and 49, A/C.6/SR.912, p. 70.