(a) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations ; and

(b) Is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

Article 56

Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and ;

(a) It appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or

(b) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the treaty or is otherwise established that such was the intention of the parties when concluding the later treaty.

Article 57

Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles :

(a) The other parties by unanimous agreement to suspend the operation of the treaty or to terminate it earlier :

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties ;

(b) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State ;

(c) Any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in :

(a) A repudiation of the treaty not sanctioned by the present articles ; or

(b) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

Article 58

Supervening impossibility of performance

A party may invoke an impossibility of performing a treaty as a ground for terminating it if the impossibility results

from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

Article 59

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless :

(a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty ; and

(b) The effect of the change is radically to transform the scope of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked :

(a) As a ground for terminating or withdrawing from a treaty establishing a boundary ;

(b) If the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

Article 60

Severance of diplomatic relations

The severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations established between them by the treaty.

Article 61

Emergence of a new peremptory norm of general international law

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4 : PROCEDURE

Article 62

Procedure to be followed in case of invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which claims that a treaty is invalid or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under the provisions of the present articles must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 63

Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 64

Revocation of notifications and instruments provided for in articles 62 and 63

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

SECTION 5 : CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 65

Consequences of the invalidity of a treaty

1. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty :

(a) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed ;

(b) Acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 66

Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles :

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 67

Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law

1. In the case of a treaty void under article 50 the parties shall :

(a) Eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) Bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty :

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 68

Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles;

(a) Relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(b) Does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible.

PART VI

MISCELLANEOUS PROVISIONS

Article 69

Cases of State succession and State responsibility

The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State.

Article 70

Case of an aggressor State

The present articles are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII

DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATIONS

Article 71

Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organisation, shall be designated by the negotiating States in the treaty or in some other manner.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Article 72

Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular :

(a) Keeping the custody of the original text of the treaty if entrusted to it ;

(b) Preparing certified copies of the original text and further texts in such additional languages as may be required by the treaty and transmitting them to the States entitled to become parties to the treaty ;

(c) Receiving any signatures to the treaty and any instruments and notifications relating to it ;

(d) Examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question ;

(e) Informing the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty ;

(f) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited ;

(g) Performing the functions specified in other provisions of the present articles ;

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the other States entitled to become parties to the treaty or, where appropriate, of the competent organ of the organisation concerned.

Article 73

Notifications and Communications

Except as the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the present articles shall :

(a) If there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter ;

(b) Be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary.

(c) If transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1 (e).

Article 74

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected :

(a) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) By executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make ; or

(c) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter :

(a) Shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit ;

(b) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *proces-verbal* of the rectification of the text, and communicate a copy of it to the contracting States ;

(c) If an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the contracting States agree should be corrected.

4. (a) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *proces-verbal* specifying the rectification and communicate a copy to the contracting States.

Article 75

Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

(III) COMMENTS MADE BY THE DELEGATIONS OF ASIAN AND AFRICAN STATES IN THE SIXTH COMMITTEE OF THE U.N. GENERAL ASSEMBLY AND THE WRITTEN COMMENTS OF THE ASIAN AND AFRICAN GOVERNMENTS ON THE I.L.C.'S DRAFT ARTICLES

GENERAL

I. Comments of the Delegations in the Sixth Committee, 1966

AFGHANISTAN AND ALGERIA

See Article 69 below.

CAMEROON

19. The Law of Treaties was a matter of particular interest to countries which, like their own, had just emerged from colonialism into independence and had found themselves bound by a number of treaties and conventions that had been concluded previously without their consent and had and were still having adverse effects on their political and economic structure. It was therefore time for a clear statement to be made of the recognized international law governing treaties. The present international situation, of course, did little to facilitate that task and particularly commendation was accordingly due to the eminent jurists on the I.L.C., particularly the Special Rapporteur and its Chairman, for the draft articles they had produced. They regretted only that the draft was incomplete and, in particular, that it contained no provisions on State succession, a question of great concern to the new nations. It must not be forgotten, however, that the draft before the Committee was merely intended to serve as a basis for a convention on the law of treaties.[1]

1. 908th Meeting, 1966, paragraph 19, A/C.6/SR.908, p. 40.

CEYLON

The internal laws of the modern State provided its members with a variety of legal instruments for the regulation of life within that community: the contract; the conveyance or assignment of immovable property, which might be made for valuable consideration or might be a gift or an exchange; the gratuitous promise clothed in a particular form; the Charter on Private Act of Parliament creating a corporation; legislation which might be constituent, such as a written constitution, or might be declaratory of existing law with comparatively unimportant changes. On the other hand, in international law only one instrument, the treaty, existed for carrying out the legal transactions of all kinds required in international society. Thus, if international society wished to enact a fundamental, organic constitutional law, such as the Charter of the U.N. was intended to be, and in large measure was in fact, it employed the treaty. If two States wished to put on record their adherence to the principle of the three-mile limit of territorial waters, as in the first article of the Anglo-American Convention of 1924, respecting the regulation of liquor traffic, they used the treaty. If one State wished to sell its possessions to another, as, for example, Denmark sold its West Indian possessions to the U.S. in 1916, it does so by treaty. Again, if the great European Powers were engaged upon one of their periodic resettlements and determined upon certain permanent dispositions to which they wished to give the force of the "public law of Europe", they had to do it by treaty. And, if there was a desire to create an international organisation, such as the International Union for the Protection of Literary and Artistic Works which closely resembles the corporation of the private law, it was done by treaty.

2. No one would suggest that all the differing private law transactions were governed by rules of universal or even of general applicability; yet that appeared to be the underlying assumption of international lawyers in dealing with treaties.

The I.L.C. had succeeded to a high degree in systematizing the law of treaties in terms applicable to most international agreements and had thereby earned the gratitude of all members of the Sixth Committee. Ceylon wished to express its thanks to the Commission and to its four Special Rapporteurs, the late Mr. J.L. Brierly and Sir Hersch Lauterpacht, Sir Gerald Fitzmaurice and Sir Humphrey Waldock; to do so was not to minimize the importance of earlier or contemporary efforts such as the Harvard Convention on the Law of Treaties of 1928, the Harvard Draft Convention on the Law of Treaties (*American Journal of I. L.*, Vol. 29, No. 34 Supplement, October, 1935) and the American Law Institute Draft (Official Draft of the statement of the Foreign Relations Law of the United States—St. Paul, Minn. American Lal Institute Publications, 1965).

3. Although the Committee would have an opportunity to examine the draft articles on the law of treaties (See A/6309) again in 1967, the Ceylon delegation wished to make a few general observations on the subject. First, it was sorry to find that unlike the American Law Institute, for instance, which places no limitation on the scope of its draft by reason of the form of the agreement, the I.L.C, for a variety of reasons, not all of which were well founded, had excluded from its draft both oral international agreements and agreements to which an international organization was a party. It was true that in international practice agreements were usually in written form; on the other hand, agreements with international organizations were of particular importance to developing countries. To the extent then that the I.L.C's draft appeared to be dominated by the traditional scope and arrangement of international law, his delegation wished to place its disappointment.

4. Second, Ceylon regretted that even though the Commission consisted of persons chosen purely for their professional competence, it had been unable to reconcile, in a spirit

of compromise, certain differences of doctrine, for example on the questions of participation in general multilateral treaties and of indirect or economic coercion. If a body of specialists had been unable to agree on a formulation in those important areas, it was hardly likely that a Conference of representatives of governments would be able to do much better. His delegation was convinced that the exclusion of some States from participation in general multilateral treaties, by direct or indirect means, was not only inconsistent with the very nature of such treaties but injurious to the progress of international law. He emphasized the importance of active participation by new nations in the re-examination and reformation of the basic principles of international law. A rethinking of those principles in the light of the diversity of the political, religious and cultural elements making up those nations would produce a result which would have at least great psychological importance. The new States would no longer be able to plead that they had been forced to accede to a system of international law developed without their participation by those who had been their political and economic masters.

5. Third, the draft did not deal adequately with the problem of treaty-making capacity. It might, indeed, be doubted that international law contained any objective criteria of international personality or treaty-making capacity. Sometimes participation in international agreements was the only test that could be applied to determine whether the parties had such personality or capacity or, indeed, "statehood". For example, India had been regarded as an international entity possessed of treaty-making capacity long before independence, because of the practice, beginning with the Treaty of Versailles in 1919, of India's becoming a separate party to international agreements. The older British dominion Southern Rhodesia, and the Commonwealth of the Philippines before its independence had all developed their treaty-making capacity through the very process of entering into international agreements.

Once the dominant or sovereign entity to which a political sub-division was subordinate consented to the latter's treaty-making capacity, the capacity existed whenever another entity was willing and able to conclude with that sub-division an agreement to be governed by international law. The very exercise of treaty-making capacity by a subordinate entity endowed it with legal personality under international law. It used with sense, ... to make the possession of legal personality a pre-requisite to the conclusion of treaties, as draft article 5 purported to do. There was, therefore, need to clarify and redefine the scope of the law of treaties as far as it concerned the classes of entities that might enter into treaties.

6. The I.L.C. had rightly recognized that not all agreements between States necessarily came within the scope of the law of treaties, and the clarifying phrase "governed by international law" in draft article 2, sub-paragraph 1(a) was, therefore, desirable. It was regrettable, however, that no test was suggested for determining whether or not a particular agreement was governed by international law. Unfortunately, the Commission had not explained why the criterion of the intention of the parties had not been used. A reference to the "manifested" intention of the parties, in consonance with the prevailing doctrine in the law of contracts, might have ensured the necessity of objectivity.

7. The Ceylon delegation was pleased to note that the I.L.C. had explicitly affirmed that a treaty was void if it conflicted with a peremptory norm of international law. Articles 50 and 61 represented a bold attack on difficult problems connected with the very structure of international society, and the application of the concept of *jus cogens* embodied in those provisions would substantially further the rule of law in international relations. At the same time, the Ceylon delegation doubted whether the concept had been formulated in such a way that it would be usefully applied in practice. The Commission's failure to define *jus cogens* was unfortunate, since no mechanism of compulsory jurisdiction existed as yet in international law.[2]

CONGO

It regretted that the Commission had not seen fit to include in its draft articles two topics which they considered of particular importance : the question of the succession of States and Governments and that of the international responsibility of a State with respect to a failure to perform a treaty obligation. They also regretted the absence of any provision concerning the sanctions to be applied in the case of the non-performance of treaty obligations concluded on the basis of the future law of treaties.[3]

DAHOMEY

7. Like many of the new States, Dahomey took a particular interest in the Law of Treaties and believed that all States should participate directly in codification; the best method of attaining that goal would be the conclusion of a multilateral convention that would be binding on all the sovereign States that drafted it on the basis of the draft articles and later ratified it.

8. The Commission had seen fit to limit the scope of those articles to treaties concluded between States, thus excluding treaties between States and other subjects of I.L.C. Although it respected the reasons given by the Commission for that limitation, his delegation felt that special consideration should be given to international organizations which were playing an increasingly important role in the world community,

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2. A/C.6/SR.908. Paras 1-7. 908th Meeting, 1966, Sixth Committee, pp.37-38.

3. 909th Meeting, 1966, paragraph 39 A/C.6/SR.909, p.47