provisions for such activities. The view was expressed that conservation and management of living resources did appear to fall within the broad definitional scope of article 1 paragraph 1. It was proposed that a paragraph be added to draft article 1 to clarify the issue. The proposed addition read "This convention does not apply to the conservation and management of living resources that occur in international watercourses except to the extent provided for in Part IV and except insofar as other uses affect such resources".

As regards the Second cluster of articles, Articles 5 - 10, comprised Chapter II on the General Principles of the draft articles as adopted by the ILC, it was stated that it was important to codify the most recent developments in international law in the area Of sustainable development and that the Principle Of sustainable development should be set forth in that article. The delegates of Finland, Germany, Hungary, Netherlands and Portugal, South Affica, and Venezuela shared the view that thePrinciple Of sustainable development should be incorporated into the draft articles.

As to Cluster IV (Articles 20 - 28) the articles had been drafted with a view to both dealing with existing Pollution and Preventing pollution in the future. Article 22 did not deal with the introduction of all alien or new species into a watercourse, but only with those that might have a detrimental effect on the watercourse ecosystem. In article 24, where the concept of Sustainable Development was introduced, "management" was not obligatory. Articles 25 and 26 stressed the importance Of cooperation in regulating water flow and Protecting installations.

With regard to the third cluster of articles, (Articles 1 1 to 32) intended to ensure that there was a reasonable flow of information and reasonable opportunities for consultation and negotiation, a view was expressed that the Procedure outlined in Part III of the draft articles was too rigid. It was stated in this regard that it would benefit from being flexible, interactive and participotry as agreements between watercourse States could not be expected to coincide with the procedural steps outlined in the draft articles. Thus while one delegate deemed the obligations laid down in that part to be inflexible as in his opinion the obligations concerning notification and information could be interpreted differently by different countries. others, however, were of the view that this

Part of the draft articles established some of the least burdensome obligations in the field of environmental law and opposed attempts to further narrow the scope of these provisions.

The spirit of compromise among watercourse States might not always be present when a dispute arose, the draft articles should provide for a system of compulsory third-party settlement. Arbitration or other Judicial settlement procedures should not be subject to further agreement between the States concerned.

The question of the peaceful settlement of disputes was considered to be of vital importance for the codification and progressive development of international law, especially in cases where States, because of geographical or other reasons, shared a natural resource. Article 3, paragraph 2, and articles 11 to 19 of the draft dealt with situations in which a new activity planned by one or more watercourse States threatened to cause significant harm to other watercourse States. Several delegations had suggested that the fixed period for notification in such cases should be replaced by a reasonable period of time; an independent third party would clearly be in the best position to assess whether a given period was reasonable. That issue must be resolved rapidly and satisfactorily; otherwise, a watercourse State could block the legitimate uses of a watercourse by other States for an indefinite period.

Three-step procedure was proposed consisting of first, consultations and negotiations; second, if such consultations and negotiations did not take place within a fixed period of time, each State party could unilaterally initiate a conciliation procedure; and third, if the conciliation procedure failed to resolve the dispute within a given period, and if all States parties to the dispute had accepted the jurisdiction of the International Court of Justice, -the earliest petitioner could submit the dispute to the Court. Otherwise, that same party could unilaterally initiate an arbitration proceeding, the details of which would be worked out at a later stage.

Despite its best efforts, the Working Group could not in the time allocated to it complete its consideration of the entire set of draft articles and

submitted its report to the Sixth Committtee. Following consideration of the Report of the Working Group the General Assembly inter alia decided to convene a Second Session of the Working Group of the Whole of the Sixth Committee for a period of 2 weeks from 24 March to 4 April 1997 to elaborate a framework convention on the law of non-navigational uses of international watercourses. It also decided that on the completion of its mandate the Working Group of the Whole shall report directly to General Assembly.

Pursuant to the aforementioned resolution of the General Assembly adopted at its 51st Session the second session of the Working Group of the Whole of the Sixth Committee was convened in New York from 24 March to 1997 to elaborate the framework Convention on the Law of Non-Navigatioial uses of International Watercourses. It held 12meetings during the period and the Drafting Committee held 6 meeting from 24th to 27th March 1997.

Convention on the Law Of the Non-Navigational Uses of International Watercourses

The Convention on the Law of the Non-Navigational uses of International Watercourses aimed at guiding States in negotiating agreements on specific watercourses was adopted by the General Assembly by its resolution 51/229of 21 May 1997. By a vote of 103[3]

[3]. Albania, Algeria, Angola, Antigua and Barbuda, Armenia, Australia, Austria, Bahrain Bangladesh, Belarus, Botswana, Brazil, Brunei Darussalam,Burkina Faso, Cambodia, Cameroon, Canada, Chile, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti,Estonia, Federated States of Micronesia, Finland, Gabon, Georgia, Germany, Greece,Guyana, Haiti, Hondurass, Hungary,Iceland, Indonesia, Iran, Ireland,Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Lao Peoples Democratic Republic, Latvia, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Malta, Marshall Islands Mauritius,Mexico, Morocco, Mozambique,Namibia, Nepal, Nehterlands, New Zealand, Norway, Oman, Papua New Guinea,Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania,Russian Federation, Samoa, San Marino, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Sudan, Suriname, Sweden, Syria, Thailand Trinidad and Tobago, Tunisia, Ukraine,United Arab Emirates, United Kingdom, United States, Uuguay, Venezuela Viet Nam, Yemen and Zambia.

economic integration organizations to become parties to it. The Convention shall be open for signature by all States and by regional economic ingration to 3[4] and 28 abstentions[5] the General Assembly inter alia invited States and regionalorganizations until 20thMay 2000 at the United Nations Headquarters in New York[6]

Paragraph 1 of Article 36 of the Convention stipulates that it will "enter into force on the ninetieth day following the date of deposit of the thirty -fifth instrument of ratification acceptance approval or accession with the Secretary General of the United Nations. " Although this figure was settled upon after a debate and indicative vote in the Working Group[7], a view has been expressed that the number of 35 represents a mere 18 per cent of the Organization's current membership of 185 States and that it represented a figure that was even lower if regional economic integration organizations were taken into accounts[8]

The set of 37 articles and the Annex thereto comprising the Convention on "The Law of the Non-Navigational Uses of International Watercourses" as adopted by the General Assembly is arranged in seven parts. Part 1 of the Convention entitled "**Introduction**" comprises articles 1 to 4. Part II of the Convention addresses the **"General Principles"** of the Law of the Non-Navigational uses of International Watercourses and comprises articles 5 to 10. Part 111 of the Convention addresses the question of **"Planned Measures"**and embodies the text of articles 11 to 19 . The provisions relating

[4]. The three States which voted against were Burundi, china and Turkey

[5]. Andorra, Argentina, Azerbaijan Bolivia, Bulgaria, Colombia, Cuba, Ecuador, E gypt France,Ghana, Guatemala,India,Israel, Mali, Monaco, Mongolia Pakistan, Panama, Paraguay, Peru,Rwanda, Spain,United Republic of Tanzania,Uzbekistan.The following were absent:Afghanistan, Bahamas, Barbados, Belize, Benin, Bhutan, Cape Verde, Comoros,Democratic People's Republic of korea, Dominican Republic, El Salvador, Eriteria, Fiji, Guinea, Lebanon, Mauritania, Myanmar,Niger, Nigeria, Palau, Saint Kitts and Saint Lucia, Saint Vincent and the Grenadines, Senegal, Solomon Islands, Sri Lanka, Swaziland, Tajikistan, former Yugoslav Republic of Macedonia, Turkmenistan, Uganda Zaire and Zimbabwe

[6] Press Release GA/9248

[7] The options before the Working Group were 22, 30, 35or 60 ratifications.

[8] For details see the statement of the representative of the United Republic of Tanzania made at the 99th Plenary Meeting of the 52nd Session of the General Assembly on 21 May 1997.

to the "**Protection, Preservation and Management**" of Non-Navigational Uses of International Watercourses are set out in articles 20 to 26 and constitute Part IV of the Convention. The text of articles 27 and 28 address the issues of "**Harmful Conditions and Emergency Situations**" and comprise Part V of the Convention. Part VI of the Convention comprising articles 29 to 33 set forth the Miscellaneous Provisions . Finally Part VII sets out the "Final Clauses" of the Convention on the Law of Non-Navigational Uses Of International Watercourses. The Annex to the Convention makes provision for resolution of disputes and sets forth procedures to be employed in the event that the parties to a dispute have agreed to submit it to arbitration.

The Convention, based on the draft articles prepared by the International Law Commission[9] governs the non-navigational uses of international watercourses, as well as measures to protect, preserve and manage them. It may be stated in this regard that the work of the Commission on the International watercourses has had a major influence on the development of law in other fields , in particular, the ongoing work of the international Law Commission on the subject of "International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law." The draft articles on the non navigational uses of international watercourses as adopted by the International Law Commission have influenced the drafting of such specific agreements as the 1195 Protocol On Shared Watercourse Systems in the South African Development Community Region and the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin[10]

The preamble to the Convention, *inter alia,* expresses the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and

[9] The Report to theWorking Group to the General Assembly points out that "Throughout the elaboration of the draft Convention, reference has been made to the commentaries to the draft articles prepared by the to clarify the contents of the articles." *See Convention on The Law of The Non- Navigational Uses of International Watercourses : Report of the Sixth Committee as the Working Group of the Whole, A/51/869.*

[10] For the text of the Agreement see 34 International *Legal Materials* (1995) p864

the promotion of the optimal and sustainable utilization thereof for present and future generattions.."

Viewed as a framework Convention, it provides general principles and rules to guide States in negotiating future agreements on specific watercourses. It is understood , however, that the Convention is to serve as a guideline for future watercourse agreements and unless such future watercourse agreements provide otherwise the Convention will not alter the rights and obligations Provided therein . The concept of preservation as referred to in Article 1 of the Convention, relating to the "Scope of the Convention ", is understood to include also the concept of conservations[11] It addresses such issues as flood control, water quality, erosion, sedimentation, saltwater intrusion and living resources. One of the many statements of understanding that the Chairman of the Working Group of the Whole took note of during the course of elaboration of the Convention on the Law of the Non-Navigational Uses of International Watercourses is that the Convention is inapplicable to the use of living resources that occur in international watercourses , except to the extent provided for in Part IV and except insofar as other uses affect such sources[12].

The Convention defines the term " Watercourse" broadly as a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus [13] and then goes on to define an international watercourse to mean a "watercourse parts of which are situated in different States[14]. While this definition is in accord with hydrological reality and calls the attention of States to the inter-relationship among all parts of the system of surface and underground waters that make up an international watercourse and suggesting thereby that an affect on one part of the watercourse system would be transmitted to the other, two States viz. Pakistan and Rwanda cited the inclusion groundwater as a reason for abstaining from the vote on the draft Convention.

[11] *See Convention on The Non- Navigational Uses of International Watercourses Report of the .Sixth Committee as the Working Group of the Whole, A/51/869.*

[12] Ibid.

[13] See Article 2(a) of the Convention.

[14] See article 2 (b) of the Convention.

Article 2 (c) of the Convention defines the term "watercourse State" to mean a State Party to the Convention "in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated." In the Working Group of the Whole it was understood that the term "watercourse State" is employed in the Convention as" a term of art. " It was recognized that although it is stipulated that both States and regional economic integration organizations can fall within the definition nothing in that paragraph could be taken to imply that regional economic integration organizations have the status of States in international law .

The adoption of the Convention, it is felt, makes a significant contribution to the progressive development of international law and its codification . Such elements of theConvention as equitable and reasonable utilization[15] no harm",[16] and prior notification[17] reflect the codification of some existing norms. While paragraph 1 of Article 5 on "Equitable and reasonable utilization and participation" sets forth the cornerstone of the law on the subject , the provisions of Paragraph 2 thereof reflect the acceptance of a new concept of equitable and reasonable participation.[18]

Although the Convention is, at the present time, the only Convention of a universal character on international watercourses , the representative of a number of States, who abstained or voted against the text of the Convention drew attention to a lack of consensus on several of its key provisions. For one, the representatives of some States were of the view that the Convention does not adequately balance the rights and obligations of the upstream and downstream riparian States. The view was expressed that while a framework

[15] See Article 5of the Convention on Equitable and reasonable utilization and participation

[16] See Article 7 of the Convention on the Obligation not to cause significant harm.

[17] See Part III of the Convention in particular Articles 1 1 and 12

[18] Paragraph 2 of Article 5 stipulates " Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation shall includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention."

convention should provide general principles, the present Convention had deviated from that approach. In this regard attention was drawn to the provisions governing dispute settlement. Secondly, it was felt that a Framework Convention should not incorporate compulsory rules regarding the settlement of disputes, but should be left to the discretion of States concerned.

VII. RESERVATION TO TREATIES

(i) Introduction

The item "Reservation To Treaties' was placed on the provisional agenda of the Thirty seventh session of the AALCC in accordance with Article 4 (d) of the Statutes of the Committee. At a meeting of the Legal Advisors of Member States held in New York in October 1996, during the Fifty first session of the General Assembly, a view was expressed that the AALCC Secretariat consider convening a Seminar on the Law of Treaties. The proposal was advanced in view of the consideration of the question of" The Law and Practice Relating to the Reservation of Treaties" on the work program of the International Law Commission(ILC). The Secretary General had in his Report on the Organizational, Administrative and Financial Matters submitted to the 36th Session of the Committee, (Tehran) indicated that the Secretariat proposed to convene a Seminar on the Question of Reservation to Treaties.

The item was thereafter placed on the agenda of the Meeting of the Legal Advisers of Member States of the AALCC convened at the United Nations Office in New York on 29th October 1997. The Background Note prepared by the Secretariat for that meeting pointed out that the Commission at its 49th Session had adopted a set of Preliminary Conclusions on Reservations to normative Multilateral Treaties Including Human Rights Treaties. In the course of the consideration of the Preliminary Conclusions a view had been expressed that the Commission was faced with a contradiction in that it was just commencing its work on the topic and did not know where that work might take it.

The set of preliminary conclusions on Reservations to Normative Multilateral Treaties including Human Rights Treaties adopted by the Commission at its 49th session reiterates that articles 19 to 23 of the Vienna Convention on Treaties of 1969 and 1986 govern the regime of reservation to treaties and that the object and purpose of the treaty is the most important criteria for determining the admissibility of reservations. The Commission has taken the view that the regime of the Vienna Conventions strikes a balance

between the objectives of preservation of the integrity of the text of the treaty and universality of participation in the treaty. It accordingly considered the flexibility of that regime to be suited to all treaties, of what ever nature or object.

At the Meeting of the Legal Advisers of Member States held in New York in October 1997 one Legal adviser expressed the view that the Vienna treaty regime was complete and flexible. The customary law of reservation to treaties, it was stated, provided sufficient basis to append reservations to treaties when a sovereign State considers that its interests are affected. Apropos, the monitoring mechanism of human rights instruments the view was expressed that while conducting periodical review appeared to be a reasonable and effective system there was no apparent unacceptable or gross flaw.

Another Legal Adviser while expressing support for an in depth study of the question of reservation of treaties wondered why only the question of reservations to normative treaties including human rights treaties had been taken up by the ILC. There was general support for a seminar or special meeting on subject of the reservation to treaties.

Accordingly the Secretariat proposed to convene a Special Meeting on the question of Reservations to Treaties during the course of the Thirty seventh session of the AALCC. The Special Meeting was proposed to be organized in collaboration with the Office of the Legal Counsel of the United Nations, the Treaties Division of the United Nations and the International Law Commission. It may be recalled in this regard that Special Meetings on the Establishment of an International Criminal Court and the Inter-related Aspects Between the International Criminal Court and International Humanitarian Laws were organized during the 35th and 36th Sessions of the AALCC held at Manila in (1996) and Tehran (1997) respectively and had been considered to be quite useful.

[1] For Details see The Report of the Secretary General on the Meeting of the Legal Advisers of Member States. Doc.*No*. AACC/XXXVII/New Delhi/98/S3

The views of Member States on the issue of reservation to treaties expressed during the Special Meeting together with any report or recommendation that the Committee may adopt at its 37th Session could be forwarded to the ILC which had invited comments on the preliminary conclusions adopted on the Reservations to Normative Multilateral Treaties, including human rights treaties.

A Historical Setting

The traditional rule was that a State could not make a reservation to a treaty unless the same was accepted by the States which had signed or adhered to the treaty. Thus generally speaking reservations could only be made with the consent of other States involved in the treaty making process. This was to preserve the unity of approach and to minimize deviations from the text of the treaty.

A reservation to a bilateral treaty is in effect a new proposal reopening the negotiations between the two States concerning the terms of the treaty and unless agreement can be reached about the terms of the agreement, no treaty will be concluded. In the case of a multilateral treaty the problem is more complicated since the reservation may be accepted by some States and rejected by others.

In1927 the League of Nations had adopted the following approach to reservations with regard to multilateral treaties:

"In order that any reservation whatever may be validly made in regard to a clause of the treaty, it is essential that this reservation should be accepted by all the contracting parties, as would have been the case if it had been put forward in the course of the negotiations. If not, the reservation, like the signature to which it is attached, is null and void"[2]

[2] See the Report of League of Nations Experts For The Progressive Codification Of International Law 8 L.N.O.J. (1927) p.880 and 881 quoted in D. J. Harris: Cases and Materials on International Law 3rd edition p.586 (1983).

To begin with the Secretary General of the United Nations applied the somewhat rigid system which followed the practice of the Secretary General of the League of Nations. Where there existed an organ capable of determining the effects of a reservation, the Secretary General referred the text to it for interpretation. Thus, in 1948 the Secretary General informed the States Parties to the Constitution of the World Health Organization (WHO), that he was unable to decide whether the United States of America had become a party to that Convention by depositing an instrument containing a reservation. He had also pointed out that the World Health Assembly was competent to interpret the Constitution of the WHO.[3]

The question of determination of the legal effects of reservations to a treaty and the objections to reservations first arose when the Secretary General of the United Nations found it difficult to determine whether or not the Convention on the Prevention and Punishment of the Crime of Genocide[4] would enter into force in accordance with the provisions of Article XIII thereof[5]. The Secretary General reported the difficulty to the General Assembly which at its fifth session invited the ILC in the course of its work on the codification of the law of treaties, to study the question of reservations to multilateral conventions both from the point of view of codification and from that of the progressive development of international law; to give priority to this study and to report thereon, especially as regards multilateral conventions of which the Secretary General is the depository. The report of the Commission was to be considered by the General Assembly at its sixth session. The General Assembly also requested the International Court of Justice for an advisory opinion.[6]

[3] The Secretary General later announced that the United States had become a party to the Convention since theWorld Health Assembly had unanimously recognized that the reservation was not incompatible with the Constitution of the World Health Assembly

[4] The Convention was adopted by General Assembly Resolution - of 9 December 1948.

[5] The Convention was to have entered into force on the 19th day after the date of deposit of the 20th instrument of ratification or accession. However, a number of the 20 instruments of ratification had contained reservations as to various articles of the Convention to the substance of which

[6] General Assembly Resolution 478(V) of 16 November 1950. The text of the resolution is reproduced in Annexure I

It may be mentioned that the request of the General Assembly had been posed in the following terms :

> "In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification:
> "I. Can the reserving State be regarded as being a party to the Convention while still maintaining its reservation if the reservation is objected to by one or more of the parties to the Convention but not by others?
> "II. If the answer to question is in the affirmative, what is the effect of the reservation as between the reserving State and:
> "(a) The parties which object to the reservation?
> "(b) Those which accept it?
> "III. What would be the legal effect as regards the answer to question I if an objection to a reservation is made:
> "(a) By a signatory which has not yet ratified?
> "(b) By a State entitled to sign or accede but which has not yet done so?";

In its Advisory Opinion of 28th May 1951 the International Court of Justice[7] inter alia said that

In so far as concerns the Convention on the Prevention and Punishment of the Crime of Genocide, in the event of a State ratifying or acceding to the Convention subject to a reservation made either on ratification or on accession, or on signature followed by ratification,

On Question I

That a State which has made and maintained a reservation which has

[7] The Opinion was rendered by a vote of seven to five The Judges in the majority were President Basdevant; Judges Hackworth; Waniarski,Zoricic;deVisscher; Klaested and Badawi Pasha. The dissenting judges were VicePresident Guerrero; Judges Alvarez; Sir McNair, Read and Hsu Mu.

been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to theConvention.

On Question II.

(a) that if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention;

(b) that if, on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the Convention;

On Question III:

(a) that an objection to a reservation made by a signatory State which has not yet ratified the Convention can have the legal effect indicated in the reply to *Question I* only upon ratification.Until that moment it merely serves as a notice to the other State of the eventual attitudeof the signatory State;

(b) that an objection to a reservation made by a State which is entitled to sign or accede but which has not yet done so, is without legal effect.

Thus the traditional or "restrictive" approach to reservations was rejected by the International Court of Justice in its advisory opinion in the *Reservations to the Genocide Convention case*, where the Court held that "a State which had made and maintained a reservation which has been objected to by one or more parties to the Convention but not by others, can be regarded as being a party to the convention if the reservation is compatible with the object and purpose of the Convention[8] otherwise , that State cannot be regarded as being a party to the Convention.

[8]. Compatibility in the Court's opinion could be decided by States individually, since it stated that "if a party to the convention objects to a reservation which it considers incompatible with the object and purpose of the convention it can in fact consider that the reserving State is not a party to the Convention".

Thereafter the General Assembly by its resolution 598 (V1) inter alia recommended that organs of the United Nations, specialized agencies and States should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations and to the effect to be attributed to them. It also recommended to all States that they be guided in regard to the Convention on the Prevention and Punishment of the Crime of Genocide by the advisory opinion of the International Court of Justice of 28 May 1951; By its operative paragraph 3 the General Assembly requested the Secretary-General:

"(a) In relation to reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, to conform his practice to the advisory opinion of the Court of 28 May 1951

(b) In respect of future conventions concluded under the auspices of the United Nations of which he is the depository:

(i) To continue to act as depositary in connection with the deposit of documents containing reservations or objections, without passing upon the legal effect of such documents; and

(ii) To communicate the text of such documents relating to reservations or objections to all States concerned, leaving it to each state to draw legal consequences from such communications."

Thirty-Seventh Session : Discussion
Report Of The Special Meeting On Reservation To Treaties Held On 14th April, 1998

The Special Meeting on the 'Reservation To Treaties' was convened during the Thirty Seventh Session of the AALCC. The Special Meeting was chaired by the President Dr. P.S. Rao and it was understood that the Bureau of the thirty seventh session would also be the Bureau of the Special Meeting .Thus, Mr.Martin A.B.K Amidu, the Deputy Minister of Justice and the Deputy Attorney General of Ghana, who had been elected the Vice

President of the Thirty Seventh Session was the Vice-President of the Special Meeting. The Special Meeting appointed Deputy SecretaryGeneral, Dr. W.Z.Kamil, as the Rapporteur.

The Secretary General welcomed the delegates and experts who in response to the invitation of the Secretariat lent their consent to make presentations and steer the discussions in the Special Meeting. He further stated it was the third Special Meeting to be organized by the Secretariat within the annual sessions of the Committee. He recalled that during the Thirty fifth Session of the Establishment of an International Criminal Court and that during the Thirty Sixth Session a Special Meeting had been convened to consider the Interrelated Aspects Between the International Criminal Court and International Humanitarian Law. A large number of delegates to the 35th and 36th Sessions of the Committee had considered the two Special Meetings to be useful.

The Secretary General stated that when the International Law Commission, at its 49th Session, adopted a set of Preliminary Conclusions on Reservations to Normative Multilateral Treaties Including Human Rights Treaties, the Secretariat proposed the convening of a Special Meeting on the Law of Treaties in particular the question of Reservations to Treaties during thecourse of the 37th Session of the AALCC. The Secretariat proposal to convene a Special Meeting was considered at a meeting of the Legal Advisers of Member States of the Committe,. held during the 52th session of the General Assembly in New York.

He stated that the Secretariat had prepared a Background Note on the subject to facilitate the deliberations on the Preliminary Conclusions on Reservations to Multilateral Treaties, and invited the Deputy Secretary General,Dr. W.Z.Kamil, to introduce the Secretariat's Brief of Documents.

Inviting attention to the Note of the Secretary General prepared for the Special Meeting the Deputy Secretary General Dr.Kamil , recalled that the Special Meeting on the Establishment of an International Criminal Court and the Interrelated Aspects Between the International Criminal Court and International Humanitarian Law organized during the 35 and 36 Sessions of

the AALCC had been considered useful.

He pointed out that the Preliminary Conclusions on Reservations To Normative Multilateral Treaties Including Human Rights Treaties adopted by the ILC at its 49th Session reiterate that articles 19 to 23 of the Vienna Conventions on Treaties of 1969 and 1986 govern the regime of reservation to treaties and that the "object and purpose of the treaty" is the most important criteria for determining the admissibility of reservations. The Commission has taken the view that the regime of the Vienna Conventions strikes a balance between the objectives of preservation of the integrity of the text of the treaty and universality of participation in the treaty. It accordingly considered the flexibility of that regime to be suited to all treaties, of what ever nature or object.

The Commission is of the opinion that the twin objectives (i) of the preservation of the integrity of the text of the treaty, and (ii) universality of participation in the treaty are equally applicable in the case of reservations to normative multilateral treaties including treaties in the area of human rights, and consequently the general rules enunciated in Articles 19 to 23 of the Vienna Convention of 1969 and 1986 govern reservations to such instruments. It has further taken the view that the establishment of monitoring bodies by many human rights treaties had, however, given rise to legal questions that had not been envisaged at the time of drafting those treaties connected with appreciation of the admissibility of reservations formulated by States. The Deputy Secretary General stated further that the Preliminary Conclusions adopted by the Commission recognize that where human rights treaties are silent on the subject of the formulation of reservations the monitoring bodies, established by the Human Rights Treaties, are competent to comment upon and express recommendations with regard to the admissibility of reservations by States in order to carry out the functions assigned to their Several members of the Commission had however disagreed with this principle as incorporated in paragraph 5 of the preliminary conclusions.

The Commission, suggested that the competence of the monitoring bodies does not exclude or otherwise affect the traditional modalities of control by the contracting parties, in accordance with the provisions of the Vienna