ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

REPORT OF THE TENTH SESSION
KARACHI
1969

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REPORT OF THE TENTH SESSION
Held in Karachi (Pakistan) From 21st to 31st January 1969

Contents

I. INTRODUCTORY

Establishment and Functions of the Committee

The ASIAN LEGAL CONSULTATIVE COMMITTEE, as it was originally called, was constituted by the Governments of BURMA, CEYLON, INDIA, INDONESIA, IRAQ, JAPAN and SYRIA as from the 15th of November, 1956, to serve as an Advisory Body of Legal Experts, to deal with problems that may be referred to it, and to help in the exchange of views and information on legal matters of common concern between the participating countries. In response to a suggestion made by the then Prime Minister of India, Mr. Jawahar Lal Nehru, which was accepted by all the participating countries in the Asian Legal Consultative Committee, the Statutes of the Committee were amended with effect from the 19th of April, 1958, so as to include participation of the countries in the African continent. Consequent upon this change in the Statutes, the name of the Committee was altered and it was renamed as the ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE. Membership of the Committee is open to the countries in the Asian and African continents in accordance with the provisions of its Statutes and Statutory Rules.

The UNITED ARAB REPUBLIC, upon its formation by the merger of Egypt and Syria, became an original participating country in the Committee in the place of SYRIA. SUDAN was admitted to the Committee with effect from the 1st of October, 1958, PAKISTAN from the 1st of January, 1959, MOROCCO from the 24th of February, 1961, THAILAND from the 6th of December, 1961, GHANA from the 28th of October, 1963, JORDAN from the 1st of January, 1968, and SIERRA LEONE from the 1st of October, 1968. The Republic of the PHILIPPINES was admitted as an Associate Member from October, 1969.

The Committee is governed in all matters by its Statutes and Statutory Rules. Its functions as set out in Article 3 of the Statutes are :

"(a) To examine questions that are under consideration by the International Law Commission and to arrange for the views of the Committee to be placed before the said Commission; to examine the reports of the Commission and to make recommendations thereon to the Governments of the participating countries;

(b) To consider legal problems that may be referred to the Committee by any of the participating countries and to make such recommendations to Governments as may be thought fit;

(c) To exchange views and information on legal matters of common concern and to make recommendations thereon, if deemed necessary; and

(d) To communicate with the consent of the Governments of the participating countries the points of view of the Committee on international legal problems referred to it to the United Nations, other institutions and international organisations."

The Committee normally meets once annually by rotation in the countries participating in the Committee. Its First Session was held in New Delhi (1957), the Second in Cairo (1958), the Third in Colombo (1960), the Fourth in Tokyo (1961), the Fifth in Rangoon (1962), the Sixth in Cairo (1964), the Seventh in Baghdad (1965), the Eighth in Bangkok (1966), the Ninth in New Delhi (1967), and the Tenth Session was held in Karachi from 21st to 31st of January, 1969.

The Committee has its permanent Secretariat in New Delhi for the conduct of day to day work. A section of the

Secretariat is charged with the task of collection of materials and preparation of background papers for assisting the Committee in its deliberations during the sessions. The Committee functions in all its matters through its Secretary who acts in consultation with the Liaison Officers appointed by each of the participating countries.

Office-bearers of the Committee and its Secretariat

At its Tenth Session held at Karachi in January, 1969, the Committee elected the Member for Pakistan, Mr. Syed Sharifuddin Pirzada, Attorney-General of Pakistan, and the Member for Jordan, Hon'ble Mr. Shukri Al Muhtadi, Legal Adviser to the Prime Minister of Jordan, respectively as President and Vice-President of the Committee for the year 1969-70.

The Committee at its First Session decided to locate its permanent Secretariat in New Delhi (India). The Committee also decided at its First, Second, Fourth, Sixth, Seventh and Ninth Sessions that Mr. B. Sen, Senior Advocate of the Supreme Court of India, should perform the functions of the Secretary to the Committee.

Co-operation with other Organisations

The Committee maintains close relations with and receives published documentation from the United Nations, the International Law Commission, the International Court of Justice, the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Conference on Trade and Development (UNCTAD), the International Institute for the Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the Organisation of African Unity, and the League of Arab States. The Committee has taken steps to co-operate with the United Nations in its Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law,

and as part of that Programme the Committee has decided to sponsor two scholarships to be awarded to the nationals of Asian and African countries.

The Committee is empowered under its Statutory Rules to admit to its Sessions Observers from international and regional inter-governmental organisations. The International Law Commission was represented at the Committee's Fourth, Fifth, Sixth and Seventh Sessions respectively by Dr. F. V. Garcia-Amador, Dr. Radhabinod Pal, Mr. Eduardo Jimenez de Arechaga and Prof. Roberto Ago, at its Eighth and Ninth Sessions by Dr. Mustafa Kamil Yasseen, and at its Tenth Session by H. E. Dr. A. H. Tabibi. The Secretary-General of the United Nations was represented at the Committee's Fifth Session by Mr. Oscar Schachter of the U. N. Secretariat, at the Sixth Session by Mr. Luis Moreno Verdin, Director of U. N. Information Centre, Cairo, and at the Seventh Session by Mr. Dik Lehmkul, Director, U. N. Information Centre, Baghdad. The Organisation of American States was represented by Dr. F. V. Garcia-Amador at the Committee's Sixth Session. The Arab League sent Observers to the Committee's Second, Fifth, Sixth, Seventh, Eighth, and Ninth Sessions. The International Law Association of the U. S. S. R. sent Observers to the Committee's Eighth, Ninth and Tenth Sessions. Further, the American Society of International Law and the International Law Association (German Section) were also represented at the Committee's Tenth Session.

The Secretary of the Committee has discretion to invite the Specialised Agencies and other U. N. bodies keeping in view the agenda of a particular session. Since the subject of the Rights of Refugees is of particular interest to the Office of the U. N. High Commissioner for Refugees, it has been invited to be represented at the Committee's Sixth, Seventh, Eighth and Tenth Sessions when that subject was on the agenda of those Sessions.

The Committee deputes observers to the sessions of the International Law Commission in response to a standing invitation extended to it by the Commission. The United Nations also invites the Committee to be represented at all Conferences convoked by it for consideration of legal matters. At the Vienna Conference on Diplomatic Relations, 1961, the recommendations of this Committee on that subject were considered by the Conference of Plenipotentiaries as a basic document, and in fact some of the recommendations of the Committee were accepted in preference to those mentioned in the working papers. The Committee was also represented at the U. N. Conference of Plenipotentiaries on the Law of Treaties which had met in two sessions at Vienna. The Committee participated in the Second United Nations Conference on Trade and Development held in New Delhi in February-March, 1968, and in the First Meeting of the Advisory Group of International Trade Centre of the UNCTAD/GATT held in Geneva from 28th to 31st May, 1968.

The Sessions of the Committee

First Session (*New Delhi, 1957*) : During the First Session the Committee discussed and drew up interim reports for submission to the Governments of the participating countries on three subjects, namely 'Diplomatic Immunities and Privileges', 'Principles of Extradition' and 'Immunity of States in respect of Commercial Transactions'. These subjects were, however, carried forward for further consideration at the next session.

Second Session (*Cairo, 1958*) : During the Second Session the Committee had before it five main subjects for consideration namely 'Diplomatic Immunities and Privileges', 'Principles of Extradition', 'Immunity of States in respect of Commercial Transactions', 'Dual Nationality' and 'the Status and Treatment of Aliens'. It also discussed briefly questions relat-

ing to 'Free Legal Aid' and 'Reciprocal Enforcement of Foreign Judgments in Matrimonial Matters'.

The Committee finalised its Reports on 'Diplomatic Immunities and Privileges' and 'Immunity of States in respect of Commercial Transactions' which were submitted to the participating governments.

Third Session (Colombo, 1960): The Committee at its Third Session considered the comments of the participating governments on its reports on 'Diplomatic Privileges and Immunities' and 'Immunity of States in respect of Commercial Transactions' which it had finalised at its preceding Session. The Committee reaffirmed the view it had taken in its Report on 'Immunity of States in respect of Commercial Transactions'[1], but it made certain changes in its Report on Diplomatic Immunities and Privileges in the light of the comments received from the participating governments. The latter report was placed before the United Nations Conference of Plenipotentiaries on Diplomatic Relations convoked in 1961.

The Committee gave detailed consideration to the topics of 'the Status of Aliens' and 'Principles of Extradition' and drew up provisionally the principles governing these topics in the form of draft articles. These provisional draft articles were submitted to the participating governments for their comments.

The Committee also generally considered questions relating to 'Dual Nationality' and the recommendations of the International Law Commission on 'Arbitral Procedure'. The Committee decided to take up at its next Session the question of 'The Legality of Nuclear Tests', 'Conflict of Laws relating to International Sales and Purchases' and 'Relief against Double Taxation'.

1. A.A.L.C.C. *Report of the Third Session, Colombo, 1960.*

Fourth Session (Tokyo, 1961): At the fourth Session the Committee discussed in detail the subjects of 'Extradition' and 'the Status of Aliens' on the basis of the provisional draft articles adopted at its third Session. The Committee revised the draft articles in the light of comments made by the delegations present and adopted its Final Reports for submission to the participating governments.[2]

The topics relating to 'Diplomatic Protection of Citizens Abroad' and 'State Responsibility for Maltreatment of Aliens' were also generally considered by the Committee.

The Committee gave special attention to the questions of the Legality of Nuclear Tests. After a general discussion the Committee unanimously decided to place the subject as the first item on the agenda of the Fifth Session considering it to be a matter of utmost urgency.

The Committee gave further consideration to the subjects of 'Free Legal Aid' and 'Recognition and Enforcement of Foreign Judgments in Matrimonial Matters'. It decided to publish the reports of the Special Rapporteur on both these topics.[3]

Fifth Session (Rangoon, 1962): At the fifth Session the Committee discussed in detail the subjects of 'Dual or Multiple Nationality' and 'The Legality of Nuclear Tests'. The Committee drew up a set of draft articles embodying the principles relating to elimination or reduction of dual or multiple nationality.[4] It was decided that these draft articles should be submitted to the participating governments for their comments and that the subject be placed before the Committee

2. A.A.L.C.C. *Report of the Fourth Session, Tokyo, 1961.*

3. A.A.L.C.C. *Report of the Fourth Session, Tokyo. 1961.*

4. For background materials prepared by the Secretariat on the subject of Dual or Multiple Nationality, refer A.A.L.C.C. *Report of the Fifth Session, Rangoon, 1962.* For final Report of the Committee on this subject, refer A.A.L.C.C. *Report of the Sixth Session, Cairo, 1964.*

for fuller consideration in the light of comments that might be received from the member governments.

The Committee discussed the question of 'the Legality of Nuclear Tests' on the basis of materials collected by the Secretariat on the scientific and legal aspects of nuclear tests. The Committee heard the views and expressions of opinion on the various aspects of the question from the delegates present and took note of the written memoranda presented by some of the member governments. On the basis of these discussions the Secretary of the Committee drew up a Draft Report for consideration of the Committee. After a general discussion the Committee decided that the Secretariat should submit the Draft Report to the participating governments for their comments, and that the subject be placed before the next session of the Committee as a priority item on the agenda.

The Committee also considered the subject of 'Arbitral Procedure'. It decided that a report should be drawn up on 'Arbitral Procedure' incorporating the views expressed by the Delegations.[5]

Sixth Session (Cairo, 1964): At the sixth Session the Committee finalised its recommendations on the subjects of 'Dual or Multiple Nationality'[6] and 'The Legality of Nuclear Tests'[7]. It also discussed the subjects of 'The Rights of Refugees' and 'The U.N. Charter from the Asian-African Viewpoint' which were referred to the Committee by the Government of the U.A.R. The questions relating to 'Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence in Civil and Criminal Cases', referred

5. A.A.L.C.C. *Report of the Fifth Session, Rangoon, 1962*, pages 184-188.

6. A.A.L.C.C. *Report of the Sixth Session, Cairo, 1964*, pages 33-36.

7. A.A.L.C.C. *The Legality of Nuclear Tests* (New Delhi : 1964)

by the Government of Ceylon, were considered by a Sub-Committee appointed at this Session.

The Committee also considered certain questions relating to the Vienna Convention on Diplomatic Relations, 1961; the Vienna Convention on Consular Relations, 1963; and the Vienna Convention on Nuclear Damage, 1963.

Seventh Session (Baghdad, 1965): During the seventh Session the Committee finalised its recommendations on the subject of 'Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence in Civil and Criminal Cases'[8], and considered in detail the topics of 'The Rights of Refugees' and 'The U.N. Charter from Asian-African Viewpoint'. It also took up for preliminary discussion the topics of 'Law of Outer Space' and 'Codification of the Principles of Peaceful Co-existence', both referred by the Government of India. The topic of 'Relief against Double Taxation' and 'Diplomatic Protection and State Responsibility' were given consideration by Sub-Committees appointed at the Session.

Eighth Session (Bangkok, 1966): During the eighth Session the Committee finalised its consideration of the subject of 'The Rights of Refugees' by formulating general principles governing the subject in a Final Report which it adopted unanimously and decided to submit it to the Government of the U.A.R. and other participating governments.[9]

The topic of 'Relief against Double Taxation' was given consideration by a Sub-Committee. The Sub-Committee

8. A.A.L.C.C. *The Reciprocal Enforcement of Foreign Judgments* (New Delhi : 1966).

9. A.A.L.C.C. *The Rights of Refugees—Report of the Committee & Background Materials* (New Delhi ; 1967). The Principles adopted by the Committee at its Bangkok Session have been referred for re-consideration at the request of the Government of Pakistan.

prepared a report on the topics not covered by the Sub-Committee appointed at the Seventh Session.

The subject of 'Peaceful Co-existence' was also examined by a Sub-Committee. The Sub-Committee presented an Interim Report dealing with some of the aspects as it did not have sufficient time to discuss all aspects of the matter. The Committee, therefore, directed the Secretariat to continue its study of the subject and to revise the draft articles prepared by it in the light of discussions at this Session and to place the revised draft articles before it at the next Session.

At the request of the Delegation of Ghana the Committee took up the 1966 Judgment of the International Court of Justice on the South West Africa Cases and certain questions arising therefrom under Article 3 (c) of its Statutes. After a general discussion, the Committee decided to place this subject as a priority item on the agenda of its next Session and directed the Secretariat to study the points raised in the course of discussions at this Session and to prepare a comprehensive brief to facilitate deliberations at the next Session.

The Committee also considered the subject of the Law of Treaties which it had taken up at its Seventh Session as a matter arising out of the work of the International Law Commission. After taking note of the statement of the Chairman of the International Law Commission, present at the Session, on the scope of work of this Committee *vis-a-vis* the law of treaties, the Committee decided to examine the draft articles on the Law of Treaties at its next Session as a priority item with a view to formulating proposals and suggestions from the Asian-African viewpoint. The Committee appointed Dr. Sompong Sucharitkul as Special Rapporteur on the subject with the request that he prepare a report on the specific points arising out of the Commission's draft articles which required consideration by the Committee from an Asian-African perspective.

Ninth Session (New Delhi, 1967): During the ninth Session the Committee finalised its recommendations on the subject of 'Relief against Double Taxation'[10] and consideration of certain questions relating to the 1966 Judgment of the International Court of Justice in the South West Africa Cases.[11] However, the subject principally discussed during this Session was the Law of Treaties. The Committee had before it the Report on the subject prepared by Dr. Sompong Sucharitkul, the Special Rapporteur. The Secretariat of the Committee also placed before the Committee a set of 35 questions for its consideration in relation to the draft articles formulated by the International Law Commission. After initial observations made by the Delegations bringing forth additional points for consideration, the Committee appointed 3 Sub-Committees. The function of each of these Sub-Committees was to take note of the observations made by the Delegations in the plenary and then to submit its report to the main Committee for its consideration. The three Sub-Committees presented their reports, and after detailed discussions on them in the plenary, the Committee drew up an Interim Report in the form of comments on such of the I. L. C.'s draft articles as in its opinion required consideration by the Member Governments. The Committee directed its Secretariat to submit the Interim Report to the Member Governments and to place that Report at the disposal of the Delegations of the Asian-African States to the U. N. Conference of Plenipotentiaries on the Law of Treaties. The Committee also directed the Secretariat to transmit a copy of the Interim Report to the United Nations requesting it to place the same before the Conference of Plenipotentiaries on the Law of Treaties. The Committee designated an Observer to represent

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10. A.A.L.C.C. *Relief against Double Taxation & Fiscal Evasion—Report of the Committee & Background Materials.* (New Delhi ; 1968).

11. A.A.L.C.C. *South West Africa Cases—Report of the Committee & Background Materials* (New Delhi ; 1968).

the Committee at the First Session of the Conference of Plenipotentiaries.

The Committee took up for preliminary discussion the subject of the Law of International Rivers, referred to it by the Governments of Iraq and Pakistan. The Delegations of Iraq and Pakistan made their preliminary statements indicating the points which they wished to be studied by the Committee, and the Delegations of Ceylon, India, Indonesia, Japan and the U. A. R. expressed their agreement to consider the subject. The Committee directed the Secretariat to prepare a brief for its consideration at its next Session.

Tenth Session of the Committee : The Tenth Session of the Committee was held in Karachi (Pakistan) from January 21 to 31, 1969. This Session was primarily devoted to the Law of Treaties in order to provide a forum for consultations among the Asian and African States on the subject in preparation for the Second Session of the U.N. Conference of Plenipotentiaries which was held in Vienna from 9th April to 21st May, 1969. Apart from the Delegations of eleven of the Member States of the Committee, namely Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan, Sierra Leone, Thailand and the United Arab Republic, this Session was attended by the representatives of the Governments of Afghanistan, Cambodia, Congo (Kinshasa), Cyprus, Iran, Kenya, Mongolia, Morocco, Nigeria, the Philippines, Singapore, Turkey and the Republic of Korea. In addition, observers from the U. N. International Law Commission, Office of United Nations High Commissioner for Refugees, I.L.A. of U.S.S.R., I.L.A. (German Section) and the American Society of International Law also attended this Session.

The Committee devoted two plenary meetings in reviewing the work of the First Session of the Conference of Plenipotentiaries on the Law of Treaties, and thereafter it proceeded to consider in detail some of the important and controversial topics which were to come up at the Second Session of the Conference of Plenipotentiaries. The Sub-Committees presented their reports at the plenary meeting of the Committee held on the 30th of January, 1969, when these reports were adopted. It was decided to circulate the reports of the two Sub-Committees to the Delegations of all the Asian and African States attending the Second Session of the Conference of Plenipotentiaries. The Committee also decided to depute an Observer to the Second Session of the Conference in order to coordinate the work of the delegations of its Member States.

The other subjects considered at this Session were the Law of International Rivers and the Rights of Refugees.

The subject of the Law of International Rivers was discussed by the Committee at its plenary meetings held on the 24th and 25th of January, 1969. Taking note of the statements made by the Delegations present at the Session and the Observer for Nigeria and the work done by the International Law Association and other governmental and non-governmental bodies on this topic, the Committee affirmed that the development and codification of the principles governing this topic were of vital significance to the emerging countries of Asia and Africa, particularly in the context of their food and agricultural programmes. It was, therefore, decided by the Committee to appoint an Inter-Sessional Sub-Committee to give detailed consideration to this subject. The proposed inter-Sessional Sub-Committee is to meet at New Delhi prior to the holding of the Eleventh Session of the Committee and will be composed of the representatives of the Member Governments with a quorum of five Member Governments. The Sub-Committee is authorised to co-opt any person having expert knowledge of the subject to assist in its deliberations. The President and Secretary of the Committee will ex-officio be eligible to attend the meetings of the Sub-Committee. The terms of reference to this Sub-Committee are preparation of a draft of articles on the Law of Inter-

national Rivers, particularly in the light of the experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems, for the consideration of the Committee at its Eleventh Session. The Committee has directed its Secretariat to assist the Sub-Committee in its task by collecting relevant data in the light of discussions at this Session. The Committee has requested the Member Governments to indicate the points on which they desire the data to be collected and to assist the Secretariat in the collection of the relevant materials.

The topic of 'the Right of Refugees' was taken up at this Session for reconsideration by the Committee. The Committee had finalised its Report on this topic at its Eighth Session held in Bangkok during 1966. Subsequently the Government of Pakistan made a request that some aspects of the final recommendations of the Committee on this topic should be reconsidered by the Committee. This request was supported by the Governments of Iraq, Jordan and others. The matter was accordingly placed before the Committee at this Session. After extensive discussions in the plenary meetings held on the 23rd, 25th, 28th and 29th of January, 1969, the Committee adopted two resoultions, namely X(7) and X(8). By Resolution No. X(7) the Committee recognised the right in international law of the Palestine Arab Refugees and other displaced Arabs to return to their homeland and the duty of the authorities in control to receive them and restore their property; and recommended to the Member States to make every effort to secure to them these rights. The Committee also decided to request the Secretary-General of the United Nations to use his good offices to achieve this end.

By Resolution No. X(8) the Committee recorded its satisfaction on the entry into force of the Protocol relating to the Status of Refugees of 31 January 1967 which has made the provisions of the 1951 U.N. Refugee Convention universally

applicable, directed that the topic be taken up for fuller consideration at the next Session, and requested the Secretariat in the mean time to prepare, in co-operation with the Office of the United Nations High Commissioner for Refugees, a detailed analysis of the proposals made by the Delegations at this Session in the light of the recent developments in the field of refugee law.

Work done by the Committee

During the past twelve years of its existence, the Committee had to concern itself with all the three types of activities referred to in clauses (a), (b) and (c) of Article 3 of its Statutes, namely examination of questions that are under consideration by the International Law Commission ; consideration of legal problems referred by Member Governments, and exchange of views and information on legal matters of common concern. The subject on which the Committee has been able to make its recommendations so far include 'Diplomatic Immunities and Privileges', 'State Immunity in Commercial Transactions', 'Extradition', 'Status and Treatment of Aliens', 'Dual or Multiple Nationality', 'Legality of Nuclear Tests', 'Recognition and Enforcement of Foreign Judgments in Matrimonial Matters', 'Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence, both in Civil and Criminal Cases', Questions relating to Free Legal Aid, 'Relief against Double Taxation', certain questions relating to the 1966 Judgment of the International Court of Justice in South West Africa Cases, and the Law of Treaties.

The Committee had also finalised its recommendations on the Rights of Refugees at its Bangkok Session (1966), but at the request of one of its Member Governments the Committee has decided to reconsider the subject in the light of new developments in the field.

Some of the other subjects pending consideration of the Committee at present include the Law of International Rivers,

Diplomatic Protection and State Responsibility, the Law of the High Seas, the Law of the Territorial Seas, the Law of Outer Space, International Transport Law, Revision of the U.N. Charter from the Asian-African Viewpoint, State Succession, Special Missions and 'Relations between States and Inter-Governmental Organisations'.

Studies in Economic Laws

The topics under consideration of the Committee in relation to International Trade and Economics are as follows :

(*1*) *Rules of Private International Law or Conflict of Laws relating to Sales and Purchases in Commercial Transactions between States or their Nationals :*

This topic was considered by a Sub-Committee appointed by the Committee at its Fourth Session and the Member Governments had been requested to forward their laws and regulations relating to the topic so as to assist the Committee in formulating certain principles. The International Institute for the Unification of Private Law (UNIDROIT) had suggested that the Committee might consider the two conventions relating to a Uniform Law on International Sale of Goods drawn up at a diplomatic conference at The Hague in April, 1964. The United Nations Commission on International Trade Law (UNCITRAL) has also asked the Committee to consider this subject, and it is expected that the Committee will take up this topic at its Eleventh Session.

(*2*) *International Transport Law :*

This topic has been taken up at the suggestion of the UNIDROIT. International Legislation on Shipping, which is a part of this topic, has been placed on the agenda of the Eleventh Session of the Committee for a preliminary exchange of views.

(*3*) *Laws and Regulations relating to Commerce and Industry :*

This Committee, at its Third Session, held in 1960, had decided on the suggestion of the Government of India that it would proceed to prepare a Study including a compilation of the Laws and Regulations on 'Commerce and Industry and connected labour problems' in the Asian and African countries. To begin with, the Study was confined to Member Countries of the Committee on the following three topics :

(i) Foreign Investment Laws and Regulations;

(ii) Laws and Regulations relating to Control of Import and Export Trade; and

(iii) Laws and Regulations relating to Control of Industry.

The Secretariat of the Committee has already published in mimeographed form the first two of the above-mentioned studies. The Secretariat has now expanded the scope of these studies by including the laws and regulations of all the Asian and African countries on these topics.

Publications of the Committee

The full reports, including the verbatim record of discussions together with the recommendations of the Committee are made available only to the governments of the Member States of the Committee. The Committee, however, brings out regularly shorter reports on its Sessions for general circulation and sale. So far it has published reports on its First to Ninth Sessions. The Committee has also published five special reports entitled as under :

(*1*) *The Legality of Nuclear Tests—Report of the Committee and Background Materials.*

(*2*) *Reciprocal Enforcement of Foreign Judgments, Service of Process and Recording of Evidence, both in Civil and Criminal Cases—Report of the Committee and Background Materials.*

(3) *The Rights of Refugees—Report of the Committee and Background Materials.*

(4) *Relief against Double Taxation and Fiscal Evasion—Report of the Committee and Background Materials.*

(5) *South West Africa Cases—Report of the Committee and Background Materials.*

The Secretariat of the Committee has also prepared and published a compilation of the Constitutions of Asian countries. Its compilation of the Constitutions of African countries is to be published very shortly. The Secretariat has made considerable progress on the preparation of a Digest of important decisions of the municipal courts of Asian and African countries on international legal questions. It is also proposed to bring out in mimeographed form a publication containing digests of treaties and conventions registered with the United Nations Secretariat to which an Asian or African State is a party.

II. DELEGATES OF PARTICIPATING COUNTRIES AND OBSERVERS ATTENDING THE TENTH SESSION

A. Delegations of Member States

BURMA	*Not represented.*
CEYLON	
Member and Leader of Delegation	Hon'ble Mr. H.N.G. Fernando, Chief Justice of Ceylon.
Alternate Member	Mr. V.L.B. Mendis, Deputy High Commissioner for Ceylon in India.
Adviser	Mr. C.W. Pinto, Legal Adviser, Ministry of Defence and External Affairs.
Adviser	Mr. P. Naguleswaram, Ministry of Justice.
GHANA	
Member and Leader of Delegation	H.E. Mr. E.K. Dadzie, Ambassador, Ministry of External Affairs.
Alternate Member	Mr. M.W.K. Vanderpuye, Director, Legal and Consular Department, Ministry of External Affairs.
Adviser	Mr. A.E.K. Offori-Atta, Counsellor, Ghana High Commission, New Delhi.

INDIA

Member and Leader of Delegation	Dr. Nagendra Singh, Secretary to the President of India and Member, International Law Commission.
Alternate Member	Dr. S.P. Jagota, Director, Legal and Treaties Division, Ministry of External Affairs.
Adviser	Mr. V.P. Kumar, First Secretary, High Commission of India in Pakistan.
Adviser	Dr. (Mrs.) K. Thakore, Law Officer, Legal and Treaties Division, Ministry of External Affairs.
Adviser	Dr. S.N. Sinha, Law Officer, Legal and Treaties Division, Ministry of External Affairs.

INDONESIA

Member and Leader of Delegation	Miss E.H. Laurens, Chief, Legal and Consular Bureau, Ministry of Foreign Affairs.
Alternate Member	Mr. Sos Wisudha, Counsellor, Embassy of Indonesia, New Delhi.

IRAQ

Member and Leader of Delegation	Mr. Alauddin Aljubouri, Minister, Embassy of Iraq, Islamabad.

JAPAN

Member and Leader of Delegation	Dr. Kumao Nishimura.
Alternate Member	Mr. Hisashi Cwada, First Secretary, Permanent Mission of Japan to the United Nations.
Adviser	Mr. Hiroyuki Yushita, Legal Affairs Division, Ministry of Foreign Affairs.

JORDAN

Member and Leader of Delegation	Hon'ble Mr. Shukri Al Muhtadi, Legal Adviser to the Prime Minister.

PAKISTAN

Member and Leader of Delegation	Mr. Syed Sharifuddin Pirzada, Attorney General for Pakistan.
Alternate Member	Mr. Abdul Hakeem Khan, Joint Secretary, Ministry of Law.
Adviser	Mr. M.A. Samad, Legal Adviser, Ministry of Foreign Affairs.
Adviser	Mr. B.M. Abbas, Chief Engineering Adviser, Natural Resources Division.

Adviser	Mr. Manzur Ahmad, Engineering Adviser, Natural Resources Division.
Adviser	Mr. Rafiuddin, Director, Ministry of Foreign Affairs.
Adviser	Mr. Zahid Saeed, Deputy Legal Adviser, Ministry of Foreign Affairs.
Adviser	Mr. Usmani, Kashmir Affairs Division.
Adviser	Mr. Nisar Hassan Khan, Works and Rehabilitation Division.
Adviser	Mr. Aftab Hussain, Advocate.
Adviser	Mr. Jamil Hussain Rizvi, Retd. Judge, High Court of West Pakistan.
Adviser	Mr. Abdul Wadood Malik, Advocate.
Adviser	Mrs. Rashida Patel, Advocate.
Adviser	Mr. Z.A. Villani, Advocate.

SIERRA LEONE

Member and Leader of Delegation	Mr. Albert Metzger, First Parliamentary Counsel, Government of Sierra Leone.

THAILAND

Member and Leader of Delegation	H.E. Mr. Ari Buphavesa, Ambassador of Thailand in Pakistan.
Alternate Member	Mr. Montri Jalichandra, Ministry of Foreign Affairs.

UNITED ARAB REPUBLIC

Member and Leader of Delegation	Hon'ble Mr. Justice Mohamed Abdulsselam, President, High Court of Appeal at Cairo.
Alternate Member	Hon'ble Mr. Justice Sadek Almahdi, Secretary to the Ministry of Law.
Alternate Member	Prof. Gaber Gad Abdul Rahman, Dean, Faculty of Law, Cairo University.
Adviser	Dr. Ahmed Sadek Alkosheri, Assistant Professor of International Law, Cairo University.
Adviser	Mr. Mohammad Said Aldosouki, Counsellor, Treaty Division, Ministry of Foreign Affairs.

SECRETARY TO THE COMMITTEE

Mr. B. Sen,
Senior Advocate,
Supreme Court of India,
New Delhi.

B. Representatives of Non-Member States Attending as Observers

AFGHANISTAN

Mr. Abdul Kayoum Mansour,
First Secretary,
Royal Afghan Embassy,
Karachi.

CAMBODIA

H.E. Mr. Sarin Chhak,
Ambassador of Cambodia,
Cairo.

CYPRUS

Mr. Elias Ipsarides,
Director of Legal Division,
Ministry of Foreign Affairs.

DEMOCRATIC REPUBLIC OF CONGO

Mr. Sebastien Kini,
Minister-Counsellor,
Embassy of the Democratic Republic of Congo, New Delhi.

IRAN

Mr. Mohamad Amin Kardane,
Ministry of Foreign Affairs.

KENYA

Mr. F.X. Njenga,
Ministry of Foreign Affairs.

MONGOLIA

Mr. G. Nyamdo,
Ministry of Foreign Affairs.

MOROCCO

H.E. Dr. Mohamed Saadani,
Ambassador of Morocco in Pakistan.

NIGERIA

Mr. J.D. Ogundere,
Acting Deputy Solicitor General of Nigeria.

PHILIPPINES

Mr. Manual F. Laurente,
Legal Officer, Embassy of the Philippines, Islamabad.

REPUBLIC OF KOREA

Mr. Kong Chun Choi,
Consul,
Consulate General of the Republic of Korea, New Delhi.

Mr. Chong Ha Yoo,
Consul,
Consulate General of the Republic of Korea,
Islamabad.

Mr. Chang Choon Lee,
Treaty Section,
Ministry of Foreign Affairs.

SINGAPORE

Mr. K.S. Rajah,
Attorney General's Chambers,
Government of Singapore.

TURKEY

Dr. Mustafa Asula,
Counsellor,
Turkish Embassy,
Islamabad.

C. Representatives of United Nations Agencies attending as Observers

INTERNATIONAL LAW COMMISSION

H.E. Dr. Abdul Hakim Tabibi, Member, International Law Commission and Royal Afghan Ambassador to Japan.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Dr. E. Jahn, Deputy Director, Legal Division.

Mr. Zia Rizvi, Legal Officer.

D. Representatives of Non-Governmental Organisations attending as Observers

AMERICAN SOCIETY OF INTERNATIONAL LAW

Professor Myres S. McDougal, Sterling Professor of Law, Yale Law School, New Haven, U.S.A.

I.L.A. OF USSR

Mr. V. Ia Osipov.

I.L.A. (German Section)

Prof. Dr. Guenther Jaenicke, University of Frankfurt.

III. AGENDA OF THE TENTH SESSION

I. Administrative and Organisational Matters :

1. Adoption of the Agenda.
2. Election of the President and Vice-President.
3. Admission of Observers to the Session.
4. Consideration of the Secretary's Report on Policy and Administrative Questions and the Committee's Programme of Work.
5. Consideration of the Reports of the Committee's Observers to the UN Conference on the Law of Treaties, the Twentieth Session of the International Law Commission, the Second United Nations Conference on Trade and Development, Joint Advisory Group, International Trade Centre UNCTAD/GATT, and the Regional Conference of the International Commission of Jurists.
6. Dates for the Eleventh Session of the Committee to be held in Ghana.

II. Matters arising out of the Work Done by the International Law Commission under Article 3 (a) of the Statutes :

1. *Law of Treaties* : (Review of the work of the Committee of the Whole at the First Session of the United Nations Conference on the Law of Treaties held in Vienna, March—May 1968, in preparation for the Second Session of the Conference)

III. **Matters Referred to the Committee by the Governments of the Participating Countries under Article 3 (b) of the Statutes :**

1. *Rights of Refugees* : (Reconsideration of the Committee's Report on the Rights of Refugees adopted at the Eighth Session of the Committee in the light of new developments—Subject originally referred by the Government of the United Arab Republic, referred for reconsideration by the Government of Pakistan)

2. *Law of International Rivers* : (Referred by the Governments of Iraq and Pakistan)

IV. THE LAW OF INTERNATIONAL RIVERS

THE LAW OF INTERNATIONAL RIVERS

The subject of the Law of International Rivers has been referred to this Committee for consideration under Article 3(b) of its Statutes by the Governments of Iraq and Pakistan.

The subject was taken up by the Committee for preliminary discussion at its Ninth Session held in New Delhi during December, 1966. At that Session, the Delegates of IRAQ and PAKISTAN made their introductory statements setting forth the points which their Governments wished to be studied by this Committee. The points suggested by the Government of Iraq for the consideration of the Committee are : (i) Definition of the term 'International River' and (ii) Formulation of suitable Rules relating to utilisation of waters of International Rivers by the States concerned for agricultural, industrial and other purposes apart from navigation. The questions suggested by the Government of Pakistan are the uses of waters of international rivers, more particularly the rights of lower riparians. The Government of Pakistan also posed a fundamental question, namely how far the rules developed and practised by the European nations are applicable to the situations arising in the Asian-African region. According to them, the draft principles adopted by the International Law Association and the Institut de Droit International on the Law of International Rivers are not adequate for meeting the needs of the Asian-African region, and, therefore, they stressed the urgent need of developing the Law of International Rivers in a manner which would reflect the Afro-Asian viewpoint. At that Session, the Delegates of Ceylon, India, Indonesia, Japan and the United Arab Republic also made statements indicating their agreement to consider the subject. Thereupon, the Committee directed the Secretariat to prepare a comprehensive brief for consideration at its Tenth Session.

At the Tenth Session held in Karachi, the subject was considered by the Committee at its plenary meetings held on

24th and 25th of January, 1969. Initiating the discussion, the Delegate of Iraq stated that he would like to recommend that a Special Sub-Committee be set up to study the applicability of existing rules governing international waters and to formulate a draft of principles governing the subject. Having regard to the importance of the subject, he felt that it would be better if the task of formulation of draft rules be entrusted to a Sub-Committee rather than to a Special Rapporteur.

The Delegate of Pakistan supported the suggestion for the appointment of an inter-Sessional Sub-Committee. He observed that an International River was an integral part of the people of each State concerned and that the Asian-African States could make these rivers a powerful instrument of mutual advantage, co-operation, and promotion of stability and peace.

The Delegate of Ghana also supported the suggestion for constitution of an inter-Sessional Sub-Committee. In view of the utmost importance of the subject for the mankind, he advised priority to be given to this topic.

The Delegate of India stated that the first point which the Committee had to consider was the form in which the Committee's conclusions should be stated, namely whether in the form of general principles or model rules or even a draft convention; secondly the method that should be adopted for discussion and enunciation of general principles. After referring to the usual practice followed by the Committee in the consideration of the problems referred to it, he stated that the rules to be formulated on the subject must be based on proper sources of law, namely State practice whether in the form of agreements, treaties or customs. He felt that the Committee should take a decision at the outset as to whether the attempt on the part of the Committee would be to crystallise the existing rules on the subject or whether it would attempt to suggest new rules for consideration of Member Governments. He felt

that it would be desirable to do both, but it would be preferable to indicate the two types of rules separately. He suggested that although the Committee should concentrate on State practice in Asia and Africa, it should also take into account the State practice in other areas of the world, the views of experts, and the recommendations of International Organisations, both governmental and non-governmental. Although he would have preferred the Secretariat to prepare a draft of rules or principles for consideration of the Committee at its next Session, he had no objection to the proposal of appointing an inter-Sessional Sub-Committee, provided the Sub-Committee was open to participation by all Member Governments of the Committee and adequate data was made available to it by the Secretariat.

The Delegate of Indonesia stated that the subject deserved a thorough study. She supported the idea of establishment of an inter-Sessional Sub-Committee.

The Delegate of Japan stated that in view of the importance, urgency and complexity of the problem, the Committee should take up this problem and work out some guiding principles which might be used as a basis for bilateral agreements. He favoured the idea of establishment of a Sub-Committee but felt that some clear instructions should be given to the Sub-Committee regarding the manner and scope of its work. He felt that the Helsinki Rules prepared by the International Law Association could be usefully taken as a basis for discussion in the Sub-Committee, but as these rules were too general in character, it would be upto the Committee to make them more concrete by framing detailed rules.

The Delegate of Jordan stated that what was a source of anticipated fear to other Asian and African countries, had already taken place in the occupied Palestine where the Israeli authorities were in control. He referred to the diversion of the major tributaries of the Holy Jordan River. He said

that the diversion by Israel of the waters of River Jordan did not only interfere with the irrigatory rights of the lower riparians, but it also changed the historical geography of the Holy land because the River Jordan was sacred to Christians all over the world. He asked this matter to be thrashed out by a Sub-Committee which might be appointed by the Committee.

The Delegate of Sierra Leone stated that the question of waters of international rivers was of crucial importance and prompt solution was essential. He supported the suggestion of constituting an inter-Sessional Sub-Committee.

The Delegate of Thailand also supported the suggestion for establishment of an inter-Sessional Sub-Committee. He suggested that a directive should be given to the Secretariat to collect further material in order to assist the work of the Sub-Committee.

The Delegate of U.A.R. stated that this subject was of great importance to the Asian and African States as most of the major international rivers ran through the territories of these two continents. He mentioned that the problems regarding the Nile River were settled by a model agreement concluded in November 1959 between U.A.R. and the Sudan for regulation of their rights, duties and full utilisation of the waters of the River Nile. He referred to the work done by the League of Nations in concluding the Convention of December 1923 regulating the development of water power and the rights of riparians. He also referred to the Seventh International Conference of American States held in 1932 and the work done by the I.L.A. He felt that the studies made in Europe and America were not sufficient as those were based primarily on the needs of navigation and industrial uses. He emphasized that a State should not be allowed to alter the natural conditions of its territory to the disadvantage of the neighbouring State without its consent. He saw no objection to the constitution of an inter-Sessional Sub-Committee as proposed by other Delegates.

The subject was further considered in the plenary meeting held on 25th of January, 1969. The Observer for the Government of Nigeria stated that the problem of international rivers was one of the greatest importance to his country as it was traversed by the River Niger which flows through the territories of Guinea, Mali, Niger and Nigeria. He said that customary international law on the uses of waters of international rivers was guided by the community of interests of the riparian States, which meant reasonable or equitable share of the waters of an international river, as also equitable right of consultation about the development and the use of the river by each riparian State. The corresponding obligation of the riparian States, he said, was to respect the equal right of other riparians. Apart from customary international law, he said, the above principles were recognised in a number of treaties and were reiterated in the Judgment of the Permanent Court of International Justice in 1937 in the case between Holland and Belgium. He stated that the use of international waters was increasing and that the priorities in regard to the use of water differ from basin to basin, between one part of the basin and another part. He reminded the Committee that the problem of International Rivers was not only juridical but it was sociological and economic also. Therefore, the problem should not be seen purely from an academic angle, but in the light of experience of various countries. He welcomed the idea of constituting a Sub-Committee to give the matter adequate consideration so that the work of the Committee and the recommendations made by it might be beneficial to all Governments.

The Delegate of Pakistan, referring to the discussions held in the previous meeting, stated that there was broad agreement in the Committee on the question of urgency of

dealing with the problem of International Rivers in the context of the needs of Asia and Africa and that the matter had to be looked at not only from legal angle but keeping in view such other vital considerations as the engineering and human aspects also. He suggested that the Secretariat be directed to collect further data on the subject on the basis of the observations made by the Delegates at the present Session and then the participating Governments be requested to indicate what additional data should be collected by the Secretariat. He suggested the formation of a broad-based inter-Sessional Sub-Committee consisting of the representatives of Ghana, India, Indonesia, Iraq, Jordan, Pakistan, Thailand and U.A.R. for giving detailed consideration to the subject with a view to formulating draft articles taking into consideration the various aspects which have been mentioned during the deliberations of the Committee at the present Session.

The Delegate of India stated that his understanding of the proposal of an inter-Sessional Sub-Committee was that it would be open to all Member Governments to be represented on that Committee, so that in effect the meeting of the inter-Sessional Sub-Committee would be as if it were a meeting of the Committee itself, though in an informal manner. He felt that the formulation of principles should be done as far as possible by representatives of a large number of Member Governments and that the representatives who would attend the meetings of the Sub-Committee would be persons with special knowledge of the subject and that the discussions would be on a technical level. He felt that the subject being of vital importance and complexity, the formulation of principles should be undertaken by a Committee of the Whole or by the Secretariat. Although his own preference was to entrust the Secretariat with this task, he accepted the suggestion of Pakistan for appointment of an inter-Sessional Sub-Committee on the understanding that it would be composed of the representatives of all Member Governments. He reiterated his suggestion made at the earlier meeting that it would be preferable to adopt a procedure by which the Secretariat should be asked to collect data and thereafter make certain formulations which could be sent to all Member Governments for their comments and that the formulation of the Secretariat together with the comments of Member Governments could be considered by the Committee itself at its Eleventh Session. He felt that having regard to the experience of other bodies which had dealt with this subject, this matter could not be proceeded with hurriedly and that the subject should be considered methodically and systematically in such a way that no one could raise any objection.

The Committee, after some further discussion, unanimously decided to appoint a Sub-Committee consisting of the representatives of Member Governments for the purpose of preparation of draft articles on the Law of International Rivers, particularly in the light of the experience of the countries of Asia and Africa, for consideration at the Committee's Eleventh Session. It was decided that the Sub-Committee shall meet at New Delhi prior to the holding of the Eleventh Session of the Committee. It was also decided that the President and Secretary of the Committee might attend the meetings of the Sub-Committee and the Sub-Committee may also co-opt any person having expert knowledge of the subject to assist it in its deliberations. It was agreed that the quorum at the meetings of the Sub-Committee will be representatives of five Member Governments.

The Committee decided to direct the Secretariat to assist the Sub-Committee and collect the relevant background data in the light of discussions in the Committee. It was also decided to request the Governments of the participating States to indicate points on which they desire the data to be collected. The Member Governments were also requested to assist the Secretariat in the collection of the material.

RESOLUTION ADOPTED AT THE TENTH SESSION

Resolution No. X (6)

Considering that the Governments of Iraq and Pakistan by references made under Article 3(b) of the Statutes have requested the Committee to consider the Law relating to International Rivers ;

Recalling Resolution IX(16) in which the Committee decided to consider the subject of international rivers and directed the Secretariat to collect relevant material on the issues indicated in the course of statements made by the Delegations and to prepare a brief for consideration of the Committee;

Taking Note of the statements made by the Delegations present at the Tenth Session and the views expressed by the Observer for Nigeria;

Also Noting the work done by the International Law Association and other organizations and bodies both Governmental and non-governmental concerning the Law of International Rivers;

Considering that the development and codification of the principles governing the Law of International Rivers are of vital significance to the emerging countries of Asia and Africa, particularly in the context of their food and agricultural development programmes;

The Committee decides that a Sub-Committee be formed to give detailed consideration to the aforesaid subject;

The Committee further decides that the Sub-Committee do consist of the representatives of Member Governments and do meet at New Delhi, with a quorum of representatives of five Member Governments, prior to the holding of the Eleventh Session of the Committee. The President and the Secretary may attend the meetings of the Sub-Committee. The Sub-

Committee may also co-opt any person having expert knowledge of the subject to assist it in its deliberations.

The Committee directs the Sub-Committee to prepare a draft of Articles on the Law of International Rivers particularly in the light of the experience of the countries of Asia and Africa and reflecting the high moral and juristic concepts inherent in their own civilizations and legal systems, for consideration at the Committee's Eleventh Session.

The Committee further directs the Secretariat to assist the Sub-Committee and collect relevant background data in the light of the discussions in the Committee at its Tenth Session and requests the Governments of participating States to indicate points on which they desire the data to be collected.

The Committee further requests the Governments concerned to assist the Secretariat in the collection of the material whenever required.

Sd/-
Syed Sharifuddin Pirzada
President

V. THE RIGHTS OF REFUGEES

THE RIGHTS OF REFUGEES

The subject of 'the Rights of Refugees' had been referred to this Committee by the Government of U.A.R. under article 3(b) of the Statutes of the Committee. The Final Report on the subject was approved by the Committee at its Eighth Session held in Bangkok during 1966, and submitted to the Government of U.A.R. and other Member Governments of the Committee. The Government of Pakistan in their comments on this Report, stated as follows ;

> "The Government of Pakistan have no objection to the adoption of the articles subject to the following comments :
>
> (1) The term 'refugee' in Article I should be enlarged by adding a new clause viz. "(c) leaves or being outside is unable or unwilling to return to his homeland, the sovereignty over which or the international status of which is disputed by two or more States and hostilities have taken place" in Article I after clause (b).
>
> (2) Article II should have consequential amendment in the light of the amendment of the definition of refugee in Article I.
>
> (3) In Article IV a provision for the constitution of a tribunal for determining any controversy on the right of return of refugees, should be made.
>
> (4) In Article V, a provision for payment of compensation to refugees who are desirous of returning to their country should be made, and the refugees should be accorded the standard of treatment of the nationals of the country of asylum. However, certain reservations should be made, namely until

the refugees are given full citizenship they (i) cannot enter into Government service; (ii) cannot become Members of the Parliament or hold political office in the country; (iii) cannot vote as a citizen in the elections of the country; (iv) their movements can be restricted in the interests of public order and security of the State."

The Government of Pakistan also requested the Secretariat of the Committee to place the item of 'The Rights of Refugees' on the agenda of the Tenth Session for reconsideration of the Final Report in the light of their comments cited above. A number of Member Governments supported the Pakistan Government's request and accordingly the matter was placed on the agenda of the Tenth Session.

At the Tenth Session held in Karachi in January 1969, the Committee proceeded to reconsider its Final Report on the Rights of Refugees on the basis of (1) the comments received from the Government of Pakistan and (ii) a note prepared by the Office of the United Nations High Commissioner for Refugees at the request of the Secretariat of the Committee, which set out the developments in the field of international refugee law since the Bangkok Session. These developments were the entry into force of the 1967 Protocol relating to the Status of Refugees which made the 1951 Refugee Convention universally applicable, the Declaration on Territorial Asylum adopted by the U. N. General Assembly on 14 December 1967, the recommendations made by the Addis Ababa Refugees Conference held in October 1967, and the draft O.A.U. Instrument concerning Refugees.

The Committee gave consideration to this matter in its plenary meetings held on the 23rd, 25th, 28th and 29th of January, 1969 and adopted two resolutions, Nos. X(7) and X(8).

Initiating the discussion on the matter in the plenary meeting held on 23rd January, 1969, the Delegate of Pakistan stated that the primary reason for suggesting reconsideration of the Bangkok Principles was that events, which had taken place since August 1966 when the Final Report of the Committee was adopted, had proved the need for providing explicitly in the 'Principles' a provision which would cover refugees from a territory the sovereignty over which or the international status of which was in dispute. The amendment proposed by the Government of Pakistan was with regard to the definition of the term 'refugee' so as to include within the ambit of that expression those hundreds of thousands of persons who were in fact refugees but whose particular circumstances excluded them from the purview of the definition as set out in the 'Principles' adopted by the Committee.

Supporting the suggestion of the Delegate of Pakistan, the Jordanian Delegate stated that the definition of 'refugees' in the Bangkok Principles did not take care of all the cases which were encountered in actual practice. Therefore, the amendment suggested by the Delegate of Pakistan in his view would fill in the lacuna which existed in the Bangkok Principles.

The Delegate of Ghana referred to the developments in the field of refugee law since the Bangkok Session, and said that the Bangkok Principles had to be reviewed in view of those developments. Referring specifically to the draft O.A.U. Refugee Convention, prepared by the Refugee Commission at the request of the O.A.U., he mentioned that it had made some improvement in the situation by expanding the definition of 'refugee' and by stressing the principle of international solidarity in connection with the granting of ayslum to refugees. He urged the Committee to examine these new developments and improve the principles adopted at Bangkok.

The Delegate of India expressed the view that although the Bangkok Principles were not elaborately drafted and their number was not large, yet they were precise and comprehensive. He pointed out that the thought running through those principles was liberal and progressive, and it was a matter of satisfaction that the concept of provisional asylum was adopted by the Committee before the General Assembly adopted the Declaration on Territorial Asylum. Referring to the plight of Palestinian refugees since 1948 and more particularly after June 1967, he said that this Committee had given recognition and support to the principles of the right to return and the right to compensation, and therefore the legal basis of a solution already existed. He suggested that the Committee should devise machinery for implementation of those rights not with reference to any particular situation, but on the basis of general principles. He therefore felt that the amendment sought by Pakistan was unnecessary.

The Delegation of Indonesia supported in principle any proposal that might lead towards finding a solution of the refugee problem. She, however, required time to examine carefully the amendment suggested by the Delegate of Pakistan.

The Delegate of Japan expressed his willingness to review the Bangkok Principles in the light of the proposals made by the Delegates of Pakistan and Jordan and the developments in the field of refugee law which had taken place since the Bangkok Session. He said that three questions arose for consideration of the Committee, namely (i) modification of the definition of 'refugee' as suggested by the Delegate of Pakistan; (ii) the question of setting up of competent tribunals for awarding compensation; and (iii) the standard of treatment of refugees. According to him, the Pakistan Government's proposal was a very important one and required serious consideration by the Committee. As for establishment of tribunals, he felt that the time was now

ripe and the matter should be considered from a sense of realism. As for the standard of treatment for refugees, he said that unlike in Africa, in Asia the standard of treatment provided was aliens standard of treatment and it was because the national standard of treatment in the field of labour, employment, social security etc. entailed heavy burden on the receiving State. For this reason, he pointed out it would be difficult to accept the suggestion of U.N.H.C.R. regarding adoption of national standard of treatment.

The Delegate of Sierra Leone supported in principle the amendment proposed by the Delegate of Pakistan. He, however, was of the view that in considering the amendment moved by the Delegate of Pakistan, the Committee would have to consider two matters, namely (i) whether or not the Committee wished to modify a fundamental legal concept regarding refugees; and (ii) a number of amendments consequential upon the proposed amendment. He desired the Committee to consider two other questions also, as suggested by U.N.H.C.R., namely matters relating to travel documents and visas and repatriation.

The Delegate of Thailand saw no objection to the amendment proposed by Pakistan. He wanted the Committee to lay more stress on the basic rights of refugees.

The Observer for U.N.H.C.R. expressed the view that refugee situations were diverse and it was difficult to establish common principles covering all of them. Firstly, there were exchanges of population where persons had fled or were expelled to a country with which they had had close ties. In such situations, he pointed out, there existed problems of economic integration and legal problems were of lesser importance. Secondly, there was problem of refugees fleeing for fear of persecution and seeking asylum in another, generally the neighbouring country. In such cases the question of economic integration as well as that of legal status arose until

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such time as a refugee could return home or become completely integrated in the country of asylum. The third group was refugees from countries under colonial domination or under a minority regime. With regard to this group, the question was to find temporary solutions which would enable the refugee to live in dignity for a particular period of time. Finally, there was the case of people expelled from their home country by an occupying power as was pointed out by the Delegate of Jordan. In the case of this group, he felt, the question was of implementation of the right of return and the right to compensation. He stressed the need of keeping the distinction between these various categories in clear perspective in determining what recommendations in the legal field would be useful to adopt in order to solve the problem.

Referring to recent developments in this field, the U.N.H.C.R. Observer mentioned that the most important international development relating to refugees was the entry into force of the 1967 Protocol. He wished the Committee to endorse that the principles enunciated in the 1951 Refugee Convention and the 1967 Protocol represented the minimum standard of treatment of refugees. He added that although the question of territorial asylum had already been considered by the Committee, the adoption by the U.N. of the Declaration on Territorial Asylum might be an incentive for reconsideration of that matter. He stressed the importance of the repatriation of refugees who wanted to return home and in this connection he referred to the recommendations of the Addis Ababa Conference of African Legal Experts in 1967 and the draft O.A.U. Refugee Instrument as containing most constructive suggestions.

On the question of setting up of compensation tribunals, he pointed out that such tribunals had been set up after World War I and the pattern of mixed conciliation commissions and mixed arbitral tribunals for the settlement of disputes between Germany and Poland could be considered as a pattern.

Lastly, the U.N.H.C.R. Observer mentioned that all the items in the list of topics on the Rights of Refugees originally referred by the Government of U.A.R. had not been considered by the Committee at its previous sessions, particularly those relating to travel documents, financial assistance and international co-operation in the field. He advised the Committee to tackle these matters also.

There was further discussion on this matter in the plenary meeting held on the 25th of January, 1969. The Delegate of Pakistan stated that discussion in the earlier meeting showed that there was consensus in the Committee that the problem of refugees was essentially humanitarian in character and therefore it had to be treated as such. He added that technical and legal objections should not stand in the way of such a grave problem in which human rights as set out in Article 3 of the Charter of Human Rights were involved. He pointed out that the amendment suggested by him and the Delegate of Jordan in the definition of refugee was only to make the principles applicable to the case of displaced persons from an occupied territory. The definition in the draft O.A.U. Convention did not take into account the particular predicament of the refugees from the territories occupied by Israel.

Thereafter, a draft resolution was tabled jointly by the Delegations of Pakistan and Jordan. The relevant extracts of the draft resolution are as under :—

> "THE COMMITTEE DECIDED that the definition of the term 'refugee' as adopted in the Committee's report on the principles concerning the treatement of refugees at the Eighth Session of the Committee at Bangkok be amended by adding a new sub-paragraph in Article I as follows :
>
> > "(c) leaves or being outside is unable or unwilling to return to his homeland—the

State, country or occupied territory from which he, his parents or grand parents had been displaced."

THE COMMITTEE FURTHER DECIDED to adopt the following consequential amendments in Articles IV and V as a result of the amendment of the definition of the term 'refugee'.

Article IV

(i) the following words 'or the territory from which he was displaced' shall be added after the word 'nationality' and before the word 'and'; and

(ii) for the words 'or country to receive him' in the end a comma and the following shall be substituted :

"country or occupying power to receive him".

Article V

Para 1 : The following words :

"or the occupying power in control of the territory" shall be added after the word 'country' and before the word 'which'.

Para 2 :

After the word 'country' and before the comma and word "public" the following words :

"or the occupying power" shall be added."

Supporting the joint draft resolution, the Delegate of Jordan stated that there were two different kinds of refugees, viz., political refugees who leave a country voluntarily and are deprived of the protection of their own Government, and other displaced persons who because of external aggression or

military occupation are driven out of their homes against their will. The latter class of refugees, he said, were not covered by the Bangkok definition. He urged the Committee to bring this class of refugees within the definition of the Bangkok Principles by accepting the joint draft resolution.

The Delegate of Ceylon felt that as the implications of the joint draft resolution needed careful consideration, his delegation required time for doing so.

The Delegate of Ghana after referring to what he considered to be the essential basis in the status of a refugee and the provisions of the draft O.A.U. Convention, stated that he found some difficulty with the definition proposed in respect of three matters, namely the word 'homeland', the word 'displaced' and the drafting of the proposal itself. He asked what was meant by 'homeland'? He also felt that it had to be clarified whether the expression 'country' meant country of origin, country of nationality or the place of habitual residence. He said if the intention in the draft was that mere displacement of a person should bring him within the category of refugee, the implications might be far-reaching. These very important questions needed careful consideration.

As regards the plight of refugees in the Middle East, he felt that the problem primarily needed a social and economic solution, and the Committee could adopt a declaration in which it might express its sympathy and solidarity with the people of Jordan and call upon the Member Governments and the entire world to extend them the help they need. He added even if the definition was extended by the Committee to cover the exceptional cases mentioned by Jordan, the rest of the world might find it difficult to accept such a definition.

According to the Delegate of India, the task before the Committee was to examine whether the definition of 'refugee' as formulated at Bangkok was adequate, and if it was not, whether it could be enlarged to cover all the situations,

particularly the one mentioned by the Delegate of Jordan. He added that the Committee should consider the definition suggested in the draft resolution and try to evolve a consensus.

The Delegate of Indonesia expressed sympathy towards the draft resolution but felt that it needed careful consideration. She stated that had the Committee been a political or social body, she would have had no difficulty in accepting the draft resolution.

The Delegate of Iraq supported the draft resolution.

The Delegate of Japan felt that the proposal contained in the draft resolution related to substantive articles of the Bangkok Report and therefore it should be examined alongwith other important proposals and suggestions regarding the substantive matters concerning the rights of refugees.

The Delegate of Sierra Leone supported the objective behind the draft resolution, but suggested that since the Committee was concerned with juridical issues, the matter had to be examined from that angle. The amendment, he said, implied an extension of a substantive rule of International Law. Referring to the use of the terms 'homeland', 'territory' and 'State', he enquired as to how one interpreted the word 'homeland' in Article 2 as against the word 'territory' in Article 4. A number of drafting changes were suggested by him.

The Delegate of Thailand shared the views expressed by the Delegate of Japan. He suggested that although his delegation was conscious of the urgency of the problem, a postponement of the decision for a few days would contribute to reaching the consensus on the proposed amendment in the definition of 'refugee'.

The Delegate of U.A.R. accepted the principle contained in the draft resolution and agreed that it be carefully considered at a later meeting.

At the end of the plenary meeting, the Delegate of Jordan replied to some of the comments made by the Delegate of Ghana relating to the use of the term 'homeland'. He explained that the Committee was concerned with the definition of refugee for practical purposes, and, therefore, there could not be a fixed definition of 'refugee'. The criterion of judging the problem of refugees should be the miserable condition in which a refugee finds himself because of displacement from his homeland. In this connection, he referred to the letter and spirit of the U.N. Charter and the Universal Declaration of Human Rights and felt that non-enlargement of the definition of refugee would go contrary to modern trends of international law.

In the plenary meeting held on the 28th of January, 1969, the Delegate of Jordan introduced a new draft resolution in the form of an addendum to the Bangkok Principles. The text of the draft resolution is as under :

"ADDENDUM TO THE PRINCIPLES CONCERNING TREATMENT OF REFUGEES

WHEREAS it appears to the Committee on further consideration that the principles adopted at its Session held in Bangkok in 1966 mainly contemplate the status of what may be called political refugees who have been deprived of the protection of their own Government and do not provide adequately for the case of other refugees or displaced persons;

AND WHEREAS the Committee considers that such other refugees or displaced persons should enjoy the benefit of protection of the nature afforded by Articles IV and V of those principles;

NOW, THEREFORE, the Committee at its Tenth Session held in Karachi between the 21st and 30th of January, 1969, resolves as follows :

1. Any person who because of foreign domination, external aggression or occupation has left his habitual place of residence, or being outside such place, desires to go back thereto but is prevented from so doing by the Government or military authorities in control of such a place of residence shall be entitled to return to the place of his habitual residence from which he was displaced.

2. It shall accordingly be the duty of the Government or military authorities in control of such place of habitual residence to facilitate by all means at their disposal, the return of all such persons as are referred to in the foregoing paragraph, and the restitution of their property to them.

3. This natural right of return shall also be enjoyed and facilitated to the same extent as stated above in respect of the dependents of all such persons as are referred to in paragraph 1 above."

The Delegate of Ceylon supported the draft resolution subject to some minor amendments. The Delegate of Iraq also supported the said resolution.

The Delegate of Ghana again referred to the distinction between the popular concept of refugees and the international concept, and stated that in his view the term as understood in the international concept could not be stretched to cover all persons under the popular concept. As regards the draft resolution moved by Jordan, he noted with satisfaction that several expressions used in the draft were the same as in the O.A.U. Instrument. He suggested that Member Governments should be given an opportunity to consider the question of definition of 'refugee' in the light of the new developments.

As regards other principles involved in the draft resolution, he felt that their implications were far-reaching and that they should be seriously considered by the Governments. The decision in such matters should rest with the Governments rather than with their Delegations.

The Delegate of India suggested that the question of finding a solution to the problem of Palestinian refugees and the broader question of enlargement of the definition of 'refugees' should be kept separate. He was prepared to join in the expression of solidarity of all Member States of the Committee on the question of making a recommendation for the urgent solution of the problem as it had developed in West Asia, but the larger question of reconsideration of the Bangkok Principles or the adoption of new principles ought to be done in accordance with the normal practice of the Committee, i.e. after due consideration of the implications by the Governments. The Committee should not be in a hurry to adopt any rule of general application by reference to a particular situation. He reminded the Committee that on the question of Palestinian refugees there were as many as 25 resolutions recognising the right of those refugees to return to their homeland which gave a legal basis for special treatment of this question. He observed that if there was a resolution or recommendation of the Committee to the effect that the Palestinian refugees will have the right to return to their homeland, he will fully support such a resolution or recommendation.

The Delegate of Indonesia expressed sympathy for the draft resolution moved by Jordan, but expressed the view that it should be an agreed text so as to have the support of all the Delegations.

The Delegate of Japan referred to the difference in the concept of 'refugee' and that of 'displaced person' and pointed

out that the first paragraph of the draft was misleading. The present draft contained many important elements which needed to be considered and therefore he was not in a position to commit himself on this proposal. He suggested that this resolution should be submitted to the Governments of Member States for their comments and the Committee should consider it at its next Session.

The Delegate of Pakistan said that the Jordanian proposal met all the juristic objections and was also the most appropriate in the given situation. If there was consensus in the Committee on this proposal, he would not press for the adoption of the earlier resolution moved jointly by himself and the Delegate of Jordan.

The Delegate of Sierra Leone supported the new resolution in principle.

The Delegate of Thailand said that the supplementary character of the draft resolution should be more clearly spelt out in order to eliminate any impression that the whole structure of the Bangkok Principles was being altered. He suggested that it might be proper to include in the definition of 'refugee' another situation such as 'internal armed conflict' in addition to foreign domination. Subject to these and some other comments that he made, the Jordanian proposal was acceptable to him.

The Jordanian Delegate pointed out that the Committee was an advisory body to its Member Governments and whatever recommendation or resolution was adopted by the Committee, it was done only in an advisory capacity; and nothing that the Committee said was *ipso facto* binding on the Member Governments. All that he wanted the Committee to consider was whether the formula put forward by him was legally feasible, and that it was for the Governments to adopt or not to adopt the recommendation of the Committee.

The Delegate of Ghana stated that the expression of views on the Jordanian proposal by other Delegations should not be taken or understood as being an opposition to his laudable efforts in chalking out a solution for the Palestinian refugee problem. He then moved the following resolution stating that this was not tabled as an alternative to the Jordanian proposal :

"DRAFT RESOLUTION NO. X

The Committee

Considering that the Government of the United Arab Republic by a reference made under Article 3 (b) of the Statutes had requested the Committee to consider certain questions relating to the Rights of Refugees ;

And considering that the Government of Pakistan had requested the Committee to reconsider its report on some of the aspects, which request had been supported by the Governments of Iraq, Japan, Jordan and the United Arab Republic ;

Considering further the recent developments in the field of international refugee law referred to by the Delegations of Ghana, Sierra Leone and others...and explained in the Note prepared by the United Nations High Commissioner's Office for Refugees at the request of the Secretariat ;

Referring specially to the Protocol relating to the Status of Refugees of 31 January 1967 (General Assembly Resolution 2198 (XXI)) and to the United Nations Declaration on Territorial Asylum of 14 December 1967 (General Assembly Resolution 2312 (XXII)) ;

Referring further to the recommendations made by the Addis Ababa Refugee Conference of October 1967

and the Draft O.A.U. Instrument concerning Refugees ;

Considering also that it was not possible for the Committee, at its Tenth Session, to give detailed consideration to the above-mentioned instruments and recommendations on account of limited time at its disposal ;

Takes note with satisfaction of the entry into force of the above-mentioned Protocol thus making the provisions of the 1951 Refugee Convention universally applicable ;

Requests the Secretariat to put the item concerning 'Rights of Refugees' on the agenda of its Eleventh Session and in the meantime, in order to facilitate the work of the Committee, to prepare, in co-operation with the United Nations High Commissioner's Office for Refugees, recommendations. The records of the Committee's debate on the Jordanian proposal should also be made available to the Governments."

Resuming the discussion on the subject in the plenary meeting held on the 29th of January, 1969, the Delegate of Pakistan stated that his Delegation would have been very happy if the draft resolution co-sponsored by him and the Delegate of Jordan had been accepted. He, however, added that in view of the fact that certain Delegations required sufficient time to consider the proposals, it had been agreed that the issues raised in the joint draft resolution might be deferred for fuller consideration at the next Session. In the meantime to meet the urgent problem that had arisen with regard to Palestinian refugees due to Israeli aggression, the following draft resolution was moved by him :

"*Recognising* that customary international law and the Hague and Geneva Conventions provide for the immunity of civilian life and property during hostilities ;

Recognising further that the United Nations Charter and the Universal Declaration of Human Rights guarantee to all human beings the right to life, liberty, property and security of person ;

Noting that the General Assembly of the U. N. has in paragraph 11 of its resolution 194 (III) of 1948 recognised the right of return of Palestine Arab Refugees and called upon the parties concerned to respect this right and to facilitate their return to their homes, which resolution has since been reiterated on several occasions including in particular resolution 237 (1967) adopted by the Security Council on 14th June 1967 and ending with its resolution No. 2452 dated 19.12. 1968 ;

Noting further that the principles concerning the treatment of refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session declared the right of return of refugees to their homeland ;

Recognising the right in international law of Palestine Arab refugees and other displaced Arabs to return to their homeland and the duty of the authorities in control to receive them and restore their property ;

Seriously concerned with the non-implementation so far of the various resolutions of the United Nations and the non-observance of rules of international law in regard to this urgent humanitarian problem ;

The Committee decides to recommend to Member Governments to make every effort to secure both the right of return to their homeland of Palestine Arab Refugees and other displaced Arabs, and their right to restoration of properties ;

The Committee also decides to request the Secretary-General of the United Nations to use his good offices to achieve this end."

This resolution was unanimously adopted by the Committee and numbered as X (7). The draft resolution moved by the Delegate of Ghana in the plenary meeting held on the 28th of January, 1969, was also adopted unanimously, subject, however, to incorporation of some minor amendments. It was numbered as X (8).

Annex - III

ON PALESTINIAN REFUGEES

RESOLUTIONS ADOPTED AT THE TENTH SESSION

Resolution No. X (7)

Recognising that Customary International Law and the Hague and Geneva Conventions provide for the immunity of civilian life and property during hostilities;

Recognising further that the United Nations Charter and the Universal Declaration of Human Rights guarantee to all human beings the right to life, liberty, property and security of person;

Noting that the General Assembly of the U. N. has in paragraph 11 of its resolution 194 (III) of 1948 recognised the right of return of Palestine Arab refugees and called upon the parties concerned to respect this right and to facilitate their return to their homes, which resolution has since been reiterated on several occasions including in particular resolution 237(1967) adopted by the Security Council on 14th June 1967 and ending with its resolution No. 2452 dated 19-12-1968;

Noting further that the principles concerning the treatment of refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session declare the right of return of refugees to their homeland;

Recognising the right in International Law of Palestine Arab Refugees and other displaced Arabs to return to their homeland and the duty of the authorities in control to receive them and restore their property;

Seriously concerned with the non-implementation so far of the various resolutions of the United Nations and the non-observance of rules of International Law in regard to this urgent humanitarian problem;

The Committee decides to recommend to Member Governments to make every effort to secure both the right of return to their homeland of Palestine Arab Refugees and other displaced Arabs, and their right to restoration of properties;

The Committee also decides to request the Secretary-General of the United Nations to use his good offices to achieve this end.

Sd/-
Syed Sharifuddin
President

Resolution No. X (8)

The Committee

Considering that the Government of the United Arab Republic by a reference made under article 3(b) of the Statutes had requested the Committee to consider certain questions relating to the Rights of Refugees;

And considering that the Government of Pakistan had requested the Committee to reconsider its report on some of the aspects, which request had been supported by the Governments of Iraq, Jordan and the United Arab Republic;

Considering further the recent developments in the field of international refugee law referred to by the Delegations of Ghana, Sierra Leone and others.....and explained in the NOTE prepared by the United Nations High Commissioner's Office for Refugees at the request of the Secretariat;

Referring specifically to the Protocol relating to the Status of Refugees of 31st January 1967 [General Assembly Resolution 2198 (XXI)] and to the United Nations Declaration on Territorial Asylum of 14 December 1967 [General Assembly Resolution 2312 (XXII)];

Referring further to the recommendations made by the Addis Ababa Refugee Conference of October 1967 and the Draft OAU instrument concerning refugees;

Considering also that it was not possible for the Committee, at its tenth session, to give detailed consideration to the above-mentioned instruments and recommendations on account of limited time at its disposal;

Takes note with satisfaction of the entry into force of the above-mentioned Protocol, thus making the provisions of the 1951 Refugee Convention universally applicable;

Requests the Secretariat to put the item concerning "Rights of Refugees" on the agenda of its eleventh session including all the proposals made at the Tenth Session by the Delegations of Pakistan and Jordan and in the meantime, in order to facilitate the work of the Committee, to prepare, in co-operation with the United Nations High Commissioner's Office for Refugees, a detailed analysis of the above-mentioned instruments and recommendations. The records of the Committee's debate on this item shall also be made available to the Governments.

Sd/-
Syed Sharifuddin
President

VI. THE LAW OF TREATIES

THE LAW OF TREATIES

(1) Introductory Note

The results of the work of the U.N. Conference of Plenipotentiaries on the Law of Treaties, which met in Vienna in two Sessions during 1968 and 1969, pursuant to U.N. General Assembly Resolution No. 2166 (XXI) adopted on the 5th of December, 1969, have now been embodied in an international convention titled as "The Vienna Convention on the Law of Treaties".

The Conference of Plenipotentiaries on the Law of Treaties, to which all the Member Countries of the United Nations had been invited, was of special significance to Asian and African countries as this was the first time that these countries had a voice in the formulation of a uniform set of general principles on the Law of Treaties, a vital branch of International Law. Further, the fact that many of these countries had in the past been subjected to unequal treaties and had, on their independence, inherited treaty rights and obligations by reason of their being part of former colonial territories and empires, made their participation in the aforesaid Conference historically significant.

The text of the Draft Articles, adopted by the International Law Commission at its Eighteenth Session, formed the basic proposal for consideration of the Conference of Plenipotentiaries. The International Law Commission, during its First Session held in 1949, had decided that the Law of Treaties was one of the topics which was suitable for codification. Subsequently the Commission considered the subject at its various Sessions and drew up its final recommendations in the shape of Draft Articles during its Eighteenth Session held in May 1966.

Under clause (a) of Article 3 of the Statutes establishing this Committee, this Committee is required to examine questions that are under consideration by the International Law Commission and to arrange for its views to be placed before the Commission. It is further required to consider the reports of the Commission and to make its recommendations thereon to the Governments of the participating countries. Having regard to this specific function as laid down under its Statutes, the Committee has established official relations with the International Law Commission. The Commission is, therefore, represented at the Sessions of the Committee, the latter also sending a representative to attend the Sessions of the Commission in the capacity of an Observer.

Pursuant to the above-mentioned function under the Statutes, the Committee has been following the work of the International Law Commission on the Law of Treaties through its various stages, particularly in view of the paramount importance of this subject to the countries of Asian-African region. A representative of the Committee was present in the capacity of an Observer during the deliberations on the Law of Treaties at some of the Commission's Sessions when that subject was discussed. At the Thirteenth Session of the Commission, Mr. Hafez Sabek, the then Chief Justice of United Arab Republic, attended the Commission's meetings on behalf of this Committee. At the Fifteenth Session, this Committee was represented by Hon'ble Mr. Justice H.W. Tambiah of the Supreme Court of Ceylon. The Sixteenth Session was attended by Mr. Hafez Sabek and the Seventeenth Session by Dr. Hassan Zakariya, former Under Secretary of State for Foreign Affairs in the Government of Iraq. The reports of these representatives of the Committee, together with the reports of the International Law Commission on the work done by the Commission on the Law of Treaties, were generally considered by this Committee at its Sixth, Seventh and Eighth Sessions held during the years 1964, 1965 and 1966.

At its Eighth Session held in 1966, the Committee had the benefit of the presence of H. E. Dr. Mustafa Kamel Yasseen, the then President of the Commission, who stressed the need and urgency for this Committee to examine the Draft Articles prepared by the International Law Commission and to make its recommendations thereon, so as to assist the Governments of Asian and African countries prior to the holding of the Conference of Plenipotentiaries. The Committee, in response to this suggestion, decided to place this subject as the first item on the agenda of its Ninth Session.

At its Ninth Session held in New Delhi in December 1967, the Committee had before it for consideration a report on the subject prepared by Dr. Sompong Sucharitkul, the Committee's Special Repporteur, and a set of 35 questions prepared by the Secretariat of the Committee in relation to the Draft Articles formulated by the Commission. After initial observations made by the Delegations bringing forth additional points for consideration, the Committee appointed three sub-committees, the first on Draft Articles 1 to 22, the second on Draft Articles 23 to 38 and the third on Draft Articles 39 to 75. The function of each of these Sub-Committees was to take note of the observations made by the Delegations in the plenary Session, and then to submit its report to the main Committee for its consideration. The three Sub-Committees presented their reports, and after detailed discussions thereon in the plenary Session, the Committee drew up and adopted an Interim Report in the form of comments on such Draft Articles formulated by the Commission which, in its opinion, required special consideration by the Member Governments. The Interim Report was placed before the Conference of Plenipotentiaries and was also circulated to all the Asian and African Delegations participating in that Conference. It was decided to carry forward the subject to the Tenth Session of the Committee as a priority item for its final consideration, especially on the points that might arise in the course of deli-

berations of the Conference of Plenipotentiaries during its First Session.

The First Session of the Conference of Plenipotentiaries on the Law of Treaties was held in Vienna from 26th of March to 26th of May, 1968. The Committee was represented at this Session by Mr. R.J. Hayfron-Benjamin, Solicitor-General of Ghana, in the capacity of an Observer. The later part of the Session was also attended by Mr. B. Sen, Secretary of the Committee.

The Second Session of the United Nations Conference on the Law of Treaties was scheduled to be held in Vienna from the 9th of April to 21st of May, 1969. At this Session, the Conference was to consider those questions which had been deferred by the Committee of the Whole of the First Session of the Conference, namely Articles 1, 5 *bis*, 8, 12, 16, 17, 26, 36, 37, 55, 62 *bis*, 66 and 76 of the Draft Articles, and the amendments that had been moved to those Draft Articles during the First Session of the Conference. Further, a multilateral convention was to be drawn up to become the codified law in the matter of treaty relations between States.

Realising the paramount importance of the Session of the Conference in international relations, various States and groups of States had held mutual consultations amongst themselves with a view to enabling them to formulate their views in preparation for the Vienna Conference. The representatives of Western European States had met in Strasbourg in November 1968, under the auspices of the European Committee of Legal Co-operation, with a view to formulating a common stand on the various issues that were to come up at the Second Session of the Conference. Similar consultations had been held among the Socialist countries in Eastern Europe, the countries in the American Continent and the Member States of the Arab League.

Taking a cue from these developments, a suggestion was made in the meetings of the Afro-Asian Group at the First Session of the Conference on the Law of Treaties, to utilise the Tenth regular Session of this Committee for the purpose of holding consultations between the Asian and African countries on the Law of Treaties. The suggestion was approved, and consequently, the Tenth Session of this Committee, held from 21st to 30th January 1969 at Karachi, was attended by high level delegations of eleven of the Member Governments of this Committee, namely, Ceylon, Ghana, India, Indonesia, Iraq, Japan, Jordan, Pakistan, Sierra Leone, Thailand and the United Arab Republic. Thirteen other Governments sent their representatives to attend the Session and participate in the discussions on the Law of Treaties. These were: Afghanistan, Cambodia, Congo (Kinshasa), Cyprus, Iran, Kenya, Mongolia, Morocco, Nigeria, the Philippines, Singapore, Turkey and the Republic of Korea. In addition, ten Governments informed the Committee that they would be prepared to consider the recommendations of the Karachi Session.

At the Karachi Session, the Committee devoted two plenary meetings in reviewing the work of the First Session of the Vienna Conference on the Law of Treaties. All the participants recalled the manner in which the entire Asian-African Group at that Conference had been kept united under the leadership of H. E. Dr. T. O. Elias, Attorney-General of Nigeria. They expressed the view that it was absolutely essential to maintain the same unity during the Second Session of the Conference also. The Committee then decided to consider in detail some of the important and controversial topics which were to come up at the Second Session of the Conference, and for that purpose, two Sub-Committees were constituted.

The First Sub-Committee, under the Chairmanship of H. E. Miss E. H. Laurens of Indonesia, went into questions

relating to Article 62 *bis* (Procedure for settlement of differences relating to invalidation, termination, withdrawal from or suspension of the operation of treaties); Article 76 (Procedure for the settlement of disputes concerning interpretation and application of the provisions of the Convention on the Treaties); Article 5 *bis* (Participation in general multilateral treaties) and provision of final clauses including the question of applicability of the Convention on the Law of Treaties. All the Delegations of Member Countries of this Committee were represented on this Sub-Committee. The representatives of non-Member Governments also participated in the discussions in this Sub-Committee.

The Second Sub-Committee, under the Chairmanship of Dr. Ahmad S. Al Kosheri of the United Arab Republic, considered questions relating to Article 2 (Definitions), Article 12 *bis* (Expression of consent of States to be bound by Treaties), Articles 16 and 17 (Reservations to Treaties), Article 69 *bis* (Effect of severance of diplomatic relations on treaty relations between States) as well as the question of incorporating a provision for contracting out of the Convention on Treaties.

Both the Sub-Committees presented their reports at the plenary meeting of the Committee held on the 30th of January 1969, when the reports were adopted. It was decided to circulate these reports to all the Asian and African States. The Secretariat of the Committee prepared two volumes of briefs for the assistance of the Delegations of Asian-African States to the Second Session of the Vienna Conference. The Committee also sent its representatives to the Second Session of the Conference in order to co-ordinate the work of the Delegations of its Member States.

(II) TEXT OF DRAFT ARTICLES ON THE LAW OF TREATIES ADOPTED BY THE INTERNATIONAL LAW COMMISSION

PART I

INTRODUCTION

Article 1

The scope of the present articles

The present articles relate to treaties concluded between States.

Article 2

Use of terms

1. For the purposes of the present articles :

(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 to represent the State for negotiating 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, by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary 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 organization" means the inter-governmental organization.

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

Article 3

International agreements not within the scope of the present articles

The fact that the present articles do not relate :

(a) To international agreements concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form ;

shall not affect the legal force of such agreements or the application to them of any of the rules set forth in the present

articles to which they would be subject independently of these articles.

Article 4

Treaties which are constituent instruments of international organizations or are adopted within international organizations

The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization.

PART II

CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1 : CONCLUSION OF TREATIES

Article 5

Capacity of States to conclude treaties

1. Every State possesses capacity to conclude treaties.

2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down.

Article 6

Full Powers to represent the State in the conclusion of treaties

1. Except as provided in paragraph 2, 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 express-

ing the consent of the State to be bound by a treaty only if;

(a) He produces appropriate full powers; or

(b) It appears from the circumstances that the intention of the States concerned was 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;

(b) Heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the adoption of the text of a treaty in that conference or organ.

Article 7

Subsequent confirmation of an act performed without authority

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 6 as representing his State for that purpose is without legal effect unless afterwards confirmed by the competent authority of the State.

Article 8

Adoption of the text

1. The adoption of the text of a treaty takes place by the unanimous consent of the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States participating in the conference, unless by the same majority they shall decide to apply a different rule.

Article 9

Authentication of the text

The text of a treaty is established as authentic and definitive :

(a) By such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) Failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 10

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect;

(b) It is otherwise establishet that the negotiating States were agreed that signature should have that effect;

(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1 :

(a) The initialling of text constitutes a signature of the treaty when it is established that the negotiating State so agreed;

(b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 11

Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when :

(a) The treaty provides for such consent to be expressed by means of ratification;

(b) It is otherwise established that the negotiating States were agreed that ratification should be required;

(c) The representative of the State in question has signed the treaty subject to ratification; or

(d) The intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 12

Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when :

(a) The treaty or an amendment to the treaty provides that such consent may be expressed by that State by means of accession;

(b) It is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(c) All the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 13

Exchange or deposit of instruments of ratification, acceptance, approval or accession

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon :

(a) Their exchange between the contracting States;

(b) Their deposit with the depositary; or

(c) Their notification to the contracting States or to the depositary, if so agreed.

Article 14

Consent relating to a part of a treaty and choice of differing provisions

1. Without prejudice to the provisions of articles 16 to 20, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made plain to which of the provisions the consent relates.

Article 15

Obligation of a State not to frustrate the object of a treaty prior to its entry into force

A State is obliged to refrain from acts tending to frustrate the object of a proposed treaty when :

(a) It has agreed to enter into negotiations for the conclusion of the treaty, while these negotiations are in progress;

(b) It has signed the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;

(c) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2 : RESERVATIONS TO MULTILATERAL TREATIES

Article 16

Formation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless :

(a) The reservation is prohibited by the treaty;

(b) The treaty authorises specified reservations which do not include the reservation in question; or

(c) In cases where the treaty contains no provisions regarding reservations, the reservation is incompatible with the object and purpose of the treaty.

Article 17

Acceptance of and objection to reservations

1. A reservation expressly or impliedly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. 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 in its entirety 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.

3. When a treaty is a constituent instrument of an international organization, the reservation requires the acceptance of the competent organ of that organization, unless the treaty otherwise provides.

4. In cases not falling under the preceding paragraphs of this article :

(a) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;

(b) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;

(c) An act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 a reservation is considered to have been aecepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 18

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation, and an objection to a reservation must be formulated in writing and communicated to the other States entitled to become parties to the treaty.

2. If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An objection to the reservation made previously to its confirmation does not itself require confirmation.

Article 19

Legal effects of reservations

1. A reservation established with regard to another party in accordance with articles 16, 17 and 18;

(a) Modifies for the reserving State the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) Modifies these provisions to the same extent for such other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation agrees to consider the treaty in force between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 20

Withdrawal of reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides or it is otherwise agreed, the withdrawal becomes operative only when notice of it has been received by the other contracting States.

SECTION 3 : ENTRY INTO FORCE OF TREATIES

Article 21

Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

3. When the consent of a State to be bound is established after a treaty has come into force, the treaty enters into force for that State on the date when its consent was established unless the treaty otherwise provides.

Article 22

Entry into force provisionally

1. A treaty may enter into force provisionally if :

(a) The treaty itself prescribes that it shall enter into force provisionally pending ratification, acceptance, approval or accession by the contracting States; or

(b) The negotiating States have in some other manner so agreed.

2. The same rule applies to the entry into force provisionally of part of a treaty.

PART III

OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1 : OBSERVANCE OF TREATIES

Article 23

Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

SECTION 2 : APPLICATION OF TREATIES

Article 24

Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 25

Application of treaties to territory

Unless a different intention appears from the treaty or is otherwise established, the application of a treaty extends to the entire territory of each party.

Article 26

Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to or that it is not to be considered as inconsistent with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 56, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one :

(a) As between States parties to both treaties the same rule applies as in paragraph 3;

(b) As between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty governs their mutual rights and obligations;

(c) As between a State party to both treaties and a State party only to the later treaty, the later treaty governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 37, or to any question of the termination or suspension of the operation of a treaty under article 57 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3 : INTERPRETATION OF TREATIES

Article 27

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes :

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context :

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty;

(b) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 28

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 27, or to determine the meaning when the interpretation according to article 27 :

(a) Leaves the meaning ambiguous or obscure; or

(b) Leads to a result which is manifestly absurd or unreasonable.

Article 29

Interpretation of treaties in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language,

unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text. Except in the case mentioned in paragraph 1, when a comparison of the text discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which as far as possible reconciles the texts shall be adopted.

SECTION 4 : TREATIES AND THIRD STATES

Article 30

General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 31

Treaties providing for obligations for third States

An obligation arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to be a means of establishing the obligation and the third State has expressly accepted that obligation.

Article 32

Treaties providing for rights for third States

1. A right arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to

accord that right either to the State in question, or to a group of States to which it belongs, or to all States, and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 33

Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with article 31, the obligation may be revoked or modified only with the mutual consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 32, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 34

Rules in a treaty becoming binding through international custom

Nothing in articles 30 to 33 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law.

PART IV

AMENDMENT AND MODIFICATION OF TREATIES

Article 35

General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such agreement except in so far as the treaty may otherwise provide.

Article 36

Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs :

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to every party, each one of which shall have the right to take part in :

(a) The decision as to the action to be taken in regard to such proposal;

(b) The negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; and article 26, paragraph 4(b) applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State :

(a) Be considered as a party to the treaty as amended; and

(b) Be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 37

Agreements to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if :

(a) The possibility of such a modification is provided for by the treaty; or

(b) The modification in question :

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole; and

(iii) is not prohibited by the treaty.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

Article 38

Modification of treaties by subsequent practice

A treaty may be modified by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions.

PART V

INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1 : GENERAL PROVISIONS

Article 39

Validity and continuance in force of treaties

1. The validity of a treaty may be impeached only through the application of the present articles. A treaty the invalidity of which is established under the present articles is void.

2. A treaty may be terminated or denounced or withdrawn from by a party only as a result of the application of the terms of the treaty or of the present articles. The same rule applies to suspension of the operation of a treaty.

Article 40

Obligations under other rules of international law

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present articles or of the terms of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law.

Article 41

Separability of treaty provisions

1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may only be exercised with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognised in the present articles may only be invoked with respect to the whole treaty except as provided in the following paragraphs or in article 57.

3. If the ground relates to particular clauses alone, it may only be invoked with respect to those clauses where :

(a) The said clauses are separable from the remainder of the treaty with regard to their application; and

(b) Acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole.

4. Subject to paragraph 3, in cases falling under articles 46 and 47 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or to the particular clauses alone.

5. In cases falling under articles 48, 49 and 50, no separation of the provisions of the treaty is permitted.

Article 42

Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a

treaty under articles 43 to 47 inclusive or 57 to 59 inclusive if, after becoming aware of the facts :

(a) It shall have expressly agreed that the treaty, as the case may be, is valid or remains in force or continues in operation ; or

(b) It may by reason of its conduct be considered as having acquiesced, as the case may be, in the validity of the treaty or in its maintenance in force or in operation.

SECTION 2 : INVALIDITY OF TREATIES

Article 43

Provisions of internal law regarding competence to conclude a treaty

A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation of its internal law was manifest.

Article 44

Specific restrictions on authority to express the consent of the State

If the authority of a representative to express the consent of his State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating a consent expressed by him unless the restriction was brought to the knowledge of the other negotiating State prior to his expressing such consent.

Article 45

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed a essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error, or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity ; article 74 then applies.

Article 46

Fraud

A State which has been induced to conclude a treaty by the fraudulent conduct of another negotiating State may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 47

Corruption of a representative of the State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 48

Coercion of a State by the threat or use of force

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its represen-

tative through acts or threats directed against him personally shall be without any legal effect.

Article 49

Coercion of a State by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter of the United Nations.

Article 50

Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3 : TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 51

Termination of or withdrawal from a treaty by consent of the parties

A treaty may be terminated or a party may withdraw from a treaty :

(a) In conformity with a provision of the treaty allowing such termination or withdrawal ; or

(b) At any time by consent of all the parties.

Article 52

Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number

of the parties falls below the number specified in the treaty as necessary for its entry into force.

Article 53

Denunciation of a treaty containing no provision regarding termination

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty unde paragraph 1 of this article.

Article 54

Suspension of the operation of a treaty by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended :

(a) In conformity with a provision of the treaty allowing such suspension;

(b) At any time by consent of all the parties.

Article 55

Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only

When a multilateral treaty contains no provision regarding the suspension of its operation, two or more parties may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension :

(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

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.

39. Tunisia welcomed the fact that the draft expressed the principles of the strict equality of States parties to a treaty, independent will, free and complete consent by parties and good faith in the execution of treaties; it had always believed those principles were basic to the law of treaties. It would have preferred to have the draft include provisions on State succession and on the most-favoured-nation clause, the latter of which was of great importance in relations between States and helped to eliminate many instances of discrimination.[17]

UGANDA

2. It noted with regret that the Commission had failed to take a stand, *inter-alia*, on the questions of the most-favoured-nation clause and State succession. Inasmuch as those questions were of great importance to former dependencies, which often found themselves compelled to sign devolution treaties, it hoped that the Commission would give them due consideration during its coming session so that they could be considered by the proposed Conference of plenipotentiaries.[18]

TURKEY

15. Having regard, on the one hand, to article 1 of the draft, where the expression "treaties concluded between States" seemed to include in the concept of the conclusion of a treaty the whole process of bringing it into existence, and, on the other hand, to the respective headings of Part II, sections 1 and 3, which distinguished the "conclusion of treaties" from their "entry into force", it was apparent that there were two interpretations, the one general and the other restricted, of what was meant by the "conclusion of a treaty". It would be better to keep to a single interpretation and use a more neutral formula, with a view to avoiding the difficulties of interpretation to which the present text of article 1 would inevitably give rise.

17. 913th mtg., 1966, paragraphs 38 and 39 of A/C.6/SR.913, p. 78.
18. 910th mtg., 1966, A/C.6/SR.910, p. 49.

16. New conceptions such as were to be found in the more developed systems of municipal law, had been introduced into the draft ; that was a desirable step and it was welcomed by Turkey. However, to ensure the continuity and stability of a given juridical order without preventing its possible development no new element should be introduced unless it was accompanied by its counterpart. In that connexion, he referred to articles 50 and 59 which dealt respectively with treaties conflicting with a peremptory norm of general international law and treaties in respect of which there occurred a fundamental change of circumstances. In both cases, the draft provided, in article 62 paragraph 3 that if objections were raised the parties should seek a solution through the means indicated in article 33 of the Charter, but it did not impose any compulsory juridical procedure. The result was an obvious lack of balance and Turkey found it difficult to accept the solution which the Commission had adopted in the matter.

17. In view of the complexity of the draft articles, it was understandable that the Commission had not extended their scope to all international agreements. Certain questions relating to both the succession of States and the international responsibility of States had also been excluded. Aware, in particular, of the imperative needs of the younger States, Turkey hoped those questions would be settled as soon as possible.[19]

UNITED ARAB REPUBLIC

21. The UAR drew attention to the economy, the underlying philosophy and objectives of the International Law Commission's work on the law of treaties. The Commission had to delimit the scope of the subject and to set aside other

19. 907th mtg., 1966, para 17, A/C.6/SR.907, p. 33.

topics which it could not conveniently deal with in the same context. Preparatory work on some of those questions had been undertaken concurrently with the work on the law of treaties. In 1962, the Commission had reaffirmed its decision to change the scheme of its work on the law of treaties from a mere expository statement to a series of draft articles capable of serving as a basis for a multilateral convention (1962, Vol. II, Yearbook of the ILC, p. 160, para 17). In the matter of State responsibility and the succession of States and State responsibility and the succession of States and Governments, the Commission had approved the conclusions of the sub-committees that it had appointed to carry out preliminary studies on those subjects. [1963, Vol. II, Yearbook of the ILC, p. 224, paras 55 and 61]. In that connection, several members of the Commission had pointed out that in the circumstances arising out of decolonization the problems of State succession were of special importance for the new nations as well as for the international community, and that problems of concern to new States should be given particular attention in the codification of the law on the subject. The sub-committee's recommendations concerning the relationship between the topic of State succession and other topics on the Commission's agenda had been approved and it had been decided that succession in the matter of treaties would be considered in connexion with State succession rather than in the context of the law of treaties.

22. The UAR understood the considerations which had led the Commission to decide against the inclusion in its draft articles of provisions that would have required an exclusive study of questions, such as those of the responsibility of States, State succession or the effects of hostilities. It hoped, nevertheless, as several delegations had already urged, among them those of Ghana and Nigeria, that the Commission would examine the rules governing State succession without delay.

23. The draft articles had been conceived of as a complete set of rules on the law of treaties proper (A/6309). Some had criticised the draft as being too complex and detailed and as containing a number of rules of a descriptive character and a number of abstract principles that would more appropriately be included in an expository code than a draft convention. The UAR took the view that the draft, being so complete, would do much, particularly through its expository articles, to standardize the procedures for, and the various arrangements relating to the conclusion of treaties.

24. In elaborating its draft articles the ILC had sought to orient them towards a universal community of nations whose supreme law would be the UN charter. That decision had been reflected in the Commission's decision explained in paragraph 24 of its report (A/6309) to adopt the formula of a draft convention rather than that of a code. The same reason had governed its decision to abandon the traditional doctrine of unanimity in regard to reservations to treaties ; the rapid expansion of the international community made it likely that the principle of unanimity would lose its relevance and utility.

25. The underlying thought, as well as the purpose, of the draft articles was to adapt the traditional rules of international law to the UN charter and to the fundamental principles and modern trends that it enshrined. The primacy of the Charter was particularly apparent in the provisions of articles 26, 49 and 50 and in those of article 62 paragraph 3 of the draft. That primacy was self-evident, since the Charter, the product of the most profound and most durable historical development of modern times, gave practical form to the fundamental principles of general and universal international law, which voided those rules of international law, which were incompatible with them. Some of those principles were explicitly stated in the Charter ; others were implicit, but essentially

present. Some had already been recognized in traditional law and had been given wider scope in the Charter ; others might be regarded as entirely new.

26. The UAR was satisfied with the synthesis achieved in the draft between codification and progressive development of the law of treaties. In that connection he wished to refer to paragraph 35 of the Commission's Report, which stated that although it was difficult to distinguish between the two elements in each provision, some new rules were nevertheless proposed. He recalled that Mr. Brierly, Special Rapporteur of the International Law Commission, set up to study the progressive development and codification of international law, had fully agreed that codification could not be confined to a statement of existing law. When there were gaps, the codifier must suggest ways of filling them ; where there was uncertainty, he must take account of the best opinion.[20]

ZAMBIA

Zambia was committed to treaties and agreements entered into before independence which did not serve to promote the country's progress and well-being. They had consequently undertaken to review all treaties signed before 1964, to retain them that were of importance to its interests and as far as possible to free itself of the other. Zambia considered the Commission should have included in its draft (A/6309) articles concerning succession of States and Governments. Since the Commission had promised to take up the subject later, Zambia could only hope that when the time came careful consideration would be given to the topic.[21]

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20. 911th mtg., 1966, Sixth Committee, p. 60, A/C.6/SR.911.

21. 1966, p. 67, 912th mtg., Sixth Committee, A/C.6/SR.912. In general, see also comments in the appendices below.

SUCCESSION OF STATES AND GOVERNMENTS

Note

The I. L. C. at its nineteenth session (8th May-14th July, 1967, See A/CN. 4/199 of 25th July, 1967) decided that as the former Special Rapporteur on this topic, Mr. Manfred Lachs, was elected to the I. C. J., the Commission considered new arrangements for dealing with the topic. In doing so it took account of the broad outlines of the subject laid down in the report of the Sub-Committee of the Commission in 1963 (1963 Year book of I. L. C., Vol. 2, p. 261, para 13) which was agreed to by the Commission in the same year. (*Ibid.*, p. 224, para 60). That outline divided the topic into three main headings as follows :

(i) Succession in respect of treaties.

(ii) Succession in respect of rights and duties resulting from other sources than treaties.

(iii) Succession in respect of membership of international organisations.

In connexion with this outline, the Commission considered a suggestion by Mr. Lachs that the topic should be divided among more than one Special Rapporteur, in order to advance its study more rapidly. This suggestion won the support of the Commission. It had already decided in 1963 to give priority to succession in respect of treaties and that aspect of the topic had, in its opinion, become more urgent in view of the convocation by the General Assembly, in its resolution 2166 (XXI) of 5th December, 1966, of a Conference on the Law of Treaties in 1968 and 1969, and of the views expressed in the Sixth Committee at the last session of the General Assembly. The Commission, therefore, decided to advance the work on that aspect as rapidly as possible as its twentieth session in 1968. Sir Humphrey Waldock was appointed Special Rapporteur to deal with succession in respect of treaties.

Mr. Mohamed Bedjaoui was appointed Special Rapporteur with regard to the topic of succession in respect of rights and duties resulting from sources other than treaties.

Succession in respect of membership of international organisations was considered to be related both to succession in respect of treaties and to relations between States and inter-governmental organisations. It was, therefore, left aside for the time being without being assigned a Special Rapporteur.

MOST-FAVOURED-NATION CLAUSES

The International Law Commission at its nineteenth session (8th May-14th July, 1967—A/CN. 4/199 of 25th July, 1967) recalled that the Commission had laid aside the question of the most-favoured-nation clause which it had not considered indispensable to deal within its codification of the general law of treaties, although, as was said in its report on the work of its eighteenth session, "it felt that such clauses might at some future time appropriately form the subject of a special study" (Official Records of the General Assembly, Twenty-first Session —Supplement No. 9, A/6309/Rev. 1, Part II, para 32). The Commission noted that several representatives in the Sixth Committee at the twenty-first session of the General Assembly had urged that the Commission should deal with this aspect (*Op. cit.* Twenty-first Session, agenda item 84, A/5416, para 47). In view of the more manageable scope of the topic, of the interest expressed in it, and of the fact that clarification of its legal aspects might be of assistance to the United Nations Commission on International Trade Law (UNCITRAL), which will begin its work in 1968, the Commission unanimously decided to place on its programme the topic of Most-favoured-nation clauses in the Law of Treaties. It also unanimously decided to appoint Mr. Endre Ustor as Special Rapporteur on that topic.)

II. COMMENTS IN THE SIXTH COMMITTEE, 1967

LIBERIA

In view of the current developments in world affairs, they felt that the Commission had acted correctly in giving the topic of succession of States and Governments a prominent position in its future programme of work. As that topic would entail a substantial amount of work, they hoped that the Commission would devote as much of its twentieth session as possible to the consideration of it. It seemed perferable to complete one item of considerable importance, rather than to have two or three items partially considered, with the result that no action could be taken. The Commission's decision to divide the topic into three main headings and to appoint a Special Rapporteur for each heading was practical and would expedite its work. As the topic was of immense importance to developing States, which would like to see the work on it concluded as soon as possible, they suggested that the third heading—Succession in respect of membership of international organizations—should be deleted and that the subject should be considered as a part of the topic of relations between States and inter-governmental organizations. That arrangement would make it possible for the Commission to complete the study of succession of States and Governments as soon as possible.[22]

INDIA

It noted with satisfaction that the Commission had decided to advance its work on succession in respect of treaties as rapidly as possible at its twentieth session in 1968. Consideration of that aspect of the topic of State Succession must undoubtedly be accelerated in prospect of the Conference on the Law of Treaties to be held in 1968 and 1969.[23]

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22. A/C.6/SR 962, 6th October, 1967, p. 13.
23. A/C.6/SR 963, 11th October, 1967, p. 5.

JAPAN

It welcomed the fact that priority had been given to a study of the succession of States in respect of treaties. They were convinced that the study would be carried out in such a way as not to prejudice the general problems relating to the succession of States and Governments.[24]

TANZANIA

The Commission had acted wisely in giving priority to the question of the succession of States and Governments, especially as a large body of rules of international law which had come into existence before the emergence of the less developed countries as independent States was still regarded in certain quarters as automatically binding on the new States. In addition, the majority of the so-called rules of international law governing the succession of States and Governments were both inequitable and inadequate.[25]

UNITED ARAB REPUBLIC

It was glad to note that the Commission had responded promptly to the Sixth Committee's recommendation that priority should be given to the topic of succession of States and Governments in respect of treaties and to the subject of most-favoured-nation clauses in the Law of Treaties.[26]

KENYA

It welcomed the decision to give priority to the subject of succession of States and Governments in respect of treaties. The matter had become more urgent in view of the convocation by the General Assembly of a Conference on the Law of Treaties. Kenya also welcomed the idea of working simultaneously on the topic of the most-favoured-nation clause.[27]

24. Op. cit., p. 11.
25. Op. cit., p. 12.
26. A/C.6/SR. 965, 11th October, 1967, p. 3.
27. A/C.6/SR. 906, 12th October, 1967, p. 10.

MOROCCO

It would like the important question of succession of States and Governments to be given priority and considered before the draft articles on the Law of Treaties were submitted to the General Assembly.[28]

TURKEY

It noted with satisfaction the Commission's decision to proceed with its study of the topic of the Succession of States and Governments. They fully approved the programme for the future work of the Commission.[29]

Article 2

I. COMMENTS IN THE SIXTH COMMITTEE, 1966 :

CEYLON

See General (above).

INDIA

2. The reports in which the articles were contained had been intended to be as comprehensive as possible but without any sacrifice of preciseness. For example, it appeared from the lucid commentary on article 2 that on the definition of the term "Treaty" the I. L. C.'s draft is more precise than the Harvard Draft Convention on the Law of Treaties (*American Journal of International Law*, Vol. 29, No. 34, Supplement, October 1935).

3. Moreover, the purpose of codification provided a proper balance between *lex lata* and *de lege ferenda* considerations. Over-emphasis of one or the other aspect might have led to misunderstandings and misapprehensions, having regard in

28. Op. cit., p. 14.
29. A/C.6/SR.968, 13th October, 1967, p. 4.

particular to the fact that new States were anxious to know what the law was before agreeing to develop it as it ought to be. There was, of course, unanimous agreement that any attempt at codification must involve the developmental process. The codifier inevitably filled in gaps and amended the law in the light of new developments. India was glad to see that the draft articles represented a judicious combination of the two elements and that those of their provisions which related to the progressive development of international law were both justified and necessary.[30]

TURKEY

18. With reference to the interpretation of the words "governed by international law" in the commentary on article 2 Turkey noted that the Commission had excluded from the purview of the draft those international agreements which, although concluded between States, were regulated by the national law of one of the parties ; it observed that there were treaties which, although coming under international law, were subject to the national laws of one party or of a third State. As it was not stated whether or not those "mixed" treaties were covered by the draft articles, the scope of the draft should be defined more clearly and in their opinion, extended to treaties of that kind.[31]

TANZANIA

45. The Commission had already arranged to discuss at its next session some of the subjects omitted for example, 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

30. A/C.6/SR. 906, 906th Meeting, Sixth Committee, 1966, para 6.
31. A/C.6/SR 907, 907th Meeting, 1966, p. 33, para 18.

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.....

46. Special attention ought to be paid to the commentaries 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: redrafting might be necessary although that would lengthen the articles.

47. The conference would also have to decide whether to spell out the content of the more prominent concepts involved by the Commission—regarding *pacta sunt servanda*, good faith and peremptory norms of international law—or learn that content to be worked out in State practice and the jurisprudence of international tribunals. In so doing it would have to strike the balance between over-elaboration and vagueness. Further analysis might reveal that some concepts such as "good faith" clause, were redundant and even harmful. In his delegation's view these concepts might be the subject of a special study.

48. ...the principle *pacta sunt servanda* should, however, be used to oppose new States. That was in conformity with the policy set forth in the letter of 9th December 1961 from President Julius Nyerere to the Secretary General of the United Nations, (Official Records of the Security Council 16th Year Supplement for October, November and December, 1961, Doc. No. S/5018).

Tanzania advocated universal participation in general multilateral treaties, particularly into 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 repeatedly criticized double-dealing policy which was detrimental to the integrity of the United Nations system and to interests of the world community. Many States Members of the United Nations had concluded treaties with non-member States and the imperatives of world order made it essential for all States to be parties to the proposed convention on the Law of Treaties.[32]

II. WRITTEN COMMENTS BY GOVERNMENTS

AFGHANISTAN

The Government of Afghanistan notes that the term "treaty" has been used throughout the draft convention as a generic term to include all forms of international treaties concluded between States. But the term should be widened and broadened in order to include the definition of treaties in simplified form, because this kind of treaty is very common and its use is increasing daily.[33]

Article 3

Comments in the Sixth Committee

For the comments of the Governments of Ceylon, Dahomey, Ghana, Iran, Kuwait, Liberia, Sierra Leone, see General above. For the comments of Tanzania, see Article 2 above.

Article 4

OBSERVATIONS IN THE SIXTH COMMITTEE, 1967

CEYLON : See Article 8 below.

32. A/C. 6/SR 912, paras 45-49, p. 70, 912th Meeting, 1966.
33. A/6827/Add. 1 of 27th September, 1967.

Article 5

COMMENTS IN THE SIXTH COMMITTEE

For the views of Ceylon and Dahomey see General above.

MONGOLIA

32. The general principle stated in draft article 5 that every State possessed capacity to conclude treaties was a natural corollary of the principle of the sovereign equality of States—upon which the United Nations itself was based. Any move to restrict the right of certain States to conclude treaties was an attempt at subjugation that no longer had any place in modern international law which disregarded all inequalities among States.[34]

SIERRA LEONE

44. An outstanding merit of the draft articles (A/6309) was that the principle of the sovereign equality of States was reaffirmed in all articles dealing with acts or omissions of States in their international relations. Thus, it was stated that every State possessed capacity to conclude treaties and the fourth paragraph of the commentary on Article 5 made it clear that the word "State" was used with the same meaning as in the Charter of the United Nations and in the Statute of the I.C.J. i.e., it meant a State for the purposes of international law. However, the Commission had deliberately refrained from endorsing the practice of some States of entering into treaties with countries or territories which possessed less than full sovereignty, a practice that led to obvious inequities.[35]

Article 7

WRITTEN COMMENTS BY GOVERNMENTS, 1967

JAPAN

That 'an act relating to the conclusion of a treaty performed by a person who cannot be considered under article 6

34. 1966, 911th Meeting, p. 61, paragraph 32, A/C.6/SR. 911.
35. 1966, 911th Meeting, p. 62, paragraph 44, A/C.6/SR. 911.

as representative by his State for that purpose is without legal effect" is a matter of course conclusion drawn from article 6. There is, therefore, no necessity of providing for it.

The phrase "unless afterwards confirmed by the competent authority of the State" involves danger of abuse by giving rise to assertions by a person that, even in such a case where he cannot be considered under article 6 as representing his State for a certain purpose, he can represent his State for that purpose so long as confirmation of his act is allegedly expected from the competent authority of the State.

It is appropriate, therefore, to delete this article.[36]

Article 8

I. WRITTEN COMMENTS OF GOVERNMENTS, 1967

JAPAN

The procedure for the adoption of the text of a treaty at an international conference should, as a general principle, be appropriately left to the decision of the conference and the provision of this article should be kept as a residuary rule.

Therefore, it will be appropriate to delete the phrase beginning with "unless" and replace it by "unless they decide to apply a different rule".[37]

II. OBSERVATIONS IN THE SIXTH COMMITTEE, 1967

CEYLON

The draft articles did not seem adequately to cover at least one of the new techniques of treaty-making which had developed in recent years, namely the adoption of the text of a treaty by an international organization pursuant to its inherent powers. Under draft article 8, except for the case

36. A/6827 of 31st August, 1967 at p. 20.
37. A/6827 of 31st August, 1967 at p. 21.

provided for in its paragraph 2 where a text was adopted at an international conference, the rule would be that the adoption took place by the unanimous consent of the participating States; that, however, had to be read in conjunction with draft article 4, which provided that as to treaties adopted within international organizations, the application of the provisions of the draft articles was to be "subject to the relevant rules of the organizations". The application of draft article 4 raised no problem when the adoption of the text of a treaty by an international organization took place pursuant to an express provision of the organization's constituent instrument, as in the case of the I.L.O. Convention. However, where a treaty was adopted within an organization in the exercise of its inherent powers, the rules of the organization might not offer guidance, since the treaty formulated attained an independent existence. The application of draft article 4 became even more difficult when the treaty was adopted within an international organization, with its own rules. The statutes of the International Development Association, the International Finance Corporation and the Convention on the Settlement of Investment Disputes between States and Nationals of other States, all of which were instruments that had been first adopted by the Executive Directors of the World Bank and then circulated to the States members of the Bank for acceptance were examples. It might be possible to argue that the case was covered by draft article 8 (1) in that the true adoption occurred only when each State signed or ratified the text; it might also be suggested that the "rules of the organization" referred to in draft article 4 were not only the organization's regular rules but also all decisions and resolutions binding upon its members. However, Ceylon believed that the formulation and adoption of the text of the treaty by the competent organ of an international organization pursuant to its inherent powers deserved to be given clearer treatment in the draft articles. While it did not wish to make a specific proposal for amending the text, it felt that the terms of draft article

8 (1) might be made less rigid by providing for its application in cases where no other mode of adoption had been expressly or tacitly agreed. It also felt that the provisions of draft article 4 relating to treaties adopted "within an international organization" would have to be looked at carefully with a view to improvement or, if necessary, to deletion.[38]

GHANA

See General above.

SIERRA LEONE

45. The very wording of draft articles 11,12 and 13 emphasized the importance of the free consent of States becoming parties to a treaty; such consent was essential to the equitable application of the rule *pacta sunt servanda*. Articles 45-49 stated that fraud, corruption or coercion vitiated that free consent and rendered the treaty in question null and void *ab initio*. That point was particularly important for former colonial countries which had long been bound—some indeed were still bound—by one-sided agreements that were nothing more than "gin-bottle" agreements. Likewise, it emerged from article 25 dealing with the application of treaties to territory and article 30, which stated that a treaty did not create either obligations or rights for a third State without the latter's consent, the so-called colonial clause by which certain obligations under treaties concluded by some States were extended to territories under the rule of those States, even after those territories had become independent.[39]

38. A/C.6/SR. 969, 17th October, 1967, p. 6.

39. 911th Meeting, 1966 at pp. 62-63, para 45, A/C.6/SR. 911.

Article 15

WRITTEN COMMENTS OF GOVERNMENTS, 1967

JAPAN

The words "is obliged to refrain from acts tending to frustrate" should be deleted and be replaced by "should refrain from frustrating".[40]

Article 16

OBSERVATIONS IN THE SIXTH COMMITTEE 1967

CEYLON

Draft article 16 retained the traditional rule that a State might formulate reservations save in the exceptional circumstances enumerated in that article and Ceylon wondered whether the time had not come to invert the wording of that rule, in other words, to provide that unless a treaty expressly authorised reservations, they would be deemed prohibited. That was not, of course, intended to diminish the power of States to make reservations, but only to apply as a rule of interpretation. In general, however, Ceylon agreed with the statement of principles relating to procedures regarding reservations and their legal effects.[41]

Article 17

I. OBSERVATIONS IN THE SIXTH COMMITTEE

GHANA

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

40. A/6827 of 31st August, 1967, p. 21.
41. A/C.6/SR.969, 17th October, 1967, p. 6.

on that subject, had decided against the unanimity rule in favour of a more flexible system.[42]

II. WRITTEN COMMENTS BY GOVERNMENTS 1967

JAPAN

In order to make it clear that the rules laid down in this article are to be applied only when the treaty does not otherwise provide as to acceptance of or objections to reservations, it is appropriate to amend the article as follows :—

1. Add the following as paragraph 1 and renumber the present paragraphs accordingly.

   "Unless the treaty otherwise provides as to acceptance of or objections to reservations, the following paragraphs shall apply".

2. Delete "unless the treaty so provides" from new paragraph 2.

3. Delete "unless the treaty otherwise provides" from new paragraph 4.

4. Delete "for the purposes of paragraphs 2 and 4" from new paragraph 6.[43]

Article 18

OBSERVATIONS IN THE SIXTH COMMITTEE

SYRIA

It had noted with satisfaction that the first text proposed by the Commission of article 20, sub-paragraph 2 (b) (17th Session) restricting the effects of an objection to a reservation to relations between the reserving State and the objecting

42. 905th meeting, 1966, para 12, A/C.6/SR.905, p. 24.

43. A/6827, of 31st August, 1967.

State, already represented some advance on the practice generally followed in the past, which had extended those effects to all States parties to the treaty; it had been made sufficient for a State to object to a reservation made by another State in order for the treaty to cease to be in force not only between the objecting State and the reserving State, but between the latter and all other States parties to the treaty.

Syria, however, would have liked the effect of an objection to a reservation to be restricted even further by making it apply only to the provision or provisions to which the reservation related, all the other provisions of the treaty remaining in force as between the two States in question. There seemed to be no need to extend the effect of the objection to a reservation to all the provisions of a treaty when the dispute between the reserving State and objecting State concerned just one, or only a few, of those provisions, especially if it was possible to exclude the provisions in question without making the treaty meaningless. Syria was anxious to encourage the accession of as many States as possible to general multilateral treaties, inasmuch as they were usually concluded in the interest of international community. It had, therefore, been glad to note that the Commission had made fresh progress in that direction by adopting a revised text on that point (20th Session, Supplement No.9, chapter 11, Article 21, para 3) the wording of which was repeated in its final draft (A/6309, Article 19, para 3) and which provided that when a State objecting to a reservation agreed to consider the treaty in force between itself and the reserving State, the provisions to which the reservation related did not apply as between the two States to the extent of the reservation. Syria, however, was still not entirely satisfied with the text, inasmuch as the maintenance in force of the treaty in question was still subject to the agreement of the State objecting to the reservation. They hoped that the trend thus initiated by the

Commission would continue along the lines advocated by Syria.[44]

UNITED ARAB REPUBLIC

In elaborating its draft articles, the International Law Commission had sought to orient them towards a universal community of nations whose supreme law would be the U.N. Charter. That desire had been reflected in the Commission's decision, explained in paragraph 24 of its report (See A/6309) to adopt the formula of a draft convention rather than that of a code. The same reasons had governed its decision to abandon the traditional doctrine of unanimity in regard to reservations to treaties; the rapid expansion of the international community made it likely that the principle of unanimity wolud lose its relevance and utility.[45]

Article 19

OBSERVATIONS IN THE SIXTH COMMITTEE

SYRIA

See Article 18 above.

Article 23

OBSERVATIONS IN THE SIXTH COMMITTEE

CHINA

The principle *pacta sunt servanda*, which had long been honoured by the Chinese people, was essential to the legal order of the international community and China was gratified to see it reaffirmed in article 23. China's support of that principle, however, should not be construed as meaning that it opposed any change in the status quo; it had no desire to

44. 906th meeting, 1966, paras 22 and 23, A/C.6/SR.206, pp. 29-30.

45. 911th meeting, 1966, para 24, A/C.6/SR.911, p. 60.

perpetuate any unreasonable international situation, and in view of the swiftness with which the modern world was changing, it favoured the application of the doctrine *rebus sic stantibus* whenever and wherever the demand for equity was justified. Almost all modern jurists, however, reluctantly, admitted the doctrine's existence in international law; it served to balance the principle *pacta sunt servanda* and China considered that in article 59 the Commission had the right approach to the matter.[46]

GHANA

See General above.

MONGOLIA

It wished to stress the importance of reaffirming in draft article 23 the fundamental principle, *pacta sunt servanda*. The obligation to perform treaties in good faith had never been more essential than at present when the U.S.A. in flagrant violation of the 1954 Geneva Agreements, had unleashed against Vietnam a murderous war of aggression in which it was resorting to the wide-spread use of poison gases and other chemical products, in defiance of the Washington Treaty of 1922 and the Geneva Protocol of 1925. The fact that a country had not ratified some of those agreements in no way exempted it from complying with their provisions, for the U. N. Charter itself provided in the most general terms that States should ensure respect for the obligations arising from treaties and other sources of international law. Moreover, disregarding the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations and of the Convention on the Privileges and Immunities of the U. N., the U. S. A. had recently allowed some of its nationals to launch an attack against the Syrian mission to the U.N.[47]

46. 909th meeting, 1966, para 2, A/C.6/SR.909, p. 43.

47. 911th meeting, para 33, A/C 6/SR. 911, p. 61.

PAKISTAN

Although the principle *pacta sunt servanda* was important and essential to orderly relations among States, it could not be denied that public international law recognized the doctrine of *rebus sic stantibus*. In that connection, Pakistan wished to suggest two additions to the text. First, a new clause (c) should be added to article 57 paragraph 3 to read as follows :

> "Changes of the circumstances which have not been foreseen by the parties but which have been deliberately brought about or created by one of the parties to the treaty."

Secondly, a paragraph should be added to Article 58 to read as follows :

> "A party to a treaty may not plead impossibility of performance if such alleged impossibility is based on a change of circumstances deliberately brought about by that party. Such a party should restore the status quo and carry out its obligations under the treaty."[48]

SIERRA LEONE

The wording of draft articles 11, 12 and 13 emphasized the importance of the free consent of States becoming parties to a treaty; such consent was essential to the equitable application of the rule of *pacta sunt servanda*.[49]

TANZANIA

The Conference of Plenipotentiaries would have to decide whether to spell out the more prominent concepts invoked by the Commission e. g., *pacta sunt servanda*, good faith and peremptory norms of international law, or leave that content to be worked out in State practice and the jurisprudence of international tribunals. In so doing it would have

48. 911th meeting, para 17, A/C.6/SR.911, p. 59.
49. 911th meeting, para 45 of A/C.6/SR.911, p. 62.

to strike the balance between over-elaboration and vagueness. Further analysis might reveal that some concepts, such as the "good faith" clause, were redundant and even harmful. In its view those concepts might be a subject of special study.

With regard to the matter of unequal treaties, Tanzania which had suffered from colonialist exploitation, contended that the principle *pacta sunt servanda* should never be used to oppress new States. That was in conformity with the policy set forth in the letter of 9th December 1961 from President Julius Nyerere to the Secretary General of the United Nations (Official Records of the Security Council, 16th year, supplements for October, November and December 1961, document S/5018).[50]

Article 25

OBSERVATIONS IN THE SIXTH COMMITTEE

ALGERIA

34. With regard to Article 25, they regretted that the I.L.C. had made the treaties applicable to the entire territory of the signatory parties, since that might result in the application to subject peoples of the clauses and effects of treaties to which they had not consented. On attaining sovereignty, those people would be compelled to denounce such treaties, a consequence that followed, moreover, from article 30, which provided that a treaty did not create either obligations or rights for a third State without its consent.[51]

MALI

40. With regard to the application of treaties to the entire territory of each party (draft article 25), Mali wished to draw attention to the case of colonial Powers that forced

50. 912th meeting, 1966, paragraphs 46 and 47 of A/C.6/SR.912, p. 70.
51. 908th Meeting, 1966, paragraph 34 of A/C.6/SR. 906, pp. 41-42.

subject peoples to sign treaties designed to defend the selfish interests of the metropolitan country. The colonized peoples would declare those treaties void as soon as they attained their independence, and they hoped it would be possible to achieve general and complete decolonization before the conference of plenipotentiaries which had been convened.[52]

SIERRA LEONE

45. It emerged from article 25, dealing with the application of treaties to territory, and article 30 which stated that a treaty did not create either obligations or rights for a third State without the latter's consent, that the I.L.C. had repudiated the so-called colonial clause by which certain obligations under treaties concluded by some States were extended even after those territories had become independent.[53]

Article 26

OBSERVATIONS IN THE SIXTH COMMITTEE

INDIA

4. It was a source of satisfaction to India that articles 26, 49 and 50 of the draft together with the commentaries on them, proclaimed the pre-eminence of the Charter in relation to the law of treaties, in view of the important part the U.N. could play in promoting the future development of world order.[54]

UNITED ARAB REPUBLIC

25. The underlying thought, as well as the purpose of the draft articles was to adapt the traditional rules of international law to the U.N. Charter and to the fundamental principles and modern trends that it enshrined. The primacy

52. 914th meeting, 1966, paragraph 40 of A/C.6/SR 914, p. 83.
53. 911th meeting, 1966, paragraph 45 of A/C.6/SR 911, p. 63.
54. 906th meeting, 1966, paragraph 4 of A/C. 6/SR.906, p. 27.

of the Charter was particularly apparent in the provisions of articles 26, 42 and 50 and in those of article 62, paragraph 3 of the draft. That primacy was self-evident, since the Charter, the product of the most profound and most durable historical development of modern times, gave practical form to the fundamental principles of general and universal international law, which voided those rules of international law which were incompatible with them. Some of those principles were explicitly stated in the Charter; others were implicit, but essentially present. Some had already been recognized in traditional law and had been given wider scope in the Charter; others might be regarded as entirely new. [55]

Article 27

OBSERVATIONS IN THE SIXTH COMMITTEE

UNITED ARAB REPUBLIC

27. The I.L.C. had conscientiously taken account of the observations offered by various Governments. That, for instance, had been its approach to the matter of the interpretation of treaties, when it had reversed its previous position of referring to the rules of law in effect at the time of the conclusion of the treaty and had introduced a broader application of the so-called inter-temporal law [article 27, para 3(C)][56]

Article 30

I. OBSERVATIONS IN THE SIXTH COMMITTEE

ALGERIA) See Article 25 above.
MALI)

NIGERIA See General above.

55. 911th meeting, 1966, paragraph 25 of A/C.6/SR.911, p. 60.
56. 911th meeting, A/C.6/SR. 911, para, 27, p. 60.

SIERRA LEONE See Article 25 above.

TUNISIA See General above.

UGANDA See General above.

UNITED REPUBLIC

OF TANZANIA See General above.

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN

The Government of Afghanistan fully supports the principles underlying articles 30, 31 and 32 in regard to the rights and obligations of third States, with the understanding that these rules are based on "*pacta tertiis nec nocent nec prosunt*" and thus agreements neither impose obligations nor confer rights upon third parties and that a right for a third State cannot arise from a treaty which makes no provision for such a right.[57]

Article 31

WRITTEN COMMENTS OF GOVERNMENTS, 1967

AFGHANISTAN See Article 30 above.

Article 32

WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN See Article 30 above.

Article 34

OBSERVATIONS IN THE SIXTH COMMITTEE

SYRIA

24. With regard to the question of the rules in a treaty becoming generally binding through international custom

57. A/6827/Add. 1 of 27th September, 1967.

which the Commission had dealt with in article 34 of its final draft, his delegation had pointed out at the twentieth session of the General Assembly that the Commission, in its commentary on article 34, had stressed the fact that those rules did not become binding on third States unless they were recognized by those States as rules of customary law (see A/6309). In their view, that was an essential point that ought to be expressly mentioned in the text of article 34.[58]

Article 38

WRITTEN COMMENTS OF GOVERNMENTS 1967

JAPAN

Although there can possibly be cases where a treaty is modified by subsequent practice, the Government of Japan cannot agree to the inclusion of the explicit provision on this matter in the draft articles because of its constitutional problems. It is therefore suggested that this article be deleted.[59]

Article 40

WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN

The Government of Afghanistan notes with satisfaction that articles 40, 47 and 49 have laid down the principles of justice and declare that international treaties concluded through personal coercion of representatives of a State or through coercion of a State by the threat or use of force are null and void.

It is understood that the act of coercion too by a State against another State or its representative, in order to procure

58. 906th meeting, 1966, paragraph 24, A/C. 6/SR.906, p. 30,

59. A/6827 of 31st August, 1967, p. 22.

the signature, ratification, acceptance or approval of a treaty will unquestionably nullify that treaty. In the view of the Government of Afghanistan the draft Article 49 should be broadened in order that coercion as defined in this article should include not only "the threat or use of force" but also other pressures such as economic pressure including economic blockade.[60]

Article 41

WRITTEN COMMENTS OF GOVERNMENTS 1967

JAPAN

Since articles 46 and 47 should be deleted as proposed below (vide articles 46 and 47) paragraph 4 of article 41 for which there remains no reason for existence, should also be deleted.[61]

Article 43

I. WRITTEN COMMENTS BY GOVERNMENTS 1967

JAPAN

It is a matter for the State concerned to avoid, in concluding treaties, any violation of its internal law regarding competence to conclude them. Therefore, the phrase beginning with "unless" should be deleted.[62]

II. COMMENTS IN THE SIXTH COMMITTEE 1967

CEYLON

Some of the draft articles dealt with very complex questions and, as drafted, would leave too much uncertainty

60. A/6827/Add. 1 of 27th September, 1967, p. 3.
61. A/6827 of 31st August, 1967, p. 22.
62. A/6827 of 31st August, 1967, p. 22.

to gain general acceptance. In the case of article 43, which referred to the "manifest" violation of the internal law of a State, could well be asked to whom the violation should be manifest, and at what point in time, and whether the violation could be remedied, for example, through ratification by the State concerned.[63]

Article 45

OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN

3. The draft articles invoked certain juridical notions, such as that of peremptory norms and that of fundamental change of circumstances; and their provisions referred to ideas, such as the object and purpose of treaties, fraud, error and coercion. But some of those ideas, although the draft articles invested them with important legal effects, were not defined with the necessary precision. Also, in connexion with the settlement of conflicts which might be caused by the application or interpretation of those provisions, the text went no further than to state that the parties should seek a solution by the means indicated in Article 33 of the U.N. Charter, which would not appear to be enough to ensure objective solution. The provisions concerning an aggressor State were similarly inadequate. Japan, therefore, would prefer to remove from the draft any ideas or provisions that might upset the balance of the text as a whole or introduce an element of uncertainty. In that connection they drew attention to their comments (A/6309/Add. 1) and to the observations they made at the 844th meeting.[64]

Article 46

I. OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN See Article 45.

63. A/C. 6/SR.969, 17th October, 1966, p. 6.
64. 911th meeting, 1966, paragraph 3, A/C.6/SR.911, p. 57.

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

JAPAN

As the commentary to this article also admits, fraud lacks both the theory and precedents in international law and, even in the field of domestic laws of various countries the concept of fraud (or those similar to it) is not the same. Such being the case, it is likely to disturb international legal order to provide for fraud in an international convention before any international convention concerning it develops and constitutes a well established rule of international law. This article should, therefore, be deleted.[65]

Article 47

I. OBSERVATIONS IN THE SIXTH COMMITTEE

IRAQ

7. They welcomed articles 47, 48 and 49 on defective consent but regretted that the draft articles did not make it clear that economic and political pressures also constituted coercion and, as such, vitiated consent, inasmuch as they were currently as frequent and as dangerous as the threat or use of force.[66]

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN See Article 40 above.

JAPAN

The concept of corruption is not established in international law. This article should also be deleted for the same reason as the one for article 46.[67]

65. A/6827 of 31st August, 1967, p. 22.
66. 913th meeting, paragraph 7, A/C. 6/SR. 913, p. 73.
67. A/6827 of 31st August, 1967, p. 73.

Article 48

OBSERVATIONS IN THE SIXTH COMMITTEE

IRAQ See Article 47.

JAPAN See Article 45.

Article 49

1. OBSERVATIONS IN THE SIXTH COMMITTEE

ALGERIA

33. It would base its position at the diplomatic conference on the law of treaties on two main principles—the strict equality of States and the free will of States in the conclusion of treaties. Algeria considered that some of the articles required further attention and should be given greater substance. In Article 49, for example, rather than the words "the threat or use of force", it would have preferred a categorical and imperative formula excluding any form of coercion. Other forms of pressure, such as economic forms, should be mentioned as covered by the idea of coercion. Unequal treaties, which were a source of conflict and inherently invalid, could not serve the cause of peace and progress. As they conflicted with a peremptory rule of general international law they should be expressly defined as void. Equality of parties to treaties was, after all, a corollary of the sovereign equality of States. [68]

CHINA

3. It noted with interest the inclusion in article 49 of the principle that a treaty was void if its conclusion had been procured by the threat or use of force in violation of the principles of the Charter of the U.N. That idea, which was comparatively new, was quite different from the traditional

68. 908th meeting, paragraph 33, A/C. 6/SR.908, p. 41.

concept. China had not reached any decision on that article but would be only too happy to see would-be aggressors deprived of any advantage acquired through the illegal threat or use of force. [69]

IRAQ — See Article 47.

JAPAN — See Article 45.

MALI

It agreed with Algeria's suggestion that in draft article 49 the concept of the threat or use of force should be widened to include economic and other forms of pressure.[70]

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN — See Article 40 above.

Article 50

I. OBSERVATIONS IN THE SIXTH COMMITTEE 1966

ALGERIA — See Article 49.

CEYLON — See General above.

DAHOMEY — See General above.

INDIA — See Article 26.

IRAQ

7. It believed in the existence of certain overriding rules which were essential to safeguard the interests of the international community. In that connexion, the Commission's draft articles 50 and 61 were particularly important because they codified existing principles that were vital to a harmonious legal order.[71]

69. 909th meeting, paragraph 3, A/C.6/SR.909, p. 43.
70. 914th meeting, paragraph 39, A/C. 6/SR.913, p. 83.
71. 913th meeting, paragraph 7, A/C. 6/SR.913, p. 73.

JAPAN — See Article 45.

MONGOLIA — See Article 49.

PAKISTAN

The principles of the U.N. Charter prohibiting the use of force constituted a conspicuous example of the rule *jus-cogens*. As other members of the Sixth Committee had also suggested, the following examples might be given : (a) a treaty contemplating an unlawful use of force contrary to the principles of the Charter ; (b) a treaty contemplating or conniving at the commission of such acts as trade in slaves, piracy or genocide ; (c) treaties violating human rights, the principle of self-determination and so forth.[72]

PHILIPPINES

23. The draft articles on the law of treaties were progressive and challenging. That applied particularly to articles 50, 61 and 67 and by accepting the principles underlying those articles, the conference participants would demonstrate their profound desire that the rule of law should govern relations among sovereign States and their faith in the development of international law. The I.L.C. had refrained from giving examples of peremptory norms of international law in its draft articles ; but the conference participants could discuss that thought-provoking question at the appropriate time.[73]

TUNISIA — See General above.

TURKEY — See General above and Article 59 below.

UNITED REPUBLIC OF TANZANIA

See Article 23 above.

72. 911th meeting, paragraph 18, A/C. 6/SR 911, p. 59.
73. 913th meeting, 1966, paragraph 23, A/C.6/SR 913, p. 76.

MONGOLIA

35. Draft articles 49 and 50, whose main effect was to declare unequal treaties null and void, were particularly important, because their provisions recognized the collapse of the system of colonial law and should enable countries recently liberated from colonialism to develop in independence. That was a matter of particular concern to Mongolia, for the 1921 Agreement on the Establishment of Friendly Relations between Mongolia and Soviet Russia, the forty-fifth anniversary of which would be soon celebrated and under which the U.S.S.R. had renounced the privileges that Czarist Russia had acquired over Mongolia by force, had been the first treaty between a great and a small Power in which the rights of the parties and their mutual independence had been respected, thus opening a new era in inter-State relations. [74]

SIERRA LEONE

45. Articles 45-49 stated that fraud, error, corruption or coercion vitiated free consent and rendered the treaty in question null and void *ab initio*. That point was particularly important for former colonial countries which had long been bound—some indeed were still bound—by one-sided agreements that were nothing more than "gin-bottle" agreements. [75]

UNITED ARAB REPUBLIC

27. On the subject of the effect of coercion by the use of force (article 49), the Commission had dealt with a very controversial question by dismissing, in its commentary, the principle of the retroactivity of the provisions set out. Yet in that commentary it also referred to the retroactive effect of certain norms, so that implicitly it contradicted itself.

74. 911th meeting, paragraph 35, A/C. 6/SR.911, p. 62
75. 911th meeting, paragraph 45, A/C. 6/SR.911, pp. 61-62.

The same remark applied, incidentally, to the retroactivity of the provisions of article 50 (*jus cogens*).[76]

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN

The Government of Afghanistan shares the view of the International Law Commission that there exist peremptory norms of international law called *jus cogens*.

The States must respect these norms of *jus cogens*, such as the right of self-determination ; generally treaties should not be incompatible with these norms, and the States who are taking part in creating these norms as international order are obliged to respect them. [77]

III. COMMENTS IN THE SIXTH COMMITTEE 1967

IRAQ

There was a basic misunderstanding over the I.L.C.'s approach to the question of rules forming part of *jus cogens*, The I.L.C. had been asked to prepare a draft convention on the law of treaties, and one of its tasks had been to study whether it would be possible for States to conclude treaties which did not conflict with certain rules within the system of international law. It had not been asked to express an opinion on the substance of the rules of *jus cogens*, but only to determine the implications of the existence of those rules for the law of treaties.

In drawing up the provisions of the draft articles having reference to *jus cogens*, the I.L.C. had drawn the inevitable conclusions from the existence of such peremptory rules, and had given an affirmative answer to the question whether there were rules of international law from which States could not

76. 911th meeting, paragraph 27, A/C.6/SR 911, pp. 60-61.
77. A/6827/Add. 1 of 27th September, 1967.

derogate, even by a Convention. It was an undoubted fact that in international affairs there were rules of such importance that any derogation from them was impossible ; only two examples need be mentioned in the rule prohibiting slavery and that outlawing the use of force. The I.L.C. had recognized that fact and had duly taken it into account.

On the other hand, the Commission had not been required, and would not have been able, to express an opinion on the substance of the rules of *jus cogens*, still less to seek a criterion for distinguishing between a theoretical point of general international law and had no place on the law of treaties. [78]

CEYLON

Some of the draft articles dealt with very complex questions and, as drafted, would leave too much uncertainty to gain general acceptance. With regard to article 50, the international community was insufficiently developed for the concept of peremptory norms to be used without further clarification. As such clarification in the body of the Convention was no doubt now impossible, it would seem necessary to establish a procedure whereby, in any given case, it would be determined whether a peremptory norm existed. In any event, ascertainment, for the purpose of draft article 61, of the establishment of such a norm was never likely to be a single matter. [79]

Article 55

OBSERVATIONS IN THE SIXTH COMMITTEE

GHANA

13. Article 55 was a bold but perhaps dangerous step

78. A/C. 6/SR 697, 16th October, 1967, pp. 5-6.
79. A/C. 6/SR 969, 17th October, 1969, p. 6.

on the part of the Commission, as it did not seem possible to rely on the practice of States on that matter. [80]

Article 57

I. OBSERVATIONS IN THE SIXTH COMMITTEE 1966

PAKISTAN See Article 23 above.

II. COMMENTS IN THE SIXTH COMMITTEE 1967

CEYLON

Some of the draft articles dealt with very complex questions and, as drafted would leave too much uncertainty to gain general acceptance. In connexion with article 57, it would often be difficult to determine whether the breach of treaty was "material" or not. [81]

Article 58

OBSERVATIONS IN THE SIXTH COMMITTEE

PAKISTAN See Article 23 above.

Article 59

I. OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN See Article 45 above.

PAKISTAN See Article 23 above.

TURKEY

16. It noted that new conceptions, such as were to be found in the more developed systems of municipal law, had been introduced into the draft ; that was a desirable step

80. 905th meeting, 1966, paragraph 13, A/C.6/SR.805 p. 24.
81. A/C.6/SR. 969, 17th October, 1967, p. 6.

and it welcomed it. However, to ensure the continuity and stability of a given juridical order without preventing its possible development no new element should be introduced unless it was accompanied by its counterpart. In that connexion they referred to articles 50 and 59. In both cases, the draft provided, in article 62, paragraph 3, that if objection was raised the parties should seek a solution through the means indicated in Article 33 of the Charter, but it did not impose any compulsory judicial procedure. The result was an obvious lack of balance and Turkey found it difficult to accept the solution which the Commission had adopted in the matter. [82]

CEYLON

Some of the draft articles dealt with very complex questions and, as drafted, would leave too much uncertainty to gain general acceptance. The idea of a "fundamental change of circumstances" referred to in article 59 was bound to present difficulties of interpretation. [83]

II. WRITTEN COMMENTS OF GOVERNMENTS 1967

AFGHANISTAN

The Government of Afghanistan supports the formulation of this article, with the understanding that in conformity with *rebus sic stantibus*, any treaty may become inapplicable through a fundamental change of circumstances. The Government of Afghanistan fully agrees that a treaty, when concluded between the parties, has a definite object, and when the purposes, object and circumstances are changed the treaty certainly becomes inapplicable. [84]

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82. 907th Meeting, 1966, paragraph 16, A/C.6/SR.907, p. 33.

83. A/C.6/SR.969, 17th October, 1967, p. 6.

84. A/6827/Add. 1 of 27th September, 1967, p. 4.

Article 61

OBSERVATIONS IN THE SIXTH COMMITTEE

CEYLON : See General above.

IRAQ : See Article 50 above.

PHILIPPINES : See Article 50 above.

Article 62

I. OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN : See Article 45 above.

TURKEY : See Article 59 above.

UNITED ARAB REPUBLIC : See Article 26 above.

CEYLON

It had no doubt that the Commission had been concerned about difficulties of interpretation, as could be seen from draft article 62 and it understood the reasons—set forth in paragraph 3 of the commentary to article 62—why the Commission was reluctant to subject the application of the articles to the compulsory jurisdiction of the International Court of Justice. But draft article 62, which merely cited the means indicated in Article 33 of the Charter of the United Nations, did not solve the problem. Ceylon would be willing to examine the possibility of submitting disputes to the Court, even if that was not realistic in the present state of international practice. While, as pointed out in the commentary, it was true that the Vienna Convention did not provide for recourse to that procedure, there were several recent conventions, notably the International Convention on the Elimination of all Forms of Racial Discrimination, which did subject disputes arising under them to the compulsory jurisdiction of the Court. If agreement could not be reached on such a procedure, perhaps an optional protocol containing similar provisions could be considered. [85]

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85. A/C.6/SR.969, 17th October 1967, p. 7.

II. WRITTEN COMMENTS OF GOVERNMENTS, 1967

JAPAN

Not a few provisions of the draft articles contain, as is admitted in the commentary by the International Law Commission, certain concepts which may cause disputes in their application. For example "the object and purpose of the treaty in articles 16, 17, 27, 37, 55 and 57", a peremptory norm of international law "in articles 50 and 61" and "an essential basis" and "radically to transform" in article 59.

It is desirable, therefore, to designate or establish a body (taking advantage of article 29 of the Statute of the International Court of Justice, to cite an example) which is invested with standing competence to pass objective and purely legal judgements upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means. Article 62, paragraph 3, seems to be insufficient to secure such legal judgements. [86]

Article 65

WRITTEN COMMENTS OF GOVERNMENTS, 1967

JAPAN

Since articles 46 and 47 should be deleted, there is no necessity for referring to them, in this paragraph. "46, 47" should, therefore, be deleted. [87]

Article 67

OBSERVATIONS IN THE SIXTH COMMITTEE

PHILIPPINES : See Article 50 above.

86. A/6827 of 31st August 1967, p. 20 read with A/6827/Corr. 1, of 6th October 1967.

87. A/6827 of 31st August 1967, p. 22.

Article 69

OBSERVATIONS IN THE SIXTH COMMITTEE

AFGHANISTAN

9. It hoped that at its next session the I. L. C. would give priority to the question of the succession of States and Governments which was very important to all States, particularly the newly independent ones. [88]

ALGERIA

They hoped that the question of State Succession would be included in the agenda for the next session. [89]

CAMEROON : See General above.

CONGO : See General above.

DAHOMEY : See General above.

IRAN : See General above.

IRAQ : See General above.

KENYA

It hoped that the Commission could examine without delay the question of the succession of States and Governments which was of particular importance to Kenya and to all other States that had recently achieved independence. [90]

KUWAIT : See General above.

LIBERIA : See General above.

MALI : See General above.

NIGERIA : See General above.

PAKISTAN : See General above.

SIERRA LEONE : See General above

88. 917th Meeting, 1966, paragraph 9, A/C.6/SR.917, p. 98.

89. 908th Meeting, 1966, paragraph 35, A/C.6/SR.908, p. 42.

90. 913th Meeting, 1966, paragraph 33, A/C.6/SR. 913, p. 77.

SUDAN

30. Under the rules of international law prevailing before the United Nations era the consent of dependent countries, which were to become new States in the future, could not be accepted. Those countries had found themselves committed to treaties and conventions concluded without regard to their will or interests. They believed that the draft articles or additional articles should provide means of wiping out all vestiges of the treaties imposed upon the new States before independence and should create safeguards to prevent their recurrence. Otherwise a country whose economy had been crippled by the former dominating power might continue to be bound by such treaties to the detriment of its interests and development. The problem of State Succession was thus of crucial importance, as was made clear by the report (See A/6309) before the Committee. They hoped that a statement of the subject would be added to the draft articles in keeping with the request of several delegations so as to protect the rights of the currently dependent peoples. [91]

TUNISIA : See General above.

TURKEY : See General above.

UGANDA : See General above.

UNITED ARAB REPUBLIC : See General above.

UNITED REPUBLIC OF TANZANIA : See General above.

ZAMBIA : See General above.

Article 70

OBSERVATIONS IN THE SIXTH COMMITTEE

JAPAN : See Article 45 above.

91. 913th Meeting, 1966, paragraph 31, A/C.6/SR.913, p. 77.

(IV) DISCUSSIONS AT THE EIGHTH SESSION OF THE COMMITTEE HELD IN BANGKOK ON THE INTERNATIONAL LAW COMMISSION'S DRAFT ARTICLES ON THE LAW OF TREATIES

The President of the International Law Commission (H. E. Dr. M. K. Yasseen) :

Mr. President,

First of all, I should like to thank you and the other members of the Asian-African Legal Consultative Committee, both on behalf of the International Law Commission and on my own behalf, for the warm welcome I have received. I take it as a tribute to the importance which is attached, both by your Committee and by the International Law Commission, to the regular contacts which have been established between the two bodies.

These contacts and the co-operation which they aim to develop can do much towards promoting the codification and progressive development of International Law, which is the purpose of the International Law Commission, and they also serve the interests of the Governments participating in the Asian-African Legal Consultative Committee. One of the three functions of the Committee, as stated in article 3 of its Statutes, is to study the items on the agenda of the International Law Commission and to take appropriate steps to communicate its views to the Commission. To this provision the Committee at its Fifth Meeting at Rangoon in 1962 added the responsibility of examining the reports of the Commission and of making recommendations concerning them to the Governments of the participating countries. The work of codification

and progressive development in the framework of the United Nations must take full account of the interests and positions of States in all parts of the world, including those of the States in Asia and Africa, which constitute more than half of the membership of the United Nations. The study of the Commission's drafts by this Committee will promote wider knowledge and understanding of them, and will enable Governments of Asia and Africa to take their positions in the light of that knowledge and understanding. The Committee, which is composed of experts in international law, can thus assist Governments in order to enable them to point out any gaps which may exist in the Commission's drafts, and also any portions of them which may be inconsistent with the interests and positions of those Governments.

The role of the Asian-African Legal Consultative Committee in this regard takes on added importance in view of the results of the eighteenth session of the International Law Commission, which took place in Geneva from 4 May to 19 July 1966. At that session the Commission finally adopted a set of seventy-five draft articles on the Law of Treaties, and will submit them to the United Nations General Assembly at its next session. The Law of Treaties is a topic on which the Commission has been working since its first session in 1949, and to which it has devoted about twice as many meetings as to any other topic. The Law of Treaties is not only the most difficult topic which the Commission has ever dealt with, but also the most important, in view of the increasing tendency for more areas of international relations to be governed by treaty law rather than by customary law.

Furthermore, the Commission has unanimously recommended that the General Assembly should convoke an international conference of plenipotentiaries to study the Commission's draft articles on the Law of Treaties and to conclude a convention on the subject. The Commission has

explained in its reports the reasons that led it to recommend the conclusion of a convention rather than the drawing up of an expository code. These reasons were as follows :

> "First, an expository code, however well formulated, cannot in the nature of things be so effective as a convention for consolidating the law; and the consolidation of the Law of Treaties is of particular importance at the present time when so many new States have recently become members of the international community. Secondly, the codification of the Law of Treaties through a multilateral convention would give all the new States the opportunity to participate directly in the formulation of the law if they so wished; and their participation in the work of codification appears to the Commission to be extremely desirable in order that the Law of Treaties may be placed upon the widest and most secure foundations."

The effort to codify and progressively develop the Law of Treaties presents an important challenge and opportunity to Governments, particularly to those of newly independent States which are numerous in Asia and Africa and which can thereby participate in the clarification and partial reshaping of a major branch of international law. If this effort succeeds, international treaty law will be placed upon a new and firmer footing. On the other hand, should it fail, not only will States be left subject to an ancient and obscure customary law which many of them had no part in creating, but also the whole effort at codification and progressive development of international law, with all its opportunities for adapting the law to the needs of the modern world, will have suffered a severe reverse.

I wish, therefore, to make an appeal to the Asian-African Legal Consultative Committee to carry out as soon as possible

a thorough study of the Commission's draft articles on the Law of Treaties with the aim of giving the Governments the benefit of its views, and thereby assisting them to formulate their positions in the General Assembly and in any conference which it may decide to convoke. By doing so the Committee will be rendering an important service to its participating Governments, to the cause of the codification and progressive development of international law, and to the International Law Commission.

CEYLON

In regard to the Law of Treaties, we would first of all like to refer to a matter on which the Commission has not yet taken a final decision, namely, the question of *participation in a general multilateral treaty* and the question of opening a treaty to the participation of additional States.

According to traditional rules of international law, States which have not participated in the negotiating of a general multilateral treaty can only become parties to the treaty by acceding to it under the provisions of the treaty itself. Unless all the negotiating States consent, new States cannot become parties to the treaty. In the draft Articles proposed by the Commission (Articles 8 and 9 of the draft of its Special Repporteur, Sir Humphrey Waldock) it is suggested as a general rule that there is a right of accession to general multilateral treaties *unless* "otherwise provided by the terms of the treaty itself or by the established rules of an international organization". We think that this measure of progressive development is to be welcomed and that the newly independent States will endorse the view that general multilateral treaties should be open to participation on as wide a basis as possible. Likewise we favour the view reflected in Article 9 that a multilateral treaty should be open to States "other than those to which it was originally open". Article 9, paragraph 1, provides for them to be open to additional States either by

a two-thirds majority of the States which drew up the treaty or by the decision of the competent organ of an international organisation.

Another question which has been controversial and on which the views of the Committee were invited by the distinguished representative of the Commission at the last session at Baghdad was the the question of *reservations* to treaties. The draft Articles of the Commission (Articles 18 to 22) certainly do recognise the paramountcy of consent by providing that the formulation of reservations is still dependent on the degree of freedom granted by the very terms of the treaty as determined by the negotiating States. But in another respect the draft Articles do represent a departure from the *traditional view* which was that in the absence of express provision permitting reservations in a multilateral treaty, a State making reservations can be regarded as a party *only* if no objection was made by the other contracting States. The present draft Articles enable a State making a reservation to be a party to the Convention despite objections made, subject to the qualification that the convention is deemed not to be in force between the reserving State and the objecting State. There is a definite advantage in this system insofar as it facilitates maximum participation in a multilateral Convention while at the same time safeguarding the sovereign rights of other States who do not wish to be bound by such reservations. On the other hand, it has been pointed out that if this provision leads to a multiplicity of reservations being made, it may be a very difficult matter at any given time to ascertain from the time of the Convention and the diverse reservations what precisely thereto have been agreed upon. Nevertheless we favour the more liberal position taken by the Commission in this matter.

In conclusion, we welcome the decision of the Intertional Law Commission to propose for the conclusion of a multilateral Convention on the Law of Treaties in preference

to an expositary code for the reason that it would enable the entire International Community to participate in the development of the Law of Treaties.

GHANA

Mr. President, one cannot help but congratulate the International Law Commission on its work on the Law of Treaties. Hitherto, the principles governing treaty making were not properly defined. Hitherto, Big Powers had actually used their power to achieve what in the legal parlance would be regarded as no more than an unequal treaty. Why did we have unequal treaties, Mr. President? The only explanation is that, one was at a point of advantage and another at a point of disadvantage. Now, if you were to have clear cut principles governing the subject of treaties, I think, the gap between the developed and developing countries, as far as the law is concerned, would be closed and disappear completely. It is in the light of this that we feel strongly that though some time has been taken by the International Law Commission in achieving this purpose, yet, we cannot strictly say that the time has been wasted, because it is better to spend some time to achieve a concrete object than to rush through it and get nowhere. Mr. President, I need not elaborate on the importance of this subject. All I can say is that, let us give encouragement to the International Law Commission through our representatives in the United Nations because if the principles drawn up by the Commission are actually put before the United Nations and for political reasons, though not legal reasons, they are thrown over-board, it would really be a setback to the development of international law which we all yearn for. We all desire that at least there should be some sort of crystallization and certainty in the principles of international law. My delegation would like to thank Dr. Yasseen for giving us an insight into the work done by the International Law Commission on the Law of Treaties and request our Governments to give serious consideration to the adoption of the prospective convention when the time comes. Thank you.

INDIA

Mr. President, we deeply appreciate the lucid statement made by the Chairman of the International Law Commission. We realize that in achieving what they have done in the matter of compiling articles relating to the very important branch of international law, the Law of Treaties, the Commission has after a long series of labours undoubtedly reached an important landmark. We have had not the opportunity to seeing these articles yet and studying them, and it is necessary that before we offer any observations, we should have a good acquaintance with them.

I therefore suggest that this subject should be looked into by our Secretary, and the articles should be examined particularly from the point of view of Asian and African States so that our Governments may have the benefit of this Committee's views on the articles. It is a matter of satisfaction that the International Law Commission has taken the view that this is a matter more fit for a convention rather than codification. As I have said already, we welcome the success of the labours of the International Law Commission in this field, and we await the study which our Secretary will undoubtedly make of these articles. Thank you.

IRAQ

The International Law Commission has achieved so many things with satisfaction, and we thank the Commission for these achievements because it was necessary to have these achievements for the benefit of the United Nations and for its States Members. As Dr. Yasseen pointed out, we should study the Law of Treatics, and study carefully and give our opinion to our Governments. I think, it is a good idea to have this subject on the agenda of our Committee, to study it carefully,

because we need to give our opinion and the opinion of the Committee to our Governments. In general, we have no objection on the draft Articles on the Law of Treaties, but it is necessary for our Governments as Asian and African countries to have one opinion on these questions. Concerning the law of multilateral treaties, our opinion in this matter has been concluded a long time ago. They should be revised in accordance with the developments which have taken place in the field of International Law and in other technical fields, and they should be open for accession for all the States without distinction. I mean these should be universal, to be participated or acceded to by all the States, not only the Member States of the United Nations, but all the States of the world. Thank you.

JAPAN

Mr. President, I would like at first to thank the President of the International Law Commission, Dr. Yasseen, for his clear statement and a brief summary he made on the Law of Treaties. I am quite in agreement with him that the Law of Treaties forms a very important part of International Law. Now that the Commission has completed the drafting of 75 Articles on this subject, we must in the name of the Committee pay our tribute to the International Law Commission for the laborious work undertaken by it extending over a very long space of time. I have not had the pleasure to have the final text of these Articles in hand, therefore I could not make up my mind on the merit of these Articles. But now that the task of drafting by the International Law Commission has been completed, it is now up to our Governments to study these articles and define their position *vis-a-vis* these articles for the coming diplomatic conference. The task of the International Law Commission is of the nature of progressive development and codification of international law. We know that the draft prepared by the Commission contains many propositions of the nature of

progressive development of international law which, in my personal view, require careful study on the part of the Governments which would be bound in case these draft articles be formulated in the form of a universal convention. The Governments will be bound legally in their conduct in the future. Therefore, these aspects of progressive development of international law naturally require careful and serious consideration on the side of Governments. But we honestly hope that the coming diplomatic conference will succeed in drawing up a universal convention on the Law of Treaties because it is absolutely necessary to stabilize Treaty Order in a society of nations of today. And to my mind, I think the basic foundation of so-called Treaty Order among nations is based on the principles of free consent or free wills and good faith. Thank you.

PAKISTAN

Mr. President; all of us feel obliged to Dr. Yasseen, the Distinguished Chairman of the International Law Commission, for his very kind gesture in asking us to assist our respective Governments to take effective steps for the study of this important branch of international law. The effort to codify and develop the Law of treaties is undoubtedly an important challenge and an opportunity to the newly independent States in Asia and Africa. Since these States are in a majority in the United Nations, all of us fully realize that this Committee should make persistent efforts in the re-shaping of this important branch of international law. We consider in these circumstances that we should take up a study of the Commission's Draft article by article and convey to our Governments our considered views so as to enable them to formulate their position in the General Assembly or any of the conferences that may be convened for this purpose. I don't think that at this stage it is appropriate to express any opinion on the draft articles. Thank you, Sir.

THAILAND

Mr. President, the Delegation of Thailand has listened with great interest to the statement made by the learned and respected Chairman of the International Law Commission. The Delegation of Thailand would like to associate itself with other Delegations in expressing its gratitude for the work done by the International Law Commission. My Delegation would like also to express our appreciation for the report prepared by Dr. Hassan Zakaria, who attended the seventeenth session of the International Law Commission in Geneva in the capacity of an observer on behalf of our Committee. My Delegation also takes note with great satisfaction of the attitude of the International Law Commission towards our Committee. It is our belief that closer association and cooperation between the two legal bodies would contribute and facilitate the progressive development of international law as well as its codification. The presence amongst us at this session of Dr. Yasseen, the Chairman of the International Law Commission, is a matter of great honour for us and in particular for the Delegation of Thailand. My Delegation is also happy to learn that the International Law Commission has given due attention to the activities of our Committee. With regard to the subjects discussed by the International Law Commission at its seventeenth and eighteenth Sessions, my Delegation fully appreciates its deliberations which should be considered as a contribution to the promotion of progressive development of international law. The works accomplished by the International Law Commission are of high academic value, and prove once again that the Commission has continued its object progressively. My Delegation would not for the time being give detailed comments on the subjects discussed by the Commission but we reserve our right to deal with those subjects in the near future when the Committee comes to consider all those subjects in detail.

(V) PRELIMINARY REPORT SUBMITTED BY THE COMMITTEE'S SPECIAL RAPPORTEUR, DR. SOMPONG SUCHARITKUL (THAILAND)

The present report is submitted at the request of the Asian-African Legal Consultative Committee made at its last session in Bangkok, 1966. The commentator in this case has not yet had the benefit of any preliminary views of Governments which are represented on the Committee as envisaged in the original request. However, since the coming session is approaching and there is not much time left for renewed consultations before the next session, which according to latest information will now be held in New Delhi in the second half of December 1970, accordingly, the present rapporteur has no alternative but to collect and assess whatever information he can gather and try to present some pertinent observations which might be of relevant use to the deliberation of the subject at New Delhi.

In view of the fundamental importance of the Law of Treaties to Asian and African countries, which constitutes the most significant part of international law governing the relations among States, its codification and progressive development should be a matter of primary concern to all Asian and African nations. It is of vital importance that Asia and Africa should present a more coherent attitude than hitherto experienced. The voice of Asia and Africa would only be heard and heeded if their concerted views are formulated and expressed in a consistent manner with the same sense of mission and direction. Without solidarity or similarity of approach, their uncoordinated voices will be drowned despite the existence of their common interest in this matter.

The Draft Articles form part of an item which is currently receiving attention in the Sixth Committee of the General Assembly. The General Debate on the subject has been rather revealing. The larger Powers are reluctant to agree to any progress which has already been achieved in the development of the law. The poorer and weaker nations, on the other hand, are not always spontaneous in exercising their discretion. Consequently, considerable manoeuvring has been going on in order to produce results which are not as favourable to the vital interests of the Asian and African nations as could otherwise be achieved.

In international law, the generic term "treaties" includes not only the "*treaites-contrats*" or the contractual international agreements which create binding obligations between the contracting parties, but essentially also the "*treaites-lois*" or the law-making treaties which provide an inexhaustible material source of international law. As such, the law of treaties has a crucial bearing, in its practical application, on the realities of international life as well as the daily intercourse between nations.

In municipal law terminology, the law of treaties may be compared with the domestic law of contract, constitutional law and also the process and the science of legislation. In terms of jurisprudence, the law of treaties which forms part of the main body of international law necessarily affects the vital interests of nations in more than one respect. By way of analogy, the law of treaties has a much wider scope than any single branch of national law. In the light of its paramount importance, a useful approach to be adopted for its study and examination must be characterised by utmost care and cautious consideration. The Draft Articles therefore deserve our closest attention.

While the Draft Articles will receive much fuller discussions in far greater details at the International Conference

of Plenipotentiaries on the Law of Treaties to be convened at Vienna in the Spring of 1968 pursuant to General Assembly Resolution 2166 (XXI), the Asian-African Legal Consultative Committee might appropriately take occasion to sound out the views of participating governments. For this purpose, the present rapporteur has prepared certain preliminary observations of a general nature which apart from coinciding with the position taken by the Government he represents is also designed to help facilitate the final conclusion of a general convention on the law of treaties.

A special tribute should be paid to the International Law Commission and its successive Special Rapporteurs on the Law of Treaties for the valuable work they have accomplished. The work was started by the late Professor J.L. Brierly, continued by the late Sir Hersch Lauterpacht and Sir Gerald G. Fitzmaurice, and finally completed by the latest Special Rapporteur, Sir Humphrey Waldock. It has thus taken four generations of the British Member of the International Law Commission to finalize the Draft Articles we now have before us. The General Assembly, in particular the Sixth Committee, has taken a keen interest in the subject ever since its First Session. Observations have been made by various delegations in the Sixth Committee and written comments of Governments submitted and circulated, as the result of which the International Law Commission and its Special Rapporteurs on the topic have been able to complete their preparation of the Draft Articles which correspond more and more to the current needs of a modern international society under the rule of law. The gradual improvements discernible from each draft reflect the spirit and direction in which the law of treaties has continued progressively to develop in favour of the increasing sovereign equality of States. This development is slowly but steadily gaining wider acceptance in the general practice of States, notwithstanding occasional expressions of opposition from certain quarters whose diminishing interests in world affairs are

necessarily affected by the continuous progress of the contemporary law of treaties. It is understandable, however, that as the development of international law progresses in favour of greater equality and therefore better protections for the interests of smaller and weaker nations, it cannot help provoking an outburst of dissatisfactions or disappointments on the part of certain traditionalists within the larger and stronger Powers. But it should be emphasized that in the longer run this progressive trend is equally beneficial to the larger and stronger Powers. For peace and order cannot be maintained by sheer physical force alone but to be durable it must of necessity be placed on the solid basis of equity and equality. In the ultimate analysis, the law can retain its binding force only so long as it remains just, both in substance as well as in the eyes of all concerned. It is in the interest of peaceful relations and harmonious cooperation among nations that an appeal should be made to those who still persist in opposing the progress of the law to step aside so as to allow its progressive development to take its natural course unhindered by external pressures from the larger and stronger Powers. After having inflicted so much hardship and unfairness upon others, it is now their duty not to obstruct or to stand in the way of progress. It is not too late for any one to make positive and constructive contribution to the advancement of the law in support of the weaker and poorer countries.

In the main, the Draft Articles appear to be reasonably satisfactory and should be generally acceptable to Asian and African countries, especially from the point of view that the draft seems to afford far greater safeguards against unreasonable demands on the part of big Powers to the detriment of the weaker and poorer nations than the big Powers are prepared to accept. Indeed, after two decades of careful examination, through discussions in which Asian and African nations were able to take part, and continuing drafting improvements, we have come very close to meeting the minimum

requirements which from the Asian African standpoint may be considered necessary for the protection of the interests of smaller and weaker nations in the process of their national development. It is the prevailing belief of developing countries that greater safeguards in the law of treaties for the protection of the vital interests of smaller and weaker nations would be welcome because they would serve to enhance the stability of international society generally as well as promoting the social and economic stability of developing nations in particular. For these reasons, the Asian and African countries have agreed to use the Draft Articles as the basic working document which seems to provide a convenient point of departure for our discussion with the view to the adoption of a general convention on the law on the subject.

Without attempting an exhaustive commentary of the draft on an article-by-article basis, it might be convenient to adopt a systematic analytical treatment of the subject by tackling first and foremost the crux of the matter.

To a classical international lawyer no other norm can be more fundamental or fascinating than "*pacta sunt servanda*". It is not only the foundation of the law of treaties itself, but according to Professor Kelsen is the very essence of the law of nations. The Special Rapporteur has succeeded in bringing down to earth this almost celestial creature. Article 23 of the draft requires performance of a treaty in good faith only while the treaty itself remains in force and is binding upon the parties. This is indeed a modest and sober statement of the rule "*pacta sunt servanda*", which often in the past has been credited with a quaint notion of sacrosanctity akin to a "*deus ex machina*", upon the very mention of which a big Power could demand endless and limitless concessions from a poor defenceless nation. Surely neither absolute power nor any degree of sanctimony, or their combination, can convert an otherwise useful general rule of international law into a

machinery by which to perpetuate alien domination, or human enslavement or any regime of colonialism however benevolent. A question might be seriously asked whether any State can in good conscience be heard or allowed to insist upon the performance of a treaty which is unjust, or which subjects men to alien domination or imposes on a nation a status of subservience to another. Such treaties which defy the dictates of humanity have been appropriately referred to as "unequal treaties".

It has been argued by some traditionalists that such "unequal treaties" should be preserved for the sake of stability, and that a less stable system of treaty system would be more dangerous to smaller and weaker nations. The Asian and African nations will find no advantage from the stability of control and domination by external influence and pressure as the result of "unequal treaties". But the position of the protagonists of "unequal treaties" can also be understood, since invariably such treaties were unequal to their advantage and detrimental to the interests of Asian-African nations. When they talk about the stability of the treaty system, they have in mind the stability of their income and profits. Some of them even have the courage as almost shamelessly to propose that stability or the preservation of unequal treaties is good for the weaker and poorer nations, and that it is designed for their protection. The point is that if the weaker and poorer nations do not realize where their vital interests lie and should they allow themselves to swallow this line of patronizing argument, a confusion might easily be created among us. We should therefore guard against such paternalistic attitude of the big Powers.

An argument has sometimes been advanced in support of the absolute concept of "*pacta sunt servanda*" which according to some classicists admits of little or no qualification, subject only to one possible exception that in the circumstances above

described, should the colonial power utter the magic words "*pacta sunt servanda*", the newly emerged country could reply with parallel confidence "*rebus sic stantibus*", and that should be the end of the matter. But the facts of international life cannot be stated in such simple and absolute terms.

Admittedly, "*clausula rebus sic stantibus*" has been resorted to with some measure of success and without requiring any international sanction or judicial endorsement. It should be observed, however, that so far this doctrine has been operative only in one direction, i.e., to the detriment of Asian and African nations. In several instances in which an Asian nation tried to invoke the doctrine of "*pacta sunt servanda*" against a Western Power which had agreed in an earlier treaty to a frontier line, the expansionist power could invariably and successfully rely on the implied "*clausula rebus sic stantibus*" in the treaty alleging that owing to a fundamental change of circumstances the frontier so fixed according to treaty should be moved further inside the territory of the Asian nation. There was no known precedent for the operation of earlier of the above doctrines any other way. Each one has operated solely against the weak and poor for the benefit of the rich and strong.

But events have since taken a different turn, and things have really changed fundamentally. The chance of a big power invoking "*clausula rebus sic stantibus*" against an Asian or African State claiming the application of "*pacta sunt servanda*" has become more remote, with the result that there has been a sudden change of heart on the part of the big powers. The reversal of the trend is so striking that it has now become fashionable for the big powers unconsciously or perhaps self-consciously to argue for a more restricted application of "*rebus sic stantibus*", maintaining, contrary to their past habit, that there has been no clear precedent or judicial application of the doctrine of "*rebus sic stantibus*" so as to give

it any meaningful effect. Thus, the big powers have been having it both ways, and still continue to claim the benefits of both worlds.

It is gratifying to see that the principles of "*rebus sic stantibus*" are clearly stated in Article 59 (1) of the draft. In the light of past experience, paragraph 2(a) has been appropriately added for the protection of Asian and African countries. Sub-paragraph (b) may also be said to serve a similar purpose. "*Rebus sic stantibus*" as stated in the draft provides an adequate protection for smaller and weaker nations but this rule is by no means the only qualification of "*pacta sunt servanda*". Similar grounds for suspending the operation of a treaty can be found in Article 58 on *supervening impossibility of performance.*

Far more sweeping and fundamental limitations on the doctrine "*pacta sunt servanda*" are to be found in the restatement of a proposition of international law as contained in Article 50 and Article 61 of the draft. Both provisions touch upon the essential validity of treaties which conflict with a *peremptory norm of general international law* or the *jus cogens.* Under Article 50, "a treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". Article 61 deals with the emergence of a new peremptory norm of general international law in conflict with which an existing treaty becomes void and terminates. In neither case has there been a fundamental change of circumstances as described in Article 59 on *rebus sic stantibus.*

Many comments have been received which centre upon the existence and cogency of the *jus cogens* or the peremptory norm of general international law from which no derogation is permitted. Questions have been asked as to the nature and scope of such norms and the methods of ascertaining their

contents, or the machinery by which to determine their scope and application. There appears to be no insuperable difficulty in establishing the existence of the *jus cogens*, as indeed the Special Rapporteur and the majority of the enlightened Members of the International Law Commission so considered. Perhaps, an analogy can be made here by comparison with the private law of contract, bearing in mind the fact that the application of the *jus cogens* concerns primarily the essential validity of a *traite-contract* as distinguishable from a law-making treaty. The validity of a given treaty necessarily depends on the consent of the parties which must have been freely given and without any misunderstanding, error, or fraud, or intimidation or coercion of the representative, or indeed corruption or an ultra vires act on the part of the representative as contained in Draft Articles 43 to 48. Contravening any of the above provisions, a treaty may be invalidated. However, in international relations as well as in human relations, there can be no unlimited freedom of contract. Within an organised society, there are laws which regulate the peace and order of the society. In an international community of States, there are likewise rules of international law governing the conduct of their relations. Thus, in a domestic legal system a contract to commit a crime is invalid because it is illegal. Illegality vitiates the contract. Similarly, an international agreement planning or initiating a war of aggression must of necessity be invalid on grounds of illegality. There are countless such peremptory norms of general international law, which in normal circumstances would not be found in the Draft Articles on the law of treaties, just as the law of contract does not contain all the provisions of criminal law or other branches of the law. In the light of the preceding observation concerning the treatment to be accorded to "unequal treaties", it would not be necessary to give further enumeration of illustrations of the *jus cogens.* In fact, the Commentary on Article 50 already furnishes several interesting examples. It cannot be disputed that a treaty purporting to establish a colonial regime

would be considered as null and void under Article 50, while a similar treaty concluded prior to the existence of the United Nations would become invalid after the United Nations adopted the resolution on the granting of independence, subject of course to the adjustments being made by the Organizations or its Agencies.

There seems to be no inconvenience in the fact that the rules of the *jus cogens* are not precisely defined or clearly fixed in advance in every imaginable case for every possible situation. Like any other rules of international law in the age of its progressive development, there can be no static and inflexible rule. To oppose dynamism is to discourage orderly and progressive development. With regard to the question as to the existence of a concrete body or machinery by which to determine the scope and content of the *jus cogens*, it should be made plain that at this transitional stage of international law no such body truly exists for the compulsory determination of any question or of any rule of international law whatever. But does that mean that there is no law? Certainly not. The smaller and weaker nations would suffer, as indeed they have suffered, in the absence of the law. The big powers have scarcely suffered in the period of relative lawlessness. However, they should not be allowed to continue taking advantage of the application of a bad law once it has become extinct, or to revive it on the alleged ground that it was good for the smaller and weaker nations. This is a crucial point that must be clearly understood and squarely faced by members of the Asian-African Legal Consultative Committee.

The present commentator also expresses his concurrence in principle with the provisions of draft Article 49 concerning invalidity of a treaty owing to coercion of a State by the threat or use of force. This is necessary for further protection of the weak and undefended. It is also absolutely correct not to include the operation of Article 49 under Article 42 concerning

the loss of a right to invoke a ground for invalidating, terminating, withdrawing from, or suspending the operation of a treaty. The illegal use of force could not be subsequently rewarded by validation of an otherwise invalid treaty on the ground of acquiescence or subsequent conduct of the parties. Article 49 in most practical cases can be said to provide another illustration of application of the *jus cogens*.

Other provisions of the Draft Articles have been comparatively less controversial in the sense that they have drawn negligible comments from Governments. For instance, the conclusion, entry into force, publication and registration, or even interpretation have given rise to relatively little debate. Only a line of distinction is not always clearly drawn between circumstances of the conclusion of a treaty as a supplementary means of interpretation under Article 28, and the possibility of modification of treaties by subsequent practice under Article 38.

A strict interpretation and general application of the "privity of treaties" as contained in Article 30 should be followed. Articles 31 to 34 adequately state its qualifications. In no circumstances should State succession amount to an exception to Article 30.

October 20, 1967. Sompong Sucharitkul

(VI) SUMMARY OF THE PROCEEDINGS OF THE MEETINGS OF THE NINTH SESSION OF THE COMMITTEE RELATING TO LAW OF TREATIES

INTRODUCTORY

The Asian-African Legal Consultative Committee considered the Draft Articles drawn up by the International Law Commission on the Law of Treaties during its 3rd to the 11th meetings of its Ninth Session.

The Committee examined the various Articles drawn up by the Commission. In addition, it considered the question of advisability of inclusion, in the draft articles, of a provision concerning participation in general multilateral treaties. The Committee further discussed questions relating to State Succession, the implications of the most-favoured-nation clause, the advisability of applying the draft articles to oral agreements and the agreements between the States and the International Organisations and the advisability of providing for some body or authority like the International Court of Justice to secure the smooth application of the draft articles. The Committee constituted three Sub-Committees : the Ist Sub-Committee to prepare written comments on draft articles 1 to 22 and the question of participation in multilateral conventions; the IInd Sub-Committee to prepare written comments on draft articles 23 to 38; and the IIIrd Sub-Committee to prepare written comments on draft articles 39 to 75, for final consideration by the Committee, in the light of discussion on the articles in the plenary meetings of the Committee.

At its 4th meeting, held on the 21st December, 1967, the Committee discussed draft articles 1 to 22, and after preliminary observations of the Delegations, there was a further

discussion on the points raised by various Delegates, in connection with the said articles.

At its 5th meeting, held on the 22nd December, 1967, the Committee discussed draft articles 23 to 38.

Draft Articles 39 to 75 were discussed by the Committee at its 6th and 7th meetings, held on the 23rd and the 26th December, 1967, respectively.

At its 8th meeting, held on the 27th December, 1967, the Committee considered draft articles 1 to 22 and the question of participation in multilateral conventions in the light of the Ist Sub-Committee's report.

The IInd Sub-Committee's report on draft articles 23 to 38 was considered by the Committee at its 9th meeting, held on the 28th December, 1967.

The IIIrd Sub-Committee's report on draft articles 39 to 75 was considered by the Committee at its 9th and 10th meetings both held on the 28th December, 1967.

At its 11th meeting, held on the 29th December, 1967, the Committee adopted its Interim Report on the Draft Articles, setting out the points, which, in its view, require consideration of the Conference of Plenipotentiaries.

Extracts from the minutes of the meetings are set out below :

General Comments on the Draft Articles :

1. *On the question of advisability of inclusion, in the Draft Articles, of a provision concerning participation in general multilateral treaties* :

"The Representative of the International Law Commission, on being invited to state his views, said that, in his opinion, the following questions were the most important ...

(2) Question of participation in general multilateral treaties ....."[1]

"The Delegate of Ceylon.....regretted the exclusion of a provision regarding participation in multilateral treaties from the final draft prepared by the Commission. He felt that having regard to the character of general multilateral treaties, they should in principle be open to participation by all members of the international community. He said that the possibility of becoming parties to multilateral treaties is particularly important to new nations and it is inconceivable that they would henceforth accept any development in the International Law field that might still appear to reserve the sources of law-making to a group of States."[2]

"The Delegate of India supported the proposal of the Delegate of Ceylon that provision should be made with regard to participation in multilateral conventions and that such participation should be open to all States....."[3]

"The Delegate of Iraq.....also favoured universal participation in multilateral treaties."[4]

(The Delegate of Japan) "reiterated the position of his Delegation in the matter of participation in multilateral treaties....."[5]

(Note : The Sub-Committee on articles 1 to 22, appointed by the Committee, stated in its report :

1. Minutes of the 3rd Meeting held on 20th December, 1967, p. 4. para 7.
2. Minutes of the 4th meeting held on 21st December, 1967, pp. 1 and 2, para 3.
3. Ibid., p. 2, para 6.
4. Ibid., p. 3, para 7.
5. Ibid., p. 3, para 8.

Participation in general multilateral treaties

"The majority of the members of the Sub-Committee (Ceylon, India and UAR) considers that the right of every State to participate in general multilateral treaties is of vital importance to the progressive development of international law. General multilateral treaties concern the international community as a whole. If international law is to be in keeping with the real interest of the international community and if universal acceptance of the progressive development of this legal order is desirable, then the participation of every legal member of the community in the process and procedure of law-making is essential.

The minority (Japan) holds that in view of the principle of freedom of contract and the existing practice of the international conferences held under the auspices of the United Nations and the possible complications that it may imply, it would be better that the draft articles be silent on this point."

"The Committee then considered the recommendations of the Sub-Committee with regard to participation in general multilateral treaties. All the Delegations, with the exception of Japan, accepted the recommendations of the Sub-Committee and were of the view that the Articles on the Law of Treaties should contain a provision regarding participation in general multilateral treaties by States."[6]

(Note : The Committee, in its comments on the I.L.C's draft articles, annexed to its Interim Report, stated :

"The majority in the Committee considers that the right of every State to participate in general multilateral treaties is of vital importance to the progressive development of international law. General multilateral treaties concern the inter-

6. Minutes of the 8th Meeting, held on 27th December, 1967, p. 7, para 15.

national community as a whole. If the international law is to be in keeping with the real interest of the international community and if universal acceptance of the progressive development of this legal order is desirable, then the participation of every member of the community is essential. The majority in the Committee, therefore, considers that the Articles on the Law of Treaties should contain a provision regarding participation in general multilateral treaties.

"One Delegate, however, holds that in view of the principle of freedom of contract and the existing practice of the international conferences held under the auspices of the United Nations and the possible complications that it may imply, it would be better that the draft articles be silent on this point.")

2. *On the question of the necessity to exclude the subject of State Succession from the purview of the draft articles* :

(The Delegate of Ghana) "felt that it was not necessary to go into the question of State Succession in view of the explanation offered by the representative of the International Law Commission that that question was being separately considered by the Commission....."[7]

".....The Delegate of India expressed the view that questions relating to.....Succession to Treaties should not form part of the Convention....."[8]

3. *On the question of the necessity to exclude the implications of the most-favoured-nation clause from the purview of the draft articles* :

(The Delegate of Ghana) "expressed the view that the implications of most-favoured-nation clause was not

7. Minutes of the 3rd Meeting, held on 20th December, 1967, p. 3, para 6.
8. Ibid., p. 3, para 6.

neccessary to be considered in connection with the Law of Treaties....."[9]

"The Delegate of Ceylon.....did not consider the inclusion of a provision in respect of most-favoured-nation clause to be necessary in the present articles ....."[10]

4. *On the question of advisability of applying the draft articles to the oral agreements* :

"The Delegate of Ceylon addressed the house on the question whether the draft articles should apply to oral agreements as well. He felt that the articles should be restricted to agreements which are in writing . . . . . ."[11]

"The Delegate of Iraq.....felt that.....oral agreements should be excluded from the scope of these articles....."[12]

"The Delegate of Pakistan said that he agreed with the views of the Delegate of Ceylon that treaties should be in writing, as that would ensure against any element of uncertainty and this would apply to amendments to treaties also. In this connection he invited the attention of the Committee to articles 35, 36 and 38 which, in his view, were objectionable as the provisions of these articles would appear to permit modification of treaties orally....."[13]

9. Op. cit., p. 3, para 6.
10. Minutes of the 5th Meeting, held on the 22nd December, 1967, p. 2, para 3.
11. Minutes of the 4th Meeting, held on 21st December, 1967, pp. 1 and 2, para 3.
12. Ibid., p. 3, para 7.
13. Ibid., p. 4, para 9.

5. *On the question of advisability of applying the draft articles to the agreements between States and International Organisations* :

".....The Delegate of India.....expressed the view that questions relating to agreements with International Organisations.....should not form part of the convention....." [14]

"The Delegate of Ceylon.....considered that the agreements between Governments and International Organisations should be kept outside the scope of these draft articles as there are numerous special characteristics of treaties concluded by Governments with International Organisations and their inclusion in the draft articles would complicate matters....." [15]

"The Delegate of Iraq.....felt that the agreements between States and International Organisations.....should be excluded from the scope of these articles....." [16]

6. *On the question of the advisability of providing for some body or authority to secure the smooth application of the draft articles* :

"The Delegate of Japan.....reiterated the need for some body or authority like the International Court of Justice to secure smooth application of the draft articles." [17]

".....In the course of his general remarks on the difficulty of implementation of certain articles, and in

14. Minutes of the 3rd Meeting, held on 20th December, 1967, pp. 3 and 4, para 6.

15. Minutes of the 4th Meeting, held on 21st December, 1967, pp. 1 and 2, para 3.

16. Ibid., p. 3, para 7.

17. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 6, para 8.

particular, the absence of a judicial organ of a general compulsory jurisdiction, (Dr. M. K. Yasseen of the I.L.C.) pointed out that international legal order was an under-developed legal order and stressed the need that the development of its norms should not depend on a corresponding development of its institutions."[18]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

"The Japanese member of the Sub-Committee stated that not a few provisions of the draft articles contain, as is admitted in the commentary by the I.L.C., certain concepts which may cause disputes in their application. In his view, it is desirable therefore to designate or establish a body which is invested with standing competence to pass objective and purely legal judgments upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means.")

Article 2

"The Delegate of Ghana felt that the distinction made between a "contracting State" and "a party" in clauses (f) and (g) of article 2.1 should be removed as that might lead to confusion....." [19]

Article 4

(The Delegate of Pakistan) "felt that article 4 needed some amendment....." [20]

18. Op. cit., p. 8, para 11.

19. Minutes of the 4th Meeting, held on 21st December, 1967, p. 2, para 4.

20. Ibid., p. 4, para 9.

Article 5

".....With regard to article 5, the delegate (of Japan) felt that in this article some provision should be made to enable a State in formation to enter into treaties....."[21]

"The delegate of the United Arab Republic.....stated that article 5 could well be deleted as paragraph 1 of the article was already covered by article 1 of the draft and he had some doubt about the propriety or the need for a provision like paragraph 2 of Article 5....." [22]

".....The delegate of Ceylon expressed himself in favour of retention of articles 5 and 7....."[23]

".....The delegate of India favoured the retention of articles 5 and 6(1)(b)....." [24]

".....The delegate of Pakistan favoured the retention of articles 5 and 7....." [25]

".....The delegate of UAR opposed the retention of clause 2 of article 5....." [26]

".....Dr. Yasseen (ILC) stated that article 5 constituted a progressive approach. He favoured retention of paragraph 2 of that article since he regarded the federal form to be the most important and widespread form of association of States....." [27]

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21. Ibid., p. 3, para 8.
22. Ibid., p. 4, para 10.
23. Ibid., p. 4, para 11.
24. Ibid., p. 5, para 11.
25. Ibid., p. 6, para 11.
26. Ibid., p. 6, para 11.
27. Ibid., p. 6, para 11.

(Note : The Sub-Committee on draft articles 1 to 22, appointed by the Committee, stated in its report :

"The Sub-Committee is of the opinion that Article 5 should be retained. Prof. Sultan (UAR) has suggested the replacement of para 2 by the following draft :

> "In case of union between States, the capacity of member States to conclude treaties will be subject to the respective constitutional provisions and limitations of the Union."

The proposed amended text is intended to cover all kinds of union of States. The other members of the Sub-Committee consider that this proposal merits the serious consideration of the Committee.")

"With regard to Article 5, the Delegate of Ceylon was in agreement with the principle contained in the draft article but stated that the wording may require some change. The Delegate of Ghana agreed with redraft of paragraph 2 of this article, as given in the Sub-Committee's Report. The Delegate of Indonesia stated that there was no substantial difference between the draft articles prepared by the International Law Commission and the redraft suggested by the Sub-Committee. He, therefore, preferred the retention of the draft article as in the International Law Commission's draft. The Delegate of India stated that paragraph 1 of Article 5 of the International Law Commission's draft should be retained but that paragraph 2 of that article needed to be redrafted. He felt that the redraft of that paragraph given in the Sub-Committee's Report did not deal with the units of a Federation which, in his opinion, should be covered. The Delegate of Iraq stated that he had no objection to the amendment proposed by the Sub-Committee. The Delegate of Japan stated that he accepted article 5 with the redraft as appearing in the Sub-Committee's Report. The Delegate of Pakistan agreed with the views

of the Delegate of India. The Delegate of the UAR stated that he had no strong views about any particular phraseology as long as the principle he had in mind was taken care of." [28]

(Note : The Committee, in its comments, annexed to its Interim Report on the Law of Treaties, stated :

"The Committee is of the opinion that paragraph 2 of this article requires reformulation to include within its scope not only the units of a federation but all kinds of unions of States. It, therefore, suggests that paragraph 2 should incorporate the following principle :

> "In the case of union between States, the capacity of Member States as well as the capacity of the units of a Federal State to conclude treaties will be subject to the respective constitutional provisions of that union or the Federation.")

Article 6

"The delegate of the United Arab Republic.....had some doubt about article 6 (1) (b), as paragraph 2 of that article makes a detailed provision about who is to be considered as an agent or an organ of the State....." [29]

".....The delegate of India favoured the retention of articles 5 and 6 (1) (b)....." [30]

(Note : The Sub-Committee on draft articles 1 to 22, appointed by the Committee, stated in its report :

"The Sub-Committee is of the opinion that the present text of Article 6 (1) (b) may be retained on the understanding

28. Minutes of the 8th Meeting held on 27th December 1967, p. 4, para 9.

29. Minutes of the 4th Meeting, held on 21st December 1967, p. 4, para 10.

30. Ibid., p 5, para 11.

that it is designed to solve certain practical difficulties which may arise under certain circumstances.")

Article 7

".....With regard to article 7, the delegate (of Ghana) considered it to be a dangerous provision, as it might mean that an act can be done by a refugee from his own country in the hope that, at a later stage, it would be confirmed if he is successful in overthrowing his own government. He, therefore, suggested that article 7 be deleted from the draft articles." [31]

"With regard to the proposal of the delegate of Ghana for deletion of article 7, the delegate for India felt that that article may serve a purpose, as there are occasions when agreements have to be concluded in a hurry and it often happens that the full powers may not be immediately available or there may be some technical defect in the full powers."[32]

".....With regard to article 7, (the delegate of Japan) insisted that this may be deleted as there was likelihood of misuse or even abuse....." [33]

".....With regard to article 7, (Pakistan) delegate's view was that it should be retained as it incorporates the rule of general law on agency."[34]

"The delegate of the United Arab Republic..... concurred in the proposal of the delegate of Ghana that article 7 ought to be deleted as he also regarded it to be a dangerous provision....." [35]

31. Ibid., p. 2, para 4.

32. Ibid., p. 3, para 6.

33. Ibid., p. 3, para 6.

34. Ibid., p. 4, para 9.

35. Ibid., p. 4, para 10

".....The delegate of Ceylon expressed himself in favour of retention of articles 5 and 7. He observed that article 7 dealt with the case of an exception to article 6 (1) and it was, therefore, necessary for the sake of clarity to expressly provide for the exception....." [36]

".....The delegate of Ghana, whilst adhering to his views that article 7 ought to be deleted, suggested that some compromise could be arrived at between the different views by providing for a time limit, within which the confirmation of an act performed without authority should be done....."[37]

".....The delegate of India.....explained in great detail the reasons for retention of a provision like article 7 and suggested the addition of the phrase "within a reasonable time" at the end of Article 7, to provide against any possible misuse of the provisions of the article. However, if there were any special reasons against its retention, he would not have any strong objection....." [38]

".....The delegate of Japan, whilst adhering to his view that article 7 should be deleted, was prepared to drop the point, provided some drafting changes were made to prevent as far as possible the chances of misuse or abuse in order to safeguard the position of the other party....." [39]

"The delegate of Pakistan favoured the retention of articles 5 and 7. He said that the consequences of non-compliance with article 6 are given in article 7, and unless the latter article was there, there would be uncertainty. He felt that a provision like article 7 was in the interest of the State....." [40]

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36. Ibid., pp. 4 and 5, para 11.
37. Ibid., p. 5, para 11.
38. Ibid., p. 5, para 11.
39. Ibid., p. 6, para 11.
40. Ibid., p. 6, para 11.

".....The delegate of UAR.....opposed the retention of article 7, as in his view paragraph 1 (b) of article 7 took care of the exceptional cases....." [41]

".....Dr. Yasseen (ILC).....was of the view that article 7 was a very useful provision and it was certainly harmless....." [42]

(Note : The Sub-Committee on draft articles 1 to 22 appointed by the Committee, stated in its report :

"As to article 7, the Sub-Committee is of the opinion that there is no objection to the present text, provided that it is amended in such a way as to include a provision to the effect that confirmation should be made within a reasonable time. This is suggested with a view to reducing the possibility of abuse.")

"The Committee then proceeded to consider Article 6 (1) (b) read with Article 7 in the light of the Report of the Sub-Committee. The Delegate of Ceylon stated that he did not wish to limit the application of Article 6 (1) (b) only to cases indicated in the Sub-Committee's Report. He was, however, in agreement with the Sub-Committee's recommendation as regards Article 7. The Delegate of Ghana accepted the recommendations of the Sub-Committee with regard to these articles. The Delegate of Indonesia preferred the retention of the articles as in the International Law Commission's draft. The Delegate of India accepted the recommendations of the Sub-Committee. The Delegate of Iraq wished the draft articles to remain as they were in the International Law Commission's draft. The Delegate of Japan accepted the recommendations of the Sub-Committee. The Delegate of Pakistan preferred to retain these articles as in the Inter-

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41. Ibid., p. 6, para 11.
42. Ibid., p. 6, para 11.

national Law Commission's draft. The Delegate of U.A.R. accepted the recommendations of the Sub-Committee." [43]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The majority in the Committee is of the opinion that this article should be amended so as to include a provision to the effect that confirmation of the act performed without authority should be made within a reasonable time. This is suggested with a view to reducing any possibility of abuse. The majority has, however, no objection to retention of the present text of article 7 of the International Law Commission's Draft.")

Articles 10 and 11

".....With regard to articles 10 and 11, (the delegate of India) felt that there were some lacunae, because they do not provide for a case where the treaty does not stipulate that it would come into force upon signature, or that it is subject to ratification. What would be the effect, he asked, in such a contingency, and he felt that some provision should be made to cover this gap. In the absence of a provision, which would adequately take care of such a contingency, the provisions of articles 10 and 11 were likely to lead to unnecessary difficulties....." [44]

".....With regard to articles 10 and 11, (the delegate of Japan) agreed with the view of the delegate of India that there was a lacuna which should be filled....."[45]

43. Minutes of the 8th Meeting, held on 27th December,, 1967, p. 5, para 10.

44. Minutes of the 4th Meeting, held on 21st December, 1967, p. 2, para 6.

45. Ibid., p. 3, para 8.

"The delegate of the United Arab Republic ..... commented on the provisions of article 10 paragraph 2 and suggested its deletion." [46]

(The delegate of Ceylon) "did not favour the suggestion of the delegate of India for provision of a special clause to cover cases not falling within the purview of articles 10 and 11 as, in his view, that would be a very unlikely situation....." [47]

".....With regard to articles 10 and 11, (the delegate of India) made a proposal for the consideration of the House. He suggested the deletion of clause (b) of article 10 (1) and also of the phrase "or was expressed during the negotiation" from clause (c) of that article. He also suggested the linking up of articles 10 and 11 by addition of a clause to read as follows :

"(a) such consent is not expressed by signature alone as provided in article 10".

"The new clause may become Article 11 (1) (a), the existing clause (b) of Article 11 may be deleted and other related clauses renumbered. . . . . " [48]

(The delegate of Japan) "favoured the suggestion of the delegate of India regarding linking up of articles 10 and 11..."[49]

(The delegate of Pakistan) "was of the opinion that articles 10, 11 and 12 should be retained in their present form, as they are intended to deal with three different modes of conveyance of consent. . . . . " [50]

46. Ibid., p. 4, para 10.

47. Ibid., p. 5, para 11.

48. Ibid., p. 5, para 11.

49. Ibid., p. 6, para 11.

50. Ibid., p. 6, para 11.

" . . . . . Dr. Yasseen (ILC) . . . . in his personal capacity agreed that there was a lacuna in articles 10 and 11 as pointed out by the delegates of India and Japan, and agreed that some provision could be made to cover the position contemplated by the delegate of India." [51]

(Note : The Sub-Committee on draft articles 1 to 22, appointed by the Committee, stated in its report :

"The Sub-Committee examined articles 10 and 11 together and reached the conclusion that it might be preferable to state first the general rule that States are bound by treaties on ratification and that the exception is that they would be bound by treaties upon signature only if they so expressly state in the treaty. The Sub-Committee is also of the opinion that the drafting of these two articles should cover all the cases without leaving any lacuna or creating any doubt. For these reasons, the Sub-Committee would like to modify the two articles so as to read as follows :—

"**Article 10** (this corresponds to article 11 of I. L. C.'s text)

Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when :

(a) The treaty provides for such consent to be expressed by means of ratification ;

(b) Such consent is not expressed by signature alone as provided in article 11 ;

(c) The representative of the State in question has signed the treaty subject to ratification ; or

51. Ibid., p. 6, para 11.

(d) The intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 11 (this corresponds to article 10 of I. L. C.'s text)

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect;

(b) The intention of the State in question to give that effect to the signature appears from the full powers of its representative.

2. For the purposes of paragraph 1 :

(a) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed ;

(b) The signatures *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

The representative of Japan is of the opinion that article 11 mentioned above should read as follows :

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect ;

(b) It is otherwise established that the negotiating States were agreed that signature should have that effect ;

(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1 :

(a) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed ;

(b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty."

"The Committee next discussed the provisions of articles 10 and 11 in the light of the Sub-Committee's recommendations. The Delegate of India stated that the Committee should set out the principle only, and should not attempt to redraft these articles as that might lead to unnecessary complications. The Delegate of Ghana stated that he accepted the Sub-Committee's recommendations on articles 10 and 11 as re-numbered in the Sub-Committee's Report. He appreciated the point of view of the Japanese delegate on article 11 as renumbered, but felt that it would introduce some degree of uncertainty. The Delegate of Indonesia favoured the retention of the text of these articles as in the ILC's draft. The same view was expressed by the Delegates of Iraq and Japan. The Delegate of Pakistan said that the principles enunciated in the Sub-Committee's Report were acceptable to him. The Delegate of the U.A.R. suggested that in order to fill the lacuna, which

was pointed out by the Delegate of India during the discussions in the Committee on these articles, something should be said in these articles to provide that States shall be bound by treaties upon ratification, and that if they would like to be bound by treaties upon signature they should expressly say so.

"After some further discussion it was decided that the Committee should merely point out the lacunae which existed, and leave it to the Conference of Plenipotentiaries to draft the actual text of the provision.

"The Delegate of Ghana moved that the words "or was expressed during the negotiation" should be deleted from the provisions of article 10. 1(c) and article 11. 1(c). The Delegates of Iraq and the U.A.R. supported the view expressed by the Delegate of Ghana. The Delegate of India stated that he was in favour of the omission of these words from article 10. 1(c), but as to article 11.1(c), the question whether these words should be omitted also from that article depended on what the Conference of Plenipotentiaries proposed to do with regard to linking up of articles 10 and 11. The Delegates of Ceylon, Indonesia, Japan and Pakistan on the other hand wished to retain these provisions as in the ILC's draft."[52]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The majority in the Committee considers that there is a lacuna in these provisions, as no provision has been made to cover cases which do not fall either within article 10 or within article 11. It is felt that such cases are considerable and that a provision should be made, if possible, by linking up the two articles to cover cases which are not covered by the present text of these articles.

The majority is also in favour of the deletion of the words "or was expressed during the negotiation" in article 10.1 (c).

52. Minutes of the 8th Meeting, held on 27th December, 1967, pp. 5 and 6, paras 11, 12 and 13.

The minority in the Committee is in favour of retention of the present text of the Draft Articles.")

Article 15

(The delegate of India) "also wished the Committee to consider the provisions of article 15 and suggested the deletion of clauses (a) and (b) of that article..."[53]

(The delegate of Japan) "suggested deletion of article 15".[54]

(The delegate of Ghana) "generally favoured the retention of article 15 in its present form..."[55]

(Note : The Sub-Committee on articles 1 to 22, appointed by the Committee, stated in its report :

"The Sub-Committee is of the opinion that this Article should be deleted. The State should not become bound by a treaty which has not yet come into force. If, however, the Committee takes the view that this Article should be retained, the Sub-Committee would suggest that the first sentence should be modified so as to read as follows :

"A State should refrain from acts tending to frustrate the object of a proposed treaty;" etc.")

"The Committee next considered the provisions of Article 15 in the light of the Sub-Committee's Report. The Delegate of Ghana stated that he agreed to the retention of this Article as in the ILC's draft subject to the deletion of paragraph (a) of this article. The Delegate of Indonesia wished the text of

53. Minutes of the 4th Meeting, held on 21st December, 1967, p. 3, para 6.

54. Ibid., p. 3, para 8.

55. Ibid., p. 6, para 11.

this article to remain as in the ILC's draft. The Delegate of India favoured the deletion of both clauses (a) and (b). The Delegate of Iraq favoured the retention of the ILC's draft. The Delegate of Japan agreed to the deletion of paragraph (a). The Delegate of Pakistan wished the draft to remain as it is. The Delegate of U.A.R. was also in favour of deletion of paragraph (a). The Observer for the International Law Commission speaking in his personal capacity stated that Article 15 dealt with a new norm of International Law, but it was for the Committee to decide whether the provisions of this Article went too far. The Delegate of Ceylon, after hearing the views of the Observer from the International Law Commission, also agreed that paragraph (a) of this Article should be deleted. After some further discussion it was finally agreed that the majority in the Committee would recommend the deletion of paragraph (a) of Article 15 and that the rest of the Article would remain as in the International Law Commission's draft."[56]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The Committee considers this article to contain a new norm of international law which could be supported as progressive development of international law.

The majority in the Committee is, however, in favour of deletion of clause (a) of this article, as in its view the object of a proposed treaty might not be clear during the progress of negotiations. Some of the delegations are of the view that a provision like clause (a) of this article may hamper negotiations for a treaty.

Some members, however, are in favour of the retention of the present text.")

56. Minutes of the 8th Meeting, held on 27th December, 1967, pp. 6 and 7, para 14.

Article 16

"...With regard to article 16, the delegate (of Iraq) was in favour of a provision for reservations unless such reservation was incompatible with the nature of the treaty obligation" [57]

(The Delegate of Ghana) "wanted the Committee to consider whether the traditional rule relating to reservations to treaties should be followed" [58]

Articles 21 and 22

(The Delegate of India) "expressed the view that provisions of articles 21 and 22 appeared to be contradictory....." [59]

Article 23

"The Delegate of Ceylon.....regarded the principle of *pacta sunt servanda*, as embodied in article 23, as being fundamental to international legal order, and as such he did not favour any exception to the principle. However, he recognised the need for the said principle being applied in conjunction with other fundamental principles of international law which are equally important, namely, the peremptory norms of international law (*jus cogens*) as embodied in Article 50, the doctrine of supervening impossibility as provided in Article 58, and the doctrine of the fundamental change of circumstances as embodied in Article 59 of the Draft Articles....." [60]

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57. Minutes of the 4th Meeting, held on 27th December, 1967, p. 3, para 7.

58. Ibid., p. 5, para 11.

59. Ibid., p. 3, para 6.

60. Minutes of the 5th Meeting, held on 22nd December, 1967, pp. 1 and 2, para 3.

".....As regards Article 23, the Delegate of Ghana proposed deletion of the phrase "and must be performed by them in good faith" from the provision of that Article. He regarded the phrase to be unnecessary since, in his view, the essence was that the treaty is binding and is performed... [61]

".....Commenting upon Article 23, the Indian Delegate said that even if the phrase "must be performed by them in good faith" is deleted, as was suggested by the Delegate of Ghana, the rest of the provision will still have the same meaning, since the matter of good faith is already implied in the obligation to implement a treaty. He favoured the retention of Article 23 in its present form, since this would give a legal source to the obligation of good faith....." [62]

".....The Japanese Delegate favoured retention of Article 23 in its present form....." [63]

"The Delegate of Pakistan favoured retention of Article 23 in its present form....." [64]

(The Delegate of U.A.R.) "favoured retention of Article 23 in its present form....." [65]

"Dr. Yasseen (International Law Commission) regarded Article 23 to be one of the most important articles and he favoured its retention in its present form, since it served as the legal source of the principle of good faith in the context of the law relating to treaties....." [66]

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61. Ibid., p. 2, para 4.

62. Ibid., p. 2, para 6.

63. Ibid., p. 4, para 8.

64. Ibid., p. p. 4, para 9.

65. Ibid., p. 4, para 10.

66. Ibid., p. 5, para 11.

Article 25

".....While commenting on Article 25, (the delegate of Ceylon) did not think there was room for the contention that transactions entered into prior to independence would continue to apply to former colonial territories after independence....." [67]

".....As regards Article 25, (the delegate of Ghana) regarded the phrase "the entire territorry" to be superfluous. [68]

"Dr. Yasseen (International Law Commission)..... regarded Article 25 to be a reasonable article....." [69]

Article 26

(The delegate of India) "suggested a reconsideration of Article 26 by the Sub-Committee, particularly on the question of the effect of an obligation created by a new treaty on an obligation created under an earlier or later treaty on the same subject. This, according to him, had relevance to the provisions of Article 37. He suggested a consideration by the Sub-Committee of the relationship between Articles 26 and 37....." [70]

"Dr. Yasseen (International Law Commission)..... suggested an examination of Article 26 by the Sub-Committee, and stated that the Commission had spent a long time in the consideration of that article....." [71]

(Note : The Sub-Committee on draft articles 23 to 38, appointed by the Committee, stated in its report :

67. Ibid., p. 2, para 3.

68. Ibid., p. 2, para 4.

69. Ibid., p. 5, para 11.

70. Ibid., p. 3, para 6.

71. Ibid., p. 5, para 11.

"6. Provisions applicable to the amendment or revision of treaties and the conclusion of later treaties relating to the same subject matter were necessarily inevitable when circumstances changed requiring appropriate variations in the text of a treaty. If it was intended that the subsequent change in relation to the same subject matter was in substitution of the earlier agreement, or was so incompatible with the earlier version that the two were incapable of being applied together, the former treaty was effectively terminated or suspended according to Article 56.

7. But if the divergence or variation from the original version in relation to the same subject matter was not deemed by the parties to be inconsistent or was expressly made subject to such earlier treaty, the two treaties are regarded as successively co-existing. In relation to such successive treaties relating to the same subject matter Article 26 distinguished between (a) cases where there was complete identity of parties in regard to the successive treaties—(clause 3); and (b) cases where all the parties to the earlier treaty were not parties to the later treaty—(clause 4). In regard to the case in (a), there was in effect a *pro tanto* amendment of the first treaty. In regard to case (b), Article 26 envisaged three separate positions: (i) as between States which were parties to both the earlier and the later treaty only such parts of the earlier treaty as were compatible with the later treaty were saved; (ii) as between a State which was a party to both the earlier and the later treaty and a State which was party only to the earlier treaty, the earlier treaty prevailed; and (iii) as between a State which was party to both treaties and a State party only to the later treaty, obligations *inter se* were governed by the later treaty. The Sub-Committee respectfully agrees with the rules so formulated and recommends their endorsement by the Committee.")

Articles 27, 28 and 29

".....While commenting upon Articles 27, 28 and 29 relating to the rules of interpretation of treaties, (the Delegate

of India) pointed out that the basic rule of interpretation is embodied in clause (1) of Article 27. He was of the view that the provisions of clause (3) of that Article were not complete, as he considered that reference to "preparatory work", which will throw light on the intention of the parties should also be included in this paragraph, sub-clause (d), rather than be given an altogether subsidiary or supplementary position in Article 28 as in the present draft. If a suitably drafted new clause (d) is added to Article 27 in paragraph (3), Article 28 could be deleted..... [72]

".....As regards Article 29, (the Delegate of Pakistan) felt that there was some lacuna in the provisions of the Article, in as much as it did not provide for a situation where there was a conflict between two authenticated versions....." [73]

(The Delegate of U.A.R.) "did not regard the provisions of Articles 27, 28 and 29 to be complete, in as much as the element of real intention of the parties to a treaty was missing therefrom. He suggested inclusion of a new provision in article 27 which would make the real intention of the parties the most important criteria in the matter of interpretation of treaties....." [74]

"Regarding the rules of interpretation as embodied in Articles 27, 28 and 29 (Dr. Yasseen of the ILC) stated that Article 27 embodied the view that the text of a treaty is the most important source of ascertaining the real intent of the parties. He pointed out that the texts of the articles 27 and 28 did not overlook the necessity of determining the real intention. As regards the preparatory work, he was of the view that even though it was one of the means of ascertaining

72. Ibid., p. 3, para 6.

73. Ibid., p. 4, para 9.

74. Ibid., p. 4, para 10.

the real intention, yet it does not appear very helpful. It is generally agreed that although clear in the preparatory work, an idea cannot be retained unless it is somewhat reflected in the text. He pointed out that in some of the municipal laws reference to preparatory work, for the purposes of interpretation, is not permitted.

"While commenting on Article 29, he said that the exception provided in clause 3 referred to the last phrase of clause 1....." [75]

"The U.A.R. Delegate regarded it necessary to state in article 27 that the basic rule of interpretation is based on seeking the real intention of the parties to a treaty....." [76]

(Note : The Sub-Committee on draft articles 23 to 38, appointed by the Committee, stated in its report :

"2. The Sub-Committee acknowledged the fact that there was a cleavage of opinion in regard to how the question of interpretation of treaties should be approached. There was on the one hand those who considered the task of interpretation to be the elucidation of the text of a treaty and on the other those who held the view that the discovery of the true intention of the parties to be the paramount function of interpretation. While it is basic to the whole process of interpretation that the goal should be the ascertainment of the true intention of the parties, the Sub-Committee concluded that the primary emphasis should be placed on the intention as evidenced by the text, that is to say, the actual terms of the treaty, and that it would not be either necessary or desirable to state specifically in Article 27 that the object of interpretation was the discovery of the intention of the parties. This was manifest from the formulation of the general rule in

75. Ibid., p. 5, para 11.

76. Ibid., p, 6, para 14.

clause 1 which was a succinct statement of the essential rule. By the further elaboration of what was meant by the expression "the context" in clause 2 and by the indication of additional sources of interpretation in clauses 3 and 4, the International Law Commission draft has taken full account of the paramountcy of the element of intention. The Sub-Committee, therefore, feels (subject to the reservation made by the Indian delegate alone which is discussed in the following paragraph) that the draft rules of interpretation are quite adequate to the ascertainment of intention and are a coherent body of rules, emphasising the unitary character of the interpretative process.

3. Although the representative of India suggested the assimilation of Article 28 to Article 27, as a new sub-clause (d) to clause 3 of Article 27, the majority felt that the distinction contemplated in the two Articles should be maintained They felt that a formulation of the rule which did not stress sufficiently the primacy of the text in relation to extrinsic sources of interpretation would tend to considerable uncertainty and that there should be no room for recourse to preparatory material if the textual reading established a clear meaning in accordance with the rules specified in Article 28. While we appreciate that no rigid distinction is possible and that a nexus exists between the several sources, we are unable to accord preparatory material a parity of status with the primary criteria mentioned in Article 27 and think that the two Articles should be separate and distinct.)

".....As regards Article 28 of the Draft Articles, the Delegate of Ghana suggested the deletion of the words "to confirm the meaning resulting from the application of Article 27". He also wished para 4 of Article 27 to be deleted. The Delegate of Indonesia agreed with the views of the majority in the Sub-Committee that no amendments or modifications to Articles 27 and 28 were required. The Delegate of India

preferred the inclusion of "preparatory work" as a source of determination of real intention of the parties, and wished it to be included as clause (d) in paragraph 3 of Article 27. In his view, the provisions of article 28, relating to "preparatory work", assign it a secondary place in the interpretation of treaties, and he suggested that "preparatory work" be included in article 27 so as to make it a primary means of interpretation and that article 28 could then be deleted. The Delegate of Iraq favoured retention of the article in the form drafted by the International Law Commission. The Delegate of Pakistan preferred the present distinction between primary and secondary means of interpretation as embodied in articles 27 and 28 of the draft articles and wanted them to be retained in the present form. The Delegate of U.A.R. wanted it to be specifically stated that the main aim of interpretation is to look for the real intention of the parties. The Delegate of Ceylon preferred the present distinction between the primary and secondary means of interpretation as made in articles 27 and 28 of the Draft Articles and emphasised that the real intention of the Parties should be determined from the text of the treaty". [77]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The Committee discussed the provisions of these two articles in great detail. There was some difference of opinion in the Committee in regard to how the question of interpretation of treaties should be approached. There was on the one hand those who considered the task of interpretation to be the elucidation of the text of a treaty and on the other hand those who held the view that the discovery of the true intention of the parties to be the paramount function of interpretation. One view expressed was that the provisions of these articles do

77. Minutes of the ...th Meeting, held on 28th December 1967, pp. 2 and 3, para 6.

not sufficiently take into account that the main aim of interpretation is to look for the real intention of the parties and that these articles should be suitably modified to bring out that position. Another view that "preparatory work" as a source of determination of real intention of the parties should be included in Article 27 so as to make it a primary means of interpretation and that this source should not be assigned a secondary place in Article 28. A suggestion was, therefore, made for assimilation of Article 28 to Article 27 as a new sub-clause (d) to clause 3 of Article 27.

The majority whilst appreciating that it is basic to the whole process of interpretation that the goal should be the ascertainment of the true intention of the parties concluded that the primary emphasis should be placed on the intention as evidenced by the text, that is to say, the actual terms of the treaty and that it would not be either necessary or desirable to state specifically in Article 27 that the object of interpretation is the discovery of the intention of the parties. According to the majority view, this is manifest from the formulation of the general rule in clause (1) which is a succinct statement of the essential rule. They feel that by the expression "the text" in clause (2) and by the indication of additional sources of interpretation in clauses (3) and (4), the International Law Commission's draft has taken full account of the paramountcy of the element of intention. The majority, therefore, is of the opinion that the draft rules of interpretation as formulated by the International Law Commission are quite adequate to the ascertainment of intention and are an inherent body of rules emphasising the unitary character of the interpretative process. The majority is also of the view that the distinction contemplated in Articles 27 and 28 should be maintained. They feel that a formulation of the rule which does not stress sufficiently the primacy of the text in relation to the extrinsic sources of interpretation would tend to considerable uncertainty and that there should be no room for recourse to preparatory material

if the textual reading establishes a clear meaning in accordance with the rules specified in Article 27. The majority is further of the view that though no rigid distinction is possible and that a nexus exists between the several sources, it is unable to accord preparatory material a parity of status with the primary criteria mentioned in Article 27 and is of the opinion that the two articles should be seperate and distinct.")

Articles 30, 31 and 32

"The Delegate of Ceylon.....favoured the retention of Article 32 as formulated in the Draft." [78]

"Commenting on Article 32, (the Delegate of Pakistan) favoured a formulation of the Article, as would provide for the point of time at which the expression of a contrary intention by the third party has to be indicated....." [79]

".....As regards Articles 30, 31 and 32, (the Delegate of U.A.R.) suggested that if the word "express" is added between "without its" and "consent" in Article 30, Articles 31 and 32 can be dispensed with."[80]

"Dr. Yasseen (International Law Commission)..... pointed out that articles 30 to 32 were the product of a compromise between divergent views in the International Law Commission, as some members in the International Law Commission wanted to separate the rights from obligations, and that that was the reason for the existence of these three separate articles....." [81]

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78. Minutes of the 5th Meeting, held on 22nd December, 1967, p. 2, para 3.

79. Ibid., p. 4, para 9.

80. Ibid., p. 4, para 10.

81. Ibid., p. 5, para 11.

".....The Delegate of Ghana reiterated his earlier suggestion for the inclusion of the word "express" before the word "consent" in Article 30. As regards Article 32, he suggested deletion of the last sentence in clause 1, and the inclusion of the word "expressly" before "assents thereto". The Delegate of India agreed with the Delegate of Ghana in regard to his suggestion for the amendment of Articles 30 and 32....." [82]

".....As regards Article 30 (the Delegate of U.A.R.) suggested that the rights or obligations concerning third parties must be based on the express consent of those parties. He regarded this point to be a crucial point for the Asian and African States....." [83]

(Note : The Sub-Committee on draft articles 23 to 38, appointed by the Committee, stated in its report :

"4. In regard to the question of rights conferred on third States, the Sub-Committee is of the view that, as in the case of obligations, the express consent of such third State should be a condition precedent to their creation. Whatever may be the true position in regard to stipulations for the benefit of a third party in systems of municipal law, in international relations the express consent of such third State should, in our opinion, be required even in the case of the conferment of rights, consistently with the principle of the sovereign equality of all States.

5. The Sub-Committee also felt that such a requirement would also reduce any uncertainty in regard to the question whether a third State has assented to the conferment of the right. In our view the insistence on consent by the third State or States would in the case of multilateral treaties tend to the

82. Ibid., p. 6, para 12.

83. Ibid., p. 6, para 14.

effective participation of all States in treaties of a law-making character. The Sub-Committee also felt that if express consent of the third State was stipulated as a requirement it would help to reduce the danger of the creation of rights which carry with them contingent obligations to which such third State may well be deemed to have assented by its silence. Accordingly, the Sub-Committee recommends the amendment of Article 32 by the deletion of all the words commencing : "and the State assents thereto" to the end of paragraph 1 and the substitution therefor of the words : "and the State has expressly consented thereto." The Sub-Committee also recommends the amendment of Article 30 by the interpolation of the word "express" before the word "consent".)

"As regards the treaties and the rights and obligations of the third States, the Delegate of Ceylon was prepared to accept the amendments to articles 30 and 32 as suggested by the Sub-Committee. The Delegate of Ghana was not sure whether or not, to support the proposal regarding addition of the word "express" before "consent" in Article 30. However, he favoured an amendment as would provide for a time limit for repudiation of the rights and obligations by a third State concerned. The Delegate of Indonesia agreed with the recommendation of the Sub-Committee on the said articles. The Delegate of India also preferred the recommendation of the Sub-Committee. The Delegate of Iraq preferred the retention of the draft articles as formulated by the International Law Commission. The Delegate of Japan did not agree to the amendments proposed by the Sub-Committee to the draft article 32, and he preferred its retention in the present form. The Delegate of Pakistan was not in favour of qualifying the word "consent" as used in articles 30 and 32. The Delegate of the U.A.R. preferred the Sub-Committee's recommendations." [84]

84. Minutes of the 9th Meeting, held on 28th December, 1967, pp. 3 and 4, para 7.

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The Committee considered the provisions of this group of articles which deal with the rights and obligations of third States. The majority in the Committee is of the view that Article 32 be amended by deletion of the words "and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated" and substitution therefor of the words "and the State has expressly consented thereto". The majority is also of the opinion that Article 30 be amended by interpolation of the word "express" before the word "consent". The majority is of the opinion that as in the case of obligation the express consent of such third State should be a condition precedent to the creation of a right also. Whatever may be the true position in regard to stipulations for the benefit of a third party in the systems of municipal law, in international relations, the express consent of such third State should be required even in the case of the conferment of rights consistently with the principle of sovereign equality of States. The majority feel such a requirement would also reduce any uncertainty in regard to the question whether a third State has assented to the conferment of the right and insistence of such consent by the third State or States would in the case of multilateral treatics tend to the effective participation of all States n treaties of a law-making character. The majority is als of the view that if express consent of the third State is stipulated as a requirement it would help to reduce the danger of the creation of rights which carry with them contingen obligations to which third State may well be deemed to have assented by its silence.

The minority, however, is of the view that the draft articles as drawn by the International Law Commission are adequate.")

Article 34

"..... As regards Article 34, (Ceylonese delegate's) position was that though recognition of a rule of customary

international law was an essential element in the formation of custom as a source of international law, it was not necessary to state it in this Article. . . . . ." [85]

Articles 35, 36 and 38

"The Delegate of Pakistan said that he agreed with the view of the Delegate of Ceylon that treaties should be in writing as that would ensure against any element of uncertainty and this would apply to amendments to treaties also. In this connection he invited the attention of the Committee to articles 35, 36 and 38 which, in his view, were objectionable as the provision of those articles would appear to permit modifications of treaties orally. . . . . ." [86]

"As regards Article 38 relating to modification of treaties by subsequent practice, (the Delegate of India) mentioned that part of it had already been referred to in Article 27, para 3 (b) in connection with aids to interpretation. He enquired as to what would be the conditions for the application of Article 38 and whether it would be subject to Article 37, when only a few States decided to modify the treaty; he suggested an examination of these questions by the Sub-Committee." [87]

". . . . . .The Japanese Delegate . . . . . .suggested the deletion of Article 38." [88]

"The Delegate of Pakistan. . . . . .stressed the need for an amendment to an existing treaty to be in writing. His view

85. Minutes of the 5th Meeting, held on 22nd December, 1967, p. 2, para 3.

86. Minutes of the 4th Meeting, held on 21st December, 1967, p. 4, para 9.

87. Minutes of the 5th Meeting, held on 22nd December, 1967, p. 3, para 7.

88. Ibid., p. 4, para 8.

was that the requirement of an amendment to a treaty would also facilitate the identification of a specific date of coming into force of the amending agreement under the provisions of clause (5) of Article 36." [89]

". . . . . .As regards Article 38, (Dr. Yasseen of the I. L. C.) pointed out that a treaty could be modified by subsequent practice even under the existing rules of international law. A treaty could also be terminated by simple oral declaration by the parties, in as much as the international legal order is not a formalist one. Further, since the States are sovereign, they can change, by an oral agreement, whatever had been earlier agreed in the written form. He pointed out that these could not be avoided in view of the principle of sovereignty of States." [90]

" . . . . . The Delegate of India . . . . . accepted the rule stated in Article 38, but suggested its relationship with Articles 37 and 26 to be considered by the Sub-Committee. Dr. Yasseen clarified the position of the International Law Commission in this respect." [91]

"Commenting on Article 38, the Japanese Delegate recognised that the position gave expression to the actual international practice. However, he was not happy with the formulation of the article in its present form, in as much as it conflicts with the right of a State to modify an international agreement through its internal legislation. In this regard, Dr. Yasseen emphasised the importance of maintaining the supremacy of international legal order." [92]

89. Ibid., p. 4. para 9.

90. Ibid., pp. 5. and 6, para 11.

91. Ibid., p. 6, para 12.

92. Ibid., p. 6, para 13.

(Note : The Sub-Committee on draft articles 23 to 38, appointed by the Committee, stated in its report :

"10. As regards the general problem of amendment, it was felt that in the Articles amendment meant textual change while modification of a treaty did not necessarily involve amendment, the change or transformation being evident in the treaty's operational effects while the text remained unchanged. The Sub-Committee also wishes to record the fact that the Delegate for Japan reiterated the view expressed in the plenary session that Article 38 should be deleted.)

" . . . . . As regards Article 38, the Delegate of Ceylno pointed out that the current practice favoured retention of the article. The Delegates of Ghana and Indonesia also preferred its retention in its present form. The Delegate of India had no objection to the article, in case it is assumed that the word "parties" would include all the parties to a party. The Delegate of Iraq favoured the retention of the said article in its present form. The Delegate of Japan reiterated his view that the article should be deleted. The Delegates of Pakistan and U.A.R. favoured the proposal of the Delegate of India to retain the article with the understanding that "parties" include all the parties to a treaty." [93]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"A view was expressed in the Committee that this article should be deleted as subsequent practice was too vague and uncertain a criterion for modification of a treaty. Another view is that there could be no objection to accepting this article as in the present draft with the qualification that the "parties" in this Article meant all the parties to a treaty. A

93. Minutes of the 9th Meeting, held on 28th December, 1967, p. 4, para 8.

third view was that there was no objection to the present text as in the International Law Commission's draft.")

Article 37

(The Delegate of India) "suggested a consideration by the Sub-Committee of the relationship between Articles 26 and 37. He regarded clause (2) of Article 37 to be unnecessary burden on the parties who agreed to modify a multilateral treaty.....". [94]

(Note : The Sub-Committee on draft articles 23 to 38, appointed by the Committee, stated in its report :

"The Sub-Committee also considered Article 26 in relation to Article 37. It was noted that while *Article 26* postulated the continued existence of separate treaties covering the same subject-matter, clause 4 of Article 26 formulating the rules leading to the negation of treaty obligations by subsequent treaties, *Article 37* did not postulate the independent existence of a separate treaty as distinct from the earlier treaty but notionally at least considered the new agreement to modify the treaty as being the same treaty, albeit in a modified form.

9. In cases under Article 26 successive treaties necessarily involved different verbal formulations while in a case under Article 37, a modification in the application of the treaty was not necessarily directed to verbal changes (though modification could have the effect of textual alterations as well) but extended to an agreement (consensus) which while not altering the text yet effected a change in its operation or interpretation as between the parties so agreeing. Having regard to its multilateral character and the fact that it was the self-same multilateral treaty that was undergoing the transformation by reason of

94. Minutes of the 5th Meeting, held on 22nd December, 1967, p. 3, para 6.

modification, the Sub-Committee feels that the stringent conditions imposed on Article 37 were necessary. In regard to clause 2 of Article 37, the Sub-Committee considered it necessary to preserve the obligation to notify other parties to to the treaty. The Sub-Committee considered that clause 5 of Article 26, which was in the nature of a saving provision, was necessary, otherwise the rigorous conditions imposed by Article 37 could be set at naught by some of the parties to a multilateral treaty concluding a later multilateral treaty containing provisions that resulted in a modification of obligations.")

"Regarding the amendment or modification of treaties by a subsequent agreement, the Delegate of Ceylon agreed with the Sub-Committee's recommendations for retaining article 37 in its present form. The Delegates of Ghana, India, Indonesia, Iraq, Japan and U.A.R. also preferred retention of article 37 in its present form. The Delegate of Pakistan reiterated his position as explained in the fifth meeting of the Committee....." [95]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

A view was expressed in the Committee that the modifications contemplated in Article 37 should be in writing so as to obviate any uncertainty. The majority, however, was in favour of the provisions as in the draft articles.")

Article 39

".....As regards article 39, (the Delegate of U. A. R.) suggested deletion of the word "only" in paragraphs 1 and 2....." [96]

95. Minutes of the 9th Meeting, held on 28th December, 1967. p. 4, para 8.

96. Minutes of the 6th Meeting, held on 23rd December, 1967. p. 7, para 10.

"Dr. M. K. Yasseen (I. L. C.) explained the reasons for the limited provisions of article 39....." [97]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

"A suggestion had been made in the main Committee for the deletion of the word "only" in this Article, paragraphs 1 and 2. The Sub-Committee considered this proposal in some detail. However, if this proposal is accepted, then corresponding changes might be required in Article 57 so as to make it clear that the operation of other rules or grounds for terminating or suspending a treaty are not excluded on account of the present wording of Article 57. On balance, the Sub-Committee felt that it might be better to retain both Articles 39 and 57 as presently worded.")

"With regard to Article 39, the Delegate of the United Arab Republic reiterated that the word "only" should be deleted from paragraphs 1 and 2 of this Article though he did not feel very strongly on the point. He pointed out the consequences of retaining the word "only" in this Article. All the other Delegates, however, were prepared to accept this Article as in the Draft." [98]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The principles contained in this article were generally found to be acceptable to the majority. A delegation was, however, of the view that the word "only" in paragraphs 1 and 2 of this article should be deleted."

97. Ibid., p. 8, para 11.

98. Minutes of the 10th Meeting, held on 28th December, 1967, p. 1, para 2.

Article 43

".....Commenting on Article 43, (the Delegate of Ceylon) did not favour any change in the formulation of this article. He referred to the commentary on this article, that the violation must be objectively evident to any State dealing with the matter normally in good faith....." [99]

"The Delegate of the U. A. R.....regarded the present formulation of article 43 as unsatisfactory and suggested an amendment therein so as to substitute words "constitutional law" in place of "international law". He posed a question whether article 43 went beyond or against article 110 of the United Nations Charter, and suggested that the same may be examined by the Committee....." [100]

"The Delegate of the United Arab Republic suggested an amendment to article 43, which would read : "A treaty shall be ratified by the signatory States in accordance with their respective constitutional processes." This, in his view, would bring the article in consonance with the provisions of the Charter." [101]

"Dr. M. K. Yasseen (I. L. C.)..... pointed out that article 43 was the product of a compromise between the advocates of the Internationalist Doctrine and those of the Constitutionalist Doctrine..." [102]

"The Delegate of the U. A. R. suggested an amendment to article 43 so as to bring it in consonance with article 110 of the U. N. Charter. He suggested the following formulation...

99. Minutes of the 6th Meeting, held on 23rd December, 1967, pp. 1 and 2, para 3.

100. Ibid., p. 7, para 10.

101. Ibid., p. 8, para 12.

102. Ibid., p. 8, para 11.

"The consent of States to be bound by a treaty shall be expressed in accordance with their respective constitutional processes. . . . . ." [103]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

"The Sub-Committee considered article 43 in some detail. In particular, it considered the advisability of substituting the term "internal law" by the term "constitutional law". Ultimately the Sub-Committee felt that it might be better to leave article 43 as worded in the draft articles.")

"With regard to article 43, the Delegate of the United Arab Republic stated that the words "internal law" should be substituted by the words "constitutional law", and that it would be desirable to bring article 43 in accordance with the principle embodied in article 110 of the U. N. Charter. All the other Delegates were, however, prepared to accept the article as in the present draft." [104]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The Committee considered the provisions of this article in some detail. The majority was in favour of retaining the article as it is. A view was, however, expressed that the provision of article 43 as drafted would lead to practical difficulties, and be violative of article 110 of the U. N. Charter. It was, therefore, suggested that the expression "constitutional law" be substituted in place of the words "internal law".)

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103. Minutes of the 7th Meeting, held on 26th December, 1967 p. 2, para 6.

104. Minutes of the 10th Meeting, held on 26th December, 1967, p. 1, para 4.

Articles 46 and 47

"The Delegate of Ceylon. . . . . favoured retention of articles 46 and 47 in their present form despite the paucity of precedent in determining as to what can be regarded as fraud or corruption. . . . . ." [105]

". . . . . .Commenting on article 46, (the Delegate of Iraq) stated that fraud may exist in the conclusion of a treaty and if so, it would strike at the root of an agreement in a somewhat different way than an innocent error. The effect of fraud is to entitle the injured party to invoke the fraud as invalidating its consent. With regard to article 47, the delegate stated that corruption may exist and affect the consent of the State concerned. The corruption of a representative undermines the consent of the State in quite a different manner from that of fraud and differ from the case of coercion by acts directed against him personally. . . . . (He) favoured their retention in the present form. . . . . ." [106]

"The Delegate of Japan suggested deletion of articles 46 and 47 in as much as, in his view, they bring in an element of doubt in the legal security and order. He regarded the provisions of article 47 in regard to the concept of corruption to be vague and he quoted the observation of a certain government to the effect that provision should be made for specific cases of corruption, such as bribery. . . . . ." [107]

"The Delegate of the U. A. R..... favoured retention of articles 46 and 47 in their present form....." [108]

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105. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 2, para 3.

106. Ibid., pp. 4 and 5, para 7.

107. Ibid., pp. 5 and 6, para 8.

108. Ibid., p. 7, para 10.

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

"This article is acceptable to the majority. The Japanese member of the Sub-Committee was in favour of deletion of this article for reasons stated in the main Committee.")

"The Delegate of Japan stated that for the reasons already indicated by him at earlier meetings, he wished articles 46 and 47 to be deleted. The Delegate of the United Arab Republic stated that he was prepared to accept article 46 as in the draft on the understanding that this article had to be read alongwith article 49." [109]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"One delegation was in favour of deletion of these articles as in its view the provisions of these articles bring in an element of doubt in the legal security and order. In the view of the delegation the provisions of article 47 in regard to the concept of corruption were too vague.")

Article 48

".....Article 48, in (Iraqi Delegate's) view, covered all forms of constraint against the representative of a State personally which affect him as an individual.....He stated that he favoured (its) retention in the present form....." [110]

".....Commenting on article 48, (the Delegate of the U. A. R.) expressed the view that the Asian and African States should carefully select their representatives so that they are not open to coercion or corruption. . . . . ." [111]

109. Minutes of the 10th Meeting, held on 28th December, 1967, p. 1, para 5.
110. Minutes of the 6th Meeting, held on 23rd December, 1967, pp. 4 and 5, para 7.
111. Ibid., p. 7, para 10.

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that article 48 was acceptable to it in the form drafted by I.L.C.)

Article 49

"The Delegate of Ceylon. . . . . favoured an enlargement of the provisions of article 49 so as to prohibit not only the use or threat of force, but also all forms of coercion by indirect means, such as political or economic pressure. This, in his view, would be in accordance with the principles of the United Nations Charter. . . . . ." [112]

".....Article 49, according to (the Delegate of Iraq) dealt with the principle of invalidity of a treaty procured by illegal threat or use of force and he considered this doctrine to be *lex lata* in the International Law of today. In his understanding, the illegal threat mentioned in this article meant the unlawful means which affect or influence the liberty of consent of States including economic or political pressure or pressure by other means. He, therefore, suggested that the words "or any form of pressure" should be added at the end of this article....." [113]

"The Delegate of Pakistan, while commenting upon article 49, referred to Article 2, paragraph 4 of the United Nations Charter. He favoured retention of the said article in its present form....." [114]

".....As regards Article 49, (the Delegate of U.A.R.) agreed with the suggestion of the Delegate of Ceylon regarding inclusion of prohibition against economic or political pressure....." [115]

112. Ibid., p. 1, para 3.
113. Ibid., p. 5, para 7.
114. Ibid., p. 6, para 9.
115. Ibid., p. 7, para 10.

"Dr. M.K. Yasseen (I.L.C).....pointed out that coercion, as provided in article 49, was a new concept, which was previously not a ground of invalidity of a treaty. He said that the rule began to take shape under the League Covenant; and under the new Charter it assumed a concrete shape in article 2 paragraph 4. In his view, article 49 was meant by the I.L.C. to be in consonance with article 2 paragraph 4 of the Charter, and it has been argued that the concept of "force" may include political and economic pressure as well ....." [116]

"The Delegate of Japan.....stated that he favoured the retention of Article 49 in its present form. He was opposed to the proposal for insertion of a provision in this Article to provide against political and economic pressures as advocated by certain delegates. He felt that this question should be left to the interpretation of the words "threat or use of force" as provided in this Article." [117]

"Commenting on this Article, the Delegate of Pakistan stated that after hearing Dr. Yasseen and after carefully considering the wording of Article 2, paragraph 4, of the Charter, he wanted to revise his view on this article. He stated that the I.L.C. instead of making the matter specifically clear, decided to leave it to be worked out by interpretation, which was hardly satisfactory. In his view, "economic pressure" was not covered by the provision of Article 49 of the draft articles. He emphasized the need to amend the provisions suitably so that economic and political pressures are included within this article and supported the Delegate of Ceylon in this regard. He also referred, in this connection, to Article 41 of the U.N. Charter to reinforce his point." [118]

116. Ibid., p. 8, para 11.

117. Minutes of the 7th Meeting, held on 26th December, 1967, p. 1, para 4.

118. Ibid., p. 2, para 5.

".....As regards Article 49, (the Delegate of U.A.R.) reiterated his earlier view that this article should contain a provision relating to economic and political pressures and supported the proposal of the Delegates of Ceylon and Pakistan that this article should include a provision so as to state that political or economic pressure may invalidate a treaty. He observed that it would be astonishing to have a rule that corruption of representative of a State or coercion against him would invalidate a treaty but that the economic or political coercion against the State would not produce that result." [119]

"Dr. Yasseen (I.L.C.) in his personal capacity agreed with the views expressed by the Delegate of the U.A.R. that coercion in all its forms should vitiate the consent of the State. He stated that some of the Members of the International Law Commission, however, did not want to go so far. He pointed out that the second Summit Conference of Non-aligned Nations interpreted the word "force" to include economic and political pressures. In his view, economic and political pressure sometimes could be as effective as the use of force. . . . . ." [120]

"The Delegate of Ceylon stated that the provision of Article 49 was one of the most important provisions from the point of view of developing countries. He appreciated the fact that the draft articles prepared by the Commission represented the largest common measure of agreement among the members of the Commission. Nevertheless, he pointed out that the reason for the establishment of this Committee was to express the particular points of view of Asian and African countries and felt that this point of view should be placed before the Conference of Plenipotentiaries." [121]

119. Ibid., p. 2, para 6.

120. Ibid., pp. 2 and 3 para 7.

121. Ibid., p. 3, para 8.

"The Delegates of Ghana, India, and Iraq supported the suggestion made by the Delegates of Ceylon, Pakistan, and the U.A.R. as regards article 49. The Delegate of Iraq suggested the addition of the words "or by any form of pressure" at the end of the article." [122]

"The Delegate of Japan reiterated his earlier position as regards the said article." [123]

(Note : The Sub-Committee on articles 39 to 75, appointed by the Committee, stated in its report :

"The majority favoured the addition of the words "or by economic or political pressure" at the end of the Article. The Japanese member of the Sub-Committee favoured the retention of Article 49 as drafted by the I.L.C.")

"The Delegates of Ceylon, Ghana, India, Iraq, Pakistan and the U.A.R. were in favour of addition of the words "or by economic or political pressure" at the end of article 49. The Delegates of Indonesia and Japan, however, were for the retention of the article as in the present draft." [124]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The majority in the Committee is in favour of the addition of the words "or by economic or political pressure" at the end of the article. The minority is, however, in favour of the retention of the article as in the draft.")

Articles 50, 61 and 67 (Jus Cogens)

". . . . . .As regards the concept of *Jus Cogens* embodied in Article 50, (the Delegate of Ceylon) stated that

122. Ibid., pp. 3 and 4, para 9.

123. Ibid., p. 4, para 10.

124. Minutes of the 10th Meeting, held on 28th December, 1967, p. 2, para 6.

though a precise formulation of the concept would be desirable having regard to the reasons given by the Commission in its commentary, he would favour the retention of the article in its present form. . . . . ." [125]

"The Delegate of India. . . . . .generally agreed to the present formulation of articles 50, 61 and 67, although they were bound to be extremely controversial. He anticipated a heavy attack on the concept of *Jus Cogens*, as embodied in article 50, in the Conference of Plenipotentiaries, and pointed out that many jurists from the United Kingdom and other countries have taken serious objections to the provisions of this article. He regarded the concept of *Jus Cogens* to be dynamic one and pointed out that that was the reason for Article 61 being added apart from Article 50. The provisions of Article 61 were not retroactive, except to the extent indicated in Article 67, and Article 67 indicates the effect of a treaty becoming void under Article 50 or terminating under Article 61. He did not think that the concept of *Jus Cogens* could be identified with the municipal law concept of public policy, in as much as the concept of *Jus Cogens* is not a rigid one. He also referred to the criticism of the concept as embodied in Articles 50, 61 and 67 by the U.S. Government in their latest comments made on the 2nd October, 1967 on these articles (U. N. Document No. A/6827/2). He suggested an identification and definition of the peremptory norms by institutions and international courts. Further, such norms, according to him, could be created by the instruments constituent of an international organisation, like the United Nations, or by law-making multilateral treaties or even by custom. He also pointed out that in certain cases the concept of separability has been recognised, so that a part of the

125. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 2, para 3.

treaty conflicting with a peremptory norm of international law became void." [126]

". . . . . .With regard to Article 50, (the Delegate of Iraq) stated that the prohibition of the use of force in itself constitutes an example of a rule of International Law having the character of *Jus Cogens* and there were many examples in practice regarding the application of that rule. . . . . .(He) stated that he favoured (its) retention in the present form . . . . . ." [127]

". . . . . .Commenting on Article 50, (the Delegate of Japan) said that unanimity on the concept of *Jus Cogens* was unlikely and there was bound to be some difference of opinion. He favoured the retention of Article 50, while suggesting the necessity for some body or authority, such as the International Court, to decide as to which norm should be regarded as peremptory. . . . . ." [128]

". . . . . .As regards Article 50 (the Delegate of Pakistan) endorsed the views of the Indian Delegate, though he felt that the practical difficulties in identifying the peremptory norms of International Law were not insurmountable. He suggested that an answer to these difficulties could probably be found in Article 38 of the Statute of the International Court of Justice." [129]

The Delegate of the U.A.R. . . . . .suggested a reformulation of article 50 so as to read : "A treaty is void if it conflicts with the peremptory norm of general international

126. Ibid., pp. 2 and 3, para 6.

127. Ibid., p. 5, para 7.

128. Ibid., p. 6, para 8.

129. Ibid., p. 6, para 9.

law from which no derogation is permitted." He said that the provision should not go beyond this. . . . . ." [130]

"Dr. M. K. Yasseen (I.L.C.). . . . . .regarded article 50 to be necessary for the reasons advanced by the Delegate of India . . . . . ." [131]

". . . . . Commenting upon the concept of *Jus Cogens*, as embodied in Article 50 of the Draft Articles (Dr. Yasseen of I.L.C.) pointed out that the International Law Commission had been criticised by many for providing no criterion for distinguishing between peremptory norms and other norms. In his view, the Commission could only formulate the principle concerning the consequences of the existence of the rules of *Jus Cogens*, and should not, and could not, go further by providing some criterion because the Commission was preparing the draft articles on the law of treaties and not on the problem of *Jus Cogens*. He explained that the problems of *Jus Cogens* related to general international law concerning the sources of law on which the Commission may well be called upon by the General Assembly to formulate the principles. He emphasized that the notion of *Jus Cogens* was a dynamic concept and not a static one." [132]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

"The Sub-Committee considered the advisability of deleting the final clause of this Article which provides for the manner in which a peremptory norm of international law can be modified. Article 50 would then read only as follows :

130. Ibid., p. 7, para 10.

131. Ibid., p. 8, para 11.

132. Minutes of the 7th Meeting, held on 26th December, 1967, p. 3, para 7.

"A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted."

The Sub-Committee felt, however, that it would be desirable to expressly recognise in Article 50 the possibility as well as the manner of modification of a peremptory norm, as otherwise Article 50 might be interpreted in a rigid and inflexible manner. The Sub-Committee therefore is in favour of retaining Article 50 as presently worded.")

"Article 50 was acceptable to all the Delegations. The Delegate of Japan, however, wished it to be recorded that he accepted the provisions of this article subject to the note recorded at the end of the third Sub-Committee's Report." [133]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"Whilst the majority had no objection to the present draft being retained, one delegation expressed the view that this is one of the concepts which may cause dispute in its application. In the view of the delegation, it was desirable to designate or establish a body which is invested with standing competence to pass objective and purely legal judgements upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means.")

Article 53

". . . . . The Indian Delegation also commented on the subject of denunciation of a treaty containing no provision regarding its termination. The delegate referred to the resolution of the Institute of International Law where it had been suggested that a provision regulating the right of denunciation or withdrawal and the conditions for exercise of this right, be included in the treaty, or set out in any other appropriate form.

133. Minutes of the 10th Meeting, held on 28th December, 1967, p. 2, para 7.

However, in the case of a law-making treaty, he felt that there was no need for any stipulation regarding denunciation. In regard to the constituent instruments of an International Organisation, he suggested that the conditions for withdrawal of a member must be specified in the instrument itself." [134]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that Article 53 was acceptable to it in the form drafted by the I.L.C.)

Article 55

". . . . . As regards temporary suspension of a multilateral treaty by the consent of certain parties only under the provisions of Article 55, (the Delegate of Ceylon) stated that it would be desirable to define precisely the term "temporary suspension." [135]

"The Delegate of Ghana . . . . . regarded the provisions of Article 55 to be dangerous, in as much as they might lead to abuse. He suggested a re-formulation of the article so as to ensure that any suspension of the operation of multilateral treaty could be brought about only by consent of all the parties to the treaty." [136]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that Article 55 was acceptable to it in the form drafted by the I.L.C.)

Article 57

". . . . . Commenting on Article 57, (the Delegate of Ceylon) pointed out that clause (b) of paragraph 3 referred to the violation of a provision which is essential to the accom-

134. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 4, para 6.

135. Ibid., p. 2, para 3.

136. Ibid., pp. 2 and 3, para 4.

plishment of the object or the purpose of the treaty. He favoured its retention in the present from . . . . . " [137]

(Note : The Sub- Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that Article 57 was acceptable to it in the form drafted by the I.L.C.)

Article 58

". . . . . .As regards the permanent destruction of an object under Article 58 (the Delegate of Ceylon) had some doubt as to whether the object contemplated was limited to the destruction of some material object and he wanted clarification in this regard . . . . . " [138]

". . . . . .(The Delegate of Iraq) stated that he favoured (its) retention in the present form. . . . . " [139]

". . . . . .As regards Article 58, (the Delegate of Pakistan) was in favour of a formulation which would safeguard against situations in which destruction of the object is brought about by the act of the party itself. . . . . " [140]

"Dr. M.K. Yasseen (I.L.C.). . . . . pointed out that "object" has been used in Article 58, in the material sense and referred to the examples given in the commentary by the International Law Commission. . . . . "[141]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that Article 58 was acceptable to it in the form drafted by the I.L.C.)

137. Ibid., p. 2, para 3.

138. Ibid., p. 2, para 3.

139. Ibid., p. 5, para 7.

140. Ibid., p. 6, para 9.

141. Ibid., p. 8, para 11.

"With regard to articles 58 and 59, the Delegate of Pakistan reiterated his earlier comments . . . . . " [142]

Article 59

". . . . . .With regard to Article 59, (the Delegate of Ceylon) was of the view that the criteria indicated under clauses (a) and (b) of paragraph 1 were sufficiently indicative of the situations in which a fundamental change of circumstances may be invoked as a ground for terminating the treaty. . . . . " [143]

". . . . . .Commenting on the Article 59, (the Delegate of Iraq) stated all jurists admit the existence in International Law of the principle with which that article was concerned, and which is commonly known as the doctrine of *Rebus Sic Stantibus*, and that many systems of municipal laws recognise that principle quite apart from any actual impossibility of performance. . . . .(He) stated that he favoured (its) retention in the present form. . . . . " [144]

". . . . . .As regard Article 58, (the Delegate of Pakistan) was in favour of a formulation which would safeguard against situations in which destruction the object is brought about by the act of the party itself. He wanted a similar safeguard in Article 59, since a change in the fundamental circumstances could be brought about by the voluntary act of the party. . . . . " [145]

"As regards Article 59, (the Delegate of U.A.R.) was not happy about the provision of paragraph 2 clause (a), in

142. Minutes of the 10th Meeting, held on 28th December, 1967, p. 2, para 8.

143. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 2, para 3.

144. Ibid., p. 5. para 7.

145. Ibid., p. 6, para 9.

as much as boundaries in Asian and African countries had been fixed against their wishes. He therefore suggested a cautious approach in respect of the said rule. . . . . ." [146]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that Article 59 was acceptable to it in the form drafted by the I.L.C.)

"With regard to Articles 58 and 59, the Delegate of Pakistan reiterated his earlier comments. . . . . ." [147]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"One delegation was of the view that these articles (Articles 58 and 59) should be so formulated as to provide a safeguard against situations in which the destruction of the object or a change in the fundamental circumstances is brought about by the voluntary act of the party itself.")

Article 60

"The Delegate of the U.A.R. . . . . .was of the opinion that Article 60 should contain a provision relating to the suspension of diplomatic relations and suggested that first phrase of this article should read as follows :—

> "The severance or suspension of diplomatic relations between parties to a treaty shall not affect the legal relations established between them by the treaty." [148]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

146. Ibid., p. 7, para 10.

147. Minutes of the 10th Meeting, held on 28th December, 1967, p. 2, para 8.

148. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 7, para 10.

"The Sub-Committee agreed on adding the words "or suspension" after the word "severance". The proposal had originally been made in the meeting of the main Committee on December 26, 1967.")

". . . . . .All the Delegates with the exception of Ghana wanted the addition of the words "suspension or" before the word "severance" in Article 60. . . . . ." [149]

(Note : The Committee, in its comments annexed to its Interim Report on the Law of Treaties, stated :

"The majority in the Committee is in favour of the addition of the words "suspension or" before the word "severance". A minority of one is of the opinion that the addition of these words is superfluous.")

Article 65

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report :

"The Sub-Committee puts it for consideration by the main Committee whether the term "with respect to" contained in Article 65 (3) should be replaced by the term "in favour of" so as to make it absolutely clear that a party whose fraud, coercive or corrupt act has been the cause of the nullity of the treaty, cannot invoke Article 65 (3). This point is made clear in the commentary, but it is for consideration whether Article 65 (3) itself adequately reflects this understanding.")

". . . . . .Article 65 was found acceptable to all the delegates." [150]

149. Minutes of the 10th Meeting, held on 28th December, 1967, p. 2, para 8.

150. Ibid., p. 2, para 8.

Article 69

"The Delegate of Ceylon. . . . . .suggested that consideration of Article 69 may be deferred, since the matter is being separately considered by the International Law Commission. . . . . ." [151]

". . . . . .As regards Article 69, (the Delegate of Iraq) suggested exclusion of the question of succession of States and State responsibility from the field of law of treaties, because these could be treated separately." [152]

(Note : The Sub-Committee on draft articles 39 to 75, appointed by the Committee, stated in its report that article 69 was acceptable to it in the form drafted by the I.L.C.)

Article 70

"The Delegate of Ceylon. . . . . .favoured retention of Article 70 in its present form. . . . . ." [153]

"The Delegate of Japan. . . . . .said that he was not clear regarding the meaning of the provisions of Article 70." [154]

(Note : The Sub-Committee on draft articles 39 to 76 appointed by the Committee, stated in its report that Article 70 was acceptable to it in the form drafted by the I.L.C.)

151. Minutes of the 6th Meeting, held on 23rd December, 1967, p. 2, para 3.

152. Ibid., p. 5, para 7.

153. Ibid., p. 2, para 3.

154. Ibid., p. 6, para. 8.

(VII) REPORTS OF THE THREE SUB-COMMITTEES APPOINTED AT THE NINTH SESSION, NEW DELHI.

REPORT OF THE SUB-COMMITTEE ON ARTICLES 1 TO 22 OF THE I.L.C.'S DRAFT ARTICLES ON THE LAW OF TREATIES

INTRODUCTION

The Sub-Committee has endeavoured to reach, as far as possible, unanimous conclusions and has concentrated only on substantive matters and not on subsidiary or secondary matters pertaining to drafting or minor changes. The question of Article 2(f) and (g) in relation to Article 22(a), for example, is considered by the Sub-Committee to be a question essentially pertaining to drafting and not to any important question of principle. Therefore, this Report deals only with an examination of Articles 5, 6(1)(b), 7, 10, 11 and 15 of the I.L.C's text.

(1) *Article* 5

The Sub-Committee is of opinion that Article 5 should be retained. Prof. Sultan (UAR) has suggested the replacement of paragraph 2 by the following draft :

> "In case of union between States, the capacity of member States to conclude treaties will be subject to the respective constitutional provisions and limitations of that Union."

The proposed amended text is intended to cover all kinds of Unions of States. The other members of the Sub-Committee consider that this proposal merits the serious consideration of the Committee.

(2) *Article 6(1)(b) read with Article 7*

The Sub-Committee is of opinion that the present text of Article 6(1) (b) may be retained on the understanding that

it is designed to solve certain practical difficulties which may arise under certain circumstances.

As to Article 7, the Sub-Committee is of opinion that there is no objection to the present text provided that it is amended in such a way as to include a provision to the effect that confirmation should be made within a reasonable time. This is suggested with a view to reducing the possibility of abuse.

(3) *Articles 10 and 11*

The Sub-Committee examined Articles 10 and 11 together and reached the conclusion that it might be preferable to state first the general rule that States are bound by treaties on ratification and that the exception is that they would be bound by treaties upon signature only if they so expressly state in the treaty. The Sub-Committee is also of the opinion that the drafting of these two Articles should cover all the cases without leaving any lacuna or creating any doubt. For these reasons, the Sub-Committee would like to modify the two Articles so as to read as follows :

"*Article 10* (this corresponds to Article 11 of the I.L.C's text)

Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when :

(a) The treaty provides for such consent to be expressed by means of ratification;

(b) Such consent is not expressed by signature alone as provided in Article 11;

(c) The representative of the State in question has signed the treaty subject to ratification; or

(d) The intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 11 (this corresponds to Article 10 of the I.L.C.'s text)

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect;

(b) The intention of the State in question to give that effect to the signature appears from the full powers of its representative.

2. For the purposes of paragraph 1 :

(a) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

The representative of Japan is of the opinion that Article 11 mentioned above should read as follows :

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect;

(b) It is otherwise established that the negotiating States were agreed that signature should have that effect;

(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1 :

(a) The initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

(4) *Article 15*

The Sub-Committee is of opinion that this Article should be deleted. The State should not become bound by a treaty which has not yet come into force. If, however, the Committee takes the view that this Article should be retained, the Sub-Committee would suggest that the first sentence should be modified so as to read as follows :

"A State should refrain from acts tending to frustate the object of a proposed treaty when" ; etc.

(5) *Participation in general multilateral treaties*

The majority of the members of the Sub-Committee (Ceylon, India and U.A.R.) considers that the right of every

State to participate in general multilateral treaties is of vital importance to the progressive development of international law. General multilateral treaties concern the international community as a whole. If international law is to be in keeping with the real interest of the international community and if universal acceptance of the progressive development of this legal order is desirable, then the participation of every member of the community in the process and procedure of law-making is essential.

The minority (Japan) holds that in view of the principle of freedom of contract and the existing practice of the international conferences held under the auspices of the United Nations and the possible complications that it may imply, it would be better that the draft articles be silent on this point.

Sd/- K. Nishimura
Chairman

Sd/- D.S. Wijewardene
Member

Sd/- Seiyid Muhammed
Member

Sd/- Hamed Sultan
Member

REPORT OF THE SUB-COMMITTEE ON ARTICLES 23 TO 38 OF THE I.L.C.'S DRAFT ARTICLES ON THE LAW OF TREATIES

The Sub-Committee, appointed at the Fifth Meeting of the Committee held on the 22nd December 1967, consisting of Mr. H.L. de Silva (Ceylon) Chairman, Prof. Harnam Singh (India) and Mr. A. Watanabe (Japan), to consider Articles 23 to 38, held meetings on the 22nd and 23rd December. In the light of the Committee's discussions and within the time available to it, the Sub-Committee decided to deal with three major problems, namely, (a) the formulation of the general rules of interpretation of treaties, (b) treaties and the rights and obligations of third States, and (c) successive treaties and the amendment and modification of treaties.

The formulation of general rules of interpretation of treaties

2. The Sub-Committee acknowledged the fact that there was a cleavage of opinion in regard to how the question of the interpretation of treaties should be approached. There was on the one hand those who considered the task of interpretation to be the elucidation of the text of a treaty and on the other those who held the view that the discovery of the true intention of the parties to be the paramount function of interpretation. While it is basic to the whole process of interpretation that the goal should be the ascertainment of the true intention of the parties, the Sub-Committee concluded that the primary emphasis should be placed on the intention as evidenced by the text, that is to say, the actual terms of the treaty and that it would not be either necessary or desirable to state specifically in Article 27 that the object of interpretation was the discovery of the intention of the parties. This

was manifest from the formulation of the general rule in clause 1 which was a succinct statement of the essential rule. By the further elaboration of what was meant by the expression "the context" in clause 2 and by the indication of additional sources of interpretation in clauses 3 and 4, the International Law Commission draft has taken full account of the paramountcy of the element of intention. The Sub-Committee, therefore, feels (subject to the reservation made by the Indian delegate alone which is discussed in the following paragraph) that the draft rules of interpretation are quite adequate to the ascertainment of intention and are a coherent body of rules, emphasising the unitary character of the interpretative process.

3. Although the representative of India suggested the assimilation of Article 28 to Article 27 as a new sub-clause (d) to clause 3 of Article 27, the majority felt that the distinction contemplated in the two Articles should be maintained. They felt that a formulation of the rule which did not stress sufficiently the primacy of the text in realtion to extrinsic sources of interpretation would tend to considerable uncertainty and that there should be no room for recourse to preparatory material if the textual reading established a clear meaning in accordance with the rules specified in Article 28. While we appreciate that no rigid distinction is possible and that a nexus exists between the several sources, we are unable to accord preparatory material a parity of status with the primary criteria mentioned in Article 27 and think that the two Articles should be separate and distinct.

Treaties and the rights and obligations of third States

4. In regard to the question of rights conferred on third States, the Sub-Committee is of the view that, as in the case of obligations, the express consent of such third State should be a condition precedent to their creation. Whatever may be the true position in regard to stipulations for the benefit

of a third party in systems of municipal law, in international relations the express consent of such third State should, in our opinion, be required even in the case of the conferment of rights, consistently with the principle of the sovereign equality of all States.

5. The Sub-Committee also felt that such a requirement would also reduce any uncertainty in regard to the question whether a third State has assented to the conferment of the right. In our view the insistence on consent by the third State or States would in the case of multilateral treaties tend to the effective participation of all States in treaties of a law-making character. The Sub-Committee also felt that if express consent of the third State was stipulated as a requirement, it would help to reduce the danger of the creation of rights which carry with them contingent obligations to which such third State may well be deemed to have assented by its silence. Accordingly the Sub-Committee recommends the amendment of article 32 by the deletion of all the words commencing : "and the States assents thereto" to the end of paragraph 1 and the substitution therefor of the words : "and the State has expressly consented thereto". The Sub-Committee also recommends the amendment of article 30 by the interpolation of the word "express" before the word "consent".

Successive treaties and the amendment and modification of treaties

6. Provisions applicable to the amendment or revision of treaties and the conclusion of later treaties relating to the same subject matter were necessarily inevitable when circumstances changed requiring appropriate variations in the text of a treaty. If it was intended that the subsequent change in relation to the same subject matter was in substitution of the earlier agreement or was so far incompatible with the earlier version that the two were incapable of being applied together

the former treaty was effectively terminated or suspended according to Article 56.

7. But if the divergence or variation from the original version in relation to the same subject matter was not deemed by the parties to be inconsistent or was expressly made subject to such earlier treaty the two treaties are regarded as successively co-existing. In relation to such successive treaties relating to the same subject matter Article 26 distinguished between (a) cases where there was complete identity of parties in regard to the successive treaties—(clause 3) and (b) cases where all the parties to the earlier treaty were not parties to the later treaty—(clause 4). In regard to the case in (a) there was in effect a *pro tanto* amendment of the first treaty. In regard to case (b) Article 26 envisaged three separate positions: (i) as between States which were parties to both the earlier and the later treaty, only such parts of the earlier treaty as were compatible with the later only were saved; (ii) as between a State which was a party to both the earlier and the later treaty and a State which was party only to the earlier treaty, the earlier treaty prevailed ; and (iii) as between a State which was party to both treaties and a State party only to the later treaty, obligations *inter se* were governed by the later treaty. The Sub-Committee respectfully agrees with the rules so formulated and recommends their endorsement by the Committee.

8. The Sub-Committee also considered Article 26 in relation to Article 37. It was noted that while Article 26 postulated the continued existence of separate treaties covering the same subject-matter, clause 4 of Article 26 formulating the rules leading to the novation of treaty obligations by subsequent treaties, *Article 37* did not postulate the independent existence of a separate treaty, as distinct from the earlier treaty but notionally at least considered the new agreement to modify the treaty as being the same treaty, albeit in a modified form.

9. In cases under Article 26 successive treaties necessarily involved different verbal formulations while in a case under Article 37—a modification in the application of the treaty was not necessarily directed to verbal changes (though modification could have the effect of textual alterations as well) but extended to an agreement (consensus) which while not altering the text yet effected a change in its operation or interpretation as between the parties so agreeing. Having regard to its multilateral character and the fact that it was the self-same multilateral treaty that was undergoing the transformation by reason of modification the Sub-Committee feels that the stringent conditions imposed by Article 37 were necessary. In regard to clause 2 of Article 37 the Sub-Committee considered it necessary to preserve the obligation to notify other parties to the treaty. The Sub-Committee considered that clause 5 of Article 26 which was in the nature of a saving provision was necessary as otherwise the rigorous conditions imposed by Article 37 could be set at naught by some of the parties to a multilateral treaty concluding a later multilateral treaty containing provisions that resulted in a modification of obligations.

10. As regards the general problem of amendment it was felt that in the Articles amendment meant a textual change while modification of a treaty did not necessarily involve amendment, the change or transformation being evident in the treaty's operational effects while the text remained unchanged. The Sub-Committee also wishes to record the fact that the delegate for Japan reiterated the view expressed in the plenary session that Article 38 should be deleted.

REPORT OF THE SUB-COMMITTEE ON ARTICLES 39 TO 75 OF THE I.L.C.'S DRAFT ARTICLES ON THE LAW OF TREATIES

Introduction

The Sub-Committee took into consideration the various articles seriatum with particular reference to matters of substance. The Sub-Committee did not consider it necessary to go into minute details as regards drafting changes.

Article 39

A suggestion had been made in the main Committee for the deletion of the word "only" in this Article, paragraphs 1 and 2. The Sub-Committee considered this proposal in some detail. However, if this proposal is accepted, then corresponding changes might be required in Article 57 so as to make it clear that the operation of other rules or grounds for terminating or suspending a treaty are not excluded on account of the present wording of Article 57. On balance, the Sub-Committee felt that it might be better to retain both Articles 39 and 57 as presently worded.

Article 40

Acceptable.

Article 41

Acceptable.

Article 42

Acceptable.

Article 43

The Sub-Committee considered Article 43 in some detail. In particular, it considered the advisability of substituting the term "internal law" by the term "constitutional law". Ultimately, the Sub-Committee felt that it might be better to leave Article 43 as worded in the draft articles.

Article 44

Acceptable.

Article 45

Acceptable.

Article 46

This article is acceptable to the majority. The Japanese member of the Sub-Committee was in favour of deletion of this article for reasons stated in the main Committee.

Article 47

As above.

Article 48

Acceptable.

Article 49

The majority favoured the addition of the words "or by economic or political pressure" at the end of the Article. The Japanese member of the Sub-Committee favoured the retention of Article 49 as drafted by the I.L.C.

Article 50

The Sub-Committee considered the advisability of deleting the final clause of this Article which provides for the manner

in which a peremptory norm of international law can be modified. Article 50 would then read only as follows :

> "A treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted."

The Sub-Committee felt, however, that it would be desirable to expressly recognise in Article 50 the possibility as well as the manner of modification of a peremptory norm, as otherwise Article 50 might be interpreted in a rigid and inflexible manner. The Sub-Committee therefore is in favour of retaining Article 50 as presently worded.

Article 51

Acceptable.

Article 52

Acceptable.

Article 53

Acceptable.

Article 54

Acceptable.

Article 55

Acceptable.

Article 56

Acceptable.

Article 57

Acceptable.

Article 58

Acceptable.

Article 59

Acceptable.

Article 60

The Sub-Committee agreed on adding the words "or suspension" after the word "severance". The proposal had originally been made in the meeting of the main Committee on December, 1967.

Article 61

Acceptable.

Article 62

Acceptable.

Article 63

Acceptable.

Article 64

Acceptable.

Article 65

The Sub-Committee puts it for consideration by the main Committee whether the term "with respect to" contained in Article 65 (3) should be replaced by the term "in favour of" so as to make it absolutely clear that a party whose fraud, coercive or corrupt act has been the cause of the nullity of the treaty, cannot invoke article 65(3). This point is made clear in the commentary, but it is for consideration whether article 65(3) itself adequately reflects this understanding.

Article 66

Acceptable.

Article 67

Acceptable.

Article 68

Acceptable.

Article 69

Acceptable.

Article 70

Acceptable.

Article 71

Acceptable.

Article 72

Acceptable.

Article 73

Acceptable.

Article 74

Acceptable.

Article 75

Acceptable.

The Japanese member of the Sub-Committee stated that not a few provisions of the draft articles contain as is admitted by the commentary by the I.L.C., certain concepts which may cause disputes in their application. In his view, it is desirable therefore to designate or establish a body which is invested with standing competence to pass objective and purely legal judgments upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means.

Sd/- Dr. Hassan Al Rawi
Chairman

Sd/- Mr. B. K. Nketiah
Member

Sd/- Dr. J. M. Mukhi
Member

Sd/- Mr. K. Suehiro
Member

(VIII) INTERIM REPORT OF THE COMMITTEE ON THE LAW OF TREATIES ADOPTED AT THE NINTH SESSION, NEW DELHI

The Draft Articles on the Law of Treaties as provisionally drawn up by the International Law Commission at its Fifteenth Session were placed before this Committee at its Sixth Session held in Cairo in 1964 under the provisions of Article 3 (a) of the Committee's Statutes read with clause (5) (a) of Rule 6 of the Statutory Rules. After a general discussion on the Draft Articles, the Committee at that Session had decided that the Secretariat should prepare a Study on the Law of Treaties including the question of accession to general multilateral conventions taking into account the specific questions that were raised by the Delegates in the course of deliberations at that Session. The Committee further decided to request the Governments of the participating countries to communicate their views on the Draft Articles on the Law of Treaties drawn up by the International Law Commission to the Secretariat of the Committee. The Committee also decided that priority should be given to this subject and that the same should be placed on the agenda of its next Session.

2. In accordance with the aforesaid directive, the subject was placed on the agenda of the Seventh Session of the Committee held in Baghdad in 1965. At that Session the Committee appointed a Special Rapporteur to prepare a report for consideration of the Committee. It was decided that the subject be taken up at its next Session with a view to formulating proposals and suggestions from the Asian-African viewpoint for consideration of the International Law Commission.

The Special Rapporteur of the Committee (Dr. Hasan Zakaria) was requested to prepare a report on the specific points arising out of the International Law Commission's Draft on the subject which required consideration from the Asian-African viewpoint. The Special Rapporteur of the Committee attended the Seventeenth Session of the International Law Commission where the Draft Articles on the Law of Treaties were finally drawn up.

3. The Report prepared by Dr. Hasan Zakaria, Special Rapporteur of the Committee, was placed before the Committee at its Eighth Session. The Committee was informed at that Session that the Commission had concluded its work on the Law of Treaties and that the United Nations was considering the question of convoking a Conference of Plenipotentiaries to meet in the year 1968 with a view to drawing up a multilateral convention on the subject of the Law of Treaties. The President of the International Law Commission (H.E. Dr. M.K. Yasseen) who attended the Eighth Session stressed the need for the Committee to consider the subject urgently and formulate its views before the Conference of the Plenipotentiaries met to consider the question. Taking note that the provisions of Article 3 (a) of the Statutes of the Committee contemplated that the Committee should consider the reports of the Commission and make recommendations thereon to the Governments of the participating countries, it was decided that the Committee would take up this question as a priority item during its Ninth Session. It also appointed Dr. Sompong Sucharitkul (Thailand) as Special Rapporteur to prepare a report for consideration of the Committee.

4. The Report of the Special Rapporteur together with a Brief prepared by the Secretariat has been placed before the Committee for consideration at this Session. In the Brief prepared by the Secretariat, the relevant background material, including the evolution of the Draft Articles from its earliest

to the final stages in the International Law Commission has been set out. The views expressed by Asian-African Members of the Commission, during consideration of the law of treaties by the International Law Commission itself and the opinions of the Delegates of Asian-African countries to the Sixth Committee of the General Assembly of the United Nations have also been made available to this Committee. The Secretariat in its brief has indicated as many as 35 points which require consideration of the Committee with regard to the Draft Articles drawn up by the International Law Commission. The Delegates present at this Session have also brought up certain other points for consideration of the Committee.

5. The Committee at this Session has given consideration to this subject and has decided to focus attention on certain questions with the object of assisting the Governments of the participating countries to formulate their views on the subject.

6. Due to lack of time at its disposal it has not been possible for the Committee to examine all the aspects of the various Draft Articles. Having regard to the urgency of the matter and its importance to the countries of the Asian-African region, however, the Committee has decided to draw up this Interim Report and to submit the same for consideration of the Governments confining itself to some of the more important issues.

7. It has generally been agreed that the Committee in drawing up its Report should indicate in a general manner the points which require consideration of the Conference of Plenipotentiaries and that it would refrain from suggesting any text by way of amendment to the Articles as that would be really a matter for the Drafting Committee appointed by the Conference of Plenipotentiaries.

8. The Committee's comments on the Draft Articles prepared by the International Law Commission are given in the Annexure to this Report.

9. The Committee had the advantage of the presence of H.E. Dr. M.K. Yasseen, Member of the International Law Commission, who rendered great assistance to the Committee in its discussion on the subject not only by explaining the object behind the particular articles which were under discussion in the Committee but also by expressing his personal views as an expert on the points which required clarification. The Committee wishes to place on record its deep appreciation and thanks to H.E. Dr. M.K. Yasseen for his assistance in the deliberations of the Committee on this subject.

10. The Committee wishes to take this opportunity to express its deep appreciation of the monumental work done by the International Law Commission on this complex subject and to state that the few comments which the Committee has made are to express the views of the members of the Committee on some of the aspects.

C.K. Daphtary
President

ANNEXURE

COMMENTS ON THE DRAFT ARTICLES PREPARED BY THE INTERNATIONAL LAW COMMISSION

Participation in General Multilateral Treaties

The majority in the Committee considers that the right of every State to participate in general multilateral treaties is of vital importance to the progressive development of International Law. General multilateral treaties concern the international community as a whole. If international law is to be in keeping with the real interest of the international community and if universal acceptance of the progressive development of this legal order is desirable, then the participation of every member of the community is essential. The majority in the Committee, therefore, considers that the Articles on the Law of Treaties should contain a provision regarding participation in general multilateral treaties.

One Delegate, however, holds that in view of the principle of freedom of contract and the existing practice of the international conferences held under the auspices of the United Nations and the possible complications that it may imply, it would be better that the draft articles be silent on this point.

Article 5

The Committee is of the opinion that paragraph 2 of this Article requires reformulation to include within its scope not only the units of a federation but all kinds of unions of States. It, therefore, suggests that paragraph 2 should incorporate the following principle :

> In case of union between States, the capacity of Member States as well as the capacity of the units of a Federal State to conclude treaties will be subject to the respective constitutional provisions of that union or the federation.

Article 7

The majority in the Committee is of the opinion that this article should be amended so as to include a provision to the effect that confirmation of the act performed without authority should be made within a reasonable time. This is suggested with a view to reducing any possibility of abuse. The minority has, however, no objection to retention of the present text of Article 7 of the International Law Commission's Draft.

Articles 10 and 11

The majority in the Committee considers that there is a lacuna in these provisions as no provision has been made to cover cases which do not fall either within Article 10 or within Article 11. It is felt that such cases are considerable and that a provision should be made, if possible, by linking up the two articles to cover cases which are not covered by the present text of these articles.

The majority is also in favour of the deletion of the words "or was expressed during the negotiation" in Article 10 1(c).

The minority in the Committee is in favour of retention of the present text of the Draft Articles.

Article 15

The Committee considers this article to contain a new norm of international law which could be supported as progressive development of international law.

The majority in the Committee is, however, in favour of deletion of clause (a) of this article as in its view the object of a proposed treaty might not be clear during the progress of negotiations. Some of the delegations are of the view that a provision like clause (a) of this article may hamper negotiations for a treaty.

Some members, however, are in favour of the retention of the present text.

Articles 27 and 28

The Committee discussed the provisions of these two articles in great detail. There was some difference of opinion in the Committee in regard to how the question of interpretation of treaties should be approached. There was on the one hand those who considered the task of interpretation to be the elucidation of the text of a treaty and on the other those who held the view that the discovery of the true intention of the parties to be the paramount function of interpretation. One view expressed was that the provisions of these articles do not sufficiently take into account that the main aim of interpretation is to look for the real intention of the parties and that these articles should be suitably modified to bring out that position. Another view that "preparatory work" as a source of determination of real intention of the parties should be included in Article 27 so as to make it a primary means of interpretation and that this source should not be assigned a secondary place in Article 28. A suggestion was, therefore, made for assimilation of Article 28 to Article 27 as a new sub clause (d) to clause 3 of Article 27.

The majority whilst appreciating that it is basic to the whole process of interpretation that the goal should be the ascertainment of the true intention of the parties concludes that the primary emphasis should be placed on the intention as evidenced by the text, that is to say, the actual terms, of the

treaty and that it would not be either necessary or desirable to state specifically in Article 27 that the object of interpretation is the discovery of the intention of the parties. According to the majority view, this is manifest from the formulation of the general rule in clause (1) which is a succinct statement of the essential rule. They feel that by the further elaboration of what is meant by the expression "the text" in clause (2) and by the indication of additional sources of interpretation in clauses (3) and (4), the International Law Commission's draft has taken full account of the paramountcy of the element of intention. The majority, therefore, is of the opinion that the draft rules of interpretation as formulated by the International Law Commission are quite adequate to the ascertainment of intention and are an inherent body of rules emphasising the unitary character of the interpretative process. The majority is also of the view that the distinction contemplated in Articles 27 and 28 should be maintained. They feel that a formulation of the rule which does not stress sufficiently the primacy of the text in relation to the extrinsic sources of interpretation would tend to considerable uncertainty and that there should be no room for recourse to preparatory material if the textual reading establishes a clear meaning in accordance with the rules specified in Article 27. The majority is further of the view that though no rigid distinction is possible and that a nexus exists between the several sources, it is unable to accord preparatory material a parity of status with the primary criteria mentioned in Article 27 and is of the opinion that the two articles should be separate and distinct.

Articles 30, 31, 32 and 33

The Committee considered the provisions of this group of articles which deal with the rights and obligations of third States. The majority in the Committee is of the view that Article 32 be amended by deletion of the words "and the State assents thereto. Its assent shall be presumed so long

as the contrary is not indicated" and substitution therefor of the words "and the State has expressly consented thereto". The majority is also of the opinion that Article 30 be amended by interpolation of the word "express" before the word "consent". The majority is of the opinion that as in the case of obligations the express consent of such third State should be a condition precedent to the creation of a right also. Whatever may be the true position in regard to stipulations for the benefit of a third party in systems of municipal law, in international relations, the express consent of such third State should be required even in the case of the conferment of rights consistently with the principle of sovereign equality of States. The majority feels that such a requirement would also reduce any uncertainty in regard to the question whether a third State has assented to the conferment of the right and insistence of such consent by the third State would in the case of multilateral treaties tend to the effective participation of all States in treaties of a law-making character. The majority is also of the view that if express consent of the third State is stipulated as a requirement it would help to reduce the danger of the creation of rights which carry with them contingent obligations to which such third State may well be deemed to have assented by its silence.

The minority, however, is of the view that the draft articles as drawn up by the International Law Commission are adequate.

Article 37

A view was expressed in the Committee that the modifications contemplated in Article 37 should be in writing so as to obviate any uncertainty. The majority, however, was in favour of the provision as in the draft articles.

Article 38

A view was expressed in the Committee that this article should be deleted as subsequent practice was too vague and

uncertain a criterion for modification of a treaty. Another view is that there could be no objection to accepting this article as in the present draft with the clarification that the "parties" in this Article meant all the parties to a treaty. A third view was that there was no objection to the present text as in the International Law Commission's draft.

Article 39

The principle contained in this article was generally found to be acceptable to the majority. A delegation was, however, of the view that the word "only" in paragraphs 1 and 2 of this article should be deleted.

Article 43

The Committee considered the provisions of this article in some detail. The majority was in favour of retaining the article as it is. A view was, however, expressed that the provision of Article 43 as drafted might lead to practical difficulties and therefore should be brought in consonance with the principle embodied in Article 110 of the United Nations Charter. Moreover, it was suggested that if the Committee retains the principle adopted in Article 43, the expression "constitutional law" be substituted in place of the words "internal law".

Articles 46 and 47

One delegation was in favour of deletion of these articles as in its view the provisions of these articles bring in an element of doubt in the legal security and order. In the view of the delegation the provisions of Article 47 in regard to the concept of corruption were too vague.

Article 49

The majority in the Committee is in favour of the addition of the words "or by economic or political pressure" at the end of the article. The minority is, however, in favour of the retention of the article as in the draft.

Article 50

Whilst the majority had no objection to the present draft being retained, one delegation expressed the view that this is one of the concepts which may cause dispute in its application. In the view of the delegation it was desirable to designate or establish a body which is invested with standing competence to pass objective and purely legal judgments upon such disputes when they have not been solved through diplomatic negotiations or some other peaceful means.

Articles 58 and 59

One delegation was of the view that these articles should be so formulated as to provide a safeguard againt situations in which the destruction of the object or a change in the fundamental circumstances is brought about by the voluntary act of the party itself.

Article 60

The majority in the Committee is in favour of the addition of the word "suspension or" before the word "severance". A minority of one is of the opinion that the addition of these words is superfluous.

NOTE

A general comment on the draft articles made by one delegation is that there are quite a few provisions in the draft articles which contained as is admitted by the commentary of the International Law Commission certain concepts which may cause disputes in their application. The delegation considered it desirable to designate or establish appropriate bodies or authorities invested with standing competence to resolve such disputes in a purely objective and legal manner.

Sd/- C.K. Daphtary
29-12-1967

(IX) DISCUSSIONS HELD IN THE COMMITTEE AT ITS TENTH SESSION, KARACHI, ON THE LAW OF TREATIES

Meeting held on the 21st of January, 1969
at 2.30 P. M.
Mr. Sharifuddin Pirzada,
President of the Committee,
in the Chair.

President :

Now we take up the next item relating to the Law of Treaties, but before I take up this item I would like to call distinguished Delegates to express their views about the manner in which we should take this and the other two topics which are on the agenda.

Jordan :

Inasmuch as the number of Articles that are the subject of different points of view is limited, I am inclined to think that it would be the best if we leave it to the distinguished Delegates to mention those particular Articles in which they have a particular point of view. That would limit the discussion to mere points.

President :

It is being suggested that we will follow the following procedure :

(1) There may be a statement by H. E. Dr. Tabibi ; and (2) thereafter there can be a broad analysis of what happened in Vienna and indications of points which require consideration. This can be done by the various Delegates.

Thereafter each delegate may indicate the points on which discussion should be held. Thereafter, if it is agreed to, we may appoint sub-committees as may be required. After the appointment of sub-committees, we may also have the views of Delegates and Observers on the various issues involved. This is the suggestion. If it is acceptable, it may be so indicated.

Ceylon :

If I am permitted to put forward a suggestion, to expedite matters, I would say that after a preliminary discussion on and pinpointing of the matter concerning the Convention on the Law of Treaties by the full Committee, could there not be a Sub-Committee in which every Delegation will have a representative in order to thrash out the points which have been first highlighted. I think the consequence may be that the Report of the Sub-Committee will then be easier to deal with, for the reason that each Delegation will have a voice. I do not know whether it may be possible that every Delegation might be represented on the Sub-Committee.

President :

We should like to have a clarification from the Ceylonese Delegation. Whether it would be possible to have one or more Sub-Committees in respect of the Law of Treaties.

Ceylon :

It is my suggestion that there should be only one Sub-Committee. There should be a Sub-Committee certainly to deal with what in my mind and perhaps in the opinion of the distinguished Delegates are the crucial matters. If necessary, there can be a smaller Sub-Committee in the usual way to deal with other matters.

President :

The distinguished delegate from India.

India :

In regard to the suggestion made by the distinguished Delegate of Ceylon, may I say that it is an excellent proposition. We may have to adopt, and perhaps we will have to adopt it. It would perhaps be better to have at first a discussion along the lines indicated by you, and after you have ascertained the views, we may go on to the constitution of the Sub-Committees.

President :

As to the suggestion made by the distinguished Delegate of Ceylon and seconded by the distinguished Delegate of India, it seems that the consensus is in favour of adopting that suggestion. I, therefore, take it that we proceed with the procedure indicated and then come to the constitution of the Sub-Committees.

International Law Commission

H. E. Dr. A. H. Tabibi

Mr. President, let me take this opportunity, first of all, to express my deep felicitation for the unanimous election of yourself as the President of this Session of the Asian-African Legal Consultative Committee. Knowing your ability as a distinguished jurist and also as a distinguished diplomat of your country, I am sure that the affairs of this Session are in good hands, and I wish you all success in your work and success of the Committee as a whole.

I want also to express my gratitude for inviting me to explain my views on the most important topic which is now before the Committee this year, namely, the Law of Treaties. But it is a little difficult for me to speak as a representative of the International Law Commission. As you know, the practice of the International Law Commission is that we in our personal capacity decide the various aspects of a given text and we request the Secretary-General to submit to Governments our

views for their comments and observations. We receive comments and observations and go over them and when we are satisfied ourselves. we unanimously adopt the text and send it for adoption by the countries concerned. I said that it is difficult to express on behalf of the Commission because what the Commission wishes is that the text unanimously adopted is the one that they have submitted to the Vienna Conference and I do not want to speak in such a manner as to explain views contrary to the unanimous decision which we arrived at during the five years of deliberations on the text of the draft convention, which is now before the Vienna Conference.

I also do not want to express my views as a representative of my country since I am not speaking here as a member of the Committee, because on that issue also it is very difficult for me to come here as an observer of the International Law Commission and influence the Committee and members as a representative of a country of which I may be an observer. But since you have been kind enough to invite me to speak, I will speak as a completely neutral person on behalf of the Asian-Africans and on the basis of my personal observation of what I have seen in Vienna during the last session, and also make some observations on those important and crucial points, which we shall take into account between now and the next Vienna Conference. So, with this comment, Mr. President, I want to say that we should first endorse a resolution like the other resolutions that you have adopted unanimously. It is a resolution to thank the Secretariat of the Asian-African Legal Consultative Committee for preparation of the excellant documentation in regard to this topic.

As was stated this morning by the distinguished Vice-President of the Conference, the Ambassador of Jordan, this brief on the Law of Treaties and its supplements will be very helpful not only to the members of the Afro-Asians but also to other members who will participate in the next Vienna Conference, and I suggest that these should be circulated to

all the members of the Afro-Asian famlly so that they could have this excellent piece of work in order to use it at the forthcoming Vienna Conference. I, on my own part, as a representative of the International Law Commission, will communicate to the Secretary-General of the Conference my own personal idea if it is possible to circulate this as a document of the Conference for the benefit of all the participants in that Conference.

I am very happy to see here amongst us many participants of the Afro-Asian group, whether they are members of the Committee or just they are sitting here as observers, who took part in the Vienna Conference. I am glad that the Governments took interest to send all those who have taken part in the Vienna deliberations, and I think, it is a good decision by your Committee that we should discuss in detail and thrash out our views in regard to our position to be taken in the next session.

As we know from the brief prepared by the Secretariat of the Committee, there are three groups of Articles before the next session of the Conference. The first category of articles are those which have been adopted unanimously or by two-thirds vote, and I thank those who have taken part in the unanimous adoption of these articles or with 2/3rds vote. Now no decision will be taken in any international organisation without the participation and general support of the Afro-Asian participants, and since it was with the wide support of the Afro-Asian group in the Vienna Conference that the articles have been adopted, we should try to maintain our position and not to frustrate those articles which have been adopted already.

Then the second group of articles are those which have not achieved two-thirds vote. They are controversial and might be discussed again both in the plenary and, if it is possible, in the Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

Ceylon

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

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

Ghana

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

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

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

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

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

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

India

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Indonesia

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

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

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

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

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

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

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

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

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

Thank you very much.

Japan

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

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

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

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

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

may be arbitrarily asserted as a mere pretext for getting rid of an inconvenient obligation."

It is very hard to imagine that the dispute which cannot be settled by direct contact by the parties can be settled by relying upon the good faith of the parties concerned, important though this naturally is.

The Delegation of Japan wishes to emphasise that if a dispute is thus left unsettled, it is likely to introduce the rule of power rather than the rule of law into international relations. In other words, the questions of invalidity, termination or suspension of the operation of treaties, if not solved by an agreed means between the parties, are then left to power-relationship between the parties rather than a just and objective judgment.

It goes without saying that this is a question of universal application and not in the least something to which we Afro-Asian States can remain indifferent. On the contrary, as the leader of my Delegation pointed out only this morning, "international law from its origin has always been and will continue to be a protector of the small and the weak against the big", and an effective machinery for the settlement of disputes in this regard will undoubtedly be in our own interest. Naturally the way in which the implementation of this may be varied will be discussed and a number of useful suggestions and ideas may be advanced in the course of the present session of this Committee.

My Delegation for one wishes to reserve opportunity to expand its views in concrete and in greater detail at a more appropriate time. Suffice it to say at this juncture that the Delegation of Japan in the spirit of compromise and co-operation will not be taking too rigid a position with regard to concrete way as to how to implement this basic position of my country. It is prepared to listen to the views of distinguished Delegates assembled here and to co-operate with them in order

to arrive at the consensus which will be correctly reflecting the views of the majority and which at the same time will take full account of the essential principle that I have outlined.

When the prospective Convention of the Law of Treaties is adopted and put into force, the provisions contained therein will not simply be mere slogans or political guidelines but will be something which will be applicable to relations between States all over the world and between the States in the Afro-Asian Group *inter se* as positive rules binding upon all of us. For this reason my Delegation would like to appeal to the distinguished Delegates to be keenly conscious of the responsibility that is placed upon us as regards full understanding and the scope and implications of the problems involved. Thank you, Mr. President.

Jordan

I unfortunately did not have the privilege of attending the Vienna Conference. To my mind, I think, the purpose behind this Committee is to see if we can maintain unity among all the Asian-African *bloc*. Although I am not in a position to commit my Government to any particular stand, I can generally say at this juncture that we would certainly go along with the views of the majority in this Committee.

Pakistan

Mr. President, distinguished Delegates and Observers. As the Secretary has stated in his opening remarks, one of the objects of the Tenth Session of the Asian-African Legal Consultative Committee is to try and reach a consensus amongst the Asian-African States members of the Committee on certain controversial draft Articles, which were left over for consideration at the second session of the Conference in Vienna. Those of the distinguished Delegates who attended the first session of that Conference will recall that Article 62

bis introduced by the 13 States will be considered at the next session in Vienna.

The Delegation of Pakistan feels that although in their letters to the Secretariat of the Committee the Governments of India and Pakistan mentioned several Articles for consideration of the Committee, we now feel that the question of procedures for the settlement of disputes regarding the invalidity, termination etc., of treaties is the most important issue and if consensus can be reached at this session of the Committee on this question, we can claim that useful work has been done. In the view of my Delegation, the discussion on the subject of the Law of Treaties would become diffused by dealing with too many articles at the same time and may be restricted, as far as possible, to consider the underlying principles of Draft Articles 62 and 62 *bis*.

In this respect, we feel that draft Article 76 which was introduced by Switzerland at a very late stage in the first session of the Conference in Vienna raises complicated and controversial new issues, which cannot be usefully considered here. Nor is a consensus likely to be reached in respect thereof.

We have suggested earlier that the discussion may revolve around the underlying principles of draft Articles 62 and 62 *bis*. We shall now attempt to define what in our opinion the underlying principles are :

1. Any denunciation of a treaty must only be through written notice to the other State.

2. That in the event of an objection being raised by the other party, the means indicated in Article 33 of the Charter should be followed to reach a solution.

3. Compulsory conciliation through an independent Commission appointed by the parties themselves and

the good offices of the Secretary-General of the United Nations.

4. Suitability of a procedure for compulsory arbitration, where conciliation fails. We feel that the last two principles, as incorporated in Article 62 *bis*, which represents the 13-Power proposal, enjoyed the widest possible support at the Vienna Conference and can form the basis of reaching consensus in this Committee.

We would also like to suggest the inclusion of a principle which already implicit in Article 39, needs to be spelt out clearly in draft Article 62 or 62 *bis*. This principle can be stated in these words :—

> "Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by a Conciliation Commission, Arbitral Tribunal, or court of competent jurisdiction, the treaty shall remain in operation between the parties to the dispute."

We feel that whenever one party alleges termination of a treaty and the other party objects, if there are no objective means of determining whether the treaty is suspended or continues in force, then the continuance or discontinuance of a treaty is made subject to the arbitrary will of the objecting State no less than subjecting it to the arbitrary will of the claimant State. This situation in our opinion works specially to the advantage of the more powerful States.

In the end, the Delegation of Pakistan would like to emphasise the importance of compulsory procedures regarding the settlement of disputes relating to invalidity, termination etc. of treaties. We feel that a large number of Delegations at Vienna would accept the Articles in Part V if objective means of interpretation were available.

Sierra Leone

Mr. President—Our task is to pinpoint the points which we wish to consider at this Session. My Delegation would like to associate itself with the opinions already expressed by the distinguished delegates who have spoken before me. When it is quite clear that we should attempt to deal with all the methods that have been mentioned, we would probably spend the next ten days without really dealing with any one method. We, therefore, suggest as done by the distinguished Delegate from Japan that perhaps we should start considering what appears to be the most crucial method regarding the Law of Treaties, that is to say the settlement of disputes and secondly Article 5 *bis*. There has been the rumour that there is likely to be a package deal in respect of these provisions. It has been said and it has been believed that certain powers who would like to see the provision for the compulsory settlement of the disputes may well be amenable to the views of the Eastern Powers in regard to Article 5 *bis*, if these powers agree to include the provision of compulsory settlement of disputes. We would then like to discuss very briefly the article that has already been considered by the Vienna Conference.

Finally, perhaps we may refer to controversial Articles, although the Delegation of Sierra Leone does not take any flexible stand on the matter of Article 62 *bis*. I would like to state, Mr. President, that we are in favour of keeping Article 62 as it stands for we are not in favour of including any provision for the compulsory settlement of disputes for various reasons, which I hope I shall be able to give when I address this Conference on a latter occasion. On Article 5 *bis* again, the position of my Delegation is flexible and we would like to listen and discuss the matter and to take any stand that appears to win the unanimous approval of this Conference.

Thailand

Mr. President—I am sorry to say that our Delegation from Bangkok has not still arrived. Anyhow I am happy to listen to the views of the Delegates from other countries and we will also give our views at a later stage. Thank you.

U.A.R.

Mr. President—I listened with great interest to the statement made by the representative of the International Law Commission and I would like to express our thanks to him for pointing out the controversial articles which are expected to be discussed during the second session of the Vienna Conference. My Delegation considers that Articles 2, 16, 17, 62, 69 and 76 are to be discussed during this session, and if we have enough time we may also discuss the other Articles. My Delegation will try its best to find the best solution for these problems and my Delegation is going to reserve its right on each of these articles at this stage, and I think it would be preferable to express my opinion at a later stage during this conference. Thank you.

President

The meeting is adjourned to meet at 9.30 a.m. tomorrow, the 22nd January, 1969.

Meeting held on 22nd January 1969
at 9.30 A.M.

Mr. Sharifuddin Pirzada, President of the Committee,
in the Chair

President

Distinguished Delegates and Observers : The meeting is called to order. I would call upon the distinguished Observer from Nigeria who had asked for the floor.

Nigeria

I thank you Mr. President. We, in Nigeria, appreciate the brotherly feelings of the Delegates of the Asian-African Legal Consultative Committee by inviting their brothers in Africa and Asia as observers to this august assembly. We listened with very great care to the most lucid statement made yesterday by the representative of the International Law Commission, Ambassador Tabibi of Afghanistan. We listened also with equal interest and attention to the statements made by the various representatives in the Committee. We appreciate that the three subjects which are now before the Committee are very important, but we seek the permission of this Committee to emphasise upon the point of time, because the time available for the solution of the various problems, the various questions, arising from the last Vienna Conference on the Law of Treaties appears to be small. This does not mean that the subject matter of refugees or international rivers is not important. Indeed they are very important. We, in Nigeria, would like to submit to this Committee that all of us who are present here and indeed all the Delegations who were present in Vienna had an opportunity and indeed did make use of that opportunity to present their views on the various articles discussed at that Conference. If this meeting of the Committee is to be a success, the areas of discussion

must be very narrow. It will not do us much good if we were to reopen most of the matters that had been settled or if we were to miss the central problem that remains to be solved, and it is with that in mind that we shall concentrate our contribution on two or three of the outstanding problems.

First of all, Mr. President, the question of the right of every State to participate in, or be a party to, general multilateral treaties, which forms the basis of Article 5 *bis*, has been under discussion in various international conferences for a number of years. It was appropriate that the Vienna Conference should be used as a springboard to finalise that problem. We, in Nigeria, as a principle believe that juridically every State is entitled to participate in a general multilateral treaty and our contributions in the various international conferences and organisations show records of this belief of ours. But we know that every State or most States of the world believe in this juridical idea. The point of difference is the definition of what is a State, and that being substantially a political question, various jurists and various schools of thought from various countries have found the problem a little ticklish. It is the belief of Nigeria that just as the Afro-Asian group in Vienna found a compromise solution to the problem of economic and political pressure which we sought to embody in Article 49 and which finally emerged as a resolution of the Conference, it may well be that the sponsors of the amendment in Article 5 *bis* will also, in the same sense of realism, find a compromise position acceptable to all Delegations.

Mr. President, the heart of the problem of the Law of Treaties, at least of the outstanding questions in Vienna, is Articles 62 and 62 *bis*. We all remember in Vienna that the Afro-Asians as a group were indeed a successful group. We maintain the same sense of solidarity which whether we wished it or not, put the other regional groups in disarray. The

solidarity we achieved in Vienna was based on a sense of reality. That realism had as its elements, reasonableness and a sense of compromise. We achieved ultimate success which we may not have dreamed of at the beginning of the Conference. Thus, when we were pressing for the amendment sponsored by several Afro-Asian Delegations on Article 49, we pressed the Conference almost to a breaking point. We exercised legal brinksmanship at its best but instead of throwing the whole Conference over the precipice, we held at a point from where we could return and we got the best that way and over that amendment. The whole question of the Law of Treaties is of the greatest importance to the Third World, the developing countries of Afro-Asians, the Latin Americans and indeed all the small and medium-sized powers. The super powers have lived without the Convention of Law of Treaties for centuries. They have held their sway over the whole world and indeed principally over the Afro-Asian world without a Convention of the Law of Treaties for centuries. We, small countries in Africa and Asia, particularly need the Convention on the Law of Treaties more than the super-powers. Our influence is based on legality and on the rule of law. The super-powers base their stress on their economic dominance and their military power. So, any legal order which tends to reinforce the rule of law is to be encouraged and is to be supported by the small States in Africa and Asia as this is their shield.

The position of Nigeria on Article 62 was well known. We shared the same belief, like our sister countries from Africa and Asia, and stood by our joint reserve to maintain Article 62 based on Article 33 of the United Nations Charter as adequate for our purposes. But the Afro-Asian countries cannot live in isolation in this age when jets connect the world and have created shorter distances and the general economic situation has forged an irresistable link with all the countries of the world, and we have to take into consideration the interests of the other groups that we have to negotiate with in the second session of the Vienna Conference. We know, for instance that since our last conference in Vienna, the Socialist countries have negotiated a compromise solution. The compromise position is that after Article 62, they could move a little further by accepting compulsory conciliation. It is for us in this Committee to examine the whole field and consider whether it will not be in our interest also to formulate a compromise position a little beyond Article 62 as it stands.

We, in Nigeria, are parties to a number of Conventions, multilateral and bilateral in which we accepted compulsory conciliation and compulsory arbitration. In the Convention on the settlement of disputes between States and nationals of other States, to which Nigeria is a party, we accepted compulsory arbitration. And it should be noted that when a State agrees to arbitration not with another State but between itself and the nationals of another State, it not only involves a little derogation from sovereignty, it also shows a very great measure of respect for the rule of law.

We listened to the contribution of the representative of the International Law Commission on this topic yesterday and we urge this Committee to consider whether it will not be in the interest of the Afro-Asian Group at least for purpose of negotiations to move to a position from Article 62 to compulsory arbitration so that at least when the final Article comes to be considered, more of the super-powers will find the entire Convention acceptable to them; and this indeed will help our interest to take this step in the direction of compromise in the sense that efforts for the success of the Conference at Vienna are maintained and we continue with a sense of reasonableness and maintain our solidarity.

The other outstanding point which was mentioned yesterday was Article 59. There again, Nigeria would wish to

sound a note of warning and of caution. As we said earlier, it is in our interest as much as possible to refrain from opening issues which have been substantially decided because unless we work hard at this second conference and bring the Convention into being, it may not be possible to conclude the Convention in the foreseeable future.

The States in Africa which are a party to the Organisation of African Unity have by treaty and convention put in their word for maintenance of existing national boundaries. We found in Africa that the Colonialists and the Imperialists divided brother from brother, clan from clan, and tribe from tribe by the arbitrary boundaries which they drew in their scramble for Africa, for its natural resources, and in order to exploit Africa for the beneft of Europe. But we also know that to try to re-draw national boundaries could only lead to chaos—the very thing which the Imperialist Powers would want, so that they establish for ever new colonialism all over Africa. That is why, Mr. President, the States of Africa by subscribing to the O.A.U. Charter resolve to live alone and to leave the boundaries as they exist. When the various States attained independence, the respect for and the maintenance of the territorial integrity of every State of Africa is one of the most profound political aims of the members of the Organisation of African Unity. What we in Africa have done because of our history and special circumstances of our case is not necessarily the solution to the problems arising in other continents or in other areas, but we believe that where problems exist there is nothing that cannot be solved by negotiations and the spirit of brotherhood. Mr. President, we in Nigeria wish the deliberations of this Committee a huge success and seize this opportunity, Sir, through you to convey the best wishes of Dr. Elias, the Attorney General of the Federation and the Commissioner of Justice of the Republic of Nigeria, to this august Committee.

Cyprus

Mr. President—I take this opportunity to thank the Asian-African Legal Consultative Committee for its kind invitation and acceptance of my country as an observer to this important meeting and to congratulate and thank the Secretary of the Committee, Mr. Sen, for the very thorough and lucid brief prepared by the Secretariat of the Committee on the first session of the U.N. Conference on the Law of Treaties, which should be regarded as a *sine qua non* for every Afro-Asian Delegation here and in Vienna next April. I have listened to and followed carefully the statements of the distinguished Delegates and Observers who have already spoken yesterday and today and they have confirmed my view and conclusion that the main and foremost topic which should mainly concentrate the attention of these meetings, insofar as the draft Convention on the Law of Treaties is concerned, is that of settlement of differences arising under the draft Convention of the Law of Treaties. My Delegation during the last session of the Vienna Conference, got opportunity to express its views on this topic, both during the deliberations of the Committee of the Whole and the Afro-Asian Group meetings as well. We have been happy to see through despite the difficulties and vicissitudes in front of us, and that was mainly due to the spirit of unity among our Group and the untiring efforts of some who are with us again today, such as Dr. Tabibi of Afghanistan, Mr. Dadzie of Ghana and Mr. Sen of India, to mention only a few. We succeeded in remaining together bypassing at such stage a collision course which was threatening the very success of the Conference in Vienna, and we decided that at this meeting in Karachi, we will all meet again as a Group, some as observers, and on the basis of the analysis of the conclusions of the First Vienna Session which the Secretariat of the Asian-African Legal Consultative Committee so admirably has put before us, we will try and decide on a concrete consensus of opinion.

From the analytical conclusions of the Secretariat of this Committee contained at page 49 of the Secretariat's supplementary Brief, now before us, the fact is disclosed that on the question whether there should or should not be certain compulsory procedure for the settlement of disputes arising out of the Draft Convention on the Law of Treaties, there are differences even amongst the Asian-African countries. But from the further elaboration of these views at pages 49 to 51 of this document or from what has been stated so far by the distinguished Delegates and the Observer from Nigeria, it seems that this division cannot in the long run be sharp and consensus can be reached and should be reached. My delegation, for one, was among those States which in the present climate of the international opinion regarding the compulsory settlement of disputes and procedure thought that going beyond Article 62 of the International Law Commission draft would be plainly unrealistic. But we felt also that moderate proposals such as in Article 62 *bis*, which seek to supplement Article 62 of the International Law Commission draft, contained some interesting ideas, and by going further in providing compulsory conciliation and arbitration, were nevertheless based on equality within the framework of the United Nations. Any proposal such as contained in Article 62 *bis*, for instance, where it is envisaged that the Secretary-General makes the appointment of a conciliation or arbitration panel in the absence of agreement, has a positive element; and so is the provision that the expenses in each case are to be borne by the United Nations, even though on the latter point the view of the United Nations Fifth Committee may prove not to be identical with those of the sponsors of such a proposal. Mr. President, my Delegation has an open mind on the suggestion such as this one combined with the clarification such as presented yesterday by the distinguished representative of the International Law Commission, Dr. Tabibi. Dr. Tabibi believes that efforts for a compromise towards that

direction for cautious and careful approach to compulsory settlement of disputes, in the sense of conciliation and perhaps arbitration, is distinct from compulsory adjudication in general by the International Court of Justice, for which no basic occasion to elaborate our strong objections can and should be exerted. Then one more reason why we should from now on act as a group with a consensus. We believe, Mr. President, that with the necessary spirit of mutual co-operation the points of difference, which existed at the first session in Vienna between the various groups, can be removed if we can achieve a broad consensus here. While these differences may appear substantial, it is not, we trust, beyond legal ingenuity to devise techniques and mechanisms which would prevent these difficulties from forcing the next Vienna Conference into a collision course. If we work here with an open mind and formulate a consensus, the efforts can more easily be exerted to smoothen out the way at the Vienna Session and to iron out difficulties for the successful outcome of perhaps the most serious effort of codification undertaken by the United Nations. The seriousness of this codification effort is particularly evident, by the fact that our States, which have recently attained statehood, have contributed in it too.

Iran

I have nothing to state at the moment.

Kenya

Mr. President, I would like to state my views sometime later, but not just now.

Mongolia

Mr. President, I am sorry, I did not ask for the floor, Thank you.

Philippines

Thank you for giving us a chance to speak on the subject of the Law of Treaties. Now being permitted as an Observer, I would just say that we are taking notes of the things now being expressed in the Committee's meetings.

Korea

Mr. President, I would reserve my comments for an opportunity to state at a later stage.

Singapore

I reserve my right to speak at a later stage during the deliberations of the Committee's meetings.

Turkey

Thank you, Mr. President. I think I have nothing much at this stage to say for your reflection. I feel very much happy to represent my country in such a distinguished gathering. I would follow with great interest the proceedings of the Committee and try to inform myself since this is the first time that I am attending a conference. If I get a chance, I will make my statement on other occasions, whenever we discuss the topic of compulsory settlement of disputes and also I will speak on Article 62.

American Society of International Law

(*Professor Myres S. McDougal*)

Mr. President, distinguished Delegates, and fellow Observers :

It is a great honor and pleasure to be permitted to be an observer at this tenth session of the Asian-African Legal Consultative Committee. Mr. Oscar Schachter, the President of the American Society of International Law, has asked me to express his deep appreciation of your courtesy in allowing

us to be present here, and I should like to add my own warm thanks.

For more than two years the American Society of International Law has had a special committee, of which I have been a member, studying this draft convention upon the law of treaties and making recommendations to the United States Delegation to the Vienna Conference. It was my privilege also to be a member of the United States Delegation to the first Vienna Conference. Insofar as possible, however, on this occasion I should like to follow the advice given yesterday by Dr. Nagendra Singh and try to divest myself of all special identities. I hope, with appropriate humility and with awareness of my position as an observer, I will simply speak to you as one human being to another and as a citizen of the larger community of mankind.

From this prespective, it has seemed to me that those of us who favour provision of some ultimate recourse to third party decision making for application of the new treaties' convention, when negotiations between the parties break down, have not begun to make as strong a case for our position as we might make. It seems to me that the grounds for providing some ultimate recourse to third party decision are much more fundamental than fears about the vagaries of Part V on Validity. These grounds cut deep into our common interests in establishing and applying any law of international agreements and into the complexities and difficulties in applying any general law to particular instances of conflict.

The excellent documentation upon this problem prepared by your Secretariat has come to my hand too late for me to consider it in making this statement. I did, however, attend some of the sessions in Vienna and I have just reviewed the summary record of the discussions on Articles 62 and 62 *bis*. I have also listened with appreciation and enlightenment to

the eloquent statements made here yesterday and this morning.

The arguments against the provision of some ultimate recourse to third party decision making would appear to build upon five different themes. In the brief time available to me, I should like to advert to each of these types of arguments, indicating what seems to me to be presuasive reasons for rejecting each, and then to sketch in broad outline certain more positive, fundamental reasons for the establishment of some form of third party decision for last resort when negotiations fail.

The first argument against the establishment of some form of ultimate third party decision making is that such decision making in some mysterious way impairs the sovereignty of States. With all deference, it is submitted that this is not so. One might with equal realism argue that the establishment of courts within our national communities impairs the freedom of individuals. It is no more an impairment of the sovereignty of a State for it to agree to appropriate procedure for the settlement of disputes with other States than for it to agree to certain substantive provisions, such as in the draft convention, for regulating such settlement. For most peoples today sovereignty is defined as the freedom which States enjoy under international law, and it is regarded as the highest expression—not the impairment—of sovereignty for a State to engage with other States in the making and application of law. Even within our national communities a "lawful" decision is regarded as one made not merely in accord with certain policies but also by certain established procedures—whether in courts, administrative bodies, arbitration boards, and so on.

Certainly the procedures proposed in Articles 62 and 62 *bis* do not interfere with any genuine freedom of choice of States. The principal trust of these articles is to keep the parties in negotiation as long as possible and, when negotiation

fails, to provide them the widest measure of choice among modalities of settlement. It is only when consensus falters, and one or both of the parties seek to impose a unilateral will upon the other, that recourse to third party assistance is stipulated.

The second argument against ultimate recourse to third party decision making is that it may be partial or biased and may take extra-legal considerations into account. Again, it is submitted with deference, the facts cut exactly the opposite way. If there is to be no resort to a third party when there is ultimate disagreement between the parties, then the State with greatest effective power is left free to impose its will upon the other. From the standpoint of the State so imposed upon, no decision could be more partial, arbitrary, and unequal. When decisions are taken by unilateral choice only, naked power, and not law, is the governor. When there is only unilateral appreciation of facts and law, certainly partiality and extra-legal considerations are afforded their freest sway. Since it is not to be supposed that any one State, or group of States, or types of State—new or old, large or small, located in one part of the world or another—will always have the naked power to secure what it regards as its special interests, there would appear a common interest in all States in reducing this type of decision.

The third principal argument against ultimate recourse to third party decision is that there is no modern, acceptable law for such decision making to apply. This argument, again, would appear to be belied by the facts. This new convention, in the drafting and prescribing of which so many States have had a hand offers a relevant and comprehensive formulation, adequately reflecting common interest.

The gravest danger is not that there will be no law, but that there will be no procedures for the application of what could otherwise be good law. The danger is that the broad policy formulations in the new convention may be still born

because they are not complemented by appropriate procedures for their application.

It has been suggested that procedures for application are not necessary parts of a law of agreements. This would appear profoundly mistaken. Many branches of the law within our national communities require unique procedures and are incomplete without such procedures : witness the law of crime or that of torts or *delicts*. Similarly, a law adequate to regulate the making, interpretation, performance and termination of agreements—whether within national or international arenas —must require its own specific and especially adapted procedures.

The fourth argument against ultimate recourse to third party decision is that such decision might be employed to keep parties subjected to outmoded, oppressive agreements based more on coercion than on genuine mutual commitment. This fear, again, would appear unfounded. The new convention has many flexibilities written into it and embodies concepts about consent to be bound and invalidity, at least as old as Roman law, designed to secure and protect the genuine mutual consent of the parties. Similarly, the formulations of the convention about termination are most generous in taking into account the relevance of change, making explicit provision for fundamental change in circumstances and for supervening impossibility of performance.

It is common ground in most legal systems today that there is no virtue in authority, law or agreement *per se*. The virtue of authority, law, and agreement is in the common purposes and interests they serve, and when conditions so change that common purposes and interests can no longer be served, authoritative arrangements should also be changed. Law, appropriately conceived, has no built in preference for the *status quo*.

It would appear that the new convention is adequately expressive of these contemporary conceptions of authority and affords full opportunity for a changing response to changing conditions. Certainly third party decision guided by its generous provisions is likely to be less destructive of the common interest than unilateral appreciation of the relevance of change by any particular State which happens at any given time to have the effective power to make its will prevail.

The fifth and final major argument against the establishment of third party decision for the ultimate application of the convention on treaties is based on precedent : we should not do in the future what we have not done in the past. It is argued that compulsory third party decision has not been stipulated in many great conventions of the past, such as those with respect to the law of the sea, diplomatic and consular immunities, and so on ; hence there should be no such stipulation in this convention. This argument reminds me of what is known in my country as "the Goofus bird". The Goofus bird flies backwards ; though he dosen't care where he is going, he likes to know where he has been.

The States of the world, and particularly the Asian-African States, have been bold in their demands for provision of a new substantive content for the law of treaties. Why should they not be equally bold in their demands for new procedures to assure that this new substantive content will in fact be put into controlling practice in particular instances. If boldness halts at mere aspiration for new policy, it may turn out to be symbolic gesture only rather than movement towards genuine reform.

In controversies relating to the law of the sea and to diplomatic and consular immunities, third party decision is not so immediately required, since each party has within its effective control certain potentialities for reciprocity and retaliation which it can invoke to secure common interest. In contro-

versies relating to the law of treaties, one party is likely always to be at a disadvantage and no State can be sure of always being the party with advantage. In shaping a law for the future we should be guided not so much by the mistakes and failures of the past as by the urgent necessities of securing common interest under the conditions of the future.

In the few moments that I may be permitted to continue to trespass upon your patience, I should like to turn from this negative rebutting of the arguments of others to the brief outline of a more positive, affirmative case for third party decision. It is frequently urged that third party decision is indispensable to minimize the dangers of abuse in unilateral appreciation of the many vague concepts employed in the "Validity" sections of the convention and to afford a dis-interested procedure for the creation of a more precise reference for these concepts in terms of common interest. It is obvious that this suggestion has some basis in realism. It seems to me, however, that a much stronger case derives from the importance of agreement making generally to the establishment and maintenance of world public order and from the complexities and difficulties of applying any law, not merely that relating to validity or invalidity, to the ambiguous features of any particular case.

In world public order, as in our national communities, agreement serves the function of organizing an economy or society for the production and distribution of goods and services and other values. In the world arena, however, agreement serves still other, more explicitly governmental or constitutive, functions. It is a principal modality by which law is made and by which constitutions—universal, regional, or specialised—are established and maintained.

Agreement can serve these important functions and maintain an increasingly productive world society only if a certain stability in peoples' expectations about the performance of agreements is secured and maintained. Even large States,

which might otherwise rely upon their naked power to secure their special interests, have an abiding, common interest with all States, large and small, in securing this stability. In an inter-dependent world, the advantages in an arbitrary, unilateral repudiation of agreements can never reside wholly on one side, or with a few States, or even with certain types of States. The security and internal prosperity of all States are irrevocably bound together, and not even the strongest State can make itself secure in all its values by the exercise of naked power. Neither large States nor small States can have a permanent interest in securing a special share of a melting block of ice, their permanent, common interest is in an ever-expanding, more secure, and more abundant world society.

Similarly, the application of a law of international agreements designed to secure an appropriate stability in peoples' expectations can never be easy or automatic. The dangers which are anticipated in the application of the validity sections of the new convention are but dramatic examples of the delicate nature of the application of general concepts to specific facts in any case. In any instance in which claim is made for the application of a general prescription to the facts of a particular case, a series of delicate appreciations are required; the potential facts and potentially relevant laws must be explored, and the relevant laws must be interpreted and appraised in terms of basic constitutional policy (*e.g. jus cogens*); the facts must be finally characterised and the relevant laws carefully related to facts; a choice or decision must be made in terms of the projection of a future policy; and, finally appropriate measures must be taken or recommended to secure conformity of the parties to the decision. It should require little argument that all these delicate appreciations are more likely to be made in terms of common interest through the assistance of third party decision than by the unilateral, naked power decisions of either party.

I thank you for your great patience; I wish you the greatest success in your Conference; and I very much hope that your boldness of vision in the creation of new policies will be matched by an equal boldness and realism in inventing and establishing new procedures to make these policies effective. Thank you.

President:

I thank Prof. Myres S. McDougal of the American Society of International Law. If the distinguished representative of the International Law Association of the USSR wishes to say anything he can have the floor.

USSR

I have no statement to make at this moment.

President

The distinguished representative of the German Section. If he wishes to say anything.

International Law Association
(German Section)

Mr. President, thank you. As you have permitted me to take the floor this moment I first take this opportunity to thank you, Mr. President, and the distinguished members of this Committee to have admitted me in my capacity as President of German Branch of the International Law Association. I wish to make it clear, I am here not in an official capacity, but in a personal capacity as a member of the Association of German scholars. In our Association, we have started to solve the problems of the Law of Treaties since long time and we hope for success of the efforts to codify the Law of Treaties. For the moment, unfortunatly, I have not been able to come here earlier, so I have missed the opening speeches of many of your distinguised members. But I am sure that I will follow the proceedings with deep interest

because as a scholar I am very much interested to know the opinions of the Asian and African countries in these matters. In the last, I cannot do any more at the moment than to wish your Committee the greatest success in its proceedings and I hope that your meeting will conclude with success. Thank you very much, Mr. President.

President

Now it is proposed to have two Sub-Committees. As we have discussed yesterday the Sub-Committee one will deal with Articles 62 *bis*, 76 and final clauses. On this Sub-Committee each of the delegations can send its nominee. There will be a second Sub-Committee to deal with other clauses. We will be taking down the names if they are suggested by the Delegates here. The distinguished delegate from Ceylon. First Sub-Committee.

Ceylon

From my Delegation, Mr. Pinto.

Ghana

First Sub-Committee, Mr. Vanderpuye.

India

Dr. S.P. Jagota.

Indonesia

H.E. Miss E.H. Laurens.

Japan

Mr. Hisashi Owada.

Jordan

Mr. President, as I have already intimated on the previous occasion that if I can find it convenient and possible I will certainly attend the meeting.

Pakistan :

I will nominate Mr. M.A. Samad.

Sierra Leone :

Mr. Albert Metzger. My Delegation will be represented only in the first Sub-Committee.

Thailand :

Leader of the Delegation.

U.A.R. :

Mohammaed Said El Dessouki.

President :

For the Presidentship of the first sub-committee, we propose the name of the distinguished Delegate of Indonesia, if we have no objection. I think it has the approval of the distinguished delegates.

India seconded the proposal. (Unanimously elected.)

President :

Now for the second Sub-Committee.

Ceylon :

I am not very clear. I understood at the moment from Dr. Sen when he looked at me that the proposal I had made yesterday was accepted and that both the question of Article 62 *bis* and the question of multilateral treaties and Article 5 *bis* should be put before a full Committee. If you do not agree at all, then there can be a separate Sub-Committee to deal with other matters.

Secretary-General :

5 *bis* will be dealt with by Sub-Committee No. 1.

Ceylon :

May I ask for one more concession. Any Leader of the Delegation can take the place of his nominee ?

Secretary-General :

At any stage.

President :

Now the names of the Second Sub-Committee in respect of residual clauses or other matters.

Ceylon:

Mr. P. Naguleswaram.

Ghana :

Mr. President, I am sorry in view of the decision to bring 5 *bis* also in the first Sub-Committee, I would revise my delegation. I will be on the First Sub-Committee myself and Mr. Vanderpuye would be on the other.

India :

Dr. (Mrs.) K. Thakore.

Indonesia :

Mr. Sos Wisudha.

Japan :

Mr. Hiroyuki Yushita.

Pakistan :

Mr. Zahid Saeed.

Sierra Leone :

Because of physical impossibility it would not be possible but I would come on both.

President

Whenever you wish you can come.

Thailand

Our Delegation would like to know if the two Sub-Committees will be meeting at the same time ?

Secretary-General

At the same time.

Thailand

We want to be present in both the Sub-Committees, but it would be impossible if both are held at the same time.

President

Most of the time they will be held simultaneously.

Sierra Leone

We would like to be present at one time on one committee and at the other on the second committee.

U.A.R.

Dr. Ahmad Sadek Alkosheri.

India

Mr. President, this is a mere suggestion. Since there are Delegations with one member only, it may be possible for them to attend the First Committee but it would be difficult for them to simultaneously attend the meetings of the Second Committee. Why not make the Second Committee more compact consisting of about three or four delegations ? If any Delegation wishes to attend, it would be open for them to come and attend that session but it should be restricted to three or four. This is a mere suggestion. You might like to ask for the comments of other Delegates.

President :

Any comments from any other member ? The Secretary-General feels that a Sub-Committee of two or three would be too small and as it is there are only six. So, other members whenever they are available they will be able to attend. As to the presidentship of the Second Sub-Committee, the nominee of the United Arab Republic should head this Committee. If there is no objection we take it that it has your approval. (Approved)

Break

President

Distinguished Observers and Delegates, the meeting is called to order. As you all know we have constituted two Sub-Committees. You know the reference made to Sub-Committee No. 1. As to Sub-Committee No. 2, it will be desirable if we have an indication of the points which would be considered by them.

Ceylon

I have no doubt that members of the other Delegations will have various proposals as to clauses which have to be considered by this Sub-Committee. My Delegation suggests that there are two matters which appear to us to need investigation. The first is the applicability of this Convention to past Treaties.

Secretary-General

That will be taken care of by the Final Clauses.

Ceylon

The second point is, matters relating to contracting out of this Convention. It seems to me the questions to be discussed are firstly, whether under the Draft Convention as it

stands, contracting out is possible. Secondly, whether contracting out is desirable at all. And thirdly, whether there should not be express provision in the Convention that there can be no contracting out in this Convention.

Secretary-General :

That will go to the Second Sub-Committee.

Ghana :

Mr. President, we ourselves have not proposed any article outside the main ones that are put before the first meeting. I believe that some Delegates have already proposed certain Articles to be considered, and I think the Second Sub-Committee will concern itself with those points and "any other matter" which falls out the First Sub-Committee.

India :

I, too, agree with what the distinguished Delegate from Ghana has said. Most of the important ones are covered by the terms of reference which you have formulated for the first Sub-Committee. The only point which remains is one relating to restricted multilateral treaties. That could be taken up by the Second Sub-Committee. Most of the items mentioned have been covered by the First Sub-Committee.

Ceylon :

In my understanding the main purpose of the definition of multilateral treaty is to give a meaning to Article 5 *bis*. It seems to me, therefore, that the Sub-Committee which considers 5 *bis* should be charged with this aspect of multilateral treaties.

India :

I have no particular observations to make. You can do exactly as the Delegate from Ceylon has said.

Indonesia :

My Delegation has no additional articles to propose for consideration. We feel that those articles that have been left over and which were proposed for consideration—we will have our hands full and it will be a heavy task to solve those problems.

As for the remark made by the distinguished Delegate from Ceylon, I think he has a point. I think, it will be difficult to separate the consideration of Article 2 from Article 5 *bis*. However, it is a matter entirely in your hands.

Japan :

Mr. President, when I spoke yesterday I did reserve to speak something more concrete on the question of settlement of disputes. But in view of the fact that we are going to establish a Sub-Committee in which to deal with this problem more concretely, I have nothing to add except to say that I am encouraged by the atmosphere of compromise and conciliation in this Committee and also by the existence of genuine concern for the need of really an effective machinery for the settlement of disputes in the last resort.

On the matter of procedure to be followed, my Delegation in the previous notice to the Secretariat did suggest a number of articles for a possible subject of discussion. However, as I said yesterday, my Delegation believes and agrees in this respect with the distinguished Delegates of Ghana and India that the primary concern for us is the question of settlement of disputes and the relevant questions involved therein, that is to say Articles 62 and 63 primarily and, therefore, we would be advised to concentrate primarily on this question which is the key to the whole problem. I think that it would be useful to make an exchange of views and arrive at a mutual understanding on this question in the First Sub-Committee. I do not exclude the possibility of taking up other questions

which are also important but we should primarily concentrate ourselves on these questions.

Pakistan :

No suggestions.

Sierra Leone :

My Delegation is primarily concerned with what is already contained in the First Sub-Committee. That if I may suggest topics for consideration by the Second Sub-Committee, I think my Delegation is incompetent with the suggestion put forward by the distinguished Delegate from Ceylon.

Thailand :

I will make statements later on.

U. A. R. :

I suggest to discuss Article 2 and other Articles, e. g., Articles 16 and 17 concerning reservations.

President :

As regards the Observers, if they wish to attend any of the meetings of the Sub-Committee they can do so with the permission of the Chairman concerned. Yesterday some of the Delegates had observed that they would like to supplement certain discussions later on. If any Delegate wishes to make statements he can do so right now.

International Law Commission :

I asked the floor for two reasons. Firstly, to express my gratitude to you and the Secretary of the Committee and the Committee as a whole for giving me the time to speak not as a representative and Observer of the International Law Commission, but also in my personal capacity. While taking the floor I would like to express the thanks of the members and the Chairman of the International Law Commission and their

wishes for the success of the Committee during its deliberations. In the meantime in my personal capacity, I would like to put a suggestion before the Committee, to express a vote of thanks and the appreciation of the Committee to the distinguished Minister of Justice of Nigeria for his able leadership of the Afro-Asian *bloc* during his presidency of the Committee of the Whole at the Vienna Conference. We are grateful to him that he deputed Mr. Ogundere for this Conference who brought with him his wishes for the success of this Conference. It will be appropriate for us to send the greetings and good wishes of this Committee to Judge Elias and wish him success in the second part of the Vienna Conference, because it was due to his leadership that we succeeded as he held the Afro-Asian Group united all along the Conference. Since I might leave tomorrow, I want to thank you again and the Committee for the opportunity that they gave me both as Observer and the representative of the International Law Commission and also in my personal capacity.

India :

Mr. President, I want to fully associate myself with Dr. Tabibi with regard to the observations he made regarding the very important role which the Judge Elias played in the Vienna Conference. We should send a message thanking him as proposed by Dr. Tabibi. May I submit, Mr. President, that we thank the International Law Commission through the Chairman for sending Ambassador Dr. Tabibi, who has made valuable statements. Thank you, Sir.

Meeting held on the 30th of January, 1969
at 2 P. M.

Hon. Syed Sharifuddin Pirzada,
President of the Committee,
in the Chair.

President :

The report of the First Sub-Committee on the Law of Treaties is to be introduced by the Chairman.

Indonesia:

(Chairman of the First Sub-Committee) : As the Committee may recall, the First Sub-Committee was requested to take up the questions of Articles 62 *bis*, 76 and 5 *bis* together with the connected or related questions of the terms "general multilateral treaties" and "restricted multilateral treaties" and the final clauses. As it was considered by the First Sub-Committee that it would be the biggest problem to be solved, we decided to take this up as a first item, and it is, therefore, reported as the first question in our draft report. We then decided to follow the following procedure in discussing this question first to see what the basic situation was of all the Delegates and Observers. This should not have been mentioned in the first. We considered all this later on. We would go beyond this that this should be so and we then ventured to see to what extent the countries will go, and whether some consensus formula could be found. When you would read paragraphs 5, 6 and 7 of this Report together, it will give a picture of how the fields and stands were at the beginning to try within which a compromise formula and how we then decided to submit this for further consideration to our Governments so that they might base an eventual effort to try this compromise formula along these lines. Thereupon, we proceeded to take Article 76 and it was the general opinion that the Article as it is phrased in the proposed text at the Vienna Conference

would be very difficult to accept. We then proceeded to see what would be an acceptable solution and you will find the majority opinion and the minority opinion stated in the Reports. When we had finished Article 76, we took Article 5 *bis* and you will see in the report that every one pronounced himself practically in favour of the universality clause as such and the majority could support in principle inclusion of that kind in the Convention. As to the question "general multilateral treaties" we reached the consensus that we should not try to include the definition of this term in Article 2 of this Convention although there was no objection raised in favour and against the use of this term in Article 5 *bis* as adopted. We then proceeded to the final clauses and it was then that we took the question of participation in the Convention and with the few exceptions we all believed that this should be open to all States and that eventual difficulties which might arise in the implementation of such a clause could be solved by either adopting multilateral system or by adopting a non-recognition clause. As to the question of prospective force, we all agreed that Article 62 *bis* and Article 76, if adopted, are another solution that may be adopted, and the last question was ratification that would be required before that Convention could come into force. I think this is all I have to say on this matter.

Ceylon :

Mr. President, as the first speaker gave reference to the Report which is now before us for consideration, I think I must congratulate the members of the Sub-Committee and the individuals who participated in the discussions in this House. I think that the individual members of this Committee have sacrificed a great deal of time and pleasure in order to proceed on the work of the Committee. Even a brief reading of the Report of the Sub-Committee makes it quite evident that the members of the Sub-Committee have striven as far as possible not only to consider all the different proposals which have

been made concerning the problem but also to set out in a very clarified form the different alternative solutions which had been considered. I am not myself aware of what the next step should be, but I am sure the next step will be that the Member Governments will have the opportunity of considering this Report before the next Vienna Conference. I have no doubt that opportunity should be availed of by all the Member Governments with a view to seeing that our Member Countries as well as other countries of the Afro-Asian Group will be able in some at least of these matters to present a single view with regard to these problems. I think, Mr. President, that is all I need say because it is apparent from the Report of the Sub-Committee that how far anxious the members of the Sub-Committee were to attain unanimous view that they unfortunately have not been able to do so. It would appear that the value of the Report will be found after Member Countries have opportunity to consider it.

Ghana :

Mr. President, I fully endorse the Report as introduced by the distinguished Chairman of the Sub-Committee and I have no other comments to make. My feeling is the same as stated by my distinguished neighbour, Chief Justice of Ceylon. I think that the Member Governments should have the opportunity to study the Report specially in view of the coming session of the Law of Treaties which will benefit them when the matter is taken up at the Vienna Conference, that will take place in April. I have only to add that in view of this Report the Secretariat is already burdened. I think that the Secretariat will try to make these particular records available to the Member Governments as soon as possible. There will be a big margin of time for Member Governments to study them. If that happens, it would appear that all the efforts which we have put in here in Karachi would be helpful to our brother countries in Africa and Asia, and they will learn a great deal. With this plea that the records should be made available

specially on the Law of Treaties as soon as the Secretariat could afford to do so, I conclude. Thank you, Sir.

India :

Thank you, Mr. President. We are very happy to endorse the Report of the First Sub-Committee in its entirety.

Iraq :

Thank you, Mr. President. In endorsing this Report, I only wish to congratulate the Chairman for all the hard work and industrious efforts put in to produce this excellent Report.

Japan :

Thank you, Mr. President. My Delegation also endorses fully the Report of the First Sub-Committee. We are in full agreement with the views expressed by previous speakers with regard to the efforts put into this work and we should thank the distinguished Chairman of the Sub-Committee whose efforts have been remarkable. My Delegation also thanks the Secretariat. The Delegation of Japan is also hopeful that the exchanges of views have been very useful and the Report would no doubt give rich material for Member Governments to digest and to consider this difficult and dangerous problem at the Vienna Conference.

Jordan :

I have no remarks to make save to thank the Chairman and Members of the Sub-Committee for this useful piece of work.

Pakistan :

My Delegation endorses the Report of the Sub-Committee and hopes that when the Secretariat will make the records available to the Member Governments, it will receive consideration by each Member Government, and I am glad to join

the other Delegates in thanking the Chairman of the First Sub-Committee which produced this Report by tiring efforts made in the successive meetings. We have had sometimes late sittings and we have been able to produce this report.

Sierra Leone :

In endorsing the Report of the First Sub-Committee, Mr. President, I would like to congratulate the Chairman of that Sub-Committee for her very expert guidance which she has given during the meetings of that Sub-Committee. Thank you, Mr. President.

Thailand :

My Delegation would endorse the Report of the First Sub-Committee but I have some questions to ask. I wish to draw your attention to pages 7 and 8 of the Report, last line of p. 7 and the first line of p. 8. I think that the First Sub-Committee has taken a decision to delete the clause of "while reserving its position" in the Convention. I would like to be enlightened by the distinguished Chairman if our memory is correct.

Indonesia :

(Chairman of the First Sub-Committee) : I am afraid, it was not deleted. Better ask the Secretary-General.

Thailand :

My Delegation fully supports the Report of this Sub-Committee. Thank you, Mr. President.

U.A.R. :

I fully endorse the Report of the First Sub-Committee and I have no other comments to add. I would like to congratulate and thank the Chairman of the Sub-Committee for her hard work and efforts in the preparation of the Report.

President :

Distinguished Chairman. If she wishes to say something again.

Indonesia (Chairman of the First Sub-Committee) :

Mr. President. Thank you for the opportunity you are giving me to thank my distinguished colleagues in thanking me. As I already stated this morning in the Sub-Committee I was able to do what I could mainly due to the cooperation and friendly spirit I found in my Sub-Committee and I wonder in thanking you instead of you thanking me.

President :

As there are no other remarks, the Report as presented by the First Sub-Committee on the Law of Treaties is adopted unanimously.

We will now take up the Report of the Second Sub-Committee on the Law of Treaties. The Chairman of the Sub-Committee to introduce the Report.

U.A.R. (Chairman of the Second Sub-Committee) :

Mr. President, our Sub-Committee studied the items referred by the Committee, and the first point was with regard to Article 2. In this respect we have had four sectional elements to discuss. First one was the definition of the term "treaty" and the majority of the Delegates arrived at the conclusion that there was no need to introduce into the definition of the term "treaty" substantive elements which are to be covered in Part V of the Convention. On the other hand, the UAR Delegate was in favour of the amendment because 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, and was therefore more in favour of the definition given by the draft Convention.

The second point concerned the definition of the term "general multilateral treaty" and here the Sub-Committee was of the view that although there was no doubt about the important role played by treaties, it would be preferable not to include it in Article 2 A of the term "general multilateral treaty".

Third point was the definition of the term "reservation" and here most of the Delegates raised no objection against maintaining the draft Convention as it exists and rejecting the Hungarian amendment which was intended to include in the concept of reservation a totally different category of legal acts which are mere declarations.

The fourth point concerning Article 2 was the term "restricted multilatral treaties" and here again most of the Delegates thought that the implication of the French conception intending to amend Article 2 in order to bring in a definition of this category of so-called restricted multilateral treaty is not clear and would detract from the uniformity of the draft Convention, and so it would be unwise to introduce in Article 2 the definition of the term "restricted multilateral treaty".

These have been the main points concerning Article 2 and the conclusions arrived at by the Second Sub-Committee.

As for Article 12 *bis*, there is no objection at all because all the Delegates were of the opinion that Article 12 *bis* would be adopted without any change.

In regard to Articles 16 and 17, the first point was if it would be better to maintain Article 16 as it had been adopted at the first session of the Vienna Conference and here the Delegates were in favour of maintaining the draft and in the mean time they are in favour of the Japanese amendment

providing for the creation of a system under which the views of parties to the question of contractability are on a collateral basis, which it would be preferable to introduce.

The other point discussed by the Second Sub-Committee was to introduce in respect of Article 17 the terms "general multilateral treaty" and "restricted multilateral treaty" and here in view of the opinion expressed concerning Article 2, they are more in favour of not to introduce such a concept in the drafting of Article 17.

Article 69 *bis* was discussed in the Second Sub-Committee, and although it was of the opinion that this proposed new article confirms the existing international practice but some Delegates were of the opinion that it would be perferable to include it in the Law of Treaties and other Delegates were of 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 final point which was discussed by the Second Sub-Committee was the question of a provision for contracting out of the Convention, and here the main ideas expressed and approved by the Delegates were that the Convention of the Law of Treaties should be considered as a law making treaty and that it should govern all the treaties to be concluded between the parties to the convention, and accordingly it would be highly desirable to insert in the Convention a provision to the effect that no reservation in principle could be admitted except in respect of those articles in respect of which reservations are explicitly or impliedly permitted in this Draft Convention. These had been the main conclusions and the ideas expressed by the Delegates on the Second Sub-Committee. Thank you very much.

President :

Distinguished Delegate from Ceylon.

Ceylon :

Here again, Mr. President, it is my privilege to be the first to express appreciation of the valuable work which has been done by the members of the Second Sub-Committee. They have set out the matters which have been considered in connection with the need for amendments or alterations or additions to the draft Convention and they have also set out quite clearly the alternative views which would now be open for the consideration of our Member Governments. I am happy to note that in this case the Committee has been able on some points to make definite recommendations for adoption. My Delegation is happy to support the adoption of the Report.

Ghana :

Mr. President, my Delegation also supports the adoption of this Report and agrees with the remarks which the distinguished Delegate of Ceylon has just made. I would also like to reiterate what I said in regard to the other Report on the Law of Treaties that this Report also be made available to Member Governments in time to study them and to help them to formulate their policies before going to Vienna. I would like to add my Delegation's appreciation for the very hard work which the Chairman of this Sub-Committee put in to make this Report possible. Thank you, Sir.

India :

Thank you, Mr. President. Our Delegation would like to join in the tribute paid by our friends from Ceylon and Ghana in commending the comprehensive Report that the Second Sub-Committee has prepared on the various subjects that were referred to them for study. We fully support this Report and would like to offer our appreciation to the Sub-Committee and to its Chairman for giving us in a crisp and comprehensive manner its conclusions on these subjects.

There are some minor typographical mistakes to which my attention has been invited and I would offer these to the Secretariat a little later. May be one I could make right at this time : at page 10, 5th line from the bottom I think if we can delete coma and put a full stop and the next sentence could start with capital words, so that the two ideas are separate and not combined; that would appear to convey the sense in which these were intended so that the two sentences will deal with two different subjects : one relating to opting out or contracting out of the obligations or provisions of the Convention and the other relating to compulsory automatic review after ten years after the Convention has been adopted.

Indonesia :

Mr. President, I would like to associate myself with the previous Delegations in thanking the Chairman of the Second Sub-Committee for the hard work that he and other members of the Sub-Committee have put in in their deliberations. There are a couple of typographical errors which I will later on refer to the Secretariat. We fully endorse the Report.

Iraq :

My Delegation also endorses the Report.

Japan :

It is indeed a pleasure for my Delegation to associate itself in endorsing the work of the Second Sub-Committee. There is a minor correction at p. 8—in the second line from the bottom. It says : "Delegates of Ceylon, Pakistan and . . ." I believe we also expressed this view. I would like the name of Japan to be included, so that it may read: "Delegates of Ceylon, Japan and Pakistan . . .".

Jordan :

My Delegation, Mr. President, is also glad to associate itself with the appreciation expressed by the other distinguished

Delegates of this Committee for the good work done by the Second Sub-Committee.

Pakistan :

Mr. President, my Delegation has no hesitation in accepting the Report of the Second Sub-Committee. In particular, we would like to congratulate the Chairman of this Sub-Committee for his able guidance and also the distinguished Delegates from India and Ceylon who had put in arduous labour to draft this report, and they have made many corrections without which it would otherwise have been very difficult. Thank you very much, Mr. President.

Sierra Leone :

The Delegation of Sierra Leone was unable to participate in the work of the Second Sub-Committee, and although I have in fact not been able to examine this Report, I have no hesitation whatsoever in joining the other Delegations in extending thanks to the Chairman of the Second Sub-Committee and Members of that Sub-Committee for the very good work that they have done.

Thailand :

Mr. President, my Delegation also wishes to express thanks to the Chairman and Members of the Second Sub-Committee on the Law of Treaties for the admirable work they have done. My Delegation has no objection to the Report of the Second Sub-Committee and we fully accept the Report.

U.A.R. :

My Delegation also fully supports the Report of the Second Sub-Committee and has no comments.

President :

The report is adopted unanimously.

(X) REPORTS OF THE SUB-COMMITTEES APPOINTED AT THE TENTH SESSION, KARACHI

Report of the First Sub-Committee on the Law of Treaties

PART I

1. The First Sub-Committee on the Law of Treaties at its first meeting considered the question of admission of Observers to its meetings and agreed to allow the Observers from the Asian-African countries attending the Tenth Session to participate fully in its deliberations.

2. At its first, second, third and fourth meetings the Sub-Committee considered the question of Article 62 *bis*, proposed by 13 Powers at the First Session of the Vienna Conference for inclusion in the Convention after Article 62.

3. The Sub-Committee first took up the question whether it was sufficient to have just Article 62, or whether it was necessary to go beyond the said article. Opinion was evenly divided between those who regarded Article 62 to be sufficient and those who were prepared or considered it necessary to go beyond.

4. The Sub-Committee then considered the possibility that circumstances at the Second Session of the Vienna Conference might make it necessary to go beyond Article 62, and what the position of the States should be if the circumstances so require. It was the unanimous opinion of the Sub-Committee that under such circumstances all the States should be prepared to go beyond Article 62.

5. Thereupon the Sub-Committee considered the question to what extent, and in what form, a provision beyond Article 62 would be acceptable.

(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;

(b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;

(c) representatives accredited by States to an international Conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8

Subsequent confirmation of an act performed without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for the purpose is without legal effect unless afterwards confirmed by the State.

Article 9

Adoption of the text

1. The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2.

2. The adoption of the text of a treaty at an international Conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

Article 10

Authentication of the text

The text of a treaty is established as authentic and definitive:

(a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or

(b) failing such procedure, by the signature, signature *ad referendum* or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 11

Means of expressing consent to be bound by a treaty

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

Article 12

Consent to be bound by a treaty expressed by signature

1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when:

(a) the treaty provides that signature shall have that effect; or

(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

(a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

(b) the signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 13

Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect; or

(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 14

Consent to be bound by a treaty expressed by ratification, acceptance or approval

1. The consent of a State to be bound by a treaty is expressed by ratification when:

(a) the treaty provides for such consent to be expressed by means of ratification;

(b) it is otherwise established that the negotiating States were agreed that ratification should be required;

(c) the representative of the State has signed the treaty subject to ratification; or

(d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.

Article 15

Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State by means of accession;

(b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16

Exchange or deposit of instruments of ratification, acceptance, approval or accession

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

(a) their exchange between the contracting States;

(b) their deposit with the depositary; or

(c) their notification to the contracting States or to the depositary, if so agreed.

Article 17

Consent to be bound by part of a treaty and choice of differing provisions

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is defective only if it is made clear to which of the provisions the consent relates.

Article 18

Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2 : RESERVATIONS

Article 19

Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless :

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20

Acceptance of and objections to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirely 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.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under preceding paragraph and unless the treaty otherwise provides:

(a) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection by another contracting State to a reservation does not preclude the entry into force

of the treaty as between the objecting and reserving States unless a countrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent, to be bound by the treaty, whichever is later.

Article 21

Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies these provisions to the same extent with that other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation

relates do not apply as between the two States to the extent of the reservation.

4. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the reservation has the effects provided for in paragraphs 1 and 2.

Article 22

Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by the State;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23

Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

SECTION 3 : ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

Article 24

Entry into force

1. A treaty enters into force in such manner and upon suchdate as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25

Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if :

(a) the treaty itself so provides ; or

(b) the negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III

OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1 : OBVERVANCE OF TREATIES

Article 26

Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27

Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2 : APPLICATION OF TREATIES

Article 28

Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29

Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30

Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one :

a) as between States parties to both treaties the same rule applies as in paragraph 3;

b) as between a State party to both treaties and a State party to only one of the treaties, treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3 : INTERPRETATION OF TREATIES

Article 31

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context or the purpose or the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes :

a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

b) any instrument which was made by one or more parties in connexion with the conclusion of the

treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context :

a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of the conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31 :

a) leaves the meaning ambiguous or obscure; or

b) leads to a result which is manifestly absurd or unreasonable.

Article 33

Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each

language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph [1], when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4 : TREATIES AND THIRD STATES

Article 34

General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Article 35

Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36

Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37

Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38

Rules in a treaty becoming binding on third States through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV

AMENDMENT AND MODIFICATION OF TREATIES

Article 39

General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

Article 40

Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in :

a) the decision as to the action to be taken in regard to such proposal ;

b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement ; article 30, paragraph 4(b) applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by the State :

a) be considered as a party to the treaty as amended, and

b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 41

Agreement to modify multilateral treaties between certain of the parties only

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if :

a) the possibility of such a modification is provided for by the treaty ; or

b) the modification in question is not prohibited by the treaty and ;

i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. Unless in a case falling under paragraph 1 (a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V

INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1 : GENERAL PROVISIONS

Article 42

Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a state to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43

Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any state to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44

Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under Article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to

the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in Article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where :

(a) the said clauses are separable from the remainder of the treaty with regard to their application;

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under Articles 49 and 50 the state entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under Articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45

Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A state may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of

a treaty under Articles 46 to 50 or Articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

SECTION 2: INVALIDITY OF TREATIES

Article 46

Provisions of internal law regarding competence to conclude treaties

1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice and in good faith.

Article 47

Specific restrictions on authority to express the consent of a state

If the authority of a representative to express the consent of a state to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to other negotiating states prior to his expressing such consent.

Article 48

Error

1. A state may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that state to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the state in question contributed by its own conduct to the error or if the circumstances were such as to put that state on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; Article 79 then applies.

Article 49

Fraud

If a state has been induced to conclude a treaty by the fraudulent conduct of another negotiating state, the state may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50

Corruption of a representative of a State

If the expression of a state's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating state, the state may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51

Coercion of a representative of a state

The expression of a state's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52

Coercion of a state by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

Article 53

Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3 : TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54

Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place :

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the other contracting states.

Article 55

Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56

Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless :

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57

Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties after consultation with the other contracting states.

Article 58

Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(a) the possibility of such a suspension is provided for by the treaty; or

(b) the suspension in question is not prohibited by the treaty; and

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of ths treaty.

2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59

Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

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

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that 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 later treaty or is otherwise established that such was the intention of the parties.

Article 60

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 in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting state; or

(ii) as between all the parties;

(b) a party especially 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 party other than the defaulting state to invoke the breach as a ground for suspending the operation of the treaty in whole or in part 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 this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; 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.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61

Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearnce 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.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62

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 treaty ; and

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

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty :

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63

Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established

between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64

Emergence of a new peremptory norm of general international law (just cogens)

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4 : PROCEDURE

Article 65

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

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, 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 reasons therefor.

2. If, after the expiry of a period which, except in case 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 67 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 45, 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 66

Procedures for judicial settlement, arbitration and conciliation

If, under paragraph 3 of Article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed :

(a) any one of the parties to a dispute concerning the application or the interpretation of Article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration ;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67

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

1. The notification provided for under Article 65 paragraph 1 must be made in writing.

2. 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 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the state communicating it may be called upon to produce full powers.

Article 68

Revocation of notifications and instruments provided for in Articles 65 and 67

A notification or instrument provided for in Article 65 or 67 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 69

Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. 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 invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under Articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion 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 70

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 Convention :

(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 71

Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under Article 53 the parties shall:

(a) eliminate as far as possible the consequences of any act performed 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 64, 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 72

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 Convention :

(a) releases 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 obstruct the resumption of the operation of the treaty.

PART VI

MISCELLANEOUS PROVISIONS

Article 73

Cases of state succession, state responsibility and outbreaks of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of states or from the international responsibility of a state or from the outbreak of hostilities between states.

Article 74

Diplomatic and consular relations and the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more states does not prevent the conclusion of treaties between those states. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75

Case of an aggressor state

The provisions of the present Convention 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 REGISTRATION

Article 76

Depositaries of treaties

1. The designation of a depositary of a treaty may be made by the negotiating states, either in the treaty itself or in

some other manner. The depositary may be one or more states, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a state and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77

Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting states, comprise in particular :

(a) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

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

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the state in question;

(e) informing the parties and the states entitled to become parties to the treaty of acts, notifications and communications 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, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present Convention.

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 signatory states and the contracting states or, where appropriate, of the competent organ of the international organization concerned.

Article 78

Notifications and communications

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

(a) if there is no depositary, be transmitted direct 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 when the latter state has been informed by the depositary in accordance with Article 77, paragraph 1 (e).

Article 79

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory states and the contracting states are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected :

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

(b) by executing or exchanging an 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 shall notify the signatory states and the contracting states of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit :

(a) no objection has been raised, the depositary 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 parties and to the states entitled to become parties to the treaty;

(b) an objection has been raised, the depositary shall communicate the objection to the signatory states and to the 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 signatory states and the contracting states agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory states and the contracting states otherwise decide.

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

6. 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 of it to the signatory states and to the contracting states.

Article 80

Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

PART VIII

FINAL PROVISIONS

Article 81

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice,

and by any other state invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary General of the United Nations.

Article 83

Accession

The present Convention shall remain open for accession by any state belonging to any of the categories mentioned in Article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each state ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such state its instrument of ratification or accession.

Article 85

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are

equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

DONE AT VIENNA, this twenty-third day of May, one thousand nine hundred and sixty-nine.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every state which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under Article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows :

The state or states constituting one of the parties to the dispute shall appoint :

(a) one conciliator of the nationality of that state or of one of those states, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that state or of any of those states, who shall be chosen from the list.

The state or states constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.