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UNITED NATIONS CONFERENCE ON
THE LAW OF TREATIES

COMMENTS AND AMENDMENTS TO THE FINAL DRAFT ARTICLES
ON THE LAW OF TREATIES SUBMITTED IN 1968 IN ADVANCE
OF THE CONFERENCE IN ACCORDANCE WITH GENERAL
ASSEMBLY RESOLUTION 2287 (XXII)

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5. CEYLON

Transmitted by a note of 1 March 1968 from the Ministry
of Defence and External Affairs

1. The International Law Commission is to be congratulated on the preparation of the draft articles on the Law of Treaties which, in the opinion of this Government, would form an excellent basis for discussion at the forthcoming United Nations Conference on the Law of Treaties. The Government of Ceylon wishes to offer the following comments on the draft articles at the present time while reserving its right to make such further observations as may be appropriate at a later stage.

I. General

2. The draft articles do not purport to cover every aspect of the Law of Treaties, and part C of the Introduction refers to some of the topics excluded, e.g., succession, the effect of hostilities. Specific exclusions such as those contained in articles 3 and 69 could, however, convey the impression that the draft is in fact intended to be comprehensive save in respect of the topics so excluded, which would be incorrect. It might be preferable to include a provision which would merely state that the draft covers only those aspects of the law with which it purports to deal, and that all other aspects will continue to be regulated by customary law and treaty.

3. Paragraph 35 of the Introduction describes the Commission's work on the Law of Treaties as constituting both codification and development. But the general effect of the articles on existing treaty arrangements is not clear. Is it intended, for example, that the articles should supplement existing treaties as between the parties to those treaties which are also parties to the Convention in which the articles will be contained? Would a treaty between States A, B and C which contains no provision regarding termination be subject to termination in accordance with draft article 53 if A, B and C are all parties to the Convention on the Law of Treaties? What would be the position if there were other parties D and E to the earlier treaty who are not parties to the Convention? The operation of the articles in relation to existing treaty relationships should be clarified in an additional provision.

II. Comments on particular provisions

Articles 1 and 5

4. Article 1 refers to treaties between "States" as being the subject of the draft articles. The term "State" is not defined. In article 5 (1) it means a State which has international personality. In article 5 (2) it represents States which are not international persons. This dual usage could lead to confusion and give the impression that States members of federal unions are international persons. Their position should be clarified, the point being that States members of federal unions are not full international persons capable of international rights, e.g., they cannot conclude treaties of the type under consideration with the federal State of which they form part.

Article 2 (1) (b)

5. It might be helpful if the terms used in article 2 (1) (b) were explained briefly with a view to eliminating doubt as to their meaning and viability.

Article 3

6. The meaning of this article would be more fully expressed by the addition of the following at the end of its present text: "... or of any other relevant rules of international law".

Articles 4 and 8

7. One of the new techniques of treaty adoption which has developed in recent years, viz., the adoption of the text of a treaty by an international organization pursuant to its inherent powers, does not seem adequately covered by these articles. Article 8 (1) states the general rule regarding treaty adoption as follows:

"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."

The formulation of article 8 (1) implies that, with the exception of adoption of a text at a conference (for which separate provision is made in paragraph 2) the universal practice is, or should be, that a text is adopted unanimously by

participating States. This, however, must be read in the light of article 4 which provides that as to treaties adopted by or within international organizations the provisions of the draft articles are to be "subject to the relevant rules of the organization".

8. When the adoption of the text of a treaty by an organization takes place pursuant to an express provision of the organization's constituent instrument, as may be said to be the case with the adoption of the ILO Conventions, the provisions of article 4 would seem readily applicable. However, where a text is adopted within an organization in the exercise of its inherent powers, there may be no real "rules of the organization" which could offer guidance. Again, conventions formulated within an international organization attain an independent existence, and could hardly be said to continue to be subject to the relevant rules of the "parent" organization. The application of article 4 becomes even more difficult when the treaty adopted within an international organization is itself, in part, the constituent instrument of another and wholly independent international organization with its own rules and procedures.

9. Distinguished examples of the type of treaty we have referred to are 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 first adopted by the Executive Directors of the World Bank and then circulated to the Bank's membership for acceptance. It might be possible to argue that the terms of article 8 (1) could be made to cover this type of case by saying that the true adoptive process occurs not at the stage of executive approval within the organization, but when each State takes action to make the text its own, i.e., by signature and/or ratification. It may also be suggested that the "rules of the organization" referred to in article 4 should be interpreted to cover not only the organization's regular rules but also all decisions and resolutions binding upon its members and that the adoptive process might be expected to have been specified in the latter.

10. Although the formulation and adoption of the text of a treaty within an international organization pursuant to its inherent powers appears to have earned the right to a place in the draft articles, articles 4 and 8, as at present drafted, do not seem to do full justice to this technique. One possible solution might be

to make the terms of article 8 (1) less rigid by providing for its application in cases where no other mode of adoption had been agreed; another might be to provide in article 8 (1) specifically for its non-application to treaties adopted within an organization pursuant to its inherent powers. In any event the provisions of article 4, at any rate in so far as they relate to treaties adopted "within an international organization" will need to be reviewed very carefully with a view to their further elaboration or, if this seems premature, to their suppression.

Article 6

11. The drafting of paragraph 1 of this article appears to be faulty. As constructed at present, it could read as follows:

"... a person is considered as representing a State... only if...
(b) it appears from the circumstances that the intention of the States concerned was to dispense with full powers."

This meaning could not have been intended by the drafters. The only meaning intended was probably that full powers could be dispensed with if the participating States impliedly so agreed, and some recasting of this text would seem necessary.

Article 7

12. The words "expressly or impliedly" should be inserted after the word "confirmed" in the last line of the article. Consideration should also be given to the question whether such "confirmation" has retroactive effect or takes effect only from the moment it is given.

Articles 10 and 11

13. These articles do not provide for the case where a State's intention to be bound either upon signature or on ratification cannot be established. Consideration should be given to providing for a presumption in favour of one or other position in such a case, the most logical, perhaps, being a presumption in favour of being bound on signature. A problem could arise where in the course of negotiations a State expresses its intention to be bound on signature, but signs subject to ratification. In that event would article 10 (1) (c) or article 11 (1) (c) apply? It ought to be made clear that in such a case the signatory State would only be bound on

ratification. Similar inconsistencies could develop in practice between articles 10 (1) (a) and 11 (1) (d) or 10 (1) (c) and 11 (1) (a), etc., and consideration might therefore be given to specifying the weight to be attached to each formal element as against the other, e.g., should the authority conferred by a representative's full powers carry greater weight than formal action taken by him?

Article 13

14. The application of this article should be made subject not only to there being some contrary provision of the treaty, but also to agreement to the contrary between the parties even if expressed outside the provisions of the treaty.

Articles 16-20

15. Article 16 retains the traditional rule that a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate reservations, save in the exceptional circumstances enumerated in that article. Consideration might be given to substituting for this provision one that would provide for a reversal of that practice with regard to reservations. This may be viewed as a step forward in the development of treaty law for the following reasons: (1) the existence of the new rule could remove doubts as to whether reservations to a treaty would be permitted in cases where no express provision is made for reservations; (2) it might impel States at the time of negotiating a treaty to give adequate consideration to the question whether, and if so to what extent, reservations to the treaty should be permitted - thus obviating the possible need, which could arise long after the drafters are no more, to interpret the instrument with a view to determining the precise objects and purposes of the treaty; (3) such a provision together with appropriately modified "standard" provisions in the draft articles regarding the procedure and legal effects of reservations could tend to ease the burden on depositaries who would then always have clear instructions as to the processing of reservations; (4) it would help towards introducing a greater degree of order and certainty into treaty relations.

16. Article 16 might therefore provide that a State may formulate reservations only when the treaty so provides and then only in accordance with its provisions. It should be further stated that except as the treaty might otherwise provide, the

provisions of articles 17-20 should apply as regards acceptance/objection to reservations, as well as the procedure and legal effect of reservations. The latter articles should be so drafted as to contain a complete set of rules including those which would preclude the formulation of reservations other than at the time of signing, ratifying, accepting, etc., a treaty and prohibiting reservations incompatible with the object and purpose of the treaty, as are now reflected in the present article 16.

17. A reversal of the old rule could not, of course, in any way diminish the power of States to make reservations; it would only apply as a rule of interpretation, so that if the States concerned feel that an instrument in preparation is one to which reservations should be admitted, they ought to say so, and, in accordance with the spirit of resolution 598 (VI) of the General Assembly and the International Law Commission's own recommendation provide explicitly for the processing of reservations and the relationships which would be established as a result of such reservations. On the other hand, if provisions on reservations are omitted altogether from a treaty, it would be conclusively presumed that in the view of the participating States reservations were per se not in keeping with the object and purpose of the treaty.

18. Consideration might also be given to reversing the rule contained in article 17 (4) (b) which seems to have little logical basis. That paragraph might be redrafted so as to provide that objection by another contracting State to a reservation shall not preclude the entry into force of the treaty as between the objecting and the reserving States unless a contrary intention is expressed by the objecting State. Such a rule read together with a provision along the lines of article 19 (3) would seem to provide adequate safeguards for the parties concerned.

19. Even if it is decided that article 16 should continue to enshrine the traditional rule regarding reservations, certain changes would seem to be necessary in article 17. Thus, article 17 (2) as worded at present may be interpreted as covering reservations which cannot be formulated under article 16 and, therefore, to permit reservations which cannot properly be formulated at all. In fact article 17 (2) covers in its entirety a situation in which a reservation cannot be formulated under article 16 because of article 16 (c).

20. Article 18 (3) should be amended by insertion of the words "or an express or implied acceptance of", after the word "objection" in the first line.

21. Consideration should be given to whether the provisions of article 19 (1) (b) could properly be applied where the obligations undertaken by the parties to the treaty are not necessarily mutual or reciprocal, but are undertaken vis-à-vis the community of nations in general, e.g., treaties dealing with human rights.

Article 22

22. Some provision should be made concerning the effect of failure of a treaty which has come into force provisionally, to take effect definitively. For instance, acts done while the treaty was provisionally in force should not be open to question. Consideration should also be given to placing a time-limit on the provisional effectiveness of a treaty, i.e., it could be stated that if the treaty failed to enter into force definitively before a specified date for lack of ratification, it should cease to have any effect until the requisite ratifications are obtained.

Article 27 (1)

23. It is not clear what the position would be if there were to be a conflict between the meaning which arises from the context, and that which arises from a consideration of the object and purpose of the treaty.

Article 30

24. The absolute rule stated in this article, viz., that a treaty does not create either obligations or rights for a third State without its consent, may be too sweeping. It would be difficult, for instance, to reconcile the rule in its present form with the provisions of Article 2 (6) of the Charter of the United Nations, which seems to create obligations for non-member States and empowers the United Nations to enforce those obligations. Consideration might be given to a specific exemption of Charter provisions along the lines of draft article 26 (1).

Article 33 (1)

25. Should this provision be interpreted to mean that a party to a treaty cannot waive a right it has vis-à-vis a third State under a treaty without the consent of the third State?

Article 35

26. It would seem preferable that this article be recast to provide that a treaty may be amended by the procedure agreed upon by the parties (rather than "by agreement between the parties").

Articles 46 and 47

27. These articles make fraud and corruption of the representative of a negotiating State grounds for the invalidation of a State's consent to be bound by a treaty, i.e., a treaty which is the result of acts specified in the Articles, is voidable. Consideration might be given to providing that a treaty is also voidable when based on a misrepresentation even when innocently made.

Article 49

28. This article makes the threat or use of force in violation of the Charter of the United Nations a ground of avoidance of a treaty. It would be desirable to provide in this article also that the concept of force includes coercion by indirect means such as political or economic pressures vitiating free consent.

Articles 43, 50, 57, 59, 61 and 62

29. While the attempt to deal with the complex problems covered by these articles is most welcome, their provisions, as drafted at present would seem to leave too much uncertainty to gain general acceptance. Article 43 provides that a State may not invoke a violation of its internal law to vitiate its adherence to a treaty "unless that violation was manifest", i.e., unless the violation was objectively evident to any State dealing with the matter normally and in good faith. But to whom should the violation be manifest, and at what point of time? Can the violation be cured through some act of ratification by the State concerned? Article 50 declares to be void a treaty which conflicts with an existing peremptory norm of international law. While it is relatively simple in domestic law to hold invalid an agreement, say, for an illicit purpose, i.e., in conflict with a peremptory norm of domestic law or public policy, the international community is insufficiently developed for the concept of "peremptory norm" to be used in these articles without further clarification. As clarification by means of a definition in the Convention

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might prove an insurmountable task at present, it would seem to be necessary to establish a procedure whereby in any given case, it can be determined whether a peremptory norm exists. In any event, ascertainment, for the purpose of article 61, of the establishment of such a norm is never likely to be a simple matter.

Article 57 provides for termination or the suspension of the operation of a treaty as a consequence of a "material breach" of its provisions. Obviously, it will often be difficult to determine whether a breach is "material" or not. Finally, the application of article 59 which declares that a "fundamental change of circumstances" may in certain specific circumstances, be invoked as a ground for terminating or withdrawing from a treaty, is also bound to present difficulties of interpretation. (See also in this connexion articles 28 (a) and (b); 29 (1) and (3); 37 (1) (b) (ii); 41 (3); 45 (1); 48; and 49.)

30. It is clear that the Commission was well aware of the possible, or even inevitable, difficulties of interpretation that could arise with respect to these articles. Article 62 of the draft which prescribes the procedure to be followed when a party claims that a treaty is invalid or alleges a ground for terminating, withdrawing from or suspending the operation of a treaty, is a reflection of the Commission's concern on that score. Paragraph 3 of the Commission's Commentary on article 62 explains its reluctance to subject the application of the articles to the compulsory jurisdiction of the International Court of Justice.

31. However, article 62 does not seem to come to grips with the problem, merely creating as it does, the obligation to "seek a solution through the means indicated in Article 33 of the Charter of the United Nations". While there may be substance to the view that in the present state of international practice it would not be realistic for the Commission to put forward a proposal for reference of disputes to the Court, and while, as pointed out in the Commentary, it is true that the Vienna Conventions do not provide for reference of disputes to the International Court of Justice, it is doubtful if there exists any general trend away from such a practice. Indeed, several conventions in recent times have clauses which subject disputes arising under them to the compulsory jurisdiction of the Court, notably the International Convention on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly in December 1965, and the Convention on the Settlement of Investment Disputes which entered into force in October 1966.

Careful consideration should therefore be given by all participating States to including a provision on submission of disputes to the Court or other agreed arbitral body if all other methods of settlement fail. Should a clause referring disputes to the Court or other body prove generally unacceptable, perhaps an optional protocol with similar provisions may offer a means of clarification, at least to some participating States.

32. The latter articles represent some of the most ambitious attempts by the International Law Commission at codification, and in the view of this Government those attempts have been crowned with a remarkable degree of success. However, without some provision for objective determination as regards their applicability in a given case, their present wording would seem to leave the door open for grave abuses.

Articles 58-60

33. The application of these articles might be made subject to there being a provision to the contrary in the treaty, and again, to the agreement of the parties.

34. The provisions of article 58 should not operate so as to enable a party to claim that a treaty has terminated, if the impossibility forming the basis of that claim was actually induced by the party making the claim. It is not clear whether article 58 is intended to cover the case where one of the parties itself disappears permanently and no other entity succeeds to its rights and duties under the treaty.

Article 61

35. It is assumed that, since this article is not among those listed in article 41 (5), the principle of separability of treaty provisions would apply where an existing treaty is affected by the emergence of a new peremptory norm.

Article 75

36. Under this provision, the parties to the articles are required to register with the United Nations, treaties entered into by them - presumably even where the other parties are not Members of the United Nations or are not parties to the articles. Consideration might be given to stating explicitly the effects of failure so to register a treaty.

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New provision

37. The 1966 version of the draft articles does not include an article affirming the universality of general multilateral treaties. The Commission's decision to delete articles 8 and 9, adopted at its fourteenth session in 1962, appears to have been taken because of a sharp difference of opinion on the right of all States to participate in general multilateral treaties. Having regard to the character of general multilateral treaties which deal with (to quote the 1962 draft definition) "general norms of international law" or "matters of general interest to States as a whole" it would seem vital to the progressive development of international law that all States in the international community should have this right. An appropriately worded article affirming that right should be included among the draft articles.

6. POLAND

Transmitted by a note verbale dated 26 February 1968 from
the Permanent Mission to the United Nations

The Government of the Polish People's Republic is of the opinion that the draft articles as a whole constitute a valuable contribution to the process of codification and progressive development of international law. It may be pointed out, in particular, that the problem of reservations has been solved so as to enable large participation in treaties; the importance of jus cogens in the law of treaties has been duly stressed; an appropriate international procedure, adjusted to the present stage of international relations, has been developed in order to avoid the recurrence to subjective judgements only and to prevent the States from abusing their rights. These as well as other basic principles expressed in the draft articles are the result of a balanced compromise of various legal systems and ideas of the contemporary world and as such they will certainly serve the interests of all States irrespective of their political or economic systems.

In view of the importance and the universal character of the future convention on the law of treaties, it certainly is in the interest of the international community as a whole to assure the widest possible participation in the Vienna Conference on the law of treaties. Treaties are being concluded by all States. The capacity of every State to conclude treaties has been explicitly confirmed in draft article 5. Therefore it would not be in conformity with the aims of the Vienna Conference if any political considerations were to preclude any State from attending it. The Government of the Polish People's Republic is of the opinion that the range of those invited to the Conference should be extended so as to enable every State to take part in it.

The Government of the Polish People's Republic reaffirms its opinion that the draft articles constitute a suitable basis for the codification of the law of treaties in an appropriate international convention.

Reserving the right to present further comments and proposals at the conference itself, the Government of the Polish People's Republic would like at this stage to draw attention to some of the provisions in the draft articles that may be subject to further elaboration or improvement.

Article 4

It is believed that this article should be formulated in such a way as to preclude the possibility for an international organization to apply rules which conflict with the basic principles of the law of treaties as expressed in the present articles.

Article 5

Paragraph 1 of this article is of paramount importance as it expresses the essential principle of the law of treaties, e.g., that every State has the capacity to conclude treaties. It is equally essential, however, to provide explicitly that every State has the right to become a party to general multilateral treaties, i.e., treaties dealing with questions that by their very nature and scope interest the international community as a whole. It is believed that such a provision will constitute an essential guarantee for the full realization of the general principle expressed in paragraph 1 of article 5.

Proposed new Article 9a

It seems that a State may express its consent to be bound by a treaty by any agreed action. Therefore it would be advisable to include into the draft articles a new provision which would allow States to express their consent to be bound by a treaty also by means other than those indicated in articles 10, 11 and 12, for example, by an exchange of letters. It is suggested, therefore, that the following new provision be placed between the present articles 9 and 10.

"Article 9a

"Consent to be bound by a treaty

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

Article 10

It would be advisable to express in article 10 a general presumption that the consent of a State to be bound by a treaty is expressed by the signature, unless the treaty otherwise provides or it has been in some other manner otherwise agreed.

Proposed new Article 10a

As it has already been mentioned above [see proposed new article 9a], articles 10, 11 and 12 do not take into account the exchange of instruments, constituting a treaty, as a form of expressing the consent to be bound by a treaty. However it is very frequent in contemporary practice that exchanged instruments, constituting a treaty, are not signed nor even, in the practice of numerous States, initialled (notes verbales, aide-mémoires). In order to fill that lacuna, it is suggested to include the following provision between the present articles 10 and 11:

"Article 10a

"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 embodied in two or more related instruments is expressed by the exchange of such instruments, unless the States in question otherwise agree".

Article 13

This article expresses in fact a presumption as to the moment at which the consent of a State to be bound by a treaty is established (or is effective). The title of the article does not correspond to its content. Besides, the frequent practice of concluding treaties in the form of an exchange of instruments does not find its reflection in this article. Therefore the following wording of article 13 is suggested:

"Article 13

"Establishment of the consent to be bound by a treaty

"Unless the treaty otherwise provides, the consent of a State to be bound by a treaty is established upon:

- (a) signing of the treaty; or
- (b) exchange of the instruments of ratification, acceptance, approval or accession between the contracting States; or
- (c) deposit of the instruments mentioned under sub-paragraph (b) with the depositary; or
- (d) notification of ratification, acceptance, approval or accession made to the contracting States or to the depositary, if so agreed; or
- (e) exchange of instruments constituting a treaty."

Article 15

It is suggested that in sub-paragraph (a) of this article the words "while these negotiations are in progress" be replaced by the words "so long as it participates in these negotiations".

As to the sub-paragraph (c) it may be advisable to add a condition that the obligation terminates if the State has made its intention clear not to become a party to the treaty.

Article 16

So far as article 16 (b) is concerned, it may be noted, that the mere fact that a treaty authorizes certain reservations (for example reservations to the provisions dealing with arbitration) is not conclusive as to whether the reservations to other provisions of the treaty are admissible or are not. Therefore the rule stated in this sub-paragraph should be confined only to cases where the treaty authorizes exclusively specified reservations. So the word "exclusively" should be added between the words "authorizes" and "specified".

Article 17

Only the provisions of paragraph 1 and paragraph 3 of this article provide clearly for variations "when the treaty otherwise provides". But the problem seems to be more general, for the treaty may also provide different rules from those, for example, stated in paragraphs 4 and 5. For reasons of economy of drafting it seems desirable instead of providing for variations in each paragraph to formulate new paragraph 1, reading as follows:

"As to the acceptance of or objection to the reservations the following paragraphs shall apply, unless the treaty otherwise provides."

As to the substance of paragraph 1 of this article it may be desirable to state more clearly that it refers only to the reservations admissible under sub-paragraph (a) or (b) of article 16, and at the same time to make this provision more in line with the commentary of the International Law Commission on it. By doing so, any possible misconception as to the terms presently used, namely, "expressly or impliedly"... can be avoided. This paragraph could read as follows:

"A reservation authorized in accordance with article 16 (a) or (b) does not require any subsequent acceptance by the other contracting States."

The provision of the present paragraph 4 (b) of this article creates a presumption in favour of non-existence of treaty relations between the reserving and objecting States. The draft seems to be going too far in determining the effects of an objection to the reservation. In the interest of the development of treaty relations as widely as possible it would be desirable to stipulate that an objection to a reservation precludes the entry into force of the treaty as between the objecting and reserving States only if such an intention is clearly expressed by the objecting State.

The present paragraph 5 provides for a period of twelve months for the presentation of an objection. It seems appropriate to provide for a shorter period in this respect.

Article 18

It seems advisable to make the obvious rule contained in paragraph 2 of this article applicable not only to reservations but also to objections formulated "on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval". All acts expressing the will of States made in such cases are not final. It may happen, that an objection presented, for example, upon signing the treaty, will not be repeated upon ratifying that treaty by the State in question. In such a case it may be assumed that that State does not object to already formulated reservations, i.e. it accepts them.

For these reasons, the following formulation of paragraph 2 is suggested:

"If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval, a reservation as well as an eventual objection to it must be formally confirmed by the reserving and objecting States when expressing their consent to be bound by the treaty. In such a case the reservation and the objection shall be considered as having been made on the date of their confirmation."

Article 19

In connexion with the suggestion made above to modify the provision contained in paragraph 4 (b) of article 17, the following formulation of paragraph 3 of article 19 seems to be more adequate:

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

Article 22

Article 22 does not seem to provide for termination of what is essentially a provisional state of affairs and, consequently, is not covered by part V of the draft article. Besides, paragraph 1 of this article seems to require some drafting changes. Therefore it is proposed to replace the present wording of article 22 by the following text:

"1. A treaty may enter into force provisionally, pending ratification, acceptance, approval or accession, if

(a) the treaty itself prescribes that it shall enter into force provisionally; 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.

"3. The provisional entry into force is terminated:

(a) when the treaty definitively enters into force; or

(b) when the States between which the treaty provisionally entered into force agree to such a termination; or

(c) upon notification by one of such States of its intention not to become a party to the treaty, with respect to that State."

Article 29

Paragraph 3 of this article should be reworded as follows:

"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 texts discloses a difference of meaning which the application of articles 27 and 28 does not remove:

(a) a meaning in the language version in which the treaty was drawn up shall prevail;

(b) if the treaty was drawn up in two or more languages a meaning which as far as possible reconciles the texts shall be adopted."

It is believed that such a formulation will help to solve the problems which may arise in connexion with the interpretation of treaties in two or more languages.

Article 39

Article 39, paragraph 2 excludes any possible cause for either terminating or suspending the operation of a treaty which has not been provided for in "the present articles". In paragraph (2) of its commentary to article 69, the International Law Commission explained the reasons for not inserting into its draft articles any mention of an "outbreak of hostilities". The explanation, however, seems hardly convincing. The situation with reference to possible influences of an outbreak of hostilities on treaty relations between conflicting parties may be less clear now than it used to be under traditional international law, but it is hardly the reason to omit entirely any mention of it if the list of possible causes of terminating or suspending the operation of treaties is to be considered as exhaustive. It seems that this problem should have been treated in the same way as the two other problems which the International Law Commission did not choose to dwell upon, i.e. State succession and State responsibility.

Article 55

It seems that parties concluding an agreement to suspend the operation of provisions of a treaty should notify accordingly the other parties to the treaty. Otherwise those other parties may not be aware of the existence of the agreement suspending the operation of provisions of the treaty between certain of the parties. Those other parties should, at any rate, be in a position to evaluate whether the agreement in question is or is not in conformity with the requirements set forth in article 55 sub-paragraphs (a) and (b).

Article 65

The term "imputable", as used in paragraph 3 of this article, is so vague that it may lead to misunderstandings. Therefore, it is suggested that paragraph 3 of this article be reworded as follows:

"In cases falling under articles 46, 47, 48 and 49, paragraph 2 does not apply with respect to the Party whose fraud, corrupt act or coercion has been the cause of the nullity of the treaty."

Article 72

It seems that the provisions under sub-paragraphs (b), (e) and (f) of this article place unnecessary burden on the depositary. It would be sufficient for the depositary to send ex officio the documents and information mentioned in those provisions to the two following categories of States: negotiating States and contracting States. As to the other States, entitled to become parties to the treaty, the depositary should send them the relevant documents and information on their request only.

Article 74

It seems advisable to specify that the relevant notifications under this article should be made not only to the contracting States, but also to the negotiating States which are also interested in having an error corrected before they express their final consent to be bound by the treaty.

Article 75

It is suggested that this article be reworded as follows:

"Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations in accordance with article 102 of the Charter of the United Nations."
