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REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF THE THIRTY-THIRD SESSION

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Corrigendum

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1. Annex II, Contents

After Romania insert Sweden

2. Annex II

After Romania insert the following page

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SWEDEN

/Original: English/

/25 February 1981/

1. The Swedish Government has already on a previous occasion expressed some doubts as to the necessity of drafting a separate legal instrument dealing with treaties to which international organizations are parties. An analogous application of the Vienna Convention on the Law of Treaties would presumably be a satisfactory way of solving many of the legal problems that may arise in connexion with such treaties. Many of the draft articles prepared by the International Law Commission are in fact almost identical to the corresponding provisions of the Vienna Convention.
2. The question that may be asked, however, when studying the draft articles, is whether the International Law Commission has paid sufficient attention to the differences that exist between international organizations and States in so far as the conclusion of treaties is concerned.
3. In particular, it is noticeable that no distinction has been made in the draft articles between "internal" treaties, i.e. treaties between an international organization and one or more of its member States, and "external" treaties, i.e. treaties between an international organization and one or more non-member States. In some respects, however, these two kinds of treaties should not be treated alike. In particular, it seems difficult to apply rules such as those contained in article 27, paragraph 2, and article 46, paragraph 3, of the draft articles to treaties between an organization and its member States. When applying treaties between an organization and its member States, it is important to have regard to the fact that the rules of the organization have been adopted by the member States themselves and cannot therefore be compared to provisions of the internal law of another State.
4. In cases where an international organization concludes treaties with a non-member State, the organization is often of the customs union type. The treaties which such an organization concludes about customs duties or connected matters should normally also be binding on the member States of the organization. These member States are therefore not to be regarded as third States in the normal sense of that term. In order to take this situation into account, it seems necessary to include a provision along the lines of the proposed article 36 bis.
