UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CONF.39/5(Vol. I)
10 February 1968
ENGLISH
ORIGINAL: ENGLISH/FRENCH/RUSSIAN/SPANISH

UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES

ANALYTICAL COMPILATION OF COMMENTS AND OBSERVATIONS MADE IN 1966 AND 1967 WITH RESPECT TO THE FINAL DRAFT ARTICLES ON THE LAW OF TREATIES

Working paper prepared by the Secretariat

VOLUME I

This volume contains: (i) the comments and observations on the draft articles as a whole; (ii) the comments and observations on parts I to III of the draft articles (articles 1 to 34).

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EXPLANATORY NOTE

The analytical compilation of comments and observations made in 1966 and 1967 with respect to the final draft articles on the law of treaties has been prepared by the Secretariat in pursuance of operative paragraph 8 of General Assembly resolution 2166 (XXI) relating to the International Conference of Plenipotentiaries on the Law of Treaties. Its purpose is to enable participants in the Conference to find promptly the comments and observations concerning the particular provision under discussion at a given time.

The final text of the draft articles on the law of treaties was submitted to the General Assembly by the International Law Commission in the report on the work of its eighteenth session.* It was discussed by the Sixth Committee in 1966 during the twenty-first session of the General Assembly and in 1967 during the twenty-second session. In addition, written comments on the final text were submitted in 1967 by Member States, the Secretary-General of the United Nations, specialized agencies and IAEA in pursuance of operative paragraph 9 of resolution 2166 (XXI). The present compilation covers the observations made by representatives of Member States during the debates in the Sixth Committee in 1966 and 1967 and the written comments submitted in 1967. It consists of excerpts from the following documents:

1. Official Records of the General Assembly, Twenty-First Session, Sixth Committee, 903rd to 917th meetings, held from 4 to 21 October 1966.
2. Official Records of the General Assembly, Twenty-Second Session, Sixth Committee, 967th, 969th, 971st and 974th through 983rd meetings held from 11 to 26 October 1967.
3. Report of the Secretary-General on the written comments concerning the final draft articles on the law of treaties: document A/6827 and Add.1 and 2.**

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* See, Official Records of the General Assembly, Twenty-First Session, Supplement No. 9 (A/6309/Rev.1), part II, chapter II.

** There is a corrigendum to the English text of the comments by Japan published in document A/6827.

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An effort has been made to render the compilation as complete as possible. Like most other analytical compilations, however, it does not purport to be exhaustive and does not obviate the need to consult the documents on which it is based.

The compilation is composed of two chapters. The first is devoted to comments and observations relating to the draft articles as a whole, the second to comments and observations relating to parts, sections and individual articles of the draft. In the second chapter, the comments and observations concerning a part or a section as a whole are quoted under the title of that part or section. Those concerning an individual article are quoted under the title of that article.

In both chapters the comments and observations are followed by references in parentheses indicating the documents from which they are quoted. All references to summary records relate to those of the Sixth Committee. Thus, for instance, the reference "XXIInd session, 981st meeting, para. 20" means that the passage quoted appears in paragraph 20 of the summary record of the 981st meeting of the Sixth Committee, printed in the Official Records of the Twenty-Second Session of the General Assembly.

Because of its length, the present document is issued in two volumes. Volume I consists of Chapter I (comments and observations on the draft articles as a whole) and of those pages of Chapter II containing comments and observations on parts I to III of the draft (articles 1 to 34). Volume II consists of the remainder of Chapter II.

Chapter I

COMMENTS AND OBSERVATIONS ON THE DRAFT ARTICLES AS A WHOLE

MEMBER STATES

Afghanistan

Mr. Siddiq said his delegation considered that the draft articles on the law of treaties provided a satisfactory basis for the work of the forthcoming conference of plenipotentiaries.
(Mr. Siddiq, XXIInd session, 982nd meeting, para. 32)

The Government of Afghanistan... greatly appreciates the progress achieved by the Commission in regard to the codification of the norms and principles relating to the vital question of the law of treaties.

The Government of Afghanistan considers that the conclusion of a convention next year on this vital problem undoubtedly contributes to friendly relations among nations and may place the law of treaties upon the widest and most secure foundation.

Among the articles of the draft, the Government of Afghanistan considers that article 2 (Use of terms), article 5 (Capacity of States to conclude treaties), articles 30, 31, 32 (General rule regarding third States), article 40 (Fraud), article 47 (Corruption of a representative of the State), article 49 (Coercion of a State by the threat or use of force), article 50 (Treaties conflicting with a peremptory norm of general international law), article 59 (Fundamental change of

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circumstances) are the basic principles of the draft which should be maintained by the future conference, ...
(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations, (A/6827/Add.1, p. 2))

Algeria

Mr. Haddad said that given the difficulties involved in the codification of the law of treaties, the International Law Commission had succeeded in making its draft articles a sound basis for further work.

His Government 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. His delegation considered that some of the articles required further attention and should be given greater substance.
(Mr. Haddad, XXIst session, 908th meeting, paras. 32-33)

Argentina

His delegation... wished to state at once that in its view the draft articles - which as the Indian representative had said struck a proper balance between *lex lata* and *de lege ferenda* considerations - represented an important contribution to the progressive development of international law and to the adaptation of juridical norms to the profound changes that had taken place in the international community.
(Mr. Buceta, XXIst session, 912th meeting, para. 13)

Draft articles as a whole

Australia

Sir Kenneth Bailey said that the draft articles prepared by the Commission constituted a fully up-to-date statement of the law of treaties, comprising both lex lata and proposals de lege ferenda, but wisely refrained from attempting to distinguish those elements which belonged to the one or the other. The Commission undoubtedly best promoted the progressive development of international law and its codification by proposing draft articles that represented its members' views of what the law should be, in the light both of their knowledge of what it was and of the views of Governments. It was to be commended for putting forward a recommendation wherever it could and for refraining from doing so only in those cases where international opinion, professional and governmental, was known to be so divided that it would be unrealistic to expect any proposed solution at the present time to meet with general consent. A case in point was the Commission's decision regarding participation in multilateral treaties.
(Sir Kenneth Bailey, XXIst session, 912th meeting, para. 20)

Belgium

/Mr. Schuurmans/ said that the debate in the Committee had shown clearly that the final draft articles adopted by the Commission (A/6309/Rev.1, part II, chap. II) still raised several difficult problems, some of which touched directly on fundamental principles of international law.
(Mr. Schuurmans, XXIInd session, 982nd meeting, para. 1)

... the Commission has succeeded in extracting from the very general and extremely complex material of the law of treaties a set of clear abstract principles which appear to be generally acceptable to most States.
(Letter of 19 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 4))

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Draft articles as a whole

Bolivia

... /He said that/ while most of the draft articles merited approval, his Government reserved the right to submit at the appropriate time any observations, amendments or additions which it might consider necessary.
(Mr. Morales Aguilar, XXIInd session, 980th meeting, para. 27)

Botswana

The Government of the Republic of Botswana welcomes this codification of the law of treaties and is of the opinion that it would help in the future should this codification become the basis for a convention.
(Note verbale of 5 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 7))

Brazil

... The objective of the United Nations was to lay down guidelines for States in the matter of treaties. In the work of codification, some provisions were, so to speak, ready-made, because all the necessary rules already existed, but there were other fields in which customary rules were lacking....

He wished to stress that the draft articles on the law of treaties were not the work of the Commission alone. The latter, faithful to the spirit of General Assembly resolution 174 (II), by which it had been established and defined as a body representing the chief forms of civilization and the basic legal systems of the world, had, of course, consulted all States, both large and small - as indeed it was required to do under article 16 of its Statute - and their opinions had been incorporated into the text that had been prepared. That method of work derived from the way in which the Commission conceived its task. From its very first session, it had refused to envisage codification as the mere formulation of a number of customary provisions in a body of written rules intended as an

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instrument that would both record and reform positive law. Recognizing, in the words of its first Special Rapporteur, Mr. Brierly, that law was often uncertain and contained omissions that must be rectified, it had realized from the outset that codification must proceed not only *de lege lata* but *de lege ferenda*; i.e., it must expand law and not merely formulate existing rules.
(Mr. Amado, XXIst session, 904th meeting, paras. 19, 22)

Bulgaria

... Pursuing its main objective, as defined in its Statute, the Commission had endeavoured to reiterate and formulate existing rules and to draft new, expanded and revised rules as required by the changing international situation. He noted with satisfaction that the dominant principle throughout the draft articles (see A/6309) was that the consent of the parties, as a free expression of co-ordinated wills, constituted the legal basis of the treaty and determined its effect and existence. On many matters the Commission had departed from traditional concepts and had succeeded in framing, with much caution and flexibility, certain new legal rules. That had been the case with respect to reservations, consent to a part of the treaty, conflicts with peremptory norms of international law (*jus cogens*), the suspension and termination of treaties and other important points. He particularly approved the caution and restraint shown by the Commission in its attempt to elaborate specific provisions on the highly controversial doctrine *rebus sic stantibus*.
(Mr. Yankov, XXIst session, 910th meeting, para. 6)

In his delegation's opinion, the draft articles represented a satisfactory basis for future consideration by the conference of plenipotentiaries on the law of treaties.
(Mr. Yankov, XXIInd session, 979th meeting, para. 2)

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Draft articles as a whole

The Government of the People's Republic of Bulgaria considers that, on the whole, the draft articles on the law of treaties are a valuable contribution and could serve as a satisfactory basis for the preparation of a convention on international treaties. In this connexion it should be noted that the draft articles reflect efforts both to codify existing rules in this field and to introduce new rules reflecting the progressive development of contemporary international law.

However, some essential amendments, deleting inadequate provisions and supplying omissions, should be made in order to improve the draft.

(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 4))

Byelorussian Soviet Socialist Republic

Mr. Stankevich was gratified that the work of codifying the law of treaties was about to end in the conclusion of an international convention that would help to eliminate unjust agreements obtained by force, by fraud or by various forms of coercion, including economic pressure.... Although not entirely satisfied with the text of certain articles, he approved of them on the whole as a basis for the future convention....

He welcomed the fact that the draft articles embodied the principles of sovereign equality of States, the right of peoples to self-determination, the prohibition of the threat or use of force and good faith.

(Mr. Stankevich, XXIst session, 908th meeting, paras. 10, 12, 14)

Mr. Stankevich observed that it was generally agreed that a convention should be drawn up on the basis of the draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II)....

The obstacles to successful codification of the topic lay, not in the fact that certain provisions were not ripe for codification, as the representative of

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the United Kingdom maintained, but in the efforts of certain States to preserve outmoded colonial privileges and treaties that were not in keeping with the spirit of the times or with developments in international law. Happily, the draft articles represented a complete break with the old colonial practice of concluding unequal treaties imposed by force....

The draft articles established the general legal norms to which States should adhere in concluding, not all treaties without exception, but only those treaties which were international in character. However, the prospective title of the convention did not reflect that distinction and went beyond the scope of the subject to be dealt with. It would therefore be better to use the title "Convention on the law of international treaties". In order to avoid repetition, the word "international" need not be mentioned in the individual articles.
(Mr. Stankevich, XXIInd session, 975th meeting, paras. 1, 2, 5)

The competent authorities of the Byelorussian SSR have examined the draft articles on the law of treaties, and consider them a suitable basis for discussion at the international conference on the law of treaties. They note that the draft articles on the law of treaties contain a number of articles (48, 49, 50, 62 and 70) which are of great importance for the progressive development of international law, since they establish the invalidity of unequal and colonial treaties and of treaties concluded by means of the threat or use of force, and uphold the principle of international responsibility in respect of aggression.

At the same time, the draft articles on the law of treaties contain a number of articles which require further refinement and modification.

The draft articles on the law of treaties lay down the legal norms to which States should adhere in concluding, not all treaties without exception, but those treaties only which are international in character. However, the title of the document does not reflect this situation and goes beyond the scope of the subject dealt with by the instrument. It would therefore seem more correct to entitle the document: "Draft articles on the law of international treaties".
(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 7))

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Draft articles as a whole

Cambodia

The text of the final draft articles concerning the law of treaties expresses the major principles which derive from the practice of relations between States bound by conventions to which they have freely acceded.

(Letter of 23 May 1967 from the Secretary-General of the Ministry of Foreign Affairs (A/6827, p. 7))

Cameroon

Mr. Engo said that the law of treaties was a matter of particular interest to countries which, like his 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 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.

(Mr. Engo, XXIst session, 908th meeting, para. 19)

Canada

Mr. Gotlieb said that the draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II) represented the culmination of almost two decades of outstanding efforts on the part of the International Law Commission. States must now complete that work, at the plenipotentiary conference to be convened pursuant to General Assembly resolution 2166 (XXI) through the conclusion of a successful international convention.

Since divergent views existed on even the most basic questions, as the Commission's Special Rapporteur on the topic had pointed out in his statement at the 964th meeting of the Committee, it would not be easy to obtain broad international agreement on the rules of law and the procedures which were in

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future to govern treaty relations, and to produce a convention acceptable to all States. If the conference did not succeed in that task, the consequences would be very serious. However, the very willingness of Governments to join together in a conference for that purpose was in itself an indication that they were confident that it could achieve its aim.
(Mr. Gotlieb, XXIInd session, 976th meeting, paras. 1-2)

Ceylon

The International Law Commission had succeeded to a high degree in systematizing the law of treaties in terms applicable to most international agreements.
(Mr. Sanmuganathan, XXIst session, 908th meeting, para. 2)

Mr. Pinto felt that the draft articles, which were the result of more than seventeen years of work, would form an excellent basis for discussion at the conference on the law of treaties.
(Mr. Pinto, XXIInd session, 969th meeting, para. 8)

Chile

Mr. Vargas noted with satisfaction that the Commission had drawn up the draft articles (see A/6309) with a view to making them readily acceptable to the great majority of States; that was particularly true in the case of articles 16, 17, 18, 19 and 20. The draft articles possessed the further merit, as the representative of India had already pointed out of providing a proper balance between lex lata and de lege ferenda considerations. Also worthy of praise was the recognition of the primacy of the United Nations Charter vis-à-vis any treaty, particularly as stipulated in articles 26, 49 and 50 of the draft.
(Mr. Vargas, XXIst session, 912th meeting, para. 27)

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Draft articles as a whole

China

Mr. Chen congratulated the International Law Commission,... on the draft articles on the law of treaties (see A/6309), which represented an important step forward in the progressive codification of international law.
(Mr. Chen, XXIst session, 909th meeting, para. 1)

Colombia

The draft articles on the law of treaties opened the way to a convention that would be drawn up by a diplomatic conference and would influence the economic future of the world by strengthening solidarity among States.
(Mr. Herran Medina, XXIst session, 907th meeting, para. 12)

Congo (Democratic Republic of)

With regard to the draft articles generally, he noted with satisfaction that the Commission had not confined itself to recording the customary norms on the law of treaties but had proposed new norms to the General Assembly and to Governments. In the view of his delegation, those norms must be judged in the light of their implications for, and repercussions on, the right of self-determination, the equality of all States in the formulation of international law and the right of each country to sovereignty and independence. A convention on the law of treaties that gave proper heed to those three principles would do much to remove the anomalies of the past, when the simultaneous existence of large and small, strong and weak States had resulted in the conclusion of hundreds of unequal treaties.
(Mr. Mutuale, XXIst session, 909th meeting, para. 38)

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Draft articles as a whole

Cuba

In general, the draft articles had been carefully drawn up, and they set out systematically all the necessary elements for the progressive development and codification of the law of treaties, following the lines laid down by experience and doctrine. Regarding past experience, it should be remembered that established usages and practices reflected to an overwhelming degree a long tradition that had served the purposes of the dominant Powers, which had tried to impart to stipulations imposed on small and weak States by severe and unjust pressure the status of universally accepted rules.
(Mr. Alvarez Tabio, XXIInd session, 974th meeting, para. 20)

Cyprus

Mr. Jacovides congratulated the International Law Commission, particularly its Chairman and Special Rapporteurs, on its work relating to the law of treaties, which had not been confined to codification but had included elements of progressive development.
(Mr. Jacovides, XXIst session, 910th meeting, para. 43)

In general, the final draft articles constituted a sound basis for discussion with a view to the adoption of a convention.
(Mr. Jacovides, XXIInd session, 980th meeting, para. 53)

Czechoslovakia

... So far as the law of treaties in particular was concerned, /the International Law Commission/ had... been doubly right in preparing draft articles capable of serving as the basis for the conclusion of a legally binding instrument

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rather than a mere expository code. That procedure also had the advantage of allowing all the new States to participate directly in the formulation of the norms of treaty law.
(Mr. Potocny, XXIst session, 906th meeting, para. 9)

His delegation approved of the essentially pragmatic approach of the International Law Commission in endeavouring to seek practical solutions compatible with the general nature of treaties and extensive State practice. Although the subject-matter lent itself to controversy, the Commission had largely succeeded in its task. Both in content and in form, the draft articles on the law of treaties represented a noteworthy contribution to the progressive development of that branch of international law and provided a sound basis for a convention....

... Any radical change in the structure of the draft might lead to a deadlock and delay the work of codification indefinitely.
(Mr. Smejkal, XXIInd session, 976th meeting, paras. 19, 28)

...the draft prepared by the Commission as a whole significantly contributes both from the viewpoint of its contents and form to the progressive development of the respective branch of international law and represents a solid foundation for the work of an international diplomatic conference which is to prepare an international convention on the law of treaties.
(Note verbale of 15 August 1967 from the Chargé d'Affaires a.i. to the United Nations (A/6827, p. 8))

Draft articles as a whole

Dahomey

Mr. Adjibade said that the draft articles prepared by the International Law Commission represented an important contribution to the codification of the law of treaties and the progressive development of international law (see A/6309). His country, like many of the new States, took a particular interest in the law of treaties and believed that all States should participate directly in its codification....

(Mr. Adjibade, XXIst session, 912th meeting, para. 7)

Ecuador

Mr. Alcivar said that the final draft articles on the law of treaties (see A/6309) constituted not only a valuable work of legal science but an important contribution to the codification and progressive development of international law. In many respects they broke the old moulds of traditional law to make way for new principles consonant with the reality of the times, which demanded a more equitable legal order for the international community....

His delegation supported the proposal that the preamble to the convention on the law of treaties should stress the rule *pacta sunt servanda* and urged that it should also stress other basic principles, including those concerning the use of force and violation of the norms of *jus cogens* as causes of the nullity of treaties. The preamble not only served to interpret the document but was, to some extent, a source of legal obligations. There were in the world many agreements which had despoiled weak countries of territory or imposed economic burdens on them. Those unjust instruments - the fruits of force - could not endure. The ancient rule that no one ought to enrich himself at another's expense was still valid.

(Mr. Alcívar, XXIst session, 914th meeting, paras. 18, 35)

Draft articles as a whole

Finland

The latest draft articles on the law of treaties prepared by the International Law Commission can, in general, be considered quite satisfactory. They are the result of negotiations, in which the observations on previous drafts have been taken into account....

Although the treaty under preparation is especially intended as a codification of the law on treaties, it contains some provisions referring to the sphere of customary international law. In article 34 it is stated that a rule set forth in a treaty can become binding upon a third State as a customary rule of international law. Articles 50 and 61 deal with a norm of general international law which may also enter into the sphere of customary law. Thus the importance and influence of the customary international law is in this regard confirmed by the treaty.

As the treaties and customary law are of equal importance as sources of international law, one may ask whether it was necessary to include the provisions of customary law in the treaty under consideration.

(Note verbale of 11 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 18))

France

Mr. Jeannel said that he was glad to see that the International Law Commission, having surmounted most of the obstacles in its path, had succeeded in drawing up the draft articles on the law of treaties (see A/6309), which, taken as a whole, represented a most constructive contribution to the codification of international law. His delegation had been particularly impressed by the fact that the Commission had almost always succeeded in formulating precise rules while maintaining the flexibility that was indispensable if States were to retain their full sovereignty and continue to play their essential role in the formation of international law.

The draft articles formulated a series of rules among which States could choose, but indicated which rule should apply if the parties to a treaty deliberately or involuntarily omitted certain clauses, such as those relating to

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ratification, accession, termination, duration or revision. That was a wise procedure, because the absence of such clauses tended to provoke disputes. His philosophy in the matter could be summed up as follows: States, in full sovereignty, determined the economy of the treaties that they concluded; if they refrained, wholly or partially, from doing so, it was because they agreed to the application of the rule, or the several rules, provided in the proposed articles. That was why the French delegation could not quite see why the application of provisions that were in such close conformity with the requirements of positive law and reason should be restricted to certain categories of treaties or certain clauses of those treaties.

(Mr. Jeannel, XXIst session, 910th meeting, paras. 52-53)

Mr. de Bresson said that the draft articles on the law of treaties prepared by the International Law Commission (A/6309/Rev.1, part II, chap. II) seemed destined to become a general convention which, being above treaties in the hierarchy of law, would, in the eyes of the international community have the standing of a veritable constitution.

It was important to distinguish between separate aspects of the draft articles. First, they represented to a very large degree a work of codification, and in that category might be placed part I (Introduction), part II (Conclusion and entry into force of treaties), part III (Observance, application and interpretation of treaties), part IV (Amendment and modification of treaties), the provisions of part V dealing with the termination and suspension of the operation of treaties, and part VII (Depositaries, notifications, corrections and registration). Subject to some modifications or technical improvements, the French delegation had no fundamental objections to those clauses.

(Mr. de Bresson, XXIInd session, 969th meeting, paras. 1-2)

/...

Draft articles as a whole

Ghana

...the codification of the law of treaties,... 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 law, which was extremely desirable if the law of treaties was to be placed on the widest and most secure foundations.

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.

In its draft articles, the Commission had aimed primarily at the stabilization of the international legal order.

On the credit side,... the Commission's work on the draft articles constituted both codification and progressive development of international law....

... His delegation, while praising the Commission's efforts to stabilize the international legal order, would like it to fill in the lacunae to which he had just drawn attention and take a position on the controversial points of the law of treaties.

(Mr. Van Lare, XXIst session, 905th meeting, paras. 9, 10, 11, 12, 13)

Guinea

The advent of the draft articles filled a great gap in the evolution of modern international law, since the rules governing that area of the law had originally been laid down at a time when national sovereignty was the privilege

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of a small group of States. Most treaties concluded in that period reflected the unequal relationship between the parties. However, since the emancipation of the countries that had once languished under the colonial yoke, it had become necessary to establish new relations more in keeping with the realities of contemporary life. That noble task had been accomplished by the International Law Commission.
(Mr. Savane, XXIInd session, 982nd meeting, para. 26)

Honduras

With regard to the draft articles on the law of treaties contained in the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, part II, chap. II), his delegation felt that the topic still required further study.
(Mr. Cadalso, XXIInd session, 975th meeting, para. 12)

Hungary

Mr. Prandler congratulated the members of the International Law Commission and, in particular, the Special Rapporteur and the Chairman for the important work they had accomplished in preparing the draft articles on the law of treaties. It was true that in eighteen years the Commission had already shown on several occasions how capable it was of carrying out successfully the tasks entrusted to it; but the present undertaking had been especially delicate and difficult, for the field concerned was one in which practice, precedent and doctrine were particularly complex.
(Mr. Prandler, XXIst session, 907th meeting, para. 2)

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Draft articles as a whole

Mr. Prandler thanked the International Law Commission, and in particular Sir Humphrey Waldock, for the tremendous work they had done in preparing the draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II). The text constituted a satisfactory basis for further discussion and the eventual conclusion of a convention.

(Mr. Prandler, XXIInd session, 978th meeting, para. 1)

India

...the prime merit of the draft articles was that they offered a solution based on legal logic and the criterion of general acceptability. The reports in which they were contained had been intended to be as comprehensive as possible but without any sacrifice of preciseness.

Moreover, the proposed codification provided a proper balance between lax lata and de lege ferenda considerations. Over-emphasis of one or the other aspect might have led to misunderstandings and misapprehensions, having regard in 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. The Indian delegation, for its part, 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.

It was also a source of satisfaction to his delegation 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 United Nations could play in promoting the future development of world order.

(Mr. Singh, XXIst session, 906th meeting, paras. 2, 3, 4)

Draft articles as a whole

Differences of opinion existed about the scope and the wording, in the draft articles, of the rules on reservations, interpretation, rights and obligations of third States, invalidity due to error, fraud and coercion, conflict with jus cogens, denunciation of treaties containing no provision regarding termination, supervening impossibility of performance, fundamental change of circumstances, and the procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty. Admittedly, the draft articles were by no means perfect, because of the imperfections existing in customary international law and State practice in that regard. The Commission had tried to make its draft reflect new developments and, on the whole, it had struck a judicious balance between lex lata and lex ferenda.... In controversial matters, the Commission had stated a rule in general terms, to the extent that it was found acceptable to a majority of States, and had left its full content and application to be worked out by State practice and decisions of international tribunals.
(Mr. Rao, XXIInd session, 979th meeting, para. 13)

Iran

The text before the Committee marked an unprecedented advance towards the codification and progressive development of international law. Nevertheless, it could not be regarded as a perfect instrument.
(Mr. Fartash, XXIst session, 913th meeting, para. 24)

Iraq

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 (see A/6309). 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.

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Draft articles as a whole

His delegation believed in the existence of certain overriding rules which were essential to safeguard the interests of the international community....

...the draft as a whole was a very good basis for consideration by the proposed diplomatic conference which should be able to remedy some deficiencies. (Mr. Al-Anbari, XXIst session, 913th meeting, paras. 6, 7, 8)

Israel

On the substance of the draft articles, he first strongly urged that they be examined not only from the point of view of what they omitted but, above all, from the point of view of what they contained. More important, it must always be borne in mind that they were closely integrated and constituted a single whole.... Secondly, his delegation attached considerable importance to paragraph 35 of the Commission's report (see A/6309). That paragraph had been included very deliberately and should not be regarded as a mere routine statement. It had important political implications; for it meant that each provision must be considered on its own intrinsic merits, in its context in the articles as a whole and in the light of the requirements of contemporary international society, and not on the basis of preconceived and possibly outdated notions of what the law was or purely idealistic conceptions of what it ought to be. It also seemed premature to divide the articles into categories and attach to them epithets having a doctrinal nuance, for that might easily deflect attention from the real issues that the articles posed.

(Mr. Rosenne, XXIst session, 909th meeting, para. 14)

As stated by the Belgian Government in its comments on the draft articles (see A/6827, p. 4), the Commission had succeeded in extracting from the very general and extremely complex material of the law of treaties a set of clear abstract principles which appeared to be generally acceptable to most States;

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yet it was in that very fact that his delegation saw the challenge which the forthcoming diplomatic conference would present to contemporary diplomacy. (Mr. Rosenne, XXIInd session, 974th meeting, para. 18)

Japan

... The draft articles on the law of treaties (see A/6309) were unquestionably a masterly achievement; not only were they the product of long and laborious effort, but they gave evidence, first and foremost, of the spirit of co-operation that had prevailed in the International Law Commission....

However, the draft articles in their present form were not yet an expression of the will of States, which must put the finishing touches to them before they could be adopted in the form of an international convention.... In the Japanese Government's view, the purpose of any codification was to define rules of international law and build them into a harmonious and balanced system of precise and easily applicable provisions. However, there was a limit, particularly in the codification of the law of treaties, beyond which customary law and the development of international practice should be allowed to operate. If arbitrary applications which might be detrimental to the legitimate interests of the parties and the stability of relations among States were to be prevented, the provisions of any international convention on the law of treaties must be precise and balanced.

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 United Nations Charter - which would not appear to be enough

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to ensure objective solutions. The provisions concerning an aggressor State were similarly inadequate. His Government, 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....
(Mr. Tsuruoka, XXIst session, 911th meeting, paras. 1, 2, 3)

Kenya

... /The draft/ articles, which had been drafted after mature reflection and careful consideration of all views submitted by States, offered the proposed conference a good basis for discussion, but care must be taken not to subject them to hasty amendment.
(Mr. Mwendwa, XXIst session, 913th meeting, para. 36)

Kuwait

... Codification of the law of treaties was of particular interest to Governments and international organizations, which were frequently faced with problems created by the absence of uniformity in the rules and practice of States. The work of the International Law Commission had the great merit of shedding new light on the procedures for contracting and enforcing international legal obligations.
(Mr. Al-Jasem, XXIst session, 911th meeting, para. 38)

Liberia

Mr. Brewer said that the preparation of the draft articles on the law of treaties (see A/6309) was one of the International Law Commission's most outstanding accomplishments. Inasmuch as treaties regulated man's behaviour in his relations with his fellows, their importance in international law could not be stressed too greatly.
(Mr. Brewer, XXIst session, 912th meeting, para. 1)

Draft articles as a whole

Libya

Mr. El Sadek said his delegation considered that the draft articles prepared by the Commission constituted a satisfactory basis for the proposed convention on the law of treaties.
(Mr. El Sadek, XXIInd session, 980th meeting, para. 22)

Mali

Mr. Koita congratulated the International Law Commission on the draft articles on the law of treaties (see A/6309), which would constitute a solid basis for a general convention reflecting modern trends in international law.
(Mr. Koita, XXIst session, 914th meeting, para. 36)

Mongolia

The Commission's reports and the draft articles that it had prepared (A/6309) constituted an excellent basis for the work of the forthcoming conference of plenipotentiaries.
(Mr. Khashbat, XXIst session, 911th meeting, para. 31)

Mr. Khashbat said that the draft articles on the law of treaties prepared by the International Law Commission were, on the whole, a sound basis for an international convention.
(Mr. Khashbat, XXIInd session, 976th meeting, para. 44)

Draft articles as a whole

Netherlands

... His delegation had been particularly impressed by three things: first, the coherence of the articles as a whole, which made it difficult to decide on a natural division of the material for its allocation to different committees; second, the special character of the law of treaties as compared with other topics of codification, such as the law of the sea or the law of diplomatic and consular intercourse; and, third, the fact that the current draft, in its totality, appeared to touch upon problems of fundamental significance not only for the law of treaties but for international law as a whole. In the latter connexion, it was sufficient to mention the existence and effect of peremptory norms, the consequences of the prohibition of the threat or use of force, the role of estoppel and silent consent, and the relation of treaties to law from other sources, such as international custom and national constitutions.

If the law of treaties was considered as an indivisible whole, it would hardly seem possible to decide on the codification and progressive development of only one or several parts of it, as had been done in the case of the law of the sea....
(Mr. Tammes, XXIst session, 903rd meeting, paras. 11, 12)

... Comparing the present draft articles (A/6309/Rev.1, part II, chap. II) with the former drafts, his delegation was of the opinion that there had been an improvement both in matters of substance and in formulation. However, while some ambiguities had been taken out and some formulations had been made more precise, some misgivings still remained....

The present draft could be said to rest on two pillars: one was consent, and the other was the principle of good faith. Apart from the impact of article 50 concerning rules of *jus cogens*, the autonomy of the will of the parties remained the overriding feature of treaty law. However, as soon as consensus had been brought about, more objective criteria came in, and the autonomy of the will

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might not lead to arbitrariness and insecurity. In some instances (e.g., articles 24, 25 and 32), there was a presumption of consent.

In the case of such legal presumptions, the principle of good faith was already involved.

(Mr. Kooijmans, XXIInd session, 977th meeting, paras. 1, 2, 3)

Nicaragua

Mr. Montenegro Medrano said that his delegation approved the draft articles on the law of treaties which set forth standards based on the just principle of the juridical equality of States....

The draft articles would certainly provide the conference responsible for drafting the convention on the law of treaties with a satisfactory basis for its work.

(Mr. Montenegro Medrano, XXIInd session, 978th meeting, paras. 9, 10)

Nigeria

Mr. Ogundere said that the draft articles on the law of treaties fulfilled two functions. The first was to protect the weak States against the strong: that was the aim of part V, section 2 (Invalidity of treaties), in particular articles 45-50, and also of part V, section 3, in particular article 61 dealing with the emergence of a new *jus cogens*. The second function was to act the part of an impartial umpire seeing to it that the treaty obligations and rights of States with regard to treaties they had concluded were upheld: such was the aim of article 23 (*Pacta sunt servanda*) and, *inter alia*, articles 10-20. The forthcoming conference of plenipotentiaries would have the task of conciliating those aims with a view to the conclusion of an international convention on the law of treaties.

That objective had been shared by the International Law Commission in the accomplishment of its *magnum opus* which was a landmark in the progressive codification and development of international law. The meeting point of the two

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functions was part V, section 4 which dealt with the procedure to be followed in cases of invalidity, termination, withdrawal from, or suspension of the operation of a treaty. It appeared that that arrangement would throw those two purposes into a melting pot and that might create more problems than it would solve. His delegation would rather favour an arrangement whereby a "mosaic" would be created. That would ensure that, by agreeing to be parties to a treaty, States intended to act in good faith, whenever difficulties or misunderstandings arose, to maintain a treaty that was mutually beneficial to them, by having recourse to the procedure laid down in that treaty for the removal of the causes of friction arising from its application.
(Mr. Ogundere, XXIInd session, 978th meeting, paras. 11-12)

Peru

Mr. Belaunde said that although he recognized the value of the International Law Commission's reports and of its work on the law of treaties he felt that certain basic questions might have been gone into more thoroughly.
(Mr. Belaunde, XXIst session, 907th meeting, para. 26)

... /The draft/ articles constituted a remarkable set of doctrinal provisions designed to harmonize international law on the subject with new elements; but they did not indicate how treaties came into being, what combinations of circumstances led to their conclusion or what effects their signature entailed. To separate treaties from the sociological context that determined their creation and influenced their execution was to engage in a purely abstract exercise, which could not satisfy the legal conscience.
(Mr. Belaunde, XXIst session, 915th meeting, para. 14)

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Draft articles as a whole

Poland

The International Law Commission... could not have undertaken to codify the law of treaties without having meditated on the very foundations of contemporary international law. In so doing, the Commission had isolated a number of principles which were the pillars of its codification structure. They included the principle of the equality of States before the law and its corollary, the trend towards universality of treaties; the recognition of the ever-changing conditions of life and of the need to adapt the law to them and therefore to construe instruments concluded between States in a manner conducive to international co-operation; recognition of the existence of peremptory norms of general international law; and finally, the principle of good faith, on which all legal relationships were founded.

The principle of equality was evident in draft article 5 and its implications were evident in articles 25, 30, 33, 48 and 49. It was reflected in the statement that every State possessed capacity to conclude treaties, that fraud and coercion invalidated the consent of a State and that any treaty was void if its conclusion had been procured by the threat or use of force in violation of the principle of the Charter of the United Nations. That last provision was a new element which had given rise to fears that it might encourage unjustified allegations of coercion or that the rule might be ineffective because the same threat or coercion by which the conclusion of the treaty had been procured might also help to procure its execution, whether or not the law considered it valid. Such fears, however, seemed to be unfounded. Equality before the law and the equality of the parties to a treaty were part and parcel of lex lata. The variety of circumstances in which treaties were concluded and the different motives of the parties must not, of course, be overlooked. But what was essential, at a time when big and small Powers existed side by side, was to prevent a treaty from legalizing gross differences between a party's obligations and its rights and thereby perpetuating an imbalance to the detriment of the sovereign equality of States. It had taken jurists a long time to condemn unequal treaties or even to recognize their existence and the International Law Commission had taken a great step forward in applying the principle of equality to the very conditions under which a treaty was concluded....

Draft articles as a whole

Lastly, the concept of good faith, which was perhaps the most important of all, ran through the whole text of the draft articles, from the obligation of a State not to frustrate the object of a treaty prior to its entry into force through the application of the principle pacta sunt servanda to the methods of interpretation. All jurists agreed that at each stage of its life, a treaty should be applied in accordance with its purposes and objectives.
(Mr. Lachs, XXIst session, 913th meeting, paras. 9, 10, 18)

The Government of the Polish People's Republic duly appreciates the importance of the work done by the International Law Commission and it believes that the draft articles concerning law of treaties, as submitted by the International Law Commission, will constitute useful base for future consideration by diplomatic conferences devoted to this problem.
(Letter of 3 August 1967 from the Permanent Representative to the United Nations (A/6827, p. 23))

Romania

...his delegation believed that the preamble to the proposed convention should set forth the principles that should govern international relations. In its view, the basic concept on which such relations must be founded was the right of every State to direct its own affairs, free from all foreign interference.
(Mr. Flitan, XXIst session, 914th meeting, para. 16)

...the draft articles on the law of treaties prepared by the Commission had the merit of offering a solution which, while based generally on custom and on State practice, could be termed not only codification in the classic sense of the word but also progressive development of the law. The progressive elements strengthened the draft articles by bringing them closer to the realities of contemporary international life.

Draft articles as a whole

His delegation considered the final text of the draft articles a sound basis for discussion by the conference on the law of treaties.... As the Chairman of the Commission had said, the draft articles had been limited to the central core of the law of treaties because the Commission had felt that, once the central core had been settled successfully, it should be easier to expand the codification of the law of treaties by additions or adaptations, as had happened in the case of diplomatic law.

The draft articles, although sound, were not free of defects. At the current stage, however, he would comment on only a few aspects of the text. Firstly, the preamble of the convention should lay down ethical and legal guidelines for the conduct of States by restating the principles which ought to govern international relations, namely, respect for the right of self-determination, non-intervention in the domestic affairs of States, equal rights of States, independence and national sovereignty.

(Mr. Secarin, XXIInd session, 976th meeting, paras. 38-40)

Sierra Leone

Mr. Koroma stressed the great need of the modern world for a convention on the law of treaties, if only to enable countries recently liberated from colonial servitude to participate in the formulation of a revitalized law, better adopted to the conditions of the modern era than the traditional international law, which was essentially European in origin and therefore somewhat colonialist. His delegation was therefore happy to welcome the work done by the International Law Commission in the field of the progressive development of international law and the codification of the law of treaties.

An outstanding merit of the draft articles (see 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

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the International Court of Justice, 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.
(Mr. Koroma, XXIst session, 911th meeting, paras. 43-44)

... When embodied in a convention, the draft articles would undoubtedly prove to be a decisive step towards remedying the deficiencies in the existing body of international law....

... The Commission had preferred to seek practical solutions consistent with the general nature of treaties and with the practice of States, rather than to attempt to settle doctrinal controversies.
(Mr. Cole, XXIInd session, 982nd meeting, paras. 22, 23)

Spain

The draft articles on the law of treaties (see A/6309), prepared by the expanded Commission, were now before the Committee, and they were excellent. For the first time in the history of international law, a draft had been prepared with the collaboration of all legal systems, ideologies, races and continents. Of course, the draft articles were not perfect. His delegation, like many others, desired some amendments to the draft articles and would submit them at the forthcoming conference.
(Mr. de Luna, XXIst session, 912th meeting, para. 33)

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Draft articles as a whole

Sweden

...the International Law Commission had succeeded in shedding light on many problems and had helped to develop new ideas. The technical quality of the work accomplished was good, although it could still be improved. The Commission's awareness of the need for accommodation and compromise had led it in some instances to draft rules without much legal content.
(Mr. Blix, XXIInd session, 980th meeting, para. 6)

Syria

... His delegation hoped that after the four conventions already concluded on the Law of the Sea, on the Reduction of Statelessness, on Diplomatic Relations and Immunities and on Consular Relations, a convention on the law of treaties would be added to written conventional law, which was the best source for the law governing relations between sovereign and equal States.
(Mr. Nachabe, XXIst session, 906th meeting, para. 20)

Thailand

The successive drafts submitted by the Commission, in the light of the comments made by delegations in the Sixth Committee and the written comments of Governments, showed a progressive improvement, reflecting the growing recognition of the principle of the sovereign equality of States in international relations in general and in treaty relations in particular. The development of international law in favour of greater equality afforded better protection to the interests of smaller and weaker nations, and although the progressive trend might cause some dissatisfaction on the part of traditionalists within the larger and stronger Powers, it was equally beneficial to those Powers. In the interest of peaceful relations and harmonious co-operation among nations, his delegation urged those who persisted in opposing the progressive development of the law to allow it to take its natural course.

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Draft articles as a whole

His delegation found the draft articles generally acceptable, since they came close to meeting the minimum requirements which it considered necessary for the protection of the interests of smaller and weaker nations in the process of their national development. The present text could well serve as the basic working document for the preparation of a convention at the forthcoming conference.
(Mr. Sucharitkul, XXIInd session, 976th meeting, paras. 11-12)

Tunisia

His delegation 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....

His delegation 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 that those principles were basic to the law of treaties.
(Mr. Ben Aissa, XXIst session, 913th meeting, paras. 38, 39)

... He also wished to repeat that, if its purposes were to be achieved, the codification of international law must be based on three basic principles - strict equality between the States parties to a treaty, the free will and the free and full consent of the contracting parties and, lastly, good faith in the execution of treaties. In the view of the developing countries, which still vividly remembered the treaties forced upon them, those principles, even if self-evident to some, needed to be vigorously reaffirmed. The Tunisian delegation was

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therefore pleased to note that they had been formally stated in the draft articles prepared by the International Law Commission (A/6309/Rev.1, part II, chap. II).
(Mr. Gastli, XXIInd session, 981st meeting, para. 1)

Turkey

... The Commission's draft must be considered a monumental juridical work, the provisions of which, with respect to principle and detail, covered the various questions arising in connexion with treaties at every moment of their existence....

Subject to any comments it might have to make on certain points, his delegation considered that the text prepared by the Commission could serve as the basis for the work of a diplomatic conference on the law of treaties.
(Mr. Bilge, XXIst session, 907th meeting, paras. 14, 19)

... In an endeavour to leave no point uncovered or unforeseen, the authors of the draft had been led to introduce a number of innovations and to codify some of the more controversial aspects of international law. The resulting text contained provisions which went far beyond existing international law, and indeed beyond the most advanced scientific thinking.

... Many provisions in the draft articles were controversial, and it would be better not to press for the inclusion of those which did not command the general acceptance that was necessary for the establishment of any rule of international law. A smaller convention would be no less useful and would serve to elucidate and consolidate many of the rules governing the law of treaties.
(Mr. Miras, XXIInd session, 980th meeting, paras. 17, 21)

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Draft articles as a whole

Ukrainian Soviet Socialist Republic

Mr. Yakimenko said that he was pleased to see that after several years of hard work the International Law Commission had succeeded in preparing a series of draft articles on the law of treaties, which although not perfect in every respect constituted a most useful basis for discussion at the conference of plenipotentiaries that would have the task of drawing up a convention on that subject.
(Mr. Yakimenko, XXIst session, 905th meeting, para. 1)

... The Ukrainian delegation considered the draft entirely acceptable and felt that it would constitute an excellent basis for the discussion on the conclusion of a convention on the law of treaties, because it faithfully reflected the progressive trends in international law and in the practice of States....

The draft articles had the virtue of reflecting all legal systems and the general aspiration of peoples to secure observance of the basic principles of international law.
(Mr. Yakimenko, XXIInd session, 978th meeting, paras. 16, 19)

The competent authorities of the Ukraine find acceptable the draft articles on the law of treaties, as finally approved by the International Law Commission at its eighteenth session, and consider that they may serve as the basis for the conclusion of an international convention.

The competent authorities note with satisfaction that the draft articles reflect to a considerable extent the progressive trends in contemporary international law and the treaty practice of the State....

At the same time it is to be noted that there are certain serious deficiencies and extremely important omissions in the draft articles. To cite only one example, there is no provision to the effect that general international

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agreements should be open to participation by all States. A number of articles require more precise drafting or additions and changes, which are of considerable importance.

(Letter of 27 June 1967 from the Ministry of Foreign Affairs (A/6827, p. 24))

Union of Soviet Socialist Republics

...the Commission had prepared a draft which could serve as quite a sound basis for the elaboration and adoption of an international convention....

The draft articles contained many important propositions of the current law of treaties, which, if consistently applied, should help to strengthen legality in international relations and to develop peaceful relations among States in accordance with the generally accepted principles and rules of contemporary international law. He referred particularly to draft articles 23, 27, 49, 50, 67, 69 and 70. Of course, the draft articles were not the last word on the subject. Several important principles had not yet been included in them. The draft was rather cumbersome and too detailed, contained many propositions that were descriptive in character and not necessary in practice, and thus needed to be reworked and somewhat simplified.

(Mr. Khlestov, XXIst session, 910th meeting, paras. 17, 18)

The Soviet Union delegation considered the draft to be acceptable in general, and believed that it would provide the conference with a sound basis for discussion. It reflected the contemporary trends in State practice, while giving a worthy place to the norms advanced by the United Nations. The draft also included a large number of provisions of a dynamic nature, such as article 50 concerning treaties conflicting with a peremptory norm of general international law, with its due recognition of the concept of *jus cogens*, whereby international agreements of a colonial nature, in particular, could be declared void. The Soviet Union representative was likewise glad to note the inclusion in the draft

of articles 48 and 49, which voided treaties concluded under constraint; article 62, which imposed observance of certain formalities on the party wishing to terminate, withdraw from or suspend the operation of a treaty; and article 70, which took up the very important question of aggression and laid down the principle of the responsibility of the aggressor State in respect of treaties which it had not signed. He dwelt on the need, in that connexion, of clearly defining the concept of aggression.
(Mr. Kozhevnikov, XXIInd session, 971st meeting, para. 7)

In the opinion of the competent authorities of the USSR, the draft articles on the law of treaties could, as a whole, represent a suitable basis for discussion at the international conference on the law of treaties.
(Note verbale of 21 July 1967 from the Permanent Mission to the United Nations (A/6827, p. 25))

United Arab Republic

The draft articles before the Sixth Committee had been conceived as a complete set of rules on the law of treaties proper (see A/6309). Some had criticized 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 in a draft convention. His delegation 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....

The underlying thought, as well as the purpose, of the draft articles was to adapt the traditional rules of international law to the United Nations 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

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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.

His delegation was satisfied with the synthesis achieved in the draft between codification and progressive development of the law of treaties....

(Mr. El-Erian, XXIst session, 911th meeting, paras. 23, 25, 26)

Mr. El Araby said his delegation was satisfied that the draft articles prepared by the International Law Commission constituted a sound basis for the deliberations of the forthcoming conference of plenipotentiaries.

(Mr. El Araby, XXIInd session, 980th meeting, para. 41)

United Kingdom

The main achievement of the International Law Commission... was unquestionably its draft articles on the law of treaties.... The quality of the work accomplished was abundantly clear... even from preliminary study....

... Any convention on the law of treaties must contain provisions governing such controversial questions as reservations, *jus cogens*, *rebus sic stantibus* and the interpretation of treaties. Such differences of view as might exist with respect to those topics reflected differing philosophies with regard to the nature of international law in general....

(Mr. Sinclair, XXIst session, 908th meeting, paras. 25, 26)

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Draft articles as a whole

Because of the great importance of the subject, treaties being the main tool of international co-operation, the conference which was to prepare a convention on the law of treaties must be a success. A failure, like that of the Conference for the Codification of International Law held at The Hague in 1930 which failed over a large part of its field, could have a most serious effect on the future development of international law and the conduct of international relations....

In order to achieve the first aim, it might be necessary to leave on one side topics where the state of the law did not yet make it possible to formulate written rules, especially where views were deeply divided. Where State practice had not fully developed or where it was dealing with situations which had rarely arisen, the conference might have no firm basis on which to lay down legal provisions, and might create defective rules because of lack of actual experience. That did not mean that his Government was against the progressive development of international law. On the contrary, it might well be that a clearly established rule of international law ought to be altered or an uncertain question ought to be resolved by a convention appropriate to contemporary conditions. But the progressive development of international law should still be based on a study of State practice. In that respect, his delegation considered that some of the draft articles on the law of treaties (A/6309/Rev.1, part II, chap. II) covered fields which had not been much explored in State practice and might not therefore be ripe for codification; he referred, for example, to articles 30 to 34 (Treaties and third States) and article 41 (Separability of treaty provisions). The second aim, no less important than the first, namely, to maintain the stability of treaties, was an essential element in the just and orderly conduct of international relations.

While there was much in the articles adopted by the Commission which had his delegation's unqualified approval, there were certain areas to which the conference would have to pay particular attention.

(Mr. Darwin, XXIInd session, 967th meeting, paras. 2, 3, 4)

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Draft articles as a whole

United Republic of Tanzania

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; redrafting might therefore be necessary, although that would lengthen the articles.

The conference would also have to decide whether to spell out the content of 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 to strike the balance between overelaboration and vagueness. Further analysis might reveal that some concepts, such as the "good faith" clause, were redundant and even harmful. In his delegation's view those concepts might be a subject of special study.

(Mr. Maliti, XXIst session, 912th meeting, paras. 46-47)

United States of America

A convention on the law of treaties based on the draft articles prepared by the International Law Commission could be the most far-reaching contribution to the establishment of international law yet achieved; but it could also have an adverse effect on the development of international law and on the maintenance of world peace and security if, instead of strengthening the treaty process, it weakened it by clinging to obsolete ideas or by uncritically accepting as principles of action untested theories of what the law should be.

(Mr. Kearney, XXIInd session, 977th meeting, para. 18)

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Draft articles as a whole

The draft articles, which reflect the thought and care devoted to this subject by the Commission, provide a substantial basis for the adoption of a convention on the law of treaties.

The United States Government approves the substantive approach adopted by the Commission in a great many of the proposed articles. From the point of view of drafting and technical detail it considers further improvement is possible and will make detailed proposals for amendments of this character at the appropriate time. In addition, it will make a number of proposals for substantive improvement in certain articles....

The Government of the United States fully supports the development of a universal international law of treaties. A convention on the law of treaties which lays down definite, clear and reasonable rules, and which provides a procedure that ensures the settlement of disputes regarding the application of those rules, will be a notable contribution toward the building of a peaceful international society. It is because of these great possibilities that the Government of the United States has directed attention to some weaknesses in the draft articles in the hope that the weaknesses will be corrected or eliminated. But if a convention on the law of treaties is produced with provisions that are imprecise and unclear, with language that conceals differences rather than resolves them, and with no substantial procedural safeguards for settling disputes, the result could be to increase rather than reduce controversies among States, thus weakening the most cohesive force in the international community - treaty relationships among nations.

(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, pp. 2, 12))

Yugoslavia

Although his delegation regarded certain general aspects of the draft as unsatisfactory, its structure and formulation followed a modern concept of international law reflecting the existence or development of an international legal order that took account of the wishes of States but was increasingly becoming

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an objective entity that did not depend solely on those who contributed to its creation. The broad outlook adopted by the International Law Commission had enabled it to give proper importance to the provisions relating, for example, to jus cogens, the primacy of the United Nations Charter and the value of multilateral conventions, without causing conflict with the articles that stressed the importance of the wishes and consent of the parties. It was essential to recognize and assess when concluding and applying treaties, the various factors involved in the process of establishing international obligations.
(Mr. Sahovic, XXIst session, 907th meeting, para. 21)

Mr. Sahovic said his delegation considered that the text of the draft articles on the law of treaties would provide an excellent basis for the work of the forthcoming conference. The fact that it covered all or nearly all aspects of the law of treaties gave grounds for hoping that the States participating in the conference would be able to approve a final version of it in the form of a convention.
(Mr. Sahovic, XXIInd session, 975th meeting, para. 14)

The Government of the Socialist Federal Republic of Yugoslavia has studied the final text of the draft articles on the law of treaties prepared by the International Law Commission of the United Nations and considers it, on the whole, acceptable....

... As a definitive text, this convention will undoubtedly constitute one of the fundamental normative instruments of contemporary international law. It will contribute to the development of international law and further enhance its role and importance in the international community of today.
(Letter of 28 June 1967 from the Chief Legal Adviser of the Ministry of Foreign Affairs (A/6827, p. 27))

Draft articles as a whole

SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General welcomes the work undertaken for the progressive development and codification of the law of treaties, and is gratified that the future conference on the subject will have for consideration as its basic text the draft of impressive quality which has been prepared by the International Law Commission.
(A/6827/Add.1, p. 10)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The rules applied by FAO, as regards the Constitution of the Organization and conventions and agreements concluded within the framework of FAO, are laid down in articles II, XIV, XVII, XIX and XX of the Constitution and rules XIX and XXI of the General Rules of the Organization and in the Principles and Procedures adopted by the FAO Conference with respect to conventions and agreements concluded under articles XIV and XV of the Constitution.

While the rules applied by FAO with respect to international instruments are generally in line with those laid down in the draft articles of the law of treaties, they do differ from the latter in certain respects....
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 19))

Draft articles as a whole

International Labour Organisation

The rules applied by the ILO, as depository both of the constituent instrument of the Organisation and of instruments adopted within the Organisation, differ in certain respects from those laid down in the draft articles.

First, certain procedures differing from those set forth in the draft articles are laid down in the Constitution of the ILO. Thus it is the Constitution which provides for the procedure of authentication of international labour conventions by the signature of the President of the International Labour Conference and of the Director-General of the International Labour Office - a procedure which is applied also to instruments of amendment to the Constitution.

Second, certain procedures are provided for in standard articles of international labour conventions. Thus, since 1927, international labour conventions have contained provisions concerning their revision and the effects of such revision which are more far-reaching than the rules concerning amendment and modification of treaties contained in part IV of the draft articles.

Third, certain constitutional practices, derived from the particular structure of the Organisation, have been evolved. Thus, the International Law Commission pointed out in its report on the work of its third session (1951) that "because of its constitutional structure, the established practice of the International Labour Organisation, as described in the written statement dated 12 January 1951 of the Organisation submitted to the International Court of Justice in the case of reservations to the Convention on Genocide, excludes the possibility of reservations in international labour conventions". Again that practice is applied also to acceptance of the obligations of the Constitution of the Organisation.

(Letter of 18 May 1967 from the Director-General of the International Labour Office (A/6827/Add.1, p. 27))

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Chapter II

COMMENTS AND OBSERVATIONS ON PARTS, SECTIONS AND INDIVIDUAL ARTICLES

PART I - INTRODUCTION

ARTICLE 1

The scope of the present articles

MEMBER STATES

Bolivia

See XXIst session, 909th meeting, para. 31, quoted *infra* under article 2.

Brazil

See XXIst session, 904th meeting, para. 24, quoted *infra* under article 2.

Bulgaria

Turning to the substance of the draft articles, he said that their scope should be defined more precisely. In general, his delegation agreed with the limitations and reservations on the scope of the draft articles, as set forth in articles 1, 2 and 3, but it felt that, if the proper object of the draft articles was, *ratione materiae*, only the written treaties concluded between States, that

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should be stated in article 1, which dealt specifically with the scope of the draft articles, thus bringing that article into conformity with the definition of a treaty contained in article 2 (1) (a) and with article 3 (b) concerning international agreements not within the scope of the present draft articles. Although their scope extended only to written treaties, some particular references to the rule of tacit or implied consent which produced legal effects under certain conditions were to be found, for example, in article 17 (5), article 26 (3), article 38, and article 62 (2). It should, therefore, be made clear that, although the draft articles did not relate to unwritten agreements or to different forms of tacit consent which might produce legal effects, they did not affect the legal force of such agreements or the legal effects of implied consent.
(Mr. Yankov, XXIInd session, 979th meeting, para. 3)

The Government of the People's Republic of Bulgaria considers that, at the present stage, the codification of the law of treaties should relate to treaties concluded between States, and notes that the draft convention has been drawn up on those lines. The fact that the scope of application of this draft has been restricted to treaties concluded between States in written form is also to be commended.
(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 5))

Ceylon

... /The delegation of Ceylon/ 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 International Law Commission, for a variety of reasons, not all of which in his delegation's view 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

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practice agreements were usually in written form; on the other hand, agreements with international organizations were of particular importance to the developing countries. To the extent then that the International Law Commission's draft appeared to be dominated by the traditional scope and arrangement of international law, his delegation wished to place on record its disappointment.
(Mr. Sanmuganathan, XXIst session, 908th meeting, para. 3)

Costa Rica

The Commission had wisely decided to limit the scope of the draft articles to treaties concluded between States in written form. The conclusion of agreements by other subjects of international law, such as international organizations, was *sui generis* and required a different set of rules.
(Mr. Tinoco, XXIInd session, 982nd meeting, para. 46)

Cyprus

The Commission,... had adopted the line of least resistance as far as the scope of its work was concerned, as was clear from its report (see A/6309, paras. 28-35). The omission of such aspects of the law of treaties as treaties other than those concluded between States, treaties other than those in written form, the effect upon treaties of the outbreak of hostilities and the law of State succession as it affected treaties might have been dictated by considerations of feasibility, but many would have preferred a more liberal approach, particularly with regard to the matters of treaties concluded between States and international organizations, and of State succession.
(Mr. Jacovides, XXIst session, 910th meeting, para. 43)

Part I, article 1

... Regarding [the] scope [of the draft articles], the Commission had adopted the line of least resistance, as evidenced by the omission of such aspects of the law of treaties as treaties not in written form, the effect upon treaties of the outbreak of hostilities, and the law of State succession in respect of treaties. Many delegations might have preferred a more liberal approach. However, his delegation fully accepted Sir Humphrey Waldock's explanation that the draft articles covered as much ground as was likely to be manageable at the first stage in the codification of the law of treaties, and trusted that it would soon be possible to expand the codification by additions or adaptations.
(Mr. Jacovides, XXIInd session, 980th meeting, para. 53)

Czechoslovakia

His delegation endorsed the Commission's express decision to confine the scope of the articles in the draft to treaties concluded between States only, to the exclusion of international agreements concluded between States and international organizations or between two or more international organizations.
(Mr. Potocny, XXIst session, 906th meeting, para. 10)

In principle, Czechoslovakia agreed with the scope accorded to the draft articles and thought it wise to remain on firm ground and expand the codification of the law of treaties by subsequent additions or adaptations. As the Chairman of the International Law Commission had remarked, the Commission seemed to have been right in thinking that the draft articles already covered as much ground as was likely to be manageable at the present initial stage of the codification of the topic.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 20)

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Under paragraph (b) of article 3, the draft relates only to treaties concluded between States in written form. It is recommended therefore that the provision of article 1 be made more accurate and worded as follows: "The present Convention relates to treaties concluded between States in written form."
(Note verbale of 15 August 1967 from Chargé d'Affaires ad interim to the United Nations (A/6827, p. 8))

Dahomey

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 international law. 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.
(Mr. Adjibade, XXIst session, 912th meeting, para. 8)

Ghana

... His delegation fully appreciated the limitations that the Commission had 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 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 the 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 enjoyed by individuals.
(Mr. Van Lare, XXIst session, 905th meeting, para. 11)

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Part I, article 1

Hungary

His delegation wished,... to state... that it approved the Commission's decision to limit the draft articles to treaties concluded between States.
(Mr. Prandler, XXIst session, 907th meeting, para. 3)

India

The formulation of the draft articles in the Commission had been possible only as the result of a series of compromises on the controversial aspects of the law of treaties and the total exclusion from their scope of some of the difficult aspects, such as oral agreements between States, agreements between States and international organizations, and questions regarding State accession.
(Mr. Rao, XXIInd session, 979th meeting, para. 10)

Iran

...the Commission itself, in the section of its report relating to the scope of the articles, enumerated the omissions that it had been unable or unwilling to remedy. 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, namely, a new obligation governing public international relations, and it was registered in accordance with Article 102 of the Charter.
(Mr. Fartash, XXIst session, 913th meeting, para. 24)

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Part I, article 1

Israel

See XXIst session, 974th meeting, para. 13 quoted infra under article 2.

Kuwait

... The Commission's work was not yet complete.... 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.
(Mr. Al-Jasem, XXIst session, 911th meeting, para. 39)

Liberia

... /His delegation/ 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, his delegation 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, his delegation 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. His Government did not favour the fragmentation of a topic among a number of conventions.
(Mr. Brewer, XXIst session, 912th meeting, para. 2)

Part I, article 1

Romania

The Commission had been correct in deciding to limit the scope of the draft articles to treaties concluded between States in written form (article 1 and article 2, sub-paragraph 1 (a)) and in recommending that related topics, such as the application of the general law of treaties to international organizations (article 4), succession of States in respect of treaties, State responsibility and the most-favoured-nation clauses in the law of treaties, should be the subject of study at a later stage.
(Mr. Secarin, XXIInd session, 976th meeting, para. 39)

Sierra Leone

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 effect of 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 exchanges 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.
(Mr. Koroma, XXIst session, 911th meeting, para. 46)

Sweden

The second subject was treaty-making by international organizations, the omission of which from the convention might prove unfortunate, in view of the growing importance and number of such treaties - for example, United Nations agreements concerning technical assistance and peace-keeping operations. However,

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that deficiency would be hard to remedy without further consideration of the question by the International Law Commission.
(Mr. Blix, XXIInd session, 980th meeting, para. 8)

Turkey

With respect to terminology, he observed that 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". In his delegation's view, 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....

In view of the complexity of the draft articles, it was understandable that the Commission had not extended their scope to all international agreements.
(Mr. Bilge, XXIst session, 907th meeting, paras 15, 17)

United Kingdom

...as to the scope of the convention and the treaties to which it would extend, his delegation would like to see the convention extended to cover international organizations, but would not want it to interfere with the practices and procedures of these organizations - a point covered by article 4.
(Mr. Darwin, XXIInd session, 967th meeting, para. 6)

Part I, article 1

United Republic of Tanzania

...in examining the draft articles (see A/6309), 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 - 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 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.
(Mr. Maliti, XXIst session, 912th meeting, para. 45)

United States of America

The first basic problem is whether the proposed convention on the law of treaties is to provide the body of law which governs treaties generally. The issue is raised by article 1, article 2, paragraph 1 (a) and article 4. Under article 1 and article 2, paragraph 1 (a), treaties between States and those other international persons, such as international organizations, which are generally considered to have treaty-making capacity, would be excluded from application of the provisions of the convention. This class of treaties is now substantial and will continue to increase in size. Some of the treaties concerned are of considerable importance, such as the trilateral safeguards agreements in the atomic energy field to which the International Atomic Energy Agency is a party. The International Law Commission decided to exclude treaties of this character apparently because they have "many special characteristics" so that... "it would both unduly complicate and delay the drafting of the present articles..." to include them. The United States Government suggests that this decision could well be reviewed in order to determine whether the articles of the draft convention do, in fact, conflict with "special characteristics" of agreements to which international organizations are parties.
(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, pp. 2-3))

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Part I, article 1

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The draft articles on the law of treaties are to apply only to treaties concluded between States; it is clear from the text of, and the commentary on, articles 1 and 2 that treaties between States and international organizations are excluded from the scope of the draft articles. There appears to be a certain tendency towards the conclusion of treaties between States to which one or more international organizations may also be parties. Within the framework of FAO, the Agreement for the Establishment on a Permanent Basis of a Latin-American Forest Research and Training Institute may be a pertinent example since in addition to States, FAO is also a party to the Agreement. There are other examples such as the Indus Water Treaty - 1960, between India, Pakistan and the International Bank for Reconstruction and Development, as well as an ever-increasing number of agreements relating to regional projects, particularly in the field of activities of the United Nations Development Programme and the Bank group. It is not clear whether international instruments of this type would fall within the scope of the draft articles on the law of treaties or the rules under consideration by the International Law Commission with respect to relations between Governments and inter-governmental organizations; this problem may well deserve further consideration prior to - and possibly during - the proposed diplomatic conference on the law of treaties. In our opinion, it would be desirable to avoid a situation in which two different sets of rules would be applied to one and the same international instrument, the choice depending on whether a given problem arising in connexion with the instrument concerns relations between States or between States and international organizations.

(Letter of 7 July 1967 from Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, pp. 19-20))

Part I, articles 1 and 2

World Health Organization

It must be first of all pointed out that the draft articles deal with a subject on which WHO has little to say. Articles 1, 2 and 3 state that the draft articles relate only to treaties concluded between States. Accordingly, treaties to which the World Health Organization could be a party are excluded.
(Letter of 13 July 1967 from the Head of the Legal Office of the World Health Organization (A/6827/Add.1, pp. 41-42))

ARTICLE 2

Use of terms

MEMBER STATES

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.
(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, pp. 2-3))

Bolivia

At the Committee's 907th meeting the Panamanian representative had expressed the fear that the term "treaty", as used in article 2, sub-paragraph 1 (a), might give rise to constitutional problems in some Latin American countries. In his view that fear was groundless, inasmuch as article 2, paragraph 1, stated that the term

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was defined only "for the purposes of the present articles" and paragraph 2 stated that the provisions of paragraph 1 regarding the use of terms in the articles were without prejudice to the use of those terms or to the meanings which might be given to them in the internal law of any State. Furthermore, in paragraph 15 of its commentary on article 2, the Commission specified that paragraph 2 of that article was designed to safeguard the position of States in regard to their natural law and usages and, more especially, in connexion with the ratification of treaties. His delegation therefore approved the definition used in the draft articles and agreed that it should apply only to treaties concluded between States, excluding those to which other subjects of international law, such as international organizations and rebellious communities, were parties.
(Mr. Terceros Banzer, XXIst session, 909th meeting, para. 31)

Brazil

...the term "treaty" - with the exception of certain trade agreements - had until recently applied only to treaties of peace, friendship or alliance concluded with great pomp, which did nothing more than indicate the rules that were to govern the reciprocal conduct of two or a limited number of parties and were in no case regarded as a source of law.

The Commission had been compelled to free itself from a whole set of accepted ideas in order to establish a body of genuine international law on that subject. Thus, in article 1 of the draft articles, treaties in simplified form - exchanges of notes, for example - which had been becoming more numerous owing to the accelerated pace of modern life, were no longer regarded as the poor relations of diplomacy but as authentic treaties. Furthermore, aware of the increasingly important role played by multilateral conventions and the ever-growing tendency to regard them as an important source of international law, the Commission had been able to free that type of instrument from a whole set of outmoded ideas concerning the role of the "parties" - ideas that derived from a purely contractual conception of the treaty. The consent of the parties had accordingly acquired new vigour, and it had been necessary to tackle the problems thus raised, such as that of the importance to be attached to unanimous consent.
(Mr. Amado, XXIst session, 904th meeting, paras. 23-24)

/Mr. Amado/ was very much aware of the difficulties in law resulting from problems of terminology; he had often urged the Commission to eliminate from the draft certain unnecessary or vague expressions such as "reasonable delay" - than which nothing could be more meaningless - and the fact remained that many unformulated elements were in a drafter's mind when he used a particular word.
(Mr. Amado, XXIInd session, 969th meeting, para. 19)

Bulgaria

The definition of the term "reservation" in article 2.1 (d) should be expanded and made more precise. It should be stated explicitly that a reservation was a unilateral statement which purported to exclude, to limit or to vary the legal effect of certain provisions of the treaty concerned and their application to the State making the reservation. The provisions relating to reservations constituted an important attempt to achieve more flexibility in accommodating the requirements and interests of the broadest possible range of States.
(Mr. Yankov, XXIInd session, 979th meeting, para. 5. See also ibid., para. 3, quoted supra under art. 1)

It is essential, however, that the draft convention should provide at the outset, and specifically in article 2, paragraph 1 (a), that silence under certain conditions ("qualified silence") may produce legal effects. The draft itself contains some particular applications of this principle (article 17, paragraph 5; article 38; article 62, paragraph 1). This general idea, on which these provisions are based, should be stated at the beginning of the draft convention....

It would be desirable to expand the definition of the term "reservation" by providing, in article 2 (d), that a reservation purports not only to exclude or to vary, but also "to limit", the legal effect of certain provisions of the treaty in their application to the State making the reservation.
(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, pp. 5, 6))

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Byelorussian Soviet Socialist Republic

[The Byelorussian SSR] delegation could not but deplore the fact that the International Law Commission had abandoned the stand it had originally taken in favour of universality. In view of the latest developments and trends in international life, his delegation felt obliged to insist that article 2 (Use of terms) should include a definition of the term "general multilateral treaty", together with a stipulation that all States might become parties to such treaties, without discrimination of any kind.
(Mr. Stankevich, XXIInd session, 975th meeting, para. 6)

In article 2, the term "treaty" should be defined more precisely and a definition of the term "general multilateral treaty" should be included, together with a stipulation that all States may become parties to such treaties without discrimination of any kind.

In article 2 (d) it should be specified that reservations must be formulated in writing.
(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 7))

Ceylon

The International Law Commission 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 necessary objectivity.
(Mr. Sanmuganathan, XXIst session, 908th meeting, para. 6)

Part I, article 2

Chile

... /Mr. Vargas/ wished to refer in particular to the definition of "treaty" given in article 2, sub-paragraph 1 (a), inasmuch as that definition might have important implications for the internal public law of a number of States, particularly those in Latin America. For the purposes of the draft articles, the Commission had defined "treaty" as "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". In his delegation's view, that definition was incomplete, inasmuch as an agreement concluded between States and governed by international law was not necessarily a treaty. It was essential to add that a treaty should also be intended to produce certain juridical effects, i.e., to create, modify or extinguish a legal situation. For example, a mere statement by two Heads of State or Foreign Ministers which did no more than express certain common purposes of a non-compulsory kind and contained no reference to any rights or obligations devolving upon the parties could not be considered a treaty, although such a statement might be deemed to fall under the definition of treaty proposed by the Commission if draft article 2, sub-paragraph 1 (a), of the draft was not too strictly interpreted.

For that reason, he fully shared the view expressed by the representative of Panama (907th meeting) that it was inadvisable to propose texts that some countries, for constitutional reasons, would be unable to accept. The problem was particularly important in connexion with so-called treaties in simplified form, i.e., agreements which came within the normal prerogative of the Chief Executive and which therefore did not require legislative ratification or approval. The juridical differences between treaties drawn up in due form and agreements made in simplified form were to be found mainly in the procedure for their conclusion and entry into force; it was highly advisable, therefore, that the legal rules relating to validity, operation, effect, execution, enforcement, interpretation and termination should be the same for both kinds of agreement. What he wished to emphasize was that the case of the treaty in simplified form, which, according to the Commission's commentary, far from being at all exceptional, was very common and was steadily increasing in use, should be kept expressly in mind.

(Mr. Vargas, XXIst session, 912th meeting, paras. 28-29)

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Part I, article 2

Costa Rica

It was regrettable that the draft articles under consideration dispensed with the distinction that had been drawn in the 1962 text between formal treaties and treaties in simplified form, which were concluded by exchange of notes, agreed minute, memorandum of agreement, modus vivendi or any other method. The same norms regarding registration, interpretation, observance and termination applied to both types of treaty, although there were differences in the procedure for ratification. Moreover, some of the provisions of the draft articles would apply only to treaties of the conventional type.
(Mr. Tinoco, XXIInd session, 982nd meeting, para. 47)

Ecuador

/The Ecuador delegation/ understood, ... that the broad definition of the word "treaty" in draft article 2, sub-paragraph 1 (a), would create serious problems of internal law for many different kinds of international agreements on administrative questions usually entrusted to the executive power, which would need troublesome constitutional procedures in order to come into force. In any event, /it/ thought that it would be possible to find legal expressions which would harmonize the objectives being sought.
(Mr. Alcívar, XXIst session, 914th meeting, para. 19)

In the circumstances, /the International Law Commission/ should have made sure that the definition of a treaty contained all the necessary characteristic elements. The over-restrictive definition given in article 2 (1) (a), was not entirely satisfactory.

Treaties were not different in kind from other contractual instruments, for which the basic requirements were - in addition to capacity - consent and the existence of a lawful object and cause. The Commission had dealt with capacity in

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article 5. Consent, however, was dealt with only partially, since absence of consent was touched on in part V only in so far as it resulted from lack of freedom of the contracting parties, without any mention of the important factor of the unity of intention resulting from a full knowledge of the consequences of mutual consent....

If a treaty's purpose was to establish a legal bond, such a bond should be consonant with justice and equity, for any imbalance in that connexion, even if contractual in origin, constituted a grave danger to world peace. In its comments (see A/6309/Rev.1, part II, annex, p. 133), Luxembourg mentioned three elements on which the definition of the treaty should concentrate: the consensual nature of the treaty, the nature of the parties and the binding effect sought by the parties. His Government believed that, in view of the form the draft articles had taken, a definition should be formulated comprising the following five elements: (1) there should be unity of intention on the part of two or more States; (2) the agreement reached should be freely entered into; (3) there should be good faith; (4) a legal bond should be created establishing obligations and rights in keeping with justice and equity, and (5) the object of and the reason for the treaty should be lawful.
(Mr. Alcívar, XXIInd session, 981st meeting, paras. 25, 26, 28)

France

Some delegations had stated that certain articles would give rise to constitutional problems in their countries, and their views should be taken fully into account. His delegation also hoped that the newly independent States would be given time to study carefully the relationship between the rules contained in the draft articles and their own constitutional law.
(Mr. Jeannel, XXIst session, 910th meeting, para. 55)

Honduras

His delegation considered that, in its definitions, the convention should be more explicit, and at the same time more flexible, in referring to a "State". The definition of the term "Party" should also be carefully reconsidered, in order to take account of systems prevailing in different parts of the world. In Central America, for example, there was a trend towards the establishment of joint diplomatic missions; that innovation would result in joint negotiations of a new kind, for which some provision should be made in any international instrument on the law of treaties.
(Mr. Cadalso, XXIInd session, 975th meeting, para. 9)

Hungary

Article 2 (1) (d) defined the term "reservation". His delegation believed that it would be appropriate to mention explicitly reservations which were intended to interpret or clarify certain provisions of the treaty. The International Law Commission referred to such reservations in commentary (11) on that article but it regarded them as simple declarations, unless they amounted to reservations varying or excluding the application of certain terms of the treaty. In his delegation's view, declarations of an explanatory character could be considered reservations under article 2 (1) (d) and the provisions of articles 16-20 should be made applicable to them.
(Mr. Prandler, XXIInd session, 978th meeting, para. 2)

India

For example, it appeared from the lucid commentary on article 2 that on the definition of the term "treaty" the International Law Commission's draft was more precise than the Harvard Draft Convention on the Law of Treaties.
(Mr. Singh, XXIst session, 906th meeting, para. 2)

Iran

See XXIst session, 913th meeting, para. 24, quoted *supra* under article 1.

Israel

/His first comment/ related to article 2; while it might appear to be essentially a matter of drafting, it nevertheless had a substantive aspect. It was very important that the scope of the codification should be established clearly, and if possible in one article, or at the most two. The material at present contained in article 1, in the definition of "treaty" in article 2 and in article 3 should be rearranged so as to bring out that aspect more clearly. His delegation was not convinced that all the other definitions contained in article 2 were necessary, at least in their present form, and thought that it would add considerably to the general clarity of the text if some of them were incorporated more closely into the article or articles to which they directly referred. Comparing the first draft with the final text, it had noticed that the Commission had done that in part. For instance, the definition of "depositary" which had appeared in article 1 (*g*) of the 1962 text had been dropped and its substance had been incorporated in article 71.
(Mr. Rosenne, XXIInd session, 974th meeting, para. 13)

Mongolia

On the question whether treaties should be divided into various categories, his delegation wished to point out that the classification of treaties as bilateral or multilateral was not exhaustive. Bilateral treaties could themselves be divided into treaties in which there was only one party on each side and treaties in which there were several parties on one side and one or more parties on the other, while multilateral treaties could be divided into general universal treaties and group treaties with a limited number of participants. Moreover, it would be preferable

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to draw a distinction between multilateral treaties in which the parties should be bound to recognize one another and multilateral treaties whose participants might be States which did not recognize one another. There were some forms of multilateral political and economic agreements, such as treaties of alliance and instruments establishing common markets, which were inconceivable without close ties among all the participants and which presupposed mutual recognition. (Mr. Khashbat, XXIInd session, 976th meeting, para. 47)

Panama

His delegation... wished to draw the Committee's attention now to the definition of the term "treaty" in article 2 of the draft. The International Law Commission might have had valid reasons for preferring the word "treaty" to the expression "international agreement" as a generic term, but if the conference of plenipotentiaries endorsed that choice, a serious domestic problem of constitutional law might arise for many countries, particularly in Latin America. In a number of countries, the constitution reserved to the legislature, domestically, the right to ratify or refuse to ratify treaties, while it gave the Chief Executive the prerogative of directing the country's foreign affairs. That was true, inter alia, of the Constitutions of Panama, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, Honduras, Nicaragua, Paraguay and Peru.

As the International Law Commission itself recognized informal agreements (or agreements in simplified form) that did not require parliamentary ratification were quite common and were being increasingly employed as a means of settling, often on a short-term basis, questions relating to current administrative practice or to cultural, technical, scientific or economic co-operation. They were based on the Chief Executive's constitutional prerogative of directing the country's foreign affairs and, hence, of concluding any international agreement provided that he was not expressly forbidden to do so by the Constitution. In the United States, for example, so-called executive agreements did not require ratification by the Senate. A Head of State who was obliged to submit all international agreements of whatever type for parliamentary ratification would have his hands completely tied. In the

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circumstances, if the convention to be adopted by the conference of plenipotentiaries upheld the definition used by the International Law Commission, any agreement in simplified form concluded by a State whose parliament had ratified the convention and thus given it the force of law would be unconstitutional.

Every country whose constitution required parliamentary ratification of all treaties should bear in mind the following considerations. First, if any international agreement concluded in written form between States was a treaty, then every agreement without exception would require ratification by the legislature, unless each State in question amended its constitution or gave its own definition to the word "treaty", thus making the provisions of article 2, sub-paragraph 1 (a), inoperative. Second, assuming that in countries with a legislature that remained in session throughout the year legislators had the necessary time to ratify all agreements of an administrative type, what would be the situation in countries with long periods of parliamentary recess? Third, when an agreement had to be concluded urgently - to organize a scientific expedition, for example - would there be time for it to be ratified by the parliament? Fourth, might not the principle of the sovereign equality of States be undermined by the distinction thus arising between those States which had constitutions requiring parliamentary ratification of all treaties and those which did not have such a requirement? Fifth, should the powers of the Head of State be limited in that way, and was it not preferable to maintain the current state of affairs, in which only important agreements of a political character or of permanent effect were subject to parliamentary ratification?

Those were not abstract speculations. A question had arisen recently in Panama as to whether the Head of State, acting through his Minister for Foreign Affairs, was entitled to engage in an exchange of notes concerning scientific and technical studies without bringing the matter before the National Assembly. The question had not yet been settled.

In the past, international law had, of course, recognized certain types of international agreements that were not treaties in the strict sense of the term and therefore were not subject to parliamentary ratification. Variations in nomenclature and usage, whether due to habit or to arbitrary decision, had unquestionably created much confusion, so that it might be preferable, from the standpoint of international law, for the word "treaty" to embrace all international

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agreements; but, practically speaking, it might be going too far to try to make a single term apply to more than fifteen different types of written international agreements.

(Mr. Méndez Guardia, XXIst session, 907th meeting, paras. 33-37)

Peru

See XXIst session, 907th meeting, paras. 27-28, quoted *infra* under articles 23 and 59.

Romania

See XXIInd session, 976th meeting, para. 39, quoted *supra* under article 1.

Sierra Leone

See XXIst session, 911th meeting, para. 46, quoted *supra* under article 1.

Spain

Not only the Hispanic American countries but all other countries as well had reason to fear that the definition of the term "treaty" in draft article 2, sub-paragraph 1 (a), might create difficulties for them. On that issue the Commission had been divided into two groups of equal strength. The group to which he belonged had contended, as the Panamanian representative had pointed out at the 907th meeting, that a State was not entitled to intervene in the affairs of another State in order to ascertain whether or not there had been compliance with the constitutional requirements for declaring the will of that State or to question the word of a Head of State or his Minister for Foreign Affairs. A careful reading

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of draft article 43 would show that there could not have been a more practical and effective solution to an apparently insoluble conflict.
(Mr. de Luna, XXIst session, 912th meeting, para. 41)

Thailand

...the generic term "treaties" comprehended not only the "traités-contrats" which created binding obligations between the contracting States but also the "traités-lois" which provided a copious material source of international law. Thus, the law of treaties had a crucial bearing, in its practical application, on the realities of international life and daily intercourse between nations.
(Mr. Sucharitkul, XXIInd session, 976th meeting, para. 9)

Tunisia

...he thought that the definition of a treaty in article 2 (1) (a) should be expanded by specifying, as Sir Gerald Fitzmaurice had recommended, that a treaty was intended to create rights and obligations, or to establish relationships, governed by international law. Moreover, a treaty in simplified form should be defined as a treaty that was not subject to a ratification procedure under the municipal law of certain States.
(Mr. Gastli, XXIInd session, 981st meeting, para. 3)

Turkey

With reference to the interpretation of the words "governed by international law" in the commentary on article 2, his delegation 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 his opinion, extended to treaties of that kind.
(Mr. Bilge, XXIst session, 907th meeting, para. 18)

Union of Soviet Socialist Republics

The definition of "treaty" is insufficiently precise and needs to be specified more clearly.

In addition, it would be desirable to define "general multilateral treaty" in this article. It would then be necessary to include a special draft article on the right of all States to participate in general multilateral treaties as a consequence of the basic generally accepted principles of international law.
(Note verbale of 21 July 1967 from the Permanent Mission to the United Nations (A/6827, p. 25))

United Republic of Tanzania

See XXIst session, 912th meeting, para. 45, quoted *supra* under article 1.

...he thought that the wording of certain other articles, including article 2 in particular, should be changed.
(Mr. Samata, XXIInd session, 981st meeting, para. 15)

United States of America

See document A/6827/Add.2, quoted *supra* under article 1; *ibid.*, quoted *infra* under article 4.

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

See document A/6827/Add.1, quoted *supra* under article 1.

World Health Organization

See document A/6827/Add.1, quoted *supra* under article 1.

ARTICLE 3

International agreements not within the scope of the present articles

MEMBER STATES

Bulgaria

See XXIInd session, 979th meeting, para. 3, quoted *supra* under article 1.

See document A/6827/Add.1, quoted *supra* under article 1 and *infra* under article 34.

Costa Rica

See XXIInd session, 982nd meeting, para. 46, quoted *supra* under article 1.

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Part I, article 3

Czechoslovakia

See document A/6827, quoted *supra* under article 1.

Iran

See XXIst session, 913th meeting, para. 24, quoted *supra* under article 1.

Israel

See XXIInd session, 974th meeting, para. 13, quoted *supra* under article 2.

Sweden

See XXIInd session, 980th meeting, para. 8, quoted *supra* under article 1.

United Republic of Tanzania

See XXIst session, 912th meeting, para. 45, quoted *supra* under article 1.

SPECIALIZED AGENCIES

World Health Organization

See document A/6827/Add.1, quoted *supra* under article 1.

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ARTICLE 4

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

MEMBER STATES

Australia

[The Australian Government] would study in particular the possible implications of article 4, which provided, in somewhat vague terms, that treaties which were constituent instruments of international organizations or were adopted within international organizations should be subject to the relevant rules of the organization.
(Sir Kenneth Bailey, XXIInd session, 981st meeting, para. 13)

Bulgaria

The reference in article 4 to treaties which are constituent instruments of an international organization does not seem to be warranted. Until the organization has been formed its constituent instrument cannot be applied, and therefore when that stage is reached it is essential that the constituent instrument in question should automatically be subject to the rules laid down by the convention.
(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 5))

Ceylon

See XXIInd session, 969th meeting, para. 9, quoted *infra* under article 8.

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Czechoslovakia

In his delegation's view, the reference in article 4 to treaties which were constituent instruments of an international organization was not warranted. Did adequate rules governing such an organization exist even before the latter was established under its constituent instrument? That instrument should accordingly be subject, pleno jure, to the rules laid down in the convention. Moreover, since international treaty negotiations between States, as well as the rules of the organization, were determined by the States represented in the organization, it would be as well to make it clear that the convention should take precedence over the rules of the organization. Czechoslovakia felt that only the treaties actually drawn up within an organization should be covered by the provisions of article 4. However, its position was not rigid and it intended to give the matter further study in the light of document A/6827/Add.1.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 21)

According to the submitted draft, the application of the Convention to treatie which

(a) are constituent instruments of an international organization or

(b) are adopted within an international organization

shall be subject to any relevant rules of the organization.

In view of the fact that an international organization provides only a framework for the negotiations of States on international treaties while the treaty negotiations as well as the rules of the organization are determined by the States represented in the organization, it is considered desirable to express the priority of this convention which it enjoys over the rules of the organization which ought to be applied only in a supporting role.
(Note verbale of 15 August 1967 from Chargé d'Affaires ad interim to the United Nations (A/6827, p. 8))

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Hungary

Article 4 needed further clarification and improvement, since it seemed to restrict considerably the application of the text in the case of treaties adopted within international organizations (e.g., the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water; the International Convention on the Elimination of All Forms of Racial Discrimination). The Hungarian delegation took note that the Secretary-General of the United Nations had pointed out that the wording of the article, on the other hand, "will have the effect of altering the existing legal situation" (see A/6827/Add.1, p. 10). Without analysing in detail the comments made by the Secretary-General, the Hungarian delegation felt that, unless there was a provision to the contrary explicitly adopted by the parties concerned, the pertinent rules of the international organizations should be used only in a supporting role.
(Mr. Prandler, XXIInd session, 978th meeting, para. 3)

Israel

His delegation believed that the principle underlying article 4 was basically sound, but saw considerable difficulties in its practical implications.
(Mr. Rosenne, XXIInd session, 974th meeting, para. 14)

Nigeria

Article 4 dealt with treaties which were constituent instruments of international organizations or which were adopted within international organizations. His delegation thought that it had inadequately reflected the important role which those treaties now played in modern international law and which they would increasingly play in the future. The comments of the Secretary-General (see A/6827/Add.1, pp. 10-14) justifiably reflected some of the inadequacies of that article. It would also be desirable to indicate clearly the secondary role played by the rules of procedure of those organizations.
(Mr. Ogundere, XXIInd session, 978th meeting, para. 15)

Part I, article 4

Romania

...the precise determination of the relations between States and international organizations and of the position of the general law of treaties in relation to the relevant rules of international organizations was a complex matter which had certainly not been exhausted by the rules laid down in article 4. A more thorough consideration of the question was required, in order to determine whether that text should be retained.
(Mr. Secarin, XXIInd session, 976th meeting, para. 40)

See also *ibid.*, para. 39, quoted *supra* under article 1.

Sweden

His delegation saw little reason to object to the provision in article 4, enabling international organizations to derogate from the rules of the draft in respect of treaties made within the organization. Apart from a few articles containing peremptory norms, most of the provisions in the draft articles were of a residuary character and could thus be derogated from by express agreement between States. The same should also apply to agreements by which States established international organizations. It was to be hoped however that that latitude would not be lightly made use of or allowed to have any disintegration effects, for the practices of international organizations should continue to serve as a consolidating element in the formation of customary law.
(Mr. Blix, XXIInd session, 980th meeting, para. 9)

United Kingdom

See XXIst session, 967th meeting, para. 6, quoted *supra* under article 1.

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Part I, article 4

United States of America

In addition to article 1 and article 2, paragraph 1 (a), which have a limiting effect upon the coverage of the proposed convention, article 4 could be construed as permitting any international organization, no matter how restricted in membership or limited in purpose, to exclude the application of the convention to any or all treaties adopted within the organization. The number of multilateral treaties which are adopted within international organizations is continually increasing. To confer upon these organizations the power to abrogate what should be the generally accepted rules of international law respecting treaties is a radical step which could be justified only on the basis of a very strong case of necessity. The United States Government is not aware that any such case has been made. The Commission apparently was motivated by the same considerations of convenience as gave rise to the limitations in article 1, and article 2, paragraph 1 (a). But convenience is not enough to justify weakening to such an extent the development frameworks of world law. International organizations should be requested to establish, article by article, why the convention should not be applicable to their treaties. Special provisions, if required, could then be made on the basis of demonstrated need, and not by blanket exclusion.
(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, p. 3))

See also ibid., quoted supra under article 1.

SECRETARY-GENERAL OF THE UNITED NATIONS

...article /4/ provides that "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". It would be desirable to replace the underlined words by the words "concluded under the auspices of or deposited with an international organization".

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The commentary on article 4 explains that "This phrase is intended to exclude treaties merely drawn up under the auspices of an organization or through use of its facilities and to confine the reservation to treaties the text of which is drawn up and adopted within an organ of the organization".

This limitation of the scope of the article will have the effect of altering the existing legal situation. It has been established in practice that the United Nations under the Charter, and certain of the specialized agencies under their constitutions, have the authority to make rules concerning a broad range of treaties which are associated with their work, and not merely those adopted within their organs. Examples of such rule-making are found in General Assembly resolutions 598 (VI) of 12 January 1952 and 1452 B (XIV) of 7 December 1959, whereby the General Assembly laid down directives for the Secretary-General to follow in his practice as depositary of conventions concluded under the auspices of the United Nations; many of those conventions were of course adopted by conferences held under the auspices of the Organization rather than by United Nations organs. General Assembly resolutions 1903 (XVIII) of 18 November 1963 and 2021 (XX) of 5 November 1965 lay down rules concerning extended participation in general multilateral treaties concluded under the auspices of the League of Nations; these treaties were of course not even adopted under the auspices of the United Nations, though the Secretary-General acts as depositary of them. From the standpoint of the United Nations it would be sufficient to add to the existing text of draft article 4 only a reference to treaties "deposited with an international organization", but under the practice of certain other organizations a State which is the depositary of a treaty concluded under the auspices of an organization may ask the latter's guidance in the performance of depositary functions, and hence it seems desirable to include also a reference to treaties concluded "under the auspices of an international organization".

Draft article 4 recognizes the existing legal situation with regard to constituent instruments of international organizations, in regard to which it allows freedom to adopt rules at variance with those applicable to treaties in general. Thus the draft articles do not conflict with the Charter and rules adopted under it, as would be the case without draft article 4, for example, in regard to acquisition of membership, which takes place in the United Nations in

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accordance with Article 4 of the Charter, rules 135-139 of the rules of procedure of the General Assembly and rules 58-60 of the provisional rules of procedure of the Security Council, rather than in accordance with articles 10-12 of the draft articles on the law of treaties. Draft article 4 should, however, be broadened to leave unchanged the existing legal situation with regard to treaties of international organizations other than constituent instruments.

A restrictive innovation respecting the powers of international organizations in regard to such treaties like that proposed in draft article 4 seems likely to create both legal complications and practical difficulties. International organizations have in the past made certain rules about treaties concluded under their auspices or deposited with them. If draft article 4 becomes part of a convention, what is the effect of that convention, once it is brought into force, on the future applicability of those rules, on the one hand, in respect of States parties to the new convention, and, on the other, in respect of non-parties? Could the old rules of an international organization continue to apply to States not parties to the new convention, while the convention alone, and not the rules, would apply to parties?

States members of international organizations should retain the freedom they now have to make and apply rules to treaties in which those organizations have a legitimate interest, even though the treaties were not adopted within their organs. The draft articles are in general based on the present practice of States, and on typical cases; but the rapid evolution of international organizations and their treaty practice may continue, as in the past, to give rise to new problems requiring new solutions. Though the future convention will do much to clarify the law of treaties, serious problems may still arise where its provisions are not well adapted to the special circumstances of an organization, or where the convention gives no clear solution, or where the convention is not binding of its own force on all parties to a dispute and thus does not settle the problem. In any of these circumstances, rule-making by an international organization may prove a more practical and readily available method of overcoming difficulties than any of the other means of settling disputes, and such rule-making should not be restricted more narrowly than at present.

Moreover, problems arise in depositary practice which an international depositary should be able to submit to a deliberative body of his organization

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for the establishment of rules for his guidance; if such problems are not settled, the functions of the depositary may be involved in continuous controversy and become impossibly onerous. The Secretary-General, for example, has twice been obliged to submit to the General Assembly the problem of reservations to multilateral conventions, and the Assembly has also had to deal with the problem of extended participation in multilateral treaties concluded under the auspices of the League of Nations. Even after a convention on the law of treaties has been adopted, a long period will elapse before all States become parties to it, and serious problems may arise which it would be desirable to settle by the same method as has been used in the past. Paragraph 2 of draft article 72 provides that where a difference arises between a State and a depositary concerning the performance of the latter's functions, the depositary must bring the dispute, "where appropriate, /to the attention/ of the competent organ of the organization concerned". Under draft article 4 as now worded, it appears that the General Assembly would no longer be competent to make rules settling differences regarding treaties concluded under the auspices of the League of Nations, or treaties like the Convention of the Inter-governmental Maritime Consultative Organization (concerning which a problem was brought before the General Assembly in 1959), as they were not adopted within an organ of the United Nations. Differences concerning such treaties could, under paragraph 2 of draft article 72, be brought "to the attention of the other States entitled to become parties", but it is not clear how those States, without acting within the framework of an organization, could jointly lay down a rule for the depositary to follow.

The future convention on the law of treaties is likely to involve ultimately some changes in the depositary practice of the Secretary-General, as of most depositaries. If any of those changes should give rise to controversy, a rule established by the international organization concerned might be an appropriate means of authorizing the depositary to act in accordance with the convention in respect of States not yet parties to it; thus recognition in the future convention of the present extent of the rule-making authority of international organizations may well contribute to the effectiveness of the convention rather than detracting from it.

Part I, article 4

The distinction made in draft article 4 and its commentary between treaties adopted "within an organ" of an organization and treaties "merely drawn up under the auspices of an organization or through use of its facilities" is not very clear, as there are doubtful cases when a conference may or may not be an organ. But even where the distinction is clear, it is arbitrary, as adoption by an organ or by a separate conference is often a mere matter of convenience and should not serve as the basis for a legal distinction. For example, article 23 of the Statute of the International Law Commission provides that when the Commission submits draft articles to the General Assembly, it may recommend that the Assembly should, inter alia, recommend the draft to Members with a view to the conclusion of a convention, or that the Assembly should convoke a conference to conclude a convention. One course or another might be taken in practice for various reasons concerning the degree of complexity of the draft, the political urgency of a convention, financial considerations, etc. If for any such reasons the Assembly sends the draft to a conference, and assuming that in either case the Secretary-General is the depositary, why should the Assembly lose the power, which it would have had if it adopted the draft itself, to make rules applicable to the resulting convention?

The purpose of the change of wording suggested at the beginning of these comments on draft article 4 is not to add to the rule-making competence of international organizations, but simply to avoid prejudicing the competence which some of them, notably the United Nations, possess at present under their constitutional systems, and the competence which States may consider it desirable to confer on international organizations in the future. That competence will no doubt be exercised as cautiously and infrequently as it has been in the past. Reassurance is given by the word "rules" in the present text of draft article 4, which implies a requirement that they be legally valid rules, adopted and applied in accordance with the constitutions of the organizations concerned. The authority of each organization and of particular organs within it to make rules regarding treaties may sometimes be a complicated question, but the requirement of constitutional validity gives assurances of careful consideration and eliminates any danger of capricious decisions of minor bodies or minor officials. It can thus be anticipated that exercise of the rule-making authority will be limited

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to a few cases of genuine need of States or of depositaries, as in the past, and that the general international law of treaties as embodied in the future convention will apply to the vast majority of problems concerning the treaties connected with international organizations.

(A/6827/Add.1, pp. 10-14)

See also *ibid*, quoted *infra* under articles 8 and 9.

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

Pursuant to... article [4] the relevant rules adopted by international organizations would seem to prevail over the draft articles on the law of treaties as regards the constituent instruments of, and treaties adopted within, the international organizations concerned. As pointed out in the commentary on this article, the above rule was originally intended to apply also to treaties drawn up "under the auspices" of international organizations. In addition to the conventions and agreements concluded *within the framework* of FAO under articles XIV and XV of its Constitution, at least two other treaties have been drawn up under the auspices or with the assistance of FAO, with the approval of its governing bodies, and there may be more international treaties of this type in the not too distant future. To the extent that an international organization acts as depositary and possibly assumes certain functions concerning the implementation of such treaties it may also have to follow the relevant rules of the organization in carrying out such functions. Accordingly the term "adopted within an international organization" may have to be given a liberal interpretation, bearing in mind, of course, the observations set out in paragraph (3) of the commentary to article 4.

We presume that the "relevant rules of the organization" referred to in this article comprise both existing rules and rules that may be introduced in the future.

(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, pp. 20-21))

See also *ibid.*, quoted *infra* under article 5.

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Part I, article 4

International Labour Organisation

It is our understanding of article 4 of the draft articles that it is recognized that these various categories of rules will continue to apply to the Constitution of the Organisation and instruments adopted within the International Labour Organisation, including international labour conventions, even where they differ from the draft articles on the law of treaties and the relevant articles do not expressly provide for possible variations.
(Letter of 18 May 1967 from the Director-General of the International Labour Organisation (A/6827/Add.1, pp. 27-28))

International Telecommunication Union

Constituent instruments

The constituent instrument of the International Telecommunication Union (ITU) is the International Telecommunication Convention, which is revised by the ITU Plenipotentiary Conference, meeting at periodic intervals (usually every five years). The first of these conventions was that of Madrid (1932) whereby the "Telegraph Union" was replaced by the "Telecommunication Union". The Members of the Union were the Governments which signed and ratified the treaty or adhered to it afterwards under arrangements specified. All subsequent conventions (Atlantic City 1947, Buenos Aires 1952, Geneva 1959, Montreux 1965) have contained an annex listing the members and have made provision for the admittance of new members. Countries listed as Members have continued to appear as Members in the lists annexed to successive conventions even though they have not ratified any since the first that they ratified or to which they acceded. They continue, however, to be treated in all respects as Members, except that since the 1952 convention the right to vote is lost:

(a) By a signatory Government two years after the convention has come into force if it has not deposited an instrument of ratification;

(b) When the new convention comes into force, by a country listed as a Member which has not signed or acceded.

Thus, from a formal juridical point of view, there can be more than one "constituent instrument" in relations between ITU Members although in practice,

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e.g. choice of contributory unit, the provisions of the current convention are applied.

It is assumed that where there are inconsistencies between the provisions of the ITU "constituent instrument" (or "instruments") and those of the law of treaties, the former prevail except in cases in which article 50 of the law of treaties operates.

"treaties... adopted within international organizations"

Some further clarification of the meaning to be attached to "treaties... adopted within international organizations" is desirable so that it can be decided to what extent article 4 is to be applied to the different categories of treaties concluded in the telecommunications field.

I. The regulations

The provisions of the International Telecommunication Convention (Montreux 1965) are completed by the following sets of administration regulations:

Telegraph regulations

Telephone regulations

Radio regulations

Additional radio regulations

Ratification of the convention or accession involves acceptance of the regulations in force at the time (a number of Members, however, have made reservations in this regard).

The Montreux Convention (article 7) makes provision for the convening of administrative conferences of a world-wide character to revise these regulations or part of them or to discuss any other telecommunication question of a world-wide character.

Delegates attending such conferences must be formally accredited by credentials that confer full powers, or authorize them to represent their Governments without restrictions, or give the right to sign the Final Acts.

The regulations are drafted without a preamble containing a list of participating countries; they contain a statement that they are annexed to the Telecommunication Convention; and they are signed in a single copy which remains

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with the inviting Government or in the ITU archives as the case may be, certified copies being delivered to all Members.

Amendments to the regulations made by administrative conferences appear as final acts, either in the form of amended appendices to the regulations concerned or of a partial revision of the main body of the regulations. Such final acts are signed in a single copy, certified copies being delivered to Members. They contain a proviso that Members must inform the ITU Secretary-General of their approval and that he in turn will communicate this information to the membership.

As the regulations and amendments to them complete the International Telecommunication Convention, it would seem that they should be regarded as being part of a "constituent instrument" for the purposes of article 4.

II. Regional arrangements

(a) Under article 7 of the Montreux Convention

Under article 7 of the Montreux Convention regional administrative conferences may be called to consider telecommunication questions of a regional nature but the decisions must not conflict with the interests of other regions or the prescriptions of the administrative regulations. The expenses are a charge against all the Members of the region concerned whether participating or not.

The final acts of these conferences have been entitled variously "agreement" or "special agreement". They are usually drawn up as treaties with a preamble referring to article 7 of the Montreux Convention (or the equivalent article in earlier conventions) and listing the participating countries which are referred to as "contracting administrations". The final acts are signed in a single copy which may be deposited with the host Government or the ITU, as the case may be. Certified copies are sent to the signatory Governments which must notify their approval to the Secretary-General of the ITU.

It would seem logical that regional agreements made by conferences convened under article 7 of the Montreux Convention (or similar articles in earlier conventions) should be considered, for the purposes of article 4, as being "adopted within" the ITU.

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(b) Under article 45 of the Montreux Convention

Article 45 of the Montreux Convention gives Members the right to conclude regional agreements on telecommunication questions susceptible of being treated on a regional basis provided that they are not in conflict with the convention. Such agreements are usually drawn up in very much the same way as the instruments mentioned in the preceding paragraph. They have been called "regional agreement", "regional arrangement" or "convention" or "regional convention". Reference is usually made to the fact that the conference has been convened or the agreement made by virtue of the provisions of article 45 (or the equivalent article in earlier conventions). In some cases ratification rather than approval is required. The conferences are sometimes serviced by the ITU Secretariat but the expenses are charged against the participants only and not against the membership of the region as a whole. The custom has been, where ratification is required, for the instruments to be deposited with the host Government which informs the ITU Secretary-General. Where only approval is required, however, signatories notify the Secretary-General direct.

There is so much variation in the texts of agreements reached under article 45 that it cannot be determined of them as a category whether or not they can be held to be "adopted within" the ITU. Rather, each agreement and its surrounding circumstances would have to be examined to see to what extent it was the intention of the parties that the agreement be subject to the rules of the ITU.

(c) Other regional agreements

There seems to be only one regional agreement in the telecommunication field that does not fall within the two preceding categories since no reference is made in it to the relevant articles of the International Telecommunication Convention. Under its terms the inviting Government receives acceptances and there is no provision that these be communicated to the ITU. The instrument appears, however, in the official list of acts of the Union published by the ITU.

III. Special agreements on telecommunication matters

By article 44 of the Montreux Convention the Members of the Union reserve the right to make special agreements on telecommunication matters which do not concern other Members, provided they do not conflict with the terms of the convention or of the regulations as far as concerns harmful interference to the radio services of other countries.

The right to make special agreements is qualified by the regulations.

It is recognized in the telegraph and telephone regulations that derogation from their provisions may be made by special arrangements.

The radio regulations prescribe that special arrangements may be made as follows:

(i) By two or more Members regarding sub-allocation of bands of frequencies to the appropriate services of the participating countries.

(ii) By two or more Members regarding assignment of frequencies below or above those covered by the table of frequency allocations to stations in one or more specific services provided all Members affected have been invited to the conference.

(iii) By Members on a world-wide basis regarding assignment of frequencies covered by the table of frequency allocations to stations participating in a specific service provided that all Members are invited to the conference.

(iv) Between neighbouring countries regarding stations operating on frequencies above 41 MHz to be located in the territory of one country and intended to improve the national coverage of the other country.

In cases (i)-(iii) the ITU Secretary-General must be informed in advance of the intention to convene the conference. In all cases contents of the arrangements made must be communicated to him so that he may inform the membership as a whole.

The radio regulations also provide that special arrangements shall determine the conditions of operation of stations in the fixed and mobile services in order to protect those services from harmful interference, having regard to the difficulties of operation of stations of the maritime mobile service.

Provision has also been made in various regional agreements for further special regional arrangements.

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It is felt that each special agreement and its surrounding circumstances would have to be examined to see to what extent it was the intention of the parties that the agreement be subject to the rules of the ITU.

(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, pp. 28-33))

World Health Organization

...article 4 makes the application of treaties which are constituent instruments of an international organization or are adopted within an international organization subject to the relevant rules of the organization. It is therefore only when an organization has no rule relevant to a given case that the draft articles would apply. In other words, in the case of a treaty which is the constituent instrument of an international organization or is adopted within it, the provisions of the draft articles have only a secondary application.

(Letter of 13 July 1967 from the Head of the Legal Office of the World Health Organization (A/6827/Add.1, p. 42))

See also *ibid.*, quoted *infra* under part II, section 2.

Part II

PART II - CONCLUSION AND ENTRY INTO FORCE OF TREATIES

MEMBER STATES

France

See XXIInd session, 969th meeting, para. 2, quoted *supra* under Comments and observations on the draft articles as a whole.

Netherlands

A dominant place in the law of treaties was naturally occupied by rules concerning the consent of the State to be bound. A number of those rules, including those on reservations, were grouped in articles 10 to 20....
(Mr. Tammes, XXIst session, 903rd meeting, para. 13).

Nigeria

See XXIInd session, 978th meeting, para. 11, quoted *supra* under Comments and observations on the draft articles as a whole.

SECTION 1 - CONCLUSION OF TREATIES

MEMBER STATES

Turkey

See XXIst session, 907th meeting, para. 15, quoted *supra* under article 1.

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ARTICLE 5

Capacity of States to conclude treaties

MEMBER STATES

Australia

As a federal State, Australia would also have to give closer study to article 5 (2) dealing with the treaty-making capacity of the States members of a federal union.
(Sir Kenneth Bailey, XXIInd session, 981st meeting, para. 13)

Bulgaria

See XXIst session, 910th meeting, para. 7, quoted *infra* under article 12.

Canada

As a number of delegations had already pointed out, article 5, on capacity to conclude treaties, appeared to be incomplete. It ignored such elements as recognition and State responsibility concerning performance. Moreover, the use of so fundamental a term as "State" in the articles in this part of the draft did not seem to be wholly consistent.
(Mr. Gotlieb, XXIInd session, 976th meeting, para. 6)

Ceylon

...in his delegation's view the draft did not deal adequately with the problem of treaty-making capacity. It might, indeed, be doubted that international law

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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 dominions, 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 subdivision was subordinate consented to the latter's treaty-making capacity, the capacity existed whenever another entity was willing and able to conclude with that subdivision 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 made little sense, therefore, to make the possession of legal personality a prerequisite 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.

(Mr. Sanmuganathan, XXIst session, 908th meeting, para. 5)

Cuba

Article 5, which dealt with the important question of the capacity of States to conclude treaties, should delve further into the meaning of the word "State" in that context. Only States which enjoyed full internal and external sovereignty could possess a capacity to conclude treaties. A treaty concluded between parties, one of which enjoyed only limited and formal sovereignty, should be deemed to be void under the law of treaties, since the party that was in an inferior position legally lacked capacity to be bound. There could be mutual consent only when both parties enjoyed full contractual freedom.

(Mr. Alvarez Tabio, XXIInd session, 974th meeting, para. 24)

Czechoslovakia

/His delegation/ also considered that the existence in the future convention of an article specifying that every State possessed the capacity to conclude treaties was essential. That would reflect the principle of international law according to which all States enjoyed sovereign equality, had equal rights and duties, and were equal members of the international community, notwithstanding differences of an economic, social, political or other nature. That principle had been adopted unanimously by the 1966 Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (see A/6230).
(Mr. Potocny, XXIst session, 906th meeting, para. 11)

The right of a State to conclude international treaties was one aspect of State sovereignty. Indeed, jus contrahendi was considered a fundamental right of the State, and the international treaty was the principal source of the juridical regulation of relations among States. Hence the importance of completing the codification of the law of treaties.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 18)

See also ibid., para. 28, quoted infra under article 12.

Dahomey

See XXIst session, 912th meeting, para. 9, quoted infra under article 12.

Ecuador

See XXIInd session, 981st meeting, para. 26, quoted supra under article 2.

Mongolia

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.
(Mr. Khashbat, XXIst session, 911th meeting, para. 32)

Poland

See XXIst session, 913th meeting, para. 10, quoted *supra* under Comments and observations on the draft articles as a whole.

Poland, which had always stood up for the principle of the universality of participation in international conferences on the grounds that the existence of a State was independent of its recognition by third States, considered that, by virtue of the equality of States, any State was entitled to participate in general treaties of concern to it which might have a bearing on its interests. It considered that that right should be of an objective kind, and that it should be expressly stated in the future convention. In that respect, the provision of article 5 to the effect that every State possessed capacity to conclude treaties was insufficient, since it did not prevent the application of the contrary principle - which had of late become widely practised - of the limitation of participation in international conferences on treaties of a general kind; and it did not eliminate the injustice that would be involved in the adoption by a majority of contracting States of a clause barring some States from participation in the treaty that had been concluded. In that respect, the solution adopted by the International Law Commission was basically inimical to codification, for it was contrary to the fundamental principle

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of the equality of States; and the Polish delégation would like to draw the Sixth Committee's attention to that point, the position on which was retrograde by comparison with the 1962 text.
(Mr. Osiecki, XXIInd session, 977th meeting, para. 15)

Sierra Leone

See XXIst session, 911th meeting, para. 44, quoted *supra* under Comments and observations on the draft articles as a whole.

Sweden

Article 5 (2) attributed treaty-making capacity to the constituent members of federal States within the limits laid down by the federal constitution. He wondered, however, whether it was reasonable exactly to equate the capacity of the State under international law with that under the federal constitution and to expect foreign States fully to master the intricacies of such constitutions.
(Mr. Blix, XXIInd session, 980th meeting, para. 11)

Ukrainian Soviet Socialist Republic

His delegation attached special importance to article 5 (1), which embodied the principle of the sovereign equality of States, one of the main features of contemporary international law. Under the provision in question, any State had the right to take part in the preparation of general rules governing treaties and, consequently, in the preparation of the future convention on the law of treaties. The Ukrainian delegation therefore deplored the fact that the Sixth Committee had not succeeded in doing anything positive in that regard: what amounted in practice to depriving certain States of their right to be parties to general treaties obviously constituted discrimination, and it was to be hoped that the conference

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would take care to keep out all such discriminatory provisions. Indeed, the draft should contain a provision whereby general treaties were open to accession by all States. Again, the very nature of many general treaties made it a duty of States to accede to them, and it was therefore important that all of them should be offered the opportunity to take part in the conference.
(Mr. Yakimenko, XXIInd session, 978th meeting, para. 17)

... Article 5, establishing the capacity of every State to conclude treaties, including States members of a federal union if such capacity is admitted by the federal constitution, is based on the principle of the sovereign equality of States.
(Letter of 27 June 1967 from the Ministry of Foreign Affairs (A/6827, p. 24))

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

...article [5] limits the capacity to conclude treaties to States - including members of a federal union subject to certain qualifications. At an earlier stage, the International Law Commission considered, concurrently with the category of federations or other unions of States, the capacity of "dependent States" to enter into treaties. Thus it had been suggested that a dependent State may possess international capacity to enter into treaties, *inter alia*, where "the other contracting parties accept its participation in the treaty in its own name separately from the State which is responsible for the conduct of its international relations". It is not entirely clear whether the omission of a reference to dependent States in article 5 precludes dependent States from becoming parties to international treaties. As far as FAO is concerned, Associate Members which by definition are Territories which are not responsible for the conduct of their international relations (article II-3 of the Constitution) can be admitted to FAO and thereby assume certain rights and obligations provided for in the Constitution.

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Moreover they can also become parties to conventions and agreements adopted under article XIV of the Constitution. Although in both cases the instruments of acceptance are submitted by the Member Nation that is responsible for the conduct of the international relations of the Territory concerned, the exercise of the rights and duties connected with associate membership is vested in such Associate Member as far as membership in FAO is concerned. Similarly, Associate Members may be in a position to exercise rights and carrying out obligations under a convention or agreement if by virtue of constitutional arrangements between an Associate Member and the country responsible for its international relations the former has been endowed with the authority to become a party to international treaties. (See article II, paragraphs 3-4, article XIV, paragraph 5 of the Constitution, rule XXI, paragraphs 1-a (ii), b, c, and 3 of the General Rules of the Organization, paragraphs 7, 14-a (ii) of the Principles and Procedures Governing Conventions and Agreements Concluded under Articles XIV and XV of the Constitution.) In view of the provisions of article 4 of the draft articles, the special status of Associate Members within FAO would not seem to present any particular problems; the above observations should therefore not be construed as a suggestion for reintroducing specifically the concept of "dependent States" in the draft articles.
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, pp. 21-22))

International Telecommunication Union

Under the Monteaux Convention the Members of the Union are:

(i) Any country or group of territories listed in annex 1 to the Convention. In this list are included States members of federal unions and groups of territories.

(ii) Countries not listed which become Members of the United Nations and accede.

(iii) Any sovereign country not listed which accedes after its application for membership has been approved by two thirds of the Members of the Union.

Provision is made for associate membership in which may be included countries, territories and groups of territories the application of which is approved by a

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majority of the Members and any Trust Territory on behalf of which the United Nations has acceded to the convention and which is sponsored by the United Nations. Associate Members have the same rights and obligations as Members except the right to vote.
(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, p. 33))

ARTICLE 6

Full powers to represent the State in the conclusion of treaties

MEMBER STATES

Czechoslovakia

The provision of paragraph 1 (b) /of article 6/ should be made more precise in the sense that the intention of the respective States to dispense with full powers must be obvious.
(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 9))

Ecuador

See XXIst session, 914th meeting, para. 19, quoted *infra* under article 11.

Japan

See document A/6827 and Corr.1, quoted *infra* under article 7.

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Part II, section 1, article 6

Tunisia

As to the conditions for representation of a State in the conclusion of international treaties, it might have been better, rather than make a restrictive list, as was done in article 6, to enumerate certain conditions as a guide, leaving the details to be settled by the municipal law of each State, since constitutional systems specified almost all the organs competent to conclude treaties.
(Mr. Gastli, XXIInd session, 981st meeting, para. 4)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

Generally speaking, the rules adopted by FAO with regard to full powers and the adoption of instruments are in conformity with the relevant articles of the law of treaties. Both draft amendments to the FAO Constitution and conventions and agreements under article XIV of the Constitution have to be included in the draft agenda of the Conference or Council, as the case may be, and texts have to be circulated well in advance of the opening of the Conference or Council session. Accordingly, Member Governments may be presumed to have taken cognizance of the texts, and no credentials other than those empowering the members of delegations to represent their Governments at the session are required for the purpose of adopting an amendment to the Constitution or a convention or agreement.
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 22))

International Telecommunication Union

Accreditation to ITU plenipotentiary conferences can be given by Heads of State or Government or the Minister for Foreign Affairs. The same persons and the

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Minister responsible for questions dealt with during the conference can accredit delegates to ITU administrative conferences. The Secretary-General of the United Nations may accredit the delegation representing a Trust Territory. The head of a diplomatic mission, or the head of the permanent delegation to the European Office of the United Nations for ITU conferences held in Geneva, may accredit a delegation subject to confirmation prior to signature of the final acts by the Head of State or Government, the Minister for Foreign Affairs or (for administrative conferences) the Minister responsible.

(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, pp. 33-34))

ARTICLE 7

Subsequent confirmation of an act performed without authority

MEMBER STATES

Czechoslovakia

See document A/6827, quoted *infra* under article 44.

Japan

That "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" 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

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State for a certain purpose, he can represent his State for that purpose so long as confirmation on his act is allegedly expected from the competent authority of the State.

It is appropriate, therefore, to delete this article.

(Note verbale of 19 July 1967 from the Permanent Representative to the United Nations (A/6827 and Corr.1, pp. 20, 21))

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The problem of subsequent confirmation of an act performed by a representative of a Member Nation without credentials in the formal sense has arisen in connexion with the signing of, or acceding to, conventions and agreements, for which specific full powers are required. This situation is now regulated by a provision similar to that appearing in article 7 of the law of treaties (rule XXI-4 of the General Rules of the Organization).

(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 22))

ARTICLE 8

Adoption of the text

MEMBER STATES

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

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adoption of the text of a treaty by an international organization pursuant to its inherent powers. Under draft article 8, except for the case provided for in its paragraph 2 when 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 text, however, had to be read in conjunction with 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 any relevant rules of the organization". The application of 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 conventions of the International Labour Organisation. 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 article 4 became even more difficult when the treaty adopted within an international organization was itself, in part, the constituent instrument of a new, wholly independent international organization, with its own rules. He cited the examples of the Articles of Agreement of the International Development Association and of the International Finance Corporation and also the Convention on the Settlement of Investment Disputes between States and Nationals of other States, all of which were instruments that had first been adopted by the Executive Directors of the International Bank for Reconstruction and Development and then circulated to the States members of the Bank for acceptance. It might be possible to argue that the case was covered by 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 article 4 were not only the organization's regular rules but were also all decisions and resolutions binding upon its members. However, his delegation 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 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

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that the provisions of 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.
(Mr. Pinto, XXIInd session, 969th meeting, para. 9)

Czechoslovakia

In paragraph 2 /of article 8/ the term "international conference" ought to be defined more accurately; otherwise misunderstanding might arise as to the applicatio[n] of paragraph 1 and paragraph 2 respectively.
(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 9))

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".
(Note verbale of 19 July 1967 from the Permanent Representative to the United Nations (A/6827 and Corr.1, p. 21))

Netherlands

With regard to the adoption of a multilateral treaty in article 8 (2), his delegation held that a rule providing derogation from the unanimity rule should be applied only in the case of the adoption of general multilateral treaties. In all

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other cases, the decision should be left to the conference itself, as it might be desirable, especially in the case of regional treaties, that all the negotiating States should accept the drafted rules.
(Mr. Kooijmans, XXIInd session, 977th meeting, para. 6)

Yugoslavia

In view of the fact that in some cases the instruments convening international conferences specify the procedure for the adoption of texts by the conference, the Yugoslav Government considers that in article 8, paragraph 2, the words "when the conference is convened or at the conference itself" should be added after the words "they shall decide".
(Letter of 28 June 1967 from the Chief Legal Adviser of the Ministry of Foreign Affairs (A/6827, p. 28))

SECRETARY-GENERAL OF THE UNITED NATIONS

Paragraph 2 of draft article 8 is not in accordance with the practice of United Nations conferences, under which the adoption and amendment of the rules of procedure, including the rules relating to voting, normally takes place by a simple majority of representatives present and voting. This difference, however, will not create any difficulty if, as suggested above, article 4 is broadened to recognize the possibility that some international organizations have the authority to adopt special rules at variance with the provisions of the draft articles in regard to treaties concluded under their auspices.
(A/6827/Add.1, pp. 14-15)

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SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The principle of adoption of a text by a two-thirds majority, as reflected in article 8, paragraph 2, of the draft articles, has also been incorporated in articles XIV and XX of the FAO Constitution but the criteria for calculating that majority are not uniform in all cases. Thus, amendments to the Constitution can be adopted by the Conference by a two-thirds majority of the votes cast, provided that such majority is more than one half of the Member Nations of the Organization (article XX-1); conventions and agreements may be adopted by the Conference by a two-thirds majority of the _votes cast_ (article XIV-1), while the majority required for adoption by the FAO Council is two thirds of the _membership_ of the Council (article XIV-2).

(_Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 23)_)

See also _ibid._, quoted _supra_ under article 6.

International Telecommunication Union

The only cases where a special majority is specifically required under ITU rules are:

(a) In connexion with the admission to membership of countries not Members of the United Nations; in this case the approval of two thirds of the Members of the Union is required;

(b) In connexion with the determination of the agenda of conferences, their date and place of meeting and changes thereto.

(_Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, p. 34)_)

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ARTICLE 9

Authentication of the text

SECRETARY-GENERAL OF THE UNITED NATIONS

...article /9/ again shows the need for leaving some flexibility to international organizations in regard both to the procedures of their organs and to those of conferences under their auspices. There are cases in which, without any demonstrable agreement of the States participating in the drawing up of the treaty in accordance with sub-paragraph (a), and also without the signatures of representatives in accordance with sub-paragraph (b), the establishment of the authentic text is necessarily left to the secretariat of the conference. The commentary refers to a comparable case where authentication takes the form of a resolution of an international organization or of an act of authentication by a competent authority of an organization. Even where there is a signing ceremony at the end of a conference or of the deliberations of an organ of an international organization, reasons of time frequently prevent representatives from having any opportunity to verify the text, and in that case also the real authentication of the text is performed by the secretariat. But draft article 9 creates no difficulty provided that draft article 4 is altered as suggested above.
(A/6827/Add.1, p. 15)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The rule governing authentication of conventions and agreements is laid down in article XIV-7 of the FAO Constitution, which is at variance with article 9 of the draft articles.
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 23))

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International Labour Organisation

See document A/6827/Add.1, quoted *supra* under Comments and observations on the draft articles as a whole.

ARTICLE 10

Consent to be bound by a treaty expressed by signature

MEMBER STATES

Belgium

Article 10 (2) provides that the initialling of a text constitutes a signature of the treaty, i.e. the consent of a State to be bound by the treaty, when it is established that the negotiating States so agreed.

It was obviously thought desirable to provide a text to cover the practice referred to in paragraph (4) of the commentary on the article, concerning initialling by a Head of State, Prime Minister or Minister of Foreign Affairs.

Nevertheless, the phrase "when it is established that the negotiating States so agreed" could, in practice, give rise to serious difficulties and cast doubt on the actual effect of the initialling.

The phrase "it is established" is, after all, very general. It excludes no method of proof and might conceivably include alleged consent, based on conversations or on any source whatsoever, in certain specified circumstances.

In order to meet this objection it might be advisable to amend the phrase to read "it is expressly established".

(Letter of 19 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 4))

Part II, section 1, article 10

Canada

See XXIInd session, 976th meeting, para. 4, quoted *infra* under article 62.

Chile

See XXIst session, 912th meeting, para. 29, quoted *infra* under article 11.

Czechoslovakia

It becomes apparent from the comparison of the provisions contained in article 10, paragraph 1 (b), and that of article 11, paragraph 1 (b), that cases may occur where it has neither been ascertained that the States agreed to be bound by a treaty nor did they agree that ratification would be required. In that respect the draft appears to be incomplete. It would be useful to express in article 10 the presumption that in the cases not covered by the provisions of article 11 and of article 12 respectively, the State is bound by the signature of a treaty. The following wording of article 10 is suggested:

> "1. The consent of the State to be bound by a treaty is expressed by the signature of its representative with the exception of cases to which article 11 and article 12 apply."
>
> 2. (no change).

It is suggested that the provision contained in article 11, paragraph 1 (d), be deleted as superfluous as it is covered by the provision in paragraph 1 (b), of the same article.

(Note verbale of 15 August 1967 from Chargé d'Affaires ad interim to the United Nations (A/6827, p. 9))

Ghana

See XXIst session, 905th meeting, para. 12, quoted *infra* under article 11.

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Sweden

Article 10, concerning consent by signature, and article 11, concerning consent by ratification, acceptance and approval, appeared to be the outcome of a compromise that had achieved unanimity at the expense of legal clarity. As drafted, they merely recognized that the parties to an agreement were free to determine whether signature or ratification should be the means of expressing their consent to be bound. For cases where the parties had not specified their preference in the matter, Sweden supported the inclusion of a residuary rule whereby signature would be deemed to be the method of expressing consent to be bound.
(Mr. Blix, XXIInd session, 980th meeting, para. 12)

See also ibid., para. 12, quoted infra under article 12.

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The practice of FAO is reflected in paragraph 4 of the Principles and Procedures governing Conventions and Agreements. Thus, both the traditional system, i.e. that of signature, signature subject to ratification, and accession, as well as the simplified system of acceptance by deposit of an instrument of acceptance are being applied with respect to conventions and agreements concluded under article XIV of the Constitution.
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 23))

ARTICLE 11

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

MEMBER STATES

Canada

See XXIInd session, 976th meeting, para. 4, quoted *infra* under article 62.

Chile

...he thought that draft articles 10 and 11, concerning consent to be bound by a treaty as expressed, respectively, by signature and by ratification, should have noted that treaties in simplified form did not require ratification, and should have included rules to cover unratified treaties and treaties that did not stipulate whether or not they should be ratified.
(Mr. Vargas, XXIst session, 912th meeting, para. 29)

Costa Rica

It was debatable whether the text under consideration had been improved by the omission of the stipulation, contained in article 12 (1) of the 1962 text, that "Treaties in principle require ratification unless they fall within one of the exceptions provided for in paragraph 2 below". A State which contracted international legal obligations under a treaty was performing an act of sovereignty, which to a certain extent restricted the future exercise of its sovereign rights. Only the organs through which national sovereignty was exercised could perform such acts and impose such restrictions. In some cases - for instance, when the exercise of sovereignty was entrusted to a monarch - ratification might not be necessary.

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Countries with a democratic system of government, however, considered that sovereignty was vested in the nation - a group of people united under a government chosen by all. It was therefore essential that public treaties should be submitted to the organs representing the people for their approval. Article 5 of the Convention on Treaties (Havana, 1928) stated that treaties were obligatory only after ratification by the contracting States, even though that condition was not stipulated in the full powers of the negotiators or did not appear in the treaty itself. Article 6 of the Convention specified that ratification must be made in writing pursuant to the legislation of the State concerned. The provisions in the draft articles which dealt with ratification should be revised, in respect of the distinction between the concept of ratification in international law and the corresponding concept in constitutional law, so that those States in which parliamentary action was required for the ratification of international treaties would be able to support the convention.
(Mr. Tinoco, XXIInd session, 982nd meeting, para. 48)

Czechoslovakia

See document A/6827, quoted *supra* under article 10.

Ecuador

...draft article 11 set out the general rule that ratification was not necessary to render a treaty binding unless the need for ratification was established expressly in the treaty itself or the intention to require ratification was deduced by any of the means set out in that draft article. His delegation not only found it difficult to co-ordinate that provision with draft article 6, sub-paragraph 2 (*c*), whereby representatives accredited by States to an international conference or to an organ of an international organization were empowered only to adopt the text of a treaty, but it was concerned about the wide reach of the rule.
(Mr. Alcívar, XXIst session, 914th meeting, para. 19)

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Ghana

...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. His delegation approved the non-comittal 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 the status of 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, paragraph 1, article 11.
(Mr. Van Lare, XXIst session, 905th meeting, para. 12)

Philippines

With reference to article 11 (1) (a), concerning the expression of consent by ratification, he wished to point out that, in Philippine law, all treaties required ratification.
(Mr. Espejo, XXIInd session, 981st meeting, para. 20)

Sierra Leone

...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.
(Mr. Koroma, XXIst session, 911th meeting, para. 45)

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Part II, section 1, article 11

Spain

In the Commission, the proposal that the rule concerning ratification of treaties (draft article 11) should be reversed had prevailed. The Commission had decided that its proper course was simply to set out the conditions under which the consent of a State to be bound by a treaty was expressed by ratification in modern international law.
(Mr. de Luna, XXIst session, 912th meeting, para. 34)

Sweden

See XXIInd session, 980th meeting, para. 12, quoted *supra* under article 10 and *infra* under article 12.

Tunisia

...the Tunisian delegation approved of the wording of article 11 concerning ratification as an expression of a State's consent to be bound by a treaty. The article made it clear that ratification was the rule and non-ratification the exception, which was quite in keeping with Tunisian constitutional practice.
(Mr. Gastli, XXIInd session, 981st meeting, para. 4)

Uruguay

...he pointed out, in connexion with paragraph 1 (a) of article 11, concerning consent to be bound by a treaty that under the domestic laws of his country every treaty or international agreement, irrespective of its nature, had to be submitted to Parliament for ratification, which meant that consent to be bound by a treaty always had to find expression, as far as Uruguay was concerned, in ratification.
(Mr. Ciasullo, XXIInd session, 971st meeting, para. 5)

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SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

See document 6827/Add.1, quoted supra under article 10.

International Telecommunication Union

Ratification is required for signatories to the International Telecommunication Convention: non-signatories may accede. For most other ITU agreements approval only is required.
(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, p. 34))

ARTICLE 12*

Consent to be bound by a treaty expressed by accession

MEMBER STATES

Australia

See XXIst session, 912th meeting, para. 20, quoted supra under Comments and observations on the draft articles as a whole.

* The question of participation in multilateral treaties is included under article 12.

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Brazil

Of course, not all problems had been solved /by the International Law Commission/. For example, the commentary on article 12, which had been extremely difficult to draft, left open the question of whether general multilateral treaties should be regarded as open to participation by every State, or whether the negotiating States should be left free to fix by the provisions of the treaty the categories of States to which it might be open. That was one of the problems that would have to be dealt with by the conference of plenipotentiaries convened to conclude a convention on the law of treaties.
(Mr. Amado, XXIst session, 904th meeting, para. 25)

Bulgaria

/An/ important contribution by the Commission had been article 5 of its draft, concerning the capacity of States to conclude treaties as an inherent right of every State. Unfortunately, the Commission had not succeeded in applying that basic principle to some other pertinent provisions of the draft, such as article 12 dealing with accession. He recalled that in article 8 of the 1962 draft there had been an explicit provision to the effect that every State might become a party to a general multilateral treaty; that rule had been a legal guarantee against the doctrine and practice of discrimination with regard to participation in a treaty. His delegation firmly believed that the fundamental principle of universal accession of all States to general multilateral treaties should be embodied in the convention, because any kind of limitation on a State's treaty-making rights was contrary to the fundamental principles and peremptory norms of modern international law.
(Mr. Yankov, XXIst session, 910th meeting, para. 7)

He wished to stress his delegation's firm adherence to the principle that general multilateral treaties should be open to signature and accession by all States without any discrimination whatsoever. The principle of sovereign equality,

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embodied in article 5 and also in articles 48 and 49, implied such universality, and an explicit provision that every State might become a party to a general multilateral treaty should be included in the draft articles. The application of that principle would lead to the widest possible participation in multilateral treaties, thus increasing their effectiveness as important instruments of international co-operation.
(Mr. Yankov, XXIInd session, 979th meeting, para.4)

The Bulgarian Government notes that the final text of the draft convention proposed by the General Assembly of the United Nations at its twenty-first session no longer includes article 8 of the 1962 draft on the participation of all States in general multilateral treaties.

The absence of such a provision constitutes a set-back to the trend towards the adoption of the principle of universality in respect of the conclusion of and accession to general international treaties. The adoption of this principle would eliminate the possibility of discrimination against certain States which wish to participate in treaties and in international relations in accordance with the principle of the sovereign equality of States and the needs of genuine international co-operation.
(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, pp. 5-6))

Byelorussian Soviet Socialist Republic

The first of /the/ principles /on which agreement had not yet been reached/ was the universality of general multilateral treaties, which should be open to signature by all States, in the interests both of the international community and and of the States parties to them. Any other course of action was inconceivable, not only because it would discriminate against entire peoples, but because general multilateral treaties were concerned with interests common to all States. It was

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natural, therefore, that States that had not originally taken part in the drafting and conclusion of such a treaty should have the opportunity of acceding to it if they wished to do so.
(Mr. Stankevich, XXIst session, 908th meeting, para. 13))

Canada

See XXIInd session, 976th meeting, para. 4, quoted infra under article 62.

Ceylon

...his delegation 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 reformulation 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.
(Mr. Sanmuganathan, XXIst session, 908th meeting, para. 4)

See also ibid., para. 5, quoted supra under article 5.

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Part II, section 1, article 12

Czechoslovakia

The capacity of every State to conclude treaties also covered its capacity to accept a treaty or to accede to it and so to become a party to multilateral treaties dealing with or governing matters involving its legitimate interests. A general multilateral treaty was concluded on behalf of the international community, belonged to that community as a whole and could not be closed to the accession of States which had not participated in the international conference where the treaty was elaborated or which were not members of the international organizations under whose auspices the treaty had been prepared. Any contrary practice constituted discrimination against those States and a flagrant violation of the principle of the sovereign equality of States and the principle of universality. In addition, such an attitude seriously endangered not only peaceful international co-operation but the very objectives for the achievement of which the general multilateral treaty in question had been concluded. Such a discriminatory practice had unfortunately existed for many years, but the codification and progressive development of the law of treaties offered a good opportunity to do away with it and to declare that every general multilateral treaty, i.e., every treaty which concerned general norms of international law or dealt with matters of general interest to States as a whole, was open to participation by all States. Such a provision was not included in the draft articles, but his delegation hoped that the diplomatic conference that would undertake the task of concluding a convention on the law of treaties would remedy that deficiency.
(Mr. Potocny, XXIst session, 906th meeting, para. 12)

...in keeping with the principle enunciated in article 5 (1), it would be advisable to include a provision - possibly in article 12 - that multilateral treaties of a general nature should be open to accession by all States.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 28)

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It is desirable to express in accordance with the provision of article 5, paragraph 1, the principle that multilateral treaties of a general nature be open to the accession of all States. It is suggested therefore that the present wording of article 12 be designated as paragraph 1 and paragraph 2 be added as follows:

> "2. The consent to be bound by a multilateral treaty containing general rules of international law or affecting questions concerning general interests of all States may be expressed by each State by way of accession."

(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 9))

See also *ibid.*, quoted *supra* under article 10.

Dahomey

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 his delegation's 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.

(Mr. Adjibade, XXIst session, 912th meeting, para. 9)

Ghana

In article 12, the Commission had taken current trends in international law into account by deciding not to make 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. His delegation, nevertheless, thought that the international community might have derived some benefit from recommendations on that point.

(Mr. Van Lare, XXIst session, 905th meeting, para. 13)

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Guinea

Multilateral treaties of a general nature must, by their very nature, be universal. That essential characteristic of such treaties must never be lost sight of, lest the great hopes placed in the United Nations should be dashed. All States wishing to participate in treaties and in international relations should be allowed to do so, in keeping with the principles of equality between sovereign States and in order to give real meaning to international co-operation and encourage better mutual understanding.

(Mr. Savane, XXIInd session, 982nd meeting, para. 29)

Hungary

There was,... another important question, that of participation in general multilateral treaties, on which the Commission had formulated no rules because, as explained in the commentary on article 12, its members had been unable to agree on that point. His delegation regretted that it had not been possible to retain at least article 8, paragraph 1, of the 1962 draft, which stated that a general multilateral treaty should be open to all States. It wished to reaffirm that in its view participation in general multilateral treaties should be based on the sovereign equality of States.

(Mr. Prandler, XXIst session, 907th meeting, para. 3)

Article 12 (b) was bound to create discrimination against States when they intended to accede to the treaty but the negotiating States did not agree that such consent might be expressed. Article 12 could have been easily reworded if article 8 of the 1962 draft concerning participation in general multilateral treaties had not been deleted. His delegation strongly deplored that deletion. It was convinced that the conference of plenipotentiaries provided for in General Assembly resolution 2166 (XXI) would give due attention to that anomaly which gravely violated the principle of the sovereign equality of States and undermined the application and the very authority of the law of treaties.

(Mr. Prandler, XXIInd session, 978th meeting, para. 4)

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Iraq

Another serious omission in the draft articles was the failure to deal with the major problem of participation in general multilateral treaties. His delegation shared the opinion expressed by the representatives of Czechoslovakia and the United Arab Republic, among others, that any multilateral treaty, particularly where the 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.
(Mr. Al-Anbari, XXIst session, 913th meeting, para. 7)

Liberia

See XXIst session, 912th meeting, para. 3, quoted *infra* under article 60.

Mali

In /the/ view /of his delegation/, participation in general multilateral treaties should be open to all States without discrimination.
(Mr. Koita, XXIst session, 914th meeting, para. 36)

Mongolia

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 that matter was not mentioned in the draft

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articles, and it would be for the conference of plenipotentiaries to remedy that omission.
(Mr. Khashbat, XXIst session, 911th meeting, para. 34)

...the contemporary practice of international law demonstrated convincingly that non-recognition by particular States was no obstacle to the participation of a given State in general multilateral treaties, and therefore in the preparation of such an instrument on the law of treaties. Furthermore, to bar a non-recognized State from participation in multilateral treaties would be prejudicial to international co-operation. His delegation was sorry that the Commission had not found it possible to include article 8 of the 1962 draft in the final text. If that article was adopted, it would follow that, whenever an international treaty was open for signature or accession, any State might become a party in accordance with the procedure provided in the treaty, whether or not that State was recognized by the other parties to the treaty.
(Mr. Khashbat, XXIInd session, 976th meeting, para. 51)

Poland

Full equality implied universality. It was right that no State whose participation would serve the objectives and purposes of a treaty and whose interest in it was legitimate, should be barred from being a party to it. There was a growing trend towards opening all treaties to all interested States; that trend would ultimately prevail and would dispose of many practical and theoretical difficulties still remaining. Despite arguments to the contrary, the principle of universality in no way affected the freedom of States to select partners in international instruments that they concluded; nor did it prejudge the question of the recognition of States, which had no bearing on the subject. It was therefore regrettable that after having included an article affirming that principle in its

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1962 draft the Commission had later deleted it because of the impossibility of reaching agreement on the subject.
(Mr. Lachs, XXIst session, 913th meeting, para. 12)

...treaties should be considered open for all interested States.

The acceptance of the principle of universality of multilateral law of treaties as an indispensable condition of observing the rule of equality of States will, in the opinion of Poland, by wider use of international law, reinforce the international community and ensure progress in international relations.
(Letter of 3 August 1967 from the Permanent Representative to the United Nations (A/6827, p. 23))

Romania

...the proposed convention should establish the principle of the universality of general multilateral treaties and state explicitly that all States had the right to participate in such treaties. As stated in the commentary on draft article 12, that principle had been fully discussed by the Commission in connexion with articles 8 and 9 of the original draft, and it was regrettable that those articles had been eliminated from the final draft, for universality was essential to the development of international co-operation based on respect for the sovereignty and equality of States.
(Mr. Flitan, XXIst session, 914th meeting, para. 13)

...the convention should make the universality of general multilateral treaties one of its basic rules, by expressly proclaiming the right of all States to become parties to such treaties. The adoption of the principle of universality in the

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codification of the law of treaties would promote the development of international relations, help to reaffirm the prestige and effectiveness of the United Nations, and make a very important contribution to peace.
(Mr. Secarin, XXIInd session, 976th meeting, para. 40)

Sierra Leone

See XXIst session, 911th meeting, para. 45, quoted *supra* under article 11.

Sweden

Article 12, concerning consent by accession, was also more in the nature of a code describing how States might express their intention of making accession a means of signifying binding consent. Like articles 10 and 11, it was of little legal significance.
(Mr. Blix, XXIInd session, 980th meeting, para. 12)

Syria

See XXIst session, 906th meeting, para. 23, quoted *infra* under article 19.

Tunisia

Tunisia was also a little disappointed by the limitations placed in articles 8 and 9 on the principle that multilateral treaties should be open to signature by the greatest possible number of States. That principle could only serve to strengthen the international community; moreover, in view of the attainment of independence by so many nations, the new States should be given the opportunity to become parties to the various treaties in existence.
(Mr. Gastli, XXIInd session, 981st meeting, para. 2)

Part II, section 1, article 12

Ukrainian Soviet Socialist Republic

His delegation regretted that the Commission had not seen fit to affirm the principles of the universality of general multilateral treaties by stating in the draft articles that those treaties were open to all States. That principle was a necessary corollary of that of the equality of States. General multilateral treaties often laid down binding principles of modern law which bound all States. It was therefore unjust to deprive some States of the possibility of participating in the conclusion of the treaty on an equal basis with the others.

The United Nations had long been concerned with the question of the universality of general multilateral treaties, and the principle of universality had been implicitly affirmed in such General Assembly resolutions as 1378 (XIV) on general and complete disarmament, 1576 (XV), 1649 (XVI) and 1910 (XVIII) on nuclear tests, 2028 (XX) on the non-proliferation of nuclear weapons and 2054 (XX) on apartheid, which were addressed to all States without restriction, calling upon them to take certain steps or to become parties to certain agreements. The Committee should therefore take a positive decision on that question.
(Mr. Yakimenko, XXIst session, 905th meeting, paras. 5-6)

See also ibid., para. 17, quoted supra under article 5.

See document A/6827, quoted supra under Comments and observations on the draft articles as a whole.

Union of Soviet Socialist Republics

His delegation regretted that the principle of the universality of the law of treaties was not reflected in the draft articles. One could not draw up a convention on the law of treaties, which was to be observed by all States, and, at the same time, not permit all States to participate in it. The universality of general multilateral treaties was dictated by the needs of the every-day practice

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of international relations. When the most serious problems had been at issue all States had been wise enough to support the regulation of such problems on the basis of universality. He cited as examples General Assembly resolutions 1378 (XIV) on general and complete disarmament, 1576 (XV) and 1665 (XVI) on the prevention of the wider dissemination of nuclear weapons, and 2028 (XX) on the non-proliferation of nuclear weapons, which all contained appeals to all States without limitation. General Assembly resolutions 1598 (XV) and 1978 (XVIII) on apartheid also included appeals to all States. If life itself demanded a universal approach to the solution of world problems, surely international lawyers should oppose the introduction of cold-war policies into international law, which was universal by nature.

Some Western States that opposed the principle of universality incorrectly linked it to questions concerning the recognition of States. All international law experts were agreed, and practice confirmed, that participation in a multilateral treaty did not imply recognition of the States or Governments signing the treaty. For example, the United States, which opposed universality, nevertheless participated in the 1963 Moscow test ban treaty and the 1962 Geneva Agreement on Laos, both of which provided for participation by all States. Moreover, the United States even had bilateral agreements with States which it did not recognize, such as the agreement of 10 September 1955 between the United States and the People's Republic of China on the repatriation of civilians. If the United States participated in such agreements, it could have no logical or legal grounds for opposing the principle of the universality of general multilateral treaties.

(Mr. Khlestov, XXIst session, 910th meeting, paras. 28-29)

Stressing the importance of the principle of the universality of international law, he said that it was essential that all States should be able to adhere to the future convention on the law of treaties. Contemporary international law was not the property of a select group. Indeed, the need for all States to participate in the convention flowed from the broad principles of State sovereignty and equality. Furthermore, it would be illogical to formulate norms of international law applicable to all States while preventing certain States from adhering to them. It

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was for that reason that the Soviet Union delegation deplored the fact that the International Law Commission had not laid down the principle of universality in the text it had presented; it also regretted the absence in the draft of a definition of multilateral treaties. Fortunately, it was still possible to remedy those shortcomings.
(Mr. Kozhevnikov, XXIInd session, 971st meeting, para. 8)

United Arab Republic

...he regretted that the draft before the Committee no longer contained the provision relating to participation in multilateral treaties, which had been included in the 1962 draft. That omission, however, resulting from the dissensions to which the subject had given rise in the Commission, in no way diminished the value of the principle that no State could prevent any other State from taking part in the elaboration of norms of international law.
(Mr. El-Erian, XXIst session, 911th meeting, para. 27)

United Republic of Tanzania

His delegation 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. His delegation had repeatedly criticized that double-dealing policy, which was detrimental to the integrity of the United Nations system and the 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.
(Mr. Maliti, XXIst session, 912th meeting, para. 49)

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Part II, section 1, article 12

Yugoslavia

His delegation regretted that the International Law Commission had been unable to settle the question of participation in general multilateral treaties, which, in his delegation's view, should be open for signature by all States.
(Mr. Šahovic, XXIst session, 907th meeting, para. 23)

...his Government felt most strongly that multilateral treaties should be open to signature by all States. That was in the interest not only of the international community but of all States parties to such treaties. The exclusion of certain States from participation in general multilateral treaties was not only contrary to the principle of the sovereign equality of States, but was also a kind of discrimination which was in contradiction with the Purposes and Principles of the United Nations Charter.
(Mr. Sahovic, XXIInd session, 975th meeting, para. 19)

Guided by the Principles and Purposes of the United Nations Charter, the Government of the Socialist Federal Republic of Yugoslavia wishes to draw attention to its previous view that international treaties should be open to signature by all States.

The reasons for this position of principle are given in the Yugoslav Government's initial comments set out in the report of the International Law Commission - comments which take particular account of the interests of the international community and of the States concerned.
(Letter of 28 June 1967 from the Chief Legal Adviser of the Ministry of Foreign Affairs (A/6827, pp. 27-28))

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Zambia

In the past, most agreements between nations had been relevant only to the conditions in developed countries. Now that more and more developing nations were being admitted to the United Nations, it was right that international law should be more widely based.
(Mr. Chipampata, XXIst session, 912th meeting, para. 18)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

See document A/6827/Add.1, quoted *supra* under article 10.

ARTICLE 13

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

MEMBER STATES

Sierra Leone

See XXIst session, 911th meeting, para. 45, quoted *supra* under article 11.

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

See document A/6827/Add.1, quoted *supra* under article 10.

ARTICLE 14

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

(No comments relating specifically to this article.)

ARTICLE 15

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

MEMBER STATES

Belgium

The text of article 15 should be reviewed in the light of the following considerations:

(1) First paragraph: is the phrase "acts tending to frustrate the object of a proposed treaty" not too restrictive?

If the principle of article 15 is accepted, the article should prohibit not only acts which would frustrate the whole object of a proposed treaty but any act which might prevent it from having the desired effect in matters of any importance.

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(2) That States should be placed under a legal obligation to refrain from certain acts contrary to a treaty from the time of its signature until its entry into force is quite proper. Entry into force in fact enables the obligations included in the treaty to be made retroactive to the date of signature.

The position in the case envisaged in sub-paragraph (a) is different, since the negotiations in question might not be successful.

Unlike the case envisaged in sub-paragraph (b), the legal obligation to refrain from certain acts could not be based on the principle that an obligation which has come into force becomes retroactive, but would be based on the fact that negotiations were in progress.

This is a different and less reliable basis. Moreover, it is dangerously lacking in precision for, by definition, if the negotiations prove fruitless, it will be because the parties had different objects in mind, and the question arises to what type of obligation sub-paragraph (a) would be applicable.

(Letter of 19 July 1967 from the Permanent Representative to the United Nations (A/6827, pp. 4-5))

See also *ibid.*, quoted *infra* under article 22.

Byelorussian Soviet Socialist Republic

It is possible that a State which has entered into negotiations for the conclusion of a multilateral international treaty may, at a particular stage of the negotiations, refuse to continue them. The negotiations may continue among other parties. In this case, it seems clear that the State which has refused to continue the negotiations will, from the time of its refusal, be free of obligations in respect of the object of the treaty. The text of article 15 does not allow for this eventuality.

(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 8))

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Part II, section 1, article 15

China

Another problem arose concerning the obligation of a State not to frustrate the object of a treaty before its entry into force, as provided in article 15. While there was no doubt of the need for such a provision, the obligation, according to article 15 (a), started at a much earlier stage, namely, as soon as a State had agreed to enter into negotiations for the conclusion of a treaty. It was surely over-optimistic to assume that such gentlemanly conduct could always be expected. For example, if the many States that had participated in the negotiations of the Conference for the Reduction and Limitation of Armaments in Geneva in 1932 had stopped their armament race upon their agreement to enter into negotiation, there might have been no Second World War. His Government therefore thought that the provisions contained in article 15 were very premature.
(Mr. Chen, XXIInd session, 976th meeting, para. 34)

Finland

See document A/6827, quoted *infra* under article 23.

Japan

The words "is obliged to refrain from acts tending to frustrate" should be deleted and be replaced by "should refrain from frustrating".
(Note verbale of 19 July 1967 from the Permanent Representative to the United Nations (A/6827 and Corr.1, p. 21))

Netherlands

See XXIst session, 903rd meeting, para. 15, quoted *infra* under part V.

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Part II, section 1, article 15

Spain

The importance of the principle of good faith in international conventional law had been stressed in draft article 15 and other draft articles. The rule pacta sunt servanda, after all, was simply an application of the principle of good faith to intercourse and contracts among nations.
(Mr. de Luna, XXIst session, 912th meeting, para. 35)

Ukrainian Soviet Socialist Republic

His delegation noted with satisfaction that some of the draft articles were new and very timely: for example, article 15, concerning the obligation of a State not to frustrate the object of a treaty prior to its entry into force; article 16, dealing with the formulation of reservations; article 27, which expressed a general rule of interpretation of treaties; and article 30, which provided that a treaty did not create either obligations or rights for a third State without its consent.
(Mr. Yakimenko, XXIInd session, 978th meeting, para. 18)

United States of America

... /Some/ sections of the draft convention are replete with provisions which will result in disputes. To list but a few:

(a) What are "acts tending to frustrate the object of a proposed treaty" under article 15?

.....

(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, p. 12))

SECRETARY-GENERAL OF THE UNITED NATIONS

There are two instances in the practice of the Secretary-General where, before the entry into force of a treaty, instruments of acceptance or accession have been withdrawn by the States concerned. Under sub-paragraph (c) of this draft article, however, instruments once deposited could presumably not be withdrawn, even before the treaty enters into force, and for at least as long as "such entry into force is not unduly delayed". The decision upon the date at which delay in entry into force of a treaty becomes undue may be a difficult matter, upon which a depositary, confronted by a request for withdrawal of an instrument, might have to seek guidance from a competent organ in accordance with article 72, paragraph 2. One way of avoiding the problem would be to modify sub-paragraph (c) so as to allow freedom to withdraw instruments before the treaty enters into force, possibly by modifying the final phrase to read: "...and provided that such consent has not been withdrawn and that such entry into force is not unduly delayed".
(A/6827/Add.1, pp. 16-17)

SECTION 2 - RESERVATIONS TO MULTILATERAL TREATIES

MEMBER STATES

Australia

The articles dealing with reservations also required careful examination - especially the relation between articles 16 and 17.
(Sir Kenneth Bailey, XXIInd session, 981st meeting, para. 13)

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Part II, section 2

Belgium

The general debate in the Sixth Committee had made it very clear that in its consideration of the draft articles the conference would have to deal with a number of knotty problems of substance. In the Belgian view, one such task would be a thorough study of such problems as the matter of reservations.
(Mr. Bal, XXIst session, 917th meeting, para. 3)

Brazil

On certain points, however, there had long been an absence of clear-cut views. He himself, as a member of the International Law Commission, had originally adhered strongly to traditional concepts concerning reservations to treaties having supported the theory of unanimity. Subsequently, however, like Mr. Bartoš, he had come to accept modern rules on that point, as they had emerged following the conclusion of various international instruments. The case of multilateral treaties was another example of the varied views represented in the Commission. Should States be permitted to sign a multilateral treaty concluded by another group of States when their interests prevented them from acceding to all its provisions, so that they could thus bind themselves to all the participating States without establishing a total relationship with the treaty as a whole? He had not agreed with the proposed formulation, and other members of the Commission had expressed misgivings.
(Mr. Amado, XXIst session, 904th meeting, para. 20)

Bulgaria

See XXIst session, 910th meeting, para. 6, quoted *supra* under Comments and observations on the draft articles as a whole.

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Part II, section 2

The Government of the People's Republic of Bulgaria considers that a greater number of States should participate in multilateral treaties, especially those closely affecting their legitimate interests and the interests of the international community. A more flexible system concerning reservations would make it possible for States to achieve wider participation in international treaties and to promote international co-operation on a larger scale in the most varied fields.
(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 6))

Canada

Other articles raised questions which could perhaps be resolved by drafting changes. Articles 16 and 17, for example, dealing with reservations and objections to such reservations, required further clarification. It should be made clear, in article 16 (c) and in related articles on treaties which contained no provisions for reservations, whether a reservation which was incompatible with the object and purpose of a particular treaty had any legal effect in connexion, for example, with the coming into force of a multilateral treaty. Again, in the case of a multilateral treaty containing no provisions for reservations, it should be made clear what were the legal consequences of an objection by one State to a reservation made by another, and whether a treaty relation existed between the reserving State and the objecting State or whether the existence of the treaty relation depended upon the consent of the objecting State.
(Mr. Gotlieb, XXIInd session, 976th meeting, para. 5)

Ceylon

His... observation related to part II, section 2 of the draft articles (Reservations to multilateral treaties). Draft article 16 (Formulation of reservations) retained the traditional rule that a State might formulate reservations, save in the exceptional circumstances enumerated in that article, and he wondered

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whether the time had not come to invert the wording of that rule, in other words, to provide that unless a treaty expressly authorized 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, his delegation agreed with the statement of principles relating to procedures regarding reservations and their legal effects.
(Mr. Pinto, XXIInd session, 969th meeting, para. 10)

Chile

See XXIst session, 912th meeting, para. 27, quoted supra under Comments and observations on the draft as a whole.

Colombia

...he was glad to note that the Commission had avoided the difficulties involved in the question of reservations to multilateral treaties and had succeeded in adopting a flexible formula that constituted an equitable and solidly based solution.
(Mr. Herran Medina, XXIst session, 907th meeting, para. 9)

Czechoslovakia

With regard to the provisions on reservations to multilateral treaties in part II, section 2 (articles 16-20), it would seem advisable, in the interests of the best possible development of treaty relations, to draft article 17 in such a way as to provide that an objection against a reservation should preclude the entry into force of the treaty between the objecting and reserving States only if the objecting State made that intention expressly clear. Generally speaking, the procedure for objections should be similar to that applicable to reservations.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 22)

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France

With regard to reservations, his country's traditional view was one of great caution, inasmuch as reservations were *a priori* prejudicial to the unity of law and the real value of treaties. Furthermore, if the practice became more widespread, negotiators might make less effort to reach a solution acceptable to all concerned. His delegation consequently considered that recourse to reservations should be kept to a minimum. However, it had noted that in recent years international practice and judicial precedents had become more flexible in that regard, and it would therefore study the Commission's proposals - which concerned multilateral treaties only - more thoroughly.
(Mr. Jeannel, XXIst session, 910th meeting, para. 56)

Hungary

See XXIInd session, 978th meeting, para. 2, quoted *supra* under article 2.

Liberia

His delegation 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 in the view that recourse to reservations should be kept to a minimum.
(Mr. Brewer, XXIst session, 912th meeting, para. 4)

Libya

...while articles 16-20 dealt adequately with reservations and their legal effects, some essential amendments were required.
(Mr. El Sadek, XXIInd session, 980th meeting, para. 25)

Part II, section 2

Nicaragua

... /He/ was satisfied with the provisions concerning reservations to treaties.
(Mr. Montenegro Medrano, XXIInd session, 978th meeting, para. 10)

Poland

The Commission, nevertheless, had expressed itself indirectly in favour of the concept of universality by the manner in which it had settled the controversy on the subject of reservations between those who defended the integrity of the treaty and those who stressed the need to attract to it the greatest possible number of States (see articles 16-20 and commentaries). Where conferences drafting a treaty adopted their decisions unanimously the question of reservations did not arise, but inasmuch as international conferences had adopted the principle of the majority vote, it was only logical that States should be allowed to accede to a treaty, even if they rejected one or another of its provisions. By adopting that solution, the International Law Commission had taken a forward step.
(Mr. Lachs, XXIst session, 913th meeting, para. 13)

Romania

The Commission had done wise and realistic work on the question of reservations to multilateral treaties; however, some further adjustments would make the reservations machinery even more flexible and permit the greatest possible number of States to participate in international co-operation. His delegation, as it had stated at previous sessions, considered that an objection to a reservation should not prevent the reserving State from becoming a party to the treaty in relation to the objecting State unless such an intention was expressed by the latter State. A provision to that effect, which his delegation thought should replace draft article 17, paragraph 4 (b), would be more in accord with the needs of international

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relations and the principle of State sovereignty. The International Court of Justice, in its advisory opinion on reservations to the Convention on Genocide, had said that, as no State could be bound by a reservation to which it had not consented, it necessarily followed that each State objecting to it would or would not, on the basis of its individual appraisal within the limits of the criterion of the object and purpose of the Convention, consider the reserving State to be a party to the Convention.
(Mr. Secarin, XXIInd session, 976th meeting, para. 41)

Spain

Draft articles 16, 17 and 18 concerning reservations to multilateral treaties had been among those most discussed by the Commission. There were two conflicting principles: the traditional principle of the integrity of the convention, which required unanimity; and the more modern principle, which was to obtain the widest possible universality for the greater part of the treaty if not for the whole treaty, in those cases in which, as the International Court of Justice had said, the reservation was compatible with the object and purpose of the convention. In that way minorities were safeguarded, and a wider acceptance of the convention was possible.
(Mr. de Luna, XXIst session, 912th meeting, para. 36)

Tunisia

Tunisia also supported articles 16-20, dealing with such matters as the formulation and acceptance of reservations, objections to reservations and the legal effects of reservations. In those articles the International Law Commission had devised a flexible system whereby reservations to multilateral treaties were acceptable if they were compatible with the object and purpose of the treaty.
(Mr. Gastli, XXIInd session, 981st meeting, para. 5)

Part II, section 2

United Kingdom

See XXIst session, 908th meeting, para. 26, quoted *supra* under Comments and observations on the draft articles as a whole.

.../his delegation/ would have to consider with especial care articles 16 to 20 (Reservations to multilateral treaties). Article 16 on formulation of reservations gave great weight to the test of the compatibility of the reservation with the object and purpose of the treaty, but that was a test of which there was little experience in State practice and which was subjective in its content and uncertain in its application. In addition, there were unanswered question as to the relationship between article 16 and article 17 on acceptance and objection to reservations.

(Mr. Darwin, XXIInd session, 967th meeting, para. 4)

United States of America

Section 2, containing articles 16 through 20 regarding reservations to multilateral treaties, establishes a system which has both advantages and disadvantages. The flexible system advocated by the International Law Commission for dealing with reservations to multilateral treaties in a world of numerous States with widely variant social, political and economic systems permits a large degree of tolerance for accommodating the special positions which may result from those variances. There may be a question, however, whether the general applicability of the system advocated would be appropriate in all circumstances. This could become a serious question since several provisions in articles 16 and 17 seem to inhibit negotiators from specifying procedures and other requirements regarding the acceptability of reservations.

The relationship between articles 16 and 17 is confusing, particularly in view of the opening phrase of paragraph 4 of article 17, which refers only to the preceding paragraphs of that article. That limited reference and the wording of article 17 as a whole give rise to a question whether the prohibitions in article 16 are applicable to the provisions of article 17, especially paragraphs 4 (a) and 4 (c) of the latter. In view of this situation it seems desirable to combine the major requirements of articles 16 and 17 in a single article.

Several provisions in the two articles should also be amended.

The rule in sub-paragraph (b) of article 16 - that where a treaty authorizes specified reservations no other reservations can be made - may be too rigid. It is very difficult - if not impossible - for negotiators to anticipate all the reservations that may be necessary for particular States to become parties to a treaty, and in many instances the essential purpose of including such a provision may, accordingly, be to facilitate reservations with respect to certain provisions of the treaty but not to exclude reservations to other provisions. It is believed that the rule in sub-paragraph (b) would be found in the course of time to be more of an impediment than an aid in the drafting, bringing into force and application of treaties, and should therefore be deleted.

The words "object and purpose" in sub-paragraph (c) of article 16 and in paragraph 2 of article 17 are, as the Commission recognized, highly subjective. Reliance solely upon these words is especially inadvisable because of the uncertainty as to whether or not they encompass the "nature and character" of the treaty. The commentary on paragraph 4 (d) of article 16 cites the advisory opinion of the International Court of Justice on the Genocide Convention, in which the Court stressed the importance of the character of the treaty involved. The United States suggests, accordingly, that the phrase "object and purpose" be replaced by "character and purpose". At the same time, the "limited number" criterion in paragraph 2 of article 17 seems to ignore the character of the treaty involved. A treaty may involve a large number of States and still be of such a character that a reservation would be permissible, only if accepted by all of the parties. Accordingly, it is suggested that the reference to the limited number of negotiating States be omitted.

In paragraph 4 both sub-paragraphs (a) and (c) would seem to prevent the inclusion in a treaty of a provision specifying that any reservation or a specified reservation would be effective only after it had been accepted by a given number of parties. Paragraph 5 of article 17 would seem to inhibit the negotiating States from providing in the treaty itself for a period shorter or longer than twelve months. It would seem desirable to provide for variations if the treaty concerned so permits.

(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, pp. 3-5))

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Venezuela

Section 2 of part II of the draft articles, on reservations to multilateral treaties, was intelligently presented but would probably give rise to considerable dispute. Although the so-called Pan-American rule had definitely superseded the traditional "unanimity" system, reservations could still be open to reasonable doubt, as, for example, in the case of a reservation which was considered incompatible with the object and purpose of the treaty (article 16 (c)); the implied authorization of a reservation in the treaty itself (article 17, para. 1); the situation where there was a limited number of negotiating States (article 17, para. 2); and the legal effect of a reservation when there was an objection to it but the parties agreed to continue to be bound by the rest of the treaty (articles 17 and 19).
(Mr. Molina, XXIst session, 914th meeting, para. 2)

Yugoslavia

Although reservations limit the effects of international treaties, the international community is resorting to them more and more frequently. In fact, a system of reservations consistent with the purpose of the treaty helps to strengthen international relations, for in certain circumstances it enables States to accede to international treaties when they would not otherwise do so. Moreover, the application of reservations is in conformity both with democratic ideas and with respect for the principle of the sovereign equality of States.

The Government of the Socialist Federal Republic of Yugoslavia therefore considers most useful the provision contained in draft article 18, paragraph 1, which is intended to define clearly the position of each contracting party with regard to the acceptance or the formulation of objections to a reservation.

In this connexion, the Yugoslav Government believes that with regard to the withdrawal of a reservation, dealt with in article 20, paragraph 2, it would be more important to provide that a withdrawal would become operative only when a reasonable interval had elapsed after notice of it had been received, and this

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interval could be specified more clearly. Here the need is not only to adapt internal law to the changed situation, but also to regulate the rights and duties resulting from the formulation or the withdrawal of the reservation in question. (Letter of 28 June 1967 from the Chief Legal Adviser of the Ministry of Foreign Affairs (A/6827, p. 28))

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The FAO Constitution does not contain any provision permitting or prohibiting reservations. Since a State wishing to make a reservation to the Constitution would have to do so in applying for membership, the question of acceptance of such reservation would - if it did arise - presumably be decided by the Conference when it examines the application for membership; this would also be in line with article 17, paragraph 3, of the draft articles. Of course, the Conference could also, in accordance with article XVI of the Constitution, refer to the International Court of Justice the question of admissibility and/or the legal effects of such reservations.

The question of reservations to conventions and agreements concluded under article XIV of the Constitution is regulated by paragraph 10 of the Principles and Procedures governing Conventions and Agreements. The practice of the Organization in this respect has been communicated to the United Nations by a letter dated 29 March 1963.
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, pp. 23-24))

International Telecommunication Union

The general regulations annexed to the Montreux Convention contain the following provision "745: However, if any decision appears to a delegation to be

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of such a nature as to prevent its Government from ratifying the convention or from approving the revision of the regulations, the delegation may make reservations, final or provisional, regarding this decision."

It has been the practice for all telecommunication conventions since that of Madrid (1932) to incorporate reservations made at the time of signature in a final protocol which has been signed by all the parties. Present practice is to refuse instruments of accession containing reservations.

It is provided in the regulations and amendments thereto that should an administration make reservations about the application of any provision, no other administration shall be obliged to observe that provision in its relations with that particular administration.

Practice varies as regards regional and special agreements. In a few cases there is a final protocol containing reservations, signed by all the parties. There are no reservations to most of these treaties, however, and nearly all prescribe that accession by non-signatories must be made without reservation. (Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, pp. 34-35))

World Health Organization

WHO also has some observations to make on the draft articles concerning reservations. No comment is required on the formulation of reservations, their acceptance, the procedure or their legal effects in the case of regulations which WHO, under article 21 of its Constitution, is authorized to adopt. Article 22 of the Constitution, and the provisions of regulations Nos. 1 and 2 adopted within WHO, contain specific provisions concerning reservations, so that, in accordance with draft article 4, the provisions on reservations in the draft articles are inapplicable. This does not apply to the conventions or agreements covered by article 19 of the Constitution, which the Health Assembly also has authority to adopt, because there is no provision in the Constitution dealing with reservations to those conventions or agreements. Although no such text has yet been adopted, the likelihood is that, in view of the absence of constitutional provisions, the

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relevant draft articles would be applicable to reservations to such conventions or agreements. Nevertheless, without anticipating what attitude the Health Assembly might take, it can be assumed that such conventions or agreements would contain provisions concerning reservations and the procedure for the acceptance of reservations would be similar to that laid down in the regulations. This procedure does not leave it to the individual States to accept or object to a reservation express or impliedly, as stipulated in draft article 17 (4), but makes the Health Assembly responsible for deciding on the validity of any reservations formulated, its decision being binding on member States, irrespective of how they voted on any particular reservation.

(Letter of 13 July 1967 from the Head of the Legal Office of the World Health Organization (A/6827/Add.1, p. 43))

ARTICLE 16

Formulation of reservations

MEMBER STATES

Australia

See XXIInd session, 981st meeting, para. 13, quoted *supra* under part II, section 2.

Canada

See XXIInd session, 976th meeting, para. 5, quoted *supra* under part II, section 2.

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Ceylon

See XXIInd session, 969th meeting, para. 10, quoted *supra* under part II, section 2.

Denmark

See document A/6827, quoted *infra* under article 17.

Finland

While the results of the Commission's work were very satisfactory indeed, there were several provisions which would undoubtedly profit from further consideration. To cite one example only, article 16 (*c*) left unanswered the question when was a reservation incompatible with the object and purpose of the treaty in question. Such defects should be corrected fairly easily during the forthcoming conference. (Mr. Broms, XXIInd session, 980th meeting, para. 46)

Japan

See XXIst session, 911th meeting, para. 3, quoted *supra* under Comments and observations on the draft articles as a whole.

...in respect of article 16 (*c*), concerning the formulation of reservations, it could well be asked what kind of reservations should be regarded as incompatible with the object and purpose of a particular treaty.
(Mr. Togo, XXIInd session, 981st meeting, para. 37)

See document A/6827 and Corr.1, quoted *infra* under article 62.

Spain

See XXIst session, 912th meeting, para. 36, quoted *supra* under part II, section 2.

Ukrainian Soviet Socialist Republic

See XXIInd session, 978th meeting, para. 18, quoted *supra* under article 15.

In article 16 of the draft articles the question of reservations finds an appropriate solution.
(Letter of 27 June 1967 from the Ministry of Foreign Affairs (A/6827, p. 24))

United Kingdom

See XXIInd session, 967th meeting, para. 4, quoted *supra* under part II, section 2.

United States of America

... [Some] sections of the draft convention are replete with provisions which will result in disputes. To list but a few:

.....

(b) When is a reservation "incompatible with the object and purpose of the treaty" under article 16?
(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, p. 12))

See also *ibid.*, quoted *supra* under part II, section 2.

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Venezuela

...he wondered whether reservations with respect to the draft articles themselves, once they had taken the form of a convention, would be subject to the rule laid down in article 16. Would it be more appropriate to establish a special system of reservations for the convention? His delegation favoured the latter alternative.
(Mr. Molina, XXIst session, 914th meeting, para. 9)

See also *ibid.*, para. 2, quoted *supra* under part II, section 2.

ARTICLE 17

Acceptance of and objection to reservations

MEMBER STATES

Australia

See XXIInd session, 981st meeting, para. 13, quoted *supra* under part II, section 2.

Byelorussian Soviet Socialist Republic

It would be advisable to delete paragraph 3 of article 17, and accordingly to leave the definition of the procedure for acceptance of reservations to a treaty which is a constituent instrument of an international organization as a matter to be dealt with by the organizations themselves.
(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 8))

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Part II, section 2, article 17

Bulgaria

See XXIInd session, 979th meeting, para. 3, quoted *supra* under article 1.

See also document A/6827/Add.1, quoted *supra* under article 2.

Canada

See XXIInd session, 976th meeting, para. 5, quoted *supra* under part II, section 2.

Czechoslovakia

See XXIInd session, 976th meeting, para. 22, quoted *supra* under part II, section 2.

Under the provision contained in paragraph 4 (b) of... draft article 17 an objection against a reservation would preclude the entry into force of the treaty between the objecting and reserving States unless a contrary intention is expressed by the objecting State. However, it may be assumed there will be more cases when the objecting State will not want, even while disagreeing with a certain reservation, to preclude the entry into force of the treaty in the said bilateral relation particularly where treaties are involved in the case of which the participation of the largest possible number of States is desirable. It would, therefore, appear to be useful in the interest of the best possible development of treaty relations to formulate the above-mentioned provision in such a way that the treaty would not enter into force between the objecting and reserving States only if the objecting State makes that intention expressly clear. The following formulation of the provision contained in paragraph 4 (b) is suggested:

> "(b) an objection by another contracting State against a reservation precludes the entry into force of the treaty between the objecting and reserving States if the objecting State makes that intention expressly clear;".

In connexion with the above-said, it is recommended that the provision contained in paragraph 4 (c) be deleted as impractical.

The period of twelve months stipulated for the presentation of an objection against a reservation as stated in paragraph 5 of this article appears to be too long. It is recommended that an appropriately shorter period be considered. (Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 10))

Denmark

In the observations transmitted to the Secretary-General by note verbale of 2 March 1964 from the Permanent Representative of Denmark to the United Nations the Government of Denmark expressed the view that a reservation which is prohibited, explicitly or implicitly, should not be open to acceptance by any other party, and no other party should be required to make a formal objection in order not to be bound by the reservation. In the final draft adopted by the International Law Commission, however, the wording of article 17, paragraph 4, as well as article 17, paragraph 5, seems to give the impression that these provisions would apply to any reservation, including reservations which are inadmissible. It is true that the commentary to article 16 states that "the legal position when a reservation is one expressly or impliedly prohibited in unambiguous terms... is clear". Although the intentions of the International Law Commission on this point are thus perfectly clear, the same may not be true of the proposed text. It is felt that the principle expressed in the statement just quoted is sufficiently important to merit inclusion in the text of the Convention. This could probably be achieved by adding, in article 17, paragraph 4, first sentence, after the word "article": "or article 16 (a) or (b)".

Furthermore, the Government of Denmark is still of the opinion expressed in its previous observations that an express acceptance should be required concerning

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reservations to treaties between a small group of States. Consequently, article 17, paragraph 5, in the draft of the International Law Commission concerning tacit acceptance of reservations should not be applicable to such treaties. To obtain this effect it is suggested that the reference made in article 17, paragraph 5, to paragraph 2 of the same article be deleted.

(Note verbale of 28 July 1967 from the Acting Permanent Representative to the United Nations (A/6827, p. 16))

Ghana

...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.

(Mr. Van Lare, XXIst session, 905th meeting, para. 12)

Japan

In order to make it clear that the rules laid down in... article [17] are to be applied only when the treaty does not otherwise provide as to acceptance of or objection 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 objection 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.

(Note verbale of 19 July 1967 from the Permanent Representative to the United Nations (A/6827 and Corr.1, p. 21))

Netherlands

Irrefutable presumptions of consent were... used where, for example, the common maxim "silence gives consent" was applied in considering a reservation as accepted by a State if the latter had raised no objection within twelve months (article 17, para. 5).
(Mr. Tammes, XXIst session, 903rd meeting, para. 13)

Romania

...he wished to refer to the question of reservations to multilateral treaties The Commission, successfully resisting all attempts to impose the traditional doctrine in that regard, had concluded that the solution best adapted to the present needs of the world community was that which would ensure that the maximum number of States participated, whether completely or partially, in multilateral treaties. However, the Commission had apparently been reluctant to draw all the conclusions implicit in that solution, for draft article 17, sub-paragraph 4 (b) stated that an objection by another contracting State to a reservation precluded the entry into force of the treaty as between the objecting and reserving States unless a contrary intention was expressed by the objecting State. In his delegation's view, the cause of international co-operation would best be served by stipulating that the treaty would enter into force between the objecting and reserving States, unless the former expressed a contrary intention. Such a provision would also be more logical.
(Mr. Flitan, XXIst session, 914th meeting, para. 15)

See XXIInd session, 976th meeting, para. 41, quoted supra under part II, section 2.

Spain

See XXIst session, 912th meeting, para. 36, quoted *supra* under part II, section 2.

Tunisia

The twelve-month time-limit provided for in article 17 (5) should, however, be extended to two years so as to make the procedure envisaged more reliable. (Mr. Gastli, XXIInd session, 981st meeting, para. 5)

Union of Soviet Socialist Republics

...he questioned the aptness of paragraph 3 of article 17 (Acceptance of and objection to reservations), as its provisions merely restricted a future convention's general field of application.
(Mr. Kozhevnikov, XXIInd session, 971st meeting, para. 8)

Some doubt arises as to the desirability of retaining the provision contained in paragraph 3 of... article /17/. It seems that the determination of the procedure for the acceptance of reservations to a treaty which is a constituent instrument of an international organization should be within the competence of such organizations themselves. This would be in keeping with the general character of the draft articles.
(Note verbale of 21 July 1967 from the Permanent Mission to the United Nations (A/6827, p. 25))

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Part II, section 2, article 17

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 United Nations 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 would lose its relevance and utility. (Mr. El Erian, XXIst session, 911th meeting, para. 24)

United Kingdom

See XXIInd session, 967th meeting, para. 4, quoted *supra* under part II, section 2.

United States of America

See document A/6827/Add.2, quoted *supra* under part II, section 2.

Venezuela

See XXIst session, 914th meeting, para. 2, quoted *supra* under part II, section 2.

Part II, section 2, article 17

SECRETARY-GENERAL OF THE UNITED NATIONS

The relation between this article and the practice of the Secretary-General regarding entry into force of treaties is not quite clear. The Secretary-General, in accordance with General Assembly resolutions 598 (VI) and 1452 B (XIV), is precluded from passing upon the legal effects of instruments containing reservations or of objections to them. The situation, for depositaries as well as States, will be somewhat clarified by paragraph 4 (c) of draft article 17, which provides that an act expressing a State's consent to be bound is effective as soon as at least one other contracting State has accepted the reservation, but it may be anticipated that, in the future as in the past, express acceptances of reservations will be rare, and that much will continue to depend upon tacit acceptance. In the situation that has thus far existed, the practice of the Secretary-General, when required to make notification of the entry into force of a convention to which reservations have been made, has been as follows. When he has received the number of instruments specified in the treaty as required for entry into force (whether or not reservations in those instruments have been objected to or expressly accepted), the Secretary-General makes a notification referring to the entry into force clause of the treaty, to the receipt of the number of instruments specified therein, and to any objections that have been made to the reservations. Ninety days after such notification, if no objection to entry into force has been received, the Secretary-General proceeds with the registration of the treaty as having entered into force on the date of receipt of the necessary number of instruments. No objection has ever been received either to entry into force or to the ninety-day period allowed for States to express their views.

Article 17, paragraph 5, states that a State is not considered to have tacitly accepted a reservation until "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". Is the effect of this time-limit, in the absence of any express acceptance of a reservation, to prevent an instrument containing that reservation from being counted towards entry into force until twelve months after notification has been given of the reservation? If so, there may be considerably more delay in the entry into force of treaties than under the

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present practice of the Secretary-General. Should this be considered undesirable, a remedy could be found by shortening the period of twelve months specified in paragraph 5.
(A/6827/Add.1, pp. 16-17)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

See document A/6827/Add.1, quoted *supra* under part II, section 2.

World Health Organization

See document A/6827/Add.1, quoted *supra* under part II, section 2.

ARTICLE 18

Procedure regarding reservations

MEMBER STATES

Czechoslovakia

The provision contained in paragraph 3 of... article /18/ according to which an objection to the reservation made previously to its confirmation does not itself require confirmation contradicts to a certain extent the provision in paragraph 2 according to which a reservation is considered as having been made only on the date of its confirmation. It is recommended therefore that the same procedure be applied to objections as well as to reservations.
(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 10))

Hungary

See XXIInd session, 978th meeting, para. 2, quoted infra under article 20.

Spain

See XXIst session, 912th meeting, para. 36, quoted supra under part II, section 2.

Yugoslavia

See document A/6827/Add.1, quoted supra under part II, section 2.

ARTICLE 19

Legal effects of reservations

MEMBER STATES

Syria

His delegation had noted with satisfaction that the first text proposed by the Commission for article 20, sub-paragraph 2 (b), restricting the effects of an objection to a reservation to relations between the reserving State and the objecting 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 then been 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.

His delegation, 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. His delegation 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 the 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, the wording of which was repeated in its final draft (see 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. His delegation, however, was still not entirely satisfied with that 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. He hoped that the trend thus initiated by the Commission would continue along the lines advocated by his delegation.
(Mr. Nachabe, XXIst session, 906th meeting, paras. 22-23)

Tunisia

As to article 19, concerning legal effects of reservations, it should be clearly understood that when a State explicitly or tacitly accepted a reservation formulated by another State, the treaty continued to be in effect between the two parties save in respect of the provisions to which the reservations related.
(Mr. Gastli, XXIInd session, 981st meeting, para. 5)

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Part II, section 2, article 19

Venezuela

See XXIst session, 914th meeting, para. 2, quoted *supra* under part II, section 2.

SPECIALIZED AGENCIES

World Health Organization

The question of the legal effects of reservations, which is dealt with in article 19 (1), also requires some comment. As WHO has no relevant rules concerning reciprocity, it believes that article 19 (1) should be applicable only in so far as the nature of the treaty makes reciprocity possible. In purely administrative questions WHO might agree to one of its members invoking a reservation against another member on a basis of reciprocity. It is an entirely different matter, however, when questions of health are concerned. In WHO's view, the requirements of public health are paramount. It should be noted in this connexion that the *ad hoc* committee established by the Executive Board at its ninth session to consider the reservations made by member States to the International Sanitary Regulations included the following paragraphs in its reports:

"5.1 The Committee examined whether a reservation accepted by the World Health Assembly under the provisions of article 107 of the International Sanitary Regulations may be applied reciprocally, that is to say, that such a reservation, may be applied not only by the State making the reservation, but also by any other State party to the Regulations in its relationships with the reserving State.

"5.2 The right of a State to claim reciprocity as a condition of acceptance of a reservation to an international instrument is well established. There appears, however, to be serious doubt whether the right to claim reciprocity will exist in all instances, unless the condition of reciprocity is made at the time that the reservation is accepted.

"5.3 With a view to avoiding possible subsequent dissatisfaction and confusion with respect to the rights of the States party to the International Sanitary Regulations, the committee recommends to the Health Assembly that in accepting

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a reservation to the Regulations under article 107 such acceptance shall be with the specific understanding that the reservation may be applied, not only by the State making the reservation, but also by each other State party to the Regulations in its relations with the reserving State, unless the reservation is such that it does not lend itself to reciprocal treatment."

The World Health Organization therefore believes that draft article 19 should be interpreted as authorizing reciprocity only to the extent to which it is compatible with the nature of the treaty and of the reservation.

(Letter of 13 July 1967 from the Head of the Legal Office of the World Health Organization (A/6827/Add.1, pp. 43-44))

ARTICLE 20

Withdrawal of reservations

MEMBER STATES

Belgium

It might be advisable to make a distinction between two types of withdrawal of reservations:

(a) withdrawal of reservations expressly or impliedly authorized by the treaty, for which provision is made in article 17 (1);

(b) withdrawal of reservations for which provision is not made in the treaty and which can take effect only with the express or tacit consent of the other signatory States.

In case (a), there would seem to be no need for the consent of the other States to the withdrawal of a reservation, since the formulation of the reservation was not subject to the same consent.

In case (b), on the other hand, the consent of a State which has accepted the reservation would appear to be called for. That State may wish the reservation to be maintained if, for example, it has itself made the same reservation.

(Letter of 19 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 5))

Hungary

...objections to reservations should be presented within a shorter time than the proposed twelve-month period. As a matter of wording, article 20 should state that the withdrawal of the reservation must be formulated in writing in the same way as the reservation itself (article 18).
(Mr. Prandler, XXIInd session, 978th meeting, para. 2)

Yugoslavia

See document A/6827, quoted *supra* under part II, section 2.

SECTION 3 - ENTRY INTO FORCE OF TREATIES

MEMBER STATES

Turkey

See XXIst session, 907th meeting, para. 15, quoted *supra* under article 1.

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

Pursuant to paragraph 9 of the Principles and Procedures governing Conventions and Agreements, all texts shall indicate the method of determining the effective date of participation. The conditions for entry into force of a convention or

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agreement are also invariably specified in the text of the instrument. However, no provision has been made so far for a provisional entry into force, as referred to in article 22 of the draft articles.
(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, p. 24))

ARTICLE 21

Entry into force

MEMBER STATES

Czechoslovakia

See document A/6827, quoted *infra* under article 66.

Cyprus

See XXIInd session, 980th meeting, para. 54, quoted *infra* under article 23.

ARTICLE 22

Entry into force provisionally

MEMBER STATES

Belgium

An earlier version of article 22 (article 24 of the 1962 draft) included the following provision:

"In that case the treaty shall come into force as prescribed and shall continue in force on a provisional basis until either the treaty shall have entered into force definitively or the States concerned shall have agreed to terminate the provisional application of the treaty."

The second clause of this provision is open to objection. It requires the agreement of the States concerned in order to terminate provisional application. It would accordingly have been impossible for a State to relinquish the obligation to apply the treaty provisionally unless the other contracting States agreed, whereas most treaties contain a unilateral denunciation clause. To take an extreme case, it would be sufficient for a signatory State, under this provision of the former article 24, to fail to ratify a treaty which had not yet entered into force in order to ensure its immediate application.

It would be advisable to provide a means by which the provisional application of a treaty not yet ratified could be terminated unilaterally. Would it not be possible to include a clause similar to that in article 15 (b) and say that provisional application shall continue until the State concerned shall have made its intention clear not to become a party to the treaty?

Similarly, provision might be made for the parties to enter reservations concerning the ending of provisional application or it could be stipulated that in the absence of an agreement to that end, provisional application of a treaty might be terminated unilaterally after due notice.

(Letter of 19 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 6))

Cyprus

See XXIInd session, 980th meeting, para. 54, quoted *infra* under article 23.

Czechoslovakia

See document A/6827, quoted *infra* under article 66.

Sweden

Sweden agreed with Belgium that there should be an express provision concerning the termination of treaties provisionally in force. According to commentary (4) on article 22, the Commission had left the matter to be settled by agreement between the parties, but there might be a need to allow States the freedom to terminate such treaties unilaterally without prior notice.
(Mr. Blix, XXIInd session, 980th meeting, para. 13)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

See document A/6827/Add.1, quoted *supra* under part II, section 3.

Part III

PART III - OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

MEMBER STATES

France

See XXIInd session, 969th meeting, para. 2, quoted supra under Comments and observations on the draft articles as a whole.

Netherlands

/Rules relating to the law of treaties/ included what might be described as logical rules, such as those in paragraphs 2, 3 and 4 of article 26, on the application of successive treaties relating to the same subject-matter but not always to the same group of participating States. The principles which governed in connexion with the general rule pacta tertiis non nocent (explicitly contained in article 31) and the relative priority of rights and obligations born at successive moments were maxims of legal logic and belonged as such to any legal system, whether municipal or international.
(Mr. Tammes, XXIst session, 903rd meeting, para. 12)

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SECTION 1 - OBSERVANCE OF TREATIES

ARTICLE 23

Pacta sunt servanda

MEMBER STATES

Argentina

His delegation fully supported the provisions of article 23 regarding the strict application of the rule pacta sunt servanda, which was one of the basic principles of international law and was explicitly referred to in the Preamble and the second paragraph Article 2 of the United Nations Charter. In view of its importance, his delegation favoured the suggestion that it should be stressed in the preamble to the convention. As stated in the commentary on article 23, the principle of good faith, although applicable throughout international relations, was of particular importance in treaty law and was therefore reiterated in article 27, in connexion with the interpretation of treaties.
(Mr. Buceta, XXIst session, 912th meeting, para. 14)

Australia

Much had been said about "unequal treaties", but it would be unfortunate if considerations of that kind led to the inclusion, in an instrument of general scope, of provisions that endangered the basic principle of pacta sunt servanda. The principle that treaties were binding on the parties and must be carried out by them in good faith was vital to the real interests of all countries and particularly to those of the smaller and medium-sized States.
(Sir Kenneth Bailey, XXIInd session, 981st meeting, para. 12)

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Austria

See XXIst session, 911th meeting, para. 8, quoted infra under article 50.

Bolivia

With regard to article 23, his delegation supported the principle pacta sunt servanda, on which the law of treaties was based, but considered that the expression "treaty in force" could not be applied to a treaty which was void ab initio or unjust. Other delegations had discussed adequately the question of invalid treaties. He would like, therefore to stress the problem of unjust treaties, which was indistinguishable from that of unjust legislative enactments in domestic law. A treaty was simply an expression of general legal principles in the form of legally binding rules; and those general legal principles laid down certain limits which treaties must not overstep. A treaty that was incompatible with a general legal principle was an unjust treaty. The concept of the unjust treaty, if carelessly applied, could of course lead to international anarchy; but the fear of such an extreme case should not be allowed to prevent the peaceful rectification of situations arising out of positive law that were notoriously unjust.
(Mr. Terceros Banzer, XXIst session, 909th meeting, para. 32)

The principle pacta sunt servanda stated in article 23 must never be used to enforce an unjust treaty or one which had been imposed by the use of force or by threat, since in that case the treaty was void ab initio, or, in other words, non-existent. The principle in question was valid only with respect to treaties which had been entered into in complete freedom and in good faith. He asked what could be the moral authority for requiring the performance in good faith of a treaty if the agreement had been achieved as a result of weakness caused by a military defeat or by force.
(Mr. Morales Aguilar, XXIInd session, 980th meeting, para. 28)

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Part III, section 1, article 23

Bulgaria

The Commission had achieved distinct success in formulating the principle *pacta sunt servanda*, which was one of the corner-stones of contemporary international law. It was obvious that the origin of most international conflicts was to be found in the violation of international treaties.
(Mr. Yankov, XXIst session, 910th meeting, para. 9)

The trend towards flexibility was well balanced by the provisions relating to the observance of treaties by the parties. The rule *pacta sunt servanda*, which constituted the corner-stone and the fundamental principle of the law of treaties as a whole, was rightly stressed in the draft with the authority of a peremptory norm of international law. The rule that treaties were binding upon the parties and must be performed by them in good faith was a safeguard against any unjustified recourse to the *rebus sic stantibus* clause.
(Mr. Yankov, XXIInd session, 979th meeting, para. 6)

Byelorussian Soviet Socialist Republic

The principle of good faith was an essential element of the basic norm *pacta sunt servanda*, which the Commission had rightly reaffirmed in article 23 in the following terms: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". The importance of good faith emerged also from article 27, paragraph 1.
(Mr. Stankevich, XXIst session, 908th meeting, para. 14)

A treaty was binding on the parties and must be faithfully implemented by them, and it was the task of the United Nations collectively to ensure absolute respect for that important principle. A basic phenomenon of the contemporary

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international scene was the existence of sovereign States; that gave rise to the important principle of good faith, stated in article 23, whereby in their mutual dealings States were bound only by their own will. Accordingly, international treaties must be interpreted in such a way as to ensure that they achieved the effects desired by the contracting parties themselves. The basis for any such interpretation must be the principle of *pacta sunt servanda*, and the text of a treaty must be taken as the main proof that it reflected the intent of the parties. Any other approach to the interpretation of a treaty might result in the violation of the rights of a party.
(Mr. Stankevich, XXIInd session, 975th meeting, para. 3)

China

The principle *pacta sunt servanda*, which had long been honoured by his people, was essential to the legal order of the international community, and his delegation was gratified to see it reaffirmed in article 23. His delegation'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 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 that doctrine's existence in international law; it served to balance the principle *pacta sunt servanda*, and his delegation considered that in article 59 the Commission had had the right approach to the matter.
(Mr. Chen, XXIst session, 909th meeting, para. 2)

..., he wished to confirm his Government's approval of the inclusion of the principle of *pacta sunt servanda* in article 23. China's approval reflected not only the ethical teachings of its sages and the moral traditions of its people

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but also its firm belief that the principle represented the main stabilizing force in the legal order of the international community. However, China's advocacy of that principle did not prevent it from supporting the doctrine of rebus sic stantibus, as set out in article 59. The latter doctrine should provide a balance to the principle of pacta sunt servanda, so that the international community could enjoy stability and progress simultaneously.
(Mr. Chen, XXIInd session, 976th meeting, para. 30)

Colombia

See XXIst session, 907th meeting, para. 10, quoted infra under article 58.

Cuba

It would be dangerous to carry the principle of pacta sunt servanda to the extreme of sacrificing the higher ideals of international justice for the sake of the security of treaties which brought privileges for a few only and insecurity for others. Pacta sunt servanda was not an absolute principle; on the contrary, it was modified by the so-called rebus sic stantibus clause, which was receiving constantly increasing emphasis. The definition of pacta sunt servanda in article 23 was simple and clear, but should be made more precise. The words "every treaty in force" should be interpreted to mean that the treaty had been freely entered into and did not conflict with fundamental principles of international law, and that the consent of the parties had not been procured by fraud or coercion. The principle of pacta sunt servanda was indissolubly linked with the fundamental norms of general public international law. Without the additional safeguard afforded by the higher principles of jus cogens, the application of the pacta sunt servanda rule might lead to absurdity. The objective of every treaty should be to strengthen the international legal order, not to destroy it. For those reasons, the provision prepared by the Commission should be elaborated somewhat further, so as to reflect more accurately other principles recognized in the draft articles. The main point was to prevent agreements from being concluded in unequal conditions,

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or with abuse and discrimination. The meaning of the words "in force" should be clarified, particularly in the sense that a new rule of *jus cogens* automatically deprived a treaty incompatible with it of any force. Moreover, the principle of fidelity to the agreement had its limits in good faith, which implied not only that the parties must abstain from acts which might frustrate the performance of the agreement but also that there must be equality of consideration. To impose obligations involving a derisory *quid pro quo* was contrary to good faith. Good faith mitigated the harshness of an agreement when its performance became excessively burdensome. Similarly, the agreement should be deemed to be breached when its true underlying purpose conflicted with the essential norms of international law, even though its apparent purpose was legitimate. An example of that kind of agreement was a treaty which used a legal formality to conceal a perpetual military occupation.
(Mr. Alvarez Tabio, XXIInd session, 974th meeting, para. 22)

Cyprus

In his view, the Commission had been right to specify in draft article 23 that the rule *pacta sunt servanda* should apply only to treaties "in force"; that rule should not be applied without qualification and should be interpreted in the light of other rules under which a treaty might be considered as not "in force", particularly the draft articles relating to invalidity and termination.
(Mr. Jacovides, XXIst session, 910th meeting, para. 46)

His delegation considered that the Commission had taken the right course in specifying, in article 23, that the rule *pacta sunt servanda* should apply only to treaties "in force". Consequently, the rule stated in article 23 must be read subject to all the other rules under which a treaty might not be "in force", such as those dealing with entry into force or entry into force provisionally, and to the articles dealing with the invalidity and termination of treaties, including articles 49, 50, 57 and 59.
(Mr. Jacovides, XXIInd session, 980th meeting, para. 54)

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Czechoslovakia

The conclusion of treaties was not enough; consistent and faithful observance of obligations emanating from international treaties was also a necessity for the development of international co-operation in the economic, technical, social and cultural fields and for the strengthening of peaceful coexistence itself. Czechoslovakia was convinced of that necessity, as its history demonstrated....

It would be desirable for the principle pacta sunt servanda, a most important principle of international law dealt with in article 23, to be set out in the preamble to the proposed convention as well.

His delegation thought that in the final text of article 23 itself account should be taken of the results of the General Assembly's consideration of the question of codification and progressive development of the principle that States should fulfil in good faith the obligations assumed by them in accordance with the Charter. It would also like to have it made clear in that article that the "treaty in force" to which the principle pacta sunt servanda applied referred only to an international treaty concluded freely and on the basis of equality, in accordance with international law. That principle could not apply to treaties which had been concluded by means of coercion. Such treaties were, in fact, declared void ab initio in draft article 49, but his delegation would like the final text of that article to state that the idea of coercion covered not only the threat or use of force but such other forms of coercion as economic pressure.
(Mr. Potocny, XXIst session, 906th meeting, paras. 13-15)

See also ibid., para. 16, quoted infra under article 50.

Czechoslovakia naturally regarded the rule of pacta sunt servanda as a fundamental principle of international law, but one closely related to other such principles; it also had to be taken in conjunction with jus cogens.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 23)

See also document A/6827, quoted infra under article 24.

Part III, section 1, article 23

Ecuador

His delegation strongly reaffirmed the views which it had expressed at the twentieth session of the General Assembly concerning the rule *pacta sunt servanda* (A/CN.4/182, chap. II). That rule of customary law remained in force as a guarantee that contractual obligations would be carried out, but its effects were limited by the peremptory legal norms of the United Nations Charter. Good faith was a condition *sine qua non* in the conclusion of international treaties and indivisible; if it were lacking in the act that created the obligations it could not be partially invoked in order to demand their fulfilment; lack of good faith compromised the honour of States, and honour was not divisible.

Under draft article 23, only treaties in force were binding upon the parties, and whether a treaty was in force depended not only on formal requirements but on the substantive question of the treaty's legal validity. Consequently, the Commission had tied draft article 23 to Article 2, paragraph 2 of the Charter, which established that the obligations that Members should fulfil in good faith were those assumed by them in accordance with the Charter. The prohibition of the threat or use of force, respect for the territorial integrity and political independence of States, the principle of the self-determination of peoples, the sovereign equality of States, the prohibition of intervention in matters which were essentially within the domestic jurisdiction of States, respect for human rights and for fundamental freedoms - all those were peremptory rules of international public policy embodied in the Charter to which there could be no exceptions and which had acquired the character of *jus cogens* and the status of constitutional precepts. The rule *pacta sunt servanda* could not redeem an international treaty that violated the legal norms of the United Nations Charter. (Mr. Alcívar, XXIst session, 914th meeting, paras. 20-21)

See also *ibid.*, para. 34, quoted *infra* under Comments and observations on the draft articles as a whole.

Article 23 *pacta sunt servanda* established a norm which was the second facet of the twofold function that modern doctrine had assigned to the treaty; the first

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function being to impose obligations upon the parties and grant them rights. ... In the commentary, paras (1) and (2), article 23, the International Law Commission had indicated (see A/6309/Rev.1, part II, chap. II, pp. 42 and 43) that that article was based on the principle of good faith enunciated in Article 2 (2) of the United Nations Charter and had involved the jurisprudence of international tribunals to support the theory that that principle was a legal principle which formed an integral part of the rule pacta sunt servanda. Good faith was an essential characteristic of a contractual instrument, in internal civil law and international law alike. In the latter case, however, the good faith of the parties was presumed at the time of the conclusion of the treaty, and that perhaps explained why the United Nations Charter and article 23 of the draft articles mentioned it only as a factor in the application of a treaty. In his delegation's view, the meaning of the provisions of article 23 was that the parties should carry out a treaty in good faith, just as they had concluded it in good faith. The application ofthe principle pacta sunt servanda was also subject to the imperative provisions of the United Nations Charter, and particularly those of Article 2 (2) on good faith and those of Article 103, which provided that, in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, the former would prevail.
(Mr. Alcívar, XXIInd session, 981st meeting, para. 29)

Finland

The final draft of the International Law Commission gives cause to repeat some previously made suggestions, which the Commission has not been able to take into consideration. As an example may be cited the addition suggested to article 23, according to which the States parties are expressly obliged to refrain from acts tending to frustrate the object and purpose of the treaty. As such an obligation would exist already while the treaty is under preparation (article 15), it may even have greater significance when the treaty has already entered into force, especially as it cannot be taken for granted that the principle of pacta sunt servanda contains this obligation as well.
(Note verbale of 11 July 1967 from the Permanent Representative to the United Nations (A/6827, p. 18)

Guinea

Article 23, dealing with the principle of _pacta sunt servanda_, was of capital importance and would play a decisive role in securing the confidence and efficacity necessary to an international treaty. It would be a test of the goodwill of States in establishing and harmonizing the rules of conduct governing their relations. It was not enough merely to negotiate, sign and ratify an agreement; most important of all was that the parties should faithfully carry out their treaty obligations as long as the agreement was in force. His delegation therefore fully approved of the way in which that article had been drafted.
(Mr. Savane, XXIInd session, 982nd meeting, para. 27)

Hungary

The principle _rebus sic stantibus_ had an important bearing on the application of the principle _pacta sunt servanda_, and neither of them can be made an absolute truth in itself.
(Mr. Prandler, XXIInd session, 978th meeting, para. 6)

India

The draft articles reflected the ideas on the law of treaties which were generally accepted in contemporary international law. In particular, they rightly recognized the need to protect newly independent States against the tyranny which might result from excessive and unqualified reliance on the principle _pacta sunt servanda_. Article 23, which dealt with that subject, concerned only treaties in force and stipulated that they must be performed "in good faith". It was gratifying to find the principle of good faith firmly entrenched in the Commission's draft. In article 23, and in such articles as article 48 on the invalidity of treaties concluded under coercion of a State by the threat or use of force, the Commission had recognized that the principle _pacta sunt servanda_ should not be used as a means of insisting on the implementation of obsolete, unjust, invidiously discriminatory or otherwise objectionable treaty rights.
(Mr. Rao, XXIInd session, 979th meeting, para. 12)

Mongolia

His delegation also wished to stress the importance of reaffirming, in draft article 23, the fundamental principle *pacta sunt servanda*.
(Mr. Khashbat, XXIst session, 911th meeting, para. 33)

Netherlands

See XXIInd session, 977th meeting, para. 2, quoted *supra* under Comments and observations on the draft articles as a whole.

Nigeria

See XXIInd session, 978th meeting, para. 11, quoted *supra* under Comments and observations on the draft articles as a whole.

Pakistan

See XXIst session, 911th meeting, para. 17, quoted *infra* under article 59.

Peru

[A] question that had been neglected in the draft articles was the psycho-legal aspect of treaties, i.e., the intent of the parties. The parties to a treaty might wish, on the one hand, to give expression to common interests or achieve a common objective or, on the other hand, to subject their subsequent conduct to a rule of law, whether that rule was explicitly stated in the treaty or tacitly accepted by the parties. Thus, many treaties concluded between Latin American States for the purpose of settling territorial questions were implicitly based

on the principle of self-determination, which was the very fountain-head of nationality. That distinction was important, for if a treaty expressed the wishes of the parties and at the same time embodied an existing principle of law which was accepted by the parties, it then enjoyed a twofold legitimacy. In such treaties, which, properly speaking, were lawmaking treaties, the contractual obligation was of value both because it reflected the wishes of the parties (pacta sunt servanda) and because it reflected the principle on which the treaty was based. That fact was all the more important because contemporary international law, as it evolved, tended to assimilate principles resulting from the philosophical and historical progress of mankind and to incorporate them into the multilateral treaties that today constituted positive international law. Prior to that twofold process of evolution, treaties had represented only the transitory interests of States. Today, when several States discussed a problem that was facing them, they sought not only to reconcile their respective interests but to define the principles that could provide a basis for doing so. If they concluded a treaty embodying such principles, the treaty was inviolable; for even if the wishes of the parties changed, the principle remained.
(Mr. Belaunde, XXIst session, 907th meeting, para. 28)

Philippines

The second corner-stone of the law of treaties, after consent, namely, the principle of good faith, which was the subject of article 23 of the text, was a fundamental norm of the law of nations. His delegation nevertheless agreed with those who maintained that that norm must not be used to perpetuate rule by domination or oppression or to procure the execution of unequal, unjust, perpetual and colonial treaties. The principle of pacta sunt servanda was increasingly tempered by the rebus sic stantibus clause, to which the newly independent and the developing countries attached so much importance.
(Mr. Espejo, XXIInd session, 981st meeting, para. 20)

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Part III, section 1, article 23

Poland

See XXIst session, 913th meeting, para. 14, quoted *infra* under article 59.

In view of the need to ensure the stability of international agreements and the maintenance of the fundamental principle *pacta sunt servanda*, the Commission had been well advised to make provision only for objectively well-founded exceptions to that principle.
(Mr. Osiecki, XXIInd session, 977th meeting, para. 11)

Sierra Leone

See XXIInd session, 982nd meeting, para. 24, quoted *infra* under article 59.

Spain

See XXIst session, 912th meeting, para. 35, quoted *supra* under article 15.

Sweden

See XXIInd session, 980th meeting, para. 10, quoted *infra* under article 50.

Thailand

Too often, in the colonial past, the princple *pacta sunt servanda* had been imbued with an unwarranted sacrosanctity and had been invoked by more powerful nations to impose their will on smaller and weaker ones, to the detriment of the

latter's vital interests or natural growth. Article 23 of the draft commendably brought the inflated concept of the principle pacta sunt servanda back to its proper proportions.
(Mr. Sucharitkul, XXIInd session, 976th meeting, para. 13)

See also ibid., paras. 14-15, quoted infra under articles 50 and 59.

Ukrainian Soviet Socialist Republic

...any rule, no matter how well formulated, was of value only in so far as it was applied in practice. The law of treaties, which was one of the keystones of international law, was based in turn on the essential principle formulated in article 23 of the draft articles, namely, that every treaty in force was binding upon the parties to it and must be performed by them in good faith (see A/6309)....

It should also be stressed that the principle pacta sunt servanda applied to treaties only in so far as they were binding.
(Mr. Yakimenko, XXIst session, 905th meeting, paras. 2-3)

See also ibid., para. 4, quoted infra under article 50.

...the adoption of article 23, which laid down the principle of pacta sunt servanda, would certainly furnish additional means of taking action against those who jeopardized international peace and security.
(Mr. Yakimenko, XXIInd session, 978th meeting, para. 19)

Union of Soviet Socialist Republics

...the principle pacta sunt servanda, stated in draft article 23, was very important for the maintenance of normal relations among States. It was embodied in the Preamble and paragraph 2 of Article 2 of the United Nations Charter. Non-observance of that principle was considered by contemporary international law

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as a violation of international law, and the responsibility both for the violation of the treaty and for its effects rested with the offending State....

The USSR viewed the principle pacta sunt servanda as an important means of ensuring peace and peaceful coexistence and developing wide co-operation among peoples. All States must realize that the principle must be applied by all not only in word but in deed, failing which normal peaceful intercourse among States, and indeed the existence of international law itself, would be impossible. Accordingly, his delegation considered that further study should be given to ways of strengthening the provisions relating to the duty of States to observe international treaties, with a view to drawing up legal statements which would encourage absolute observance of international treaties by all States, large and small.

(Mr. Khlestov, XXIst session, 910th meeting, paras. 19-20)

See also ibid., para. 18, quoted supra under Comments and observations on the draft articles as a whole.

United Arab Republic

His Government firmly believed that article 23, which embodied the rule pacta sunt servanda, was the natural pivot, not only of the law of treaties, but of stable and orderly international relations as a whole. No unilateral derogation from international obligations should be tolerated, and his delegation fully endorsed the remarks of the United Kingdom representative on the importance of preserving the stability of the international legal order. Nevertheless, the rule pacta sunt servanda should not be invoked to enforce unequal treaties imposed by the use of coercion. Such treaties could never be other than detrimental to friendly relations between States.

(Mr. El Araby, XXIInd session, 980th meeting, para. 43)

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United Republic of Tanzania

With regard to the matter of unequal treaties, which had been so ably dealt with by the USSR representative, his Government, 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 9 December 1961 from President Julius Nyerere to the Secretary-General of the United Nations.

(Mr. Maliti, XXIst session, 912th meeting, para. 48)

See also, ibid., para. 47, quoted supra under Comments and observations on the draft articles as a whole.

United States of America

See document A/6827/Add.2, quoted infra under part V.

Uruguay

His delegation... noted with satisfaction that although article 23 had been devoted to the principle pacta sunt servanda - a principle which some Governments could accept only with certain reservations - the Commission had very properly qualified that article in part V, which dealt with the invalidity, termination and suspension of the operation of treaties.

(Mr. Paysse Reyes, XXIst session, 909th meeting, para. 27)

Yugoslavia

... [His] delegation felt that consideration must be given to the effects of jus cogens on the law of treaties. In that connexion, the Yugoslav Government in its written comments on article 23 (see A/6827, p. 29), had asked for more

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detailed explanations concerning the relationship between the principle pacta sunt servanda and other fundamental principles of international law laid down in the United Nations Charter and other international instruments, particularly where jus cogens was concerned.
(Mr. Sahovic, XXIInd session, 975th meeting, para. 18)

In its earlier comments, the Government of the Socialist Federal Republic of Yugoslavia had stressed the principle pacta sunt servanda as one of the fundamental principles of international law and the need to include in the commentary on that article explanations concerning the substance and effects of the principle in relation to other fundamental principles of international law laid down in the United Nations Charter and other international instruments, particularly where jus cogens was concerned.

In the opinion of the Government of the Socialist Federal Republic of Yugoslavia, the principle pacta sunt servanda is one of the fundamental principles of treaty law in the sense that it provides a basis for the application of the other principles laid down in the United Nations Charter, including the principles of the sovereign equality and independence of States, the right of self-determination of peoples, etc.

In the given circumstances, application of the pacta sunt servanda principle would not suffice to ensure observance of an international treaty in a case where peremptory norms of international law or other accepted general rules of international law were not observed: in case of nullity or absence of mutual agreement of the contracting parties.

Consequently, for the reasons stated, the Yugoslav Government again draws attention to this unresolved question.
(Letter of 28 June 1967 from the Chief Legal Adviser of the Ministry of Foreign Affairs (A/6827, p. 29))

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SECTION 2 - APPLICATION OF TREATIES

MEMBER STATES

Ghana

See XXIst session, 905th meeting, para. 11, quoted *supra* under article 1.

Jamaica

See XXIst session, 905th meeting, para. 15, quoted *infra* under article 69.

Netherlands

It was remarkable that in many places, for obvious reasons of legal certainty, the draft fell back on the presumption of consent, i.e., on probable consent instead of proved consent. The presumptions of the non-retroactivity of treaties (article 24), of the application of treaties to the entire territory of each party (article 25), and of the assent of a third State to a right accorded by a treaty to which it was not a party (article 32) were all based on the presumed agreement of the parties as to their intention and purposes.
(Mr. Tammes, XXIst session, 903rd meeting, para. 13)

United Republic of Tanzania

See XXIst session, 912th meeting, para. 45, quoted *supra* under article 1.

ARTICLE 24

Non-retroactivity of treaties

MEMBER STATES

Canada

See XXIInd session, 976th meeting, para. 4, quoted *infra* under article 62.

Czechoslovakia

Article 24 dealt exclusively with the question of retroactivity of treaties, without settling the question of the date on which they took effect. It would be advisable to insert an article stipulating that, unless otherwise provided in the treaty, it should become effective on the date of its entry into force. (Mr. Smejkal, XXIInd session, 976th meeting, para. 24)

Article 24 deals only with the question of retroactivity of treaties while the question of their becoming effective in the general sense has been left unsolved. Because of its nature the substance of that article should be included in part II of the draft and the question of treaties becoming effective should be dealt with in the general sense in respective provision. Retroactivity should always derive from a treaty because it is a factor of considerable importance.

It is therefore suggested that article 24 as formulated in the draft be deleted from part III, and in part II article 23 substituted for article 22 as follows:

"Article 23

"Effectiveness of treaties

"1. Unless otherwise provided in the treaty, it becomes effective on the date of its entry into force.

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"2. Unless a different intention appears from the treaty, 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."

The present article 23 in part III to be designated as article 24.
(Note verbale of 15 August 1967 from the Charge d'Affairs ad interim to the United Nations (A/6827, p. 11))

Netherlands

See XXIInd session, 977th meeting, para. 2; quoted *supra* under Comments and observations on the draft articles as a whole.

United States of America

.../some/ sections of the draft convention are replete with provisions which will result in disputes. To list but a few:

....

(c) What determines whether a "fact or act took place or a situation ceased to exist" under article 24?
(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, p. 12))

ARTICLE 25

Application of treaties to territory

MEMBER STATES

Algeria

With regard to article 25 of the draft, his delegation regretted that the International Law Commission had made the treaties applicable to the entire

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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 peoples 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.
(Mr. Haddad, XXIst session, 908th meeting, para. 34)

Byelorussian Soviet Socialist Republic

The Commission pointed out correctly in article 25 that the application of a treaty extended only to the entire territory of each party.
(Mr. Stankevich, XXIst session, 908th meeting, para. 15)

Canada

See XXIInd session, 976th meeting, para. 4, quoted *infra* under article 62.

Mali

With regard to the application of treaties to the entire territory of each party (draft article 25), his delegation wished to draw attention to the case of colonial Powers that forced 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 his delegation hoped that it would be possible to achieve general and complete decolonization before the conference of plenipotentiaries convened.
(Mr. Koita, XXIst session, 914th meeting, para. 40)

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Part III, section 2, article 25

Netherlands

See XXIInd session, 977th meeting, para. 2, quoted supra under Comments and observations on the draft articles as a whole.

Poland

See XXIst session, 913th meeting, para. 10, quoted supra under Comments and observations on the draft articles as a whole.

Sierra Leone

...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 International Law Commission had repudiated the so-called colonial clause by which certain obligations under treaties concluded by some States were extended to the territories under the rule of those States, even after those territories had become independent.
(Mr. Koroma, XXIst session, 911th meeting, para. 45)

Spain

One might wonder why the Commission had spent so much time on draft article 25, which simply stated that the application of a treaty extended to the entire territory of each party. In fact, the Commission had devised that wording to replace the phrase "all the territory or territories for which the parties are internationally responsible", in order to avoid the unfortunate associations of the so-called colonial clause (see A/6309, article 25, commentary, para. 3).
(Mr. de Luna, XXIst session, 912th meeting, para. 37)

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The presumption expressed in this article, to the effect that the application of a treaty extends to the entire territory of each party, applies to the FAO Constitution. It likewise applies to conventions and agreements concluded under article XIV of the FAO Constitution, it being understood that contracting States may on signature, ratification, accession or acceptance, make a declaration regarding territorial application. In addition, it is specified in the Principles and Procedures governing Conventions and Agreements that each instrument should contain a clause regarding its territorial application, i.e., its geographical scope.

(Letter of 7 July 1967 from the Legal Counsel of the Fccd and Agriculture Organization of the United Nations (A/6827/Add.1, p. 24))

International Telecommunication Union

The ITU membership includes groups of territories which are described various as:

"group of territories represented by..."

"...provinces in Africa"

"...overseas provinces"

"territories of..."

"overseas territories for the international relations of which the... are responsible".

Some of the signatories provided at the time of ratification a list of the territories included which is published by the ITU Secretariat.

There is one case of a federal union where some members, but not all, sign separately and have the right to vote. It has always been assumed that the

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signature of the union as a whole is for all the constituent parts except those members which sign separately.
(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, p. 35))

ARTICLE 26

Application of successive treaties relating to the same subject-matter

MEMBER STATES

Australia

See XXIst session, 912th meeting, para. 24, quoted *infra* under article 50.

Bulgaria

See XXIInd session, 979th meeting, para. 3, quoted *supra* under article 1.

Chile

See XXIst session, 912th meeting, para. 27, quoted *supra* under Comments and observations on the draft articles as a whole.

Colombia

The Commission... deserved special praise for article 26 of its draft, which dealt satisfactorily with the difficult question of successive treaties relating to the same subject-matter.
(Mr. Herran-Medina, XXIst session, 907th meeting, para. 9)

Cyprus

With regard to article 26, his delegation approved of the stress which was laid in paragraph 1 on the fact that the rules governing the rights and obligations of States parties to successive treaties relating to the same subject-matter were subject to Article 103 of the United Nations Charter.
(Mr. Jacovides, XXIInd session, 980th meeting, para. 55)

Ecuador

See XXIst session, 914th meeting, para. 30, quoted *infra* under article 49.

India

See XXIst session, 906th meeting, para. 4; quoted *supra* under Comments and observations on the draft articles as a whole.

Netherlands

...it might be relevant to draw attention to the fact that in several places the draft referred explicitly to the Charter of the United Nations, e.g., in articles 26, 49 and 70. The commentary on the often discussed article concerning *jus cogens* cited the example of a treaty contemplating an unlawful use of force contrary to the principles of the Charter. The obvious conclusion, therefore, was that for the development of the law of treaties the work already done and remaining to be done on principles concerning friendly relations in accordance with the Charter might prove very helpful by clarifying points of consensus and disagreement on fundamental issues and thus prepare the ground for better understanding.
(Mr. Tammes, XXIst session, 903rd meeting, para. 16)

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Part III, section 2, article 26

Union of Soviet Socialist Republics

...he... felt that article 26 (Application of successive treaties relating to the same subject matter) should resolve the question of the relationship between the obligations imposed by multilateral treaties and those imposed by bilateral treaties.
(Mr. Kozhevnikov, XXIInd session, 971st meeting, para. 8)

It would be appropriate in this article to specify how the question of the relationship of a State's obligations under a multilateral treaty and those under a bilateral treaty should be solved.

Sub-paragraph 4 (c) should also be made more precise.
(Note verbale of 21 July 1967 from the Permanent Mission to the United Nations (A/6827, p. 26))

United Arab Republic

See XXIst session, 911th meeting, para. 25, quoted supra under Comments and observations on the draft articles as a whole.

SPECIALIZED AGENCIES

International Telecommunication Union

The Montreux Convention contains the following provisions:

"266. This Convention shall abrogate and replace, in relations between the Contracting Governments, the International Telecommunication Convention (Geneva, 1959).

"267. The administrative regulations referred to in 203 are those in force at the time of signature of this Convention. They shall be regarded as annexed to this Convention and shall remain valid, subject to such partial

revisions as may be adopted in consequence of the provisions of 52 until the time of entry into force of new regulations drawn up by the competent world administrative conferences to replace them as annexes to this Convention."

All the countries or groups of territories listed as Members in the Montreux Convention either signed and ratified or acceded to the previous convention (Geneva 1959) except for five. Of these five: one is still bound by the Madrid Convention (1932), one by the Atlantic City Convention (1947), and three by the Buenos Aires Convention (1952). Three of them have signed some or all of the regulations all of which were completely revised after 1952.

As has been mentioned above, in practice the rules of the current convention are applied to these Members, e.g., choice and value of unit of contribution.

In one regional agreement it is provided that it and its plan shall be abrogated between all the contracting parties from the entry into force of a new plan. In the event of a contracting Government not approving the new plan the agreement shall be abrogated in relation to such Government as from the entry into force of the new plan.

(Letter of 24 July 1967 from the Secretary-General *ad interim* of the International Telecommunication Union (A/6827/Add.1, p. 36))

SECTION 3 - INTERPRETATION OF TREATIES

MEMBER STATES

Spain

On the difficult problem of the interpretation of treaties, the Commission had opted for the will of the parties expressed objectively in the text rather than for the intention of the parties reconstructed subjectively from the preparatory work. That provision undoubtedly would furnish added certainty and security, which were essential in law.

(Mr. de Luna, XXIst session, 912th meeting, para. 38)

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Tunisia

On the important subject of the interpretation of treaties, the Tunisian delegation thought that international law provided no absolute rules but merely a set of flexibile guidelines. Articles 27-29 might constitute a consensus that would obviate the problems and disputes arising from differences of interpretation and thus facilitate the application of international treaties. (Mr. Gastli, XXIInd session, 981st meeting, para. 6)

United Kingdom

See XXIst session, 908th meeting, para. 26, quoted *supra* under Comments and observations on the draft articles as a whole.

Yugoslavia

See XXIst session, 907th meeting, para. 22; quoted *infra* under part V.

SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

The interpretation of the FAO Constitution and of the conventions and agreements concluded under article XIV of the Constitution is dealt with in article XVII of the Constitution and in paragraphs 13 and 16 of the principles, respectively. The first two provisions place the emphasis on procedural aspects (with special reference to settlement of disputes) rather than on the substantive criteria for interpretation. Paragraph 16 of the Principles states that the languages in which the conventions and agreements are drawn up shall be equally authentic. It may be presumed that the methods of interpretation laid down in

articles 27 to 29 of the law of treaties could also be applied in regard to treaties concluded within the FAO.

(Letter of 7 July 1967 from the Legal Counsel of the Food and Agriculture Organization of the United Nations (A/6827/Add.1, pp. 24-25))

International Telecommunication Union

The Montreux Convention contains the following provisions:

"234. The official languages of the Union shall be Chinese, English, French, Russian and Spanish.

"235. The working languages of the Union shall be English, French and Spanish.

"236. In case of dispute, the French text shall be authentic.

"237. The final documents of the plenipotentiary and administrative conferences, their final acts, protocols, resolutions, recommendations and opinions, shall be drawn up in the official languages of the Union, in versions equivalent in form and content."

(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, pp. 36-37))

ARTICLE 27

General rule of interpretation

MEMBER STATES

Argentina

See XXIst session, 912th meeting, para. 14, quoted *supra* under article 23.

Byelorussian Soviet Socialist Republic

See XXIst session, 908th meeting, para. 14, quoted *supra* under article 23.

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Part III, section 3, article 27

Unfortunately, article 27 (General rule of interpretation), paragraph 1, did not contain either a general provision to the effect that the interpretation of a treaty must clarify the intentions of the parties or a provision stating that a treaty must be interpreted in accordance with the generally recognized norms of international law. There undoubtedly existed, with respect to the legitimacy of international treaties, a principle that no treaty could conflict with recognized norms and principles of international law.

The Byelorussian SSR did not subscribe to the view that a treaty in force had an existence of its own, independent of its contracting parties, and that it should therefore be interpreted not in accordance with the will of the parties but in the light of changing world conditions.
(Mr. Stankevich, XXIInd session, 975th meeting, paras. 3-4)

Canada

See XXIInd session, 976th meeting, para. 4, quoted *infra* under article 62.

Czechoslovakia

In respect of paragraph 1 /of article 27/, it is recommended that a general principle be expressed to the effect that the purpose of the interpretation of a treaty lies in ascertaining the intentions of the parties.
(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 11))

Hungary

In dealing with articles 27 and 28 concerning the interpretation of treaties the International Law Commission had concluded that "the elucidation of the meaning of the text rather than an investigation *ab initio* of the supposed intentions

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of the parties constitutes the object of interpretation" (see A/6309/Rev.1, part II, chap. II, p. 53, commentary (18) on article 28). Admittedly, that position reflected the practice of many countries but equal importance should be given to the original intention of the parties as indicated in the travaux préparatoires, which should be considered not only as a supplementary means of interpretation but as an element just as important as that mentioned, for example, in article 27 (3) (b) on subsequent practice in the application of the treaty.
(Mr. Prandler, XXIInd session, 978th meeting, para. 5)

Japan

See documents A/6827 and Corr.1, quoted infra under article 62.

Netherlands

See XXIst session, 903rd meeting, para. 15, quoted infra under part V.

Ukrainian Soviet Socialist Republic

Article 27 (1) should be supplemented by a provision to the effect that treaties could also be interpreted in the light of the generally accepted rules of international law.
(Mr. Yakimenko, XXIInd session, 978th meeting, para. 19)

See also ibid., para. 18, quoted supra under article 15.

/...

Union of Soviet Socialist Republics

See XXIst session, 910th meeting, para. 18, quoted *supra* under Comments and observations on the draft articles as a whole.

Paragraph 1 of... article 27 should likewise state that a treaty should also be interpreted in accordance with the generally accepted rules of international law.
(Note verbale of 21 July 1967 from the Permanent Mission to the United Nations (A/6827, p. 26))

United Arab Republic

...the International Law Commission 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 so-called intertemporal law (article 27, para. 3 (*c*))
(Mr. El-Erian, XXIst session, 911th meeting, para. 27)

United States of America

..., the articles dealing with the interpretation of treaties,... were based on rules which did not take into account the actual practice of States and seemed too conservative. Article 27 provided that a treaty should be interpreted according to the "ordinary meaning" of the terms employed; but since, outside their context, words did not usually have any "ordinary meaning", it was the intention of the parties that must be determined and not some alleged "ordinary meaning". All the available sources of evidence must be open for the

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purposes of interpretation, and to relegate the preparatory work or the circumstances of the treaty's conclusion to a secondary position, as did article 28, would make it more difficult, instead of easier, to resolve a dispute. It was the common practice of foreign offices to take these matters into consideration when a problem of interpretation arose; and even the international tribunals which excluded all reference to the preparatory work on the grounds that the meaning of the disputed term was clear were accustomed to add that there was nothing in the preparatory work which would cause them to change their opinion. (Mr. Kearney, XXIInd session, 977th meeting, para. 19)

The United States Government considers that articles 27 and 28 on the interpretation of treaties lay down overly rigid and unnecessary restricted requirements. One criterion of interpretation "in accordance with the ordinary meaning to be given the terms of the treaty" is accorded primacy over all other criteria. But as Lord McNair succinctly states: "... this so-called rule of interpretation like others is merely a starting point, a prima facie guide, and cannot be allowed to obstruct the essential question in the application of treaties, namely, to search for the real intention of the contracting parties in using the language employed by them".

The draft articles, unfortunately, do obstruct the essential quest to determine what was the common intent of the parties in using particular language because the ordinary meaning of terms in the treaty is made, not a starting point, but the centre point about which all other aspects of the process of interpretation must revolve like satellites. Thus, consideration of context and of the object and purpose of the treaty as provided in paragraph 1 of article 27 is specifically limited to determining the ordinary meaning to be given the treaty terms while investigation into the factors indicating the genuine purpose of the parties in selecting those terms and the community context in which they are employed is implicitly excluded.

The subordinate position to which "preparatory work" on the treaty "and the circumstances of its conclusion" are relegated by article 28 aptly illustrates the extent to which the Commission's rule of interpretation ignores the intentions of

/...

the parties. What guides can be more helpful in deciding the effect a particular clause in a treaty was intended to produce than the official records of the negotiations in which the language was agreed and the documents relating to the clause which were submitted or produced in the course of negotiations as well as the other circumstances of its conclusion? This is the almost invariable practice of Foreign Offices in the interpretation and application of treaties. The basic problem is that words can have many meanings, and what may be an ordinary meaning in one set of circumstances may be an extraordinary one in another. To resolve this difficulty there should be free access to all pertinent sources of information. But article 27 permits recourse only to the treaty, to documents made part thereof by agreement of all the parties, subsequent practice in the application of the treaty, or to relevant rules of international law. This narrow definition of the context that may be examined in determining the meaning of the treaty terms serves to reduce drastically the means available for determining what is the true meaning of a particular word or phrase or clause while broadening considerably the field of choice in which any of several available meanings can be applied to a treaty term as the "ordinary" meaning.

The Government of the United States considers that this series of restrictions upon the interpretation process should be eliminated and that the artificial separation between articles 27 and 28 should be discarded. All of the various elements of articles 27 and 28 should be arranged to avoid any fixed hierarchy so that whatever elements of interpretation are of importance in a particular set of circumstances may be given their appropriate weight, whether it be "ordinary meaning" or "subsequent practice" or "preparatory work" or any of the other elements that facilitate correct interpretation.

(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, pp. 5-6))

ARTICLE 28

Supplementary means of interpretation

MEMBER STATES

Hungary

See XXIInd session, 978th meeting, para. 5, quoted *supra* under article 27.

Thailand

He wished... to point out that a line of distinction was not always clearly drawn between the circumstances of the conclusion of a treaty as a supplementary means of interpretation under article 28 and the possibility of the modification of treaties by subsequent practice under article 38.
(Mr. Sucharitkul, XXIInd session, 976th meeting, para. 17)

United States of America

See XXIInd session, 977th meeting, para. 19, quoted *supra* under article 27.

See also document A/6827/Add.2, quoted *supra* under article 27.

ARTICLE 29

Interpretation of treaties in two or more languages

MEMBER STATES

Czechoslovakia

It is felt that the principle expressed in paragraph 3 [of article 29] is at variance with the general principle of ascertaining the intentions of parties through interpretation, *viz.*, when a difference in meaning exists which cannot be removed either under articles 27 or 28 "a meaning which as far as possible reconciles the texts shall be adopted". The application of that provision may lead to an interpretation not intended by parties at the time of the conclusion of the treaty. Should a difference in meaning not be removed in accordance with articles 27 and 28, it would be apparently necessary to remove discrepancy by negotiations between parties. It is therefore suggested that paragraph 3 be deleted.

(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 11))

SPECIALIZED AGENCIES

International Telecommunication Union

See document A/6827/Add.1, quoted *supra* under part III, section 3.

SECTION 4 - TREATIES AND THIRD STATES

MEMBER STATES

Afghanistan

The Government of Afghanistan fully supports the principles underlying these articles 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.
(Note verbale of 29 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 3))

Czechoslovakia

Czechoslovakia supported the principles stated in articles 30-32 concerning the rights and obligations of third States, on the understanding that the rules were based on the principle pacta tertiis nec nocent nec prosunt. It would therefore be best consistently to apply the general principle that treaties had no effect on third States without the latter's explicit consent, and his delegation would propose the deletion of article 32, paragraph 1, last sentence.
(Mr. Smejkal, XXIInd session, 976th meeting, para. 25)

Iran

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 International Law Commission in its 1964 report. That clause was of great importance to his country....
(Mr. Fartash, XXIst session, 913th meeting, para. 26)

/...

Netherlands

See XXIInd session, 977th meeting, para. 7, quoted *infra* under article 41.

Poland

The principle of equality necessarily had certain effects with regard to the rights and obligations of so-called third States. If the basic premise that all interested parties should be represented at negotiations were accepted, the notion of third States would gradually lose its *raison d'être*.
(Mr. Lachs, XXIst session, 913th meeting, para. 11)

Thailand

His delegation endorsed the strict interpretation of the privity of treaties, as set out in article 30, and considered that articles 31-34 adequately stated its qualifications. His delegation did not think that State succession could be an exception to article 30.
(Mr. Sucharitkul, XXIInd session, 976th meeting, para. 17)

Tunisia

On the subject of part III, section 4 (Treaties and third States), the Tunisian delegation supported the principle that a treaty applied only between the parties in virtue of another fundamental principle - namely, the sovereign equality of States.
(Mr. Gastli, XXIInd session, 981st meeting, para. 7)

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Part III, section 4

SPECIALIZED AGENCIES

International Telecommunication Union

The Montreux Convention provides as follows:

"268. Each Member and Associate Member reserves to itself and to the recognized private operating agencies the right to fix the conditions under which it admits telecommunications exchanged with a State which is not a party to this Convention.

"269. If a telecommunication originating in the territory of such a non-contracting State is accepted by a Member or Associate Member, it must be transmitted and, in so far as it follows the telecommunication channels of a Member or Associate Member, the obligatory provisions of the Convention and regulations and the usual charges shall apply to it."

The telegraph regulations (Geneva Revision, 1958) contain the following:

"1036. When telegraphic relations are opened with countries which are neither Members nor Associate Members or with recognized private operating agencies in regard to which the provisions of paragraph 2 of article 19 of the Convention have not been applied by a Member or Associate Member, the provisions of these regulations shall invariably be applied to correspondence in the section of the route which lies within the territories of Members or Associate Members, or which are operated by a recognized private operating agency.

"1037. The administrations concerned shall fix the rate applicable to this part of the route. This rate shall be added to that of the non-participating administrations."

(Letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union (A/6827/Add.1, p. 37))

ARTICLE 30

General rule regarding third States

MEMBER STATES

Algeria

See XXIst session, 908th meeting, para. 34, quoted *supra* under article 25.

Cyprus

His delegation... wished to stress the importance of the rule reflected in draft articles 30 and 31, which provided that a treaty did not create either obligations or rights for a third State without its consent. That rule derived from the maxim *pacta tertiis nec nocent nec prosunt* and was based on the concepts of the independence and sovereignty of States.
(Mr. Jacovides, XXIst session, 910th meeting, para. 47)

His delegation was in general agreement with the wording of article 30, which spelt out what the Commission rightly termed in its commentary (1) on article 31 "one of the bulwarks of the independence and equality of States" - the primary rule that the parties to a treaty could not impose an obligation on a third State without its consent.
(Mr. Jacovides, XXIInd session, 980th meeting, para. 56)

Poland

See XXIst session, 913th meeting, para. 10, quoted *supra* under Comments and observations on the draft articles as a whole.

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Sierra Leone

See XXIst session, 911th meeting, para. 45, quoted supra under article 25.

Thailand

See XXIInd session, 976th meeting, para. 17, quoted supra under part III, section 4.

Ukrainian Soviet Socialist Republic

See XXIInd session, 978th meeting, para. 18, quoted supra under article 15.

ARTICLE 31

Treaties providing for obligations for third States

MEMBER STATES

Cyprus

See XXIInd session, 980th meeting, para. 56, quoted supra under article 30.

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ARTICLE 32

Treaties providing for rights for third States

MEMBER STATES

Czechoslovakia

See XXIInd session, 976th meeting, para. 25, quoted *supra* under part III, section 4.

It is considered desirable to follow the general principle that treaties do not affect third States provided those States do not give their express assent. In accordance with that principle it is suggested to delete the last sentence in paragraph 1: /of article 32/ "Its assent shall be presumed so long as the contrary is not indicated."
(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 12))

Iran

See XXIst session, 913th meeting, para. 26, quoted *supra* under part III, section 4.

Netherlands

See XXIst session, 903rd meeting, para. 13, quoted *supra* under Part III, Section 2.

See also XXIInd session, 977th meeting, para. 2, quoted supra under Comments and observations on the draft articles as a whole.

Nigeria

His delegation... noted the absence of provisions concerning the most-favoured-nation clause - a matter of great importance to the developing countries, which had succeeded to a considerable number of treaties having such a clause. (Mr. Ogundere, XXIst session, 904th meeting, para. 12)

Spain

Draft article 32 concerning rights for third States was a good example of the way in which the Commission worked, seeking always to reach a compromise between the leading points of view. The problem dividing the Commission had not been political or even ideological; it had been simply a slight difference on a matter of legal technique. Some members wished to follow the strict French notion of *stipulation pour autrui*; but others favoured the German idea that a right, which was not a mere benefit and could be invoked juridically, could always be created in favour of a third person, and that the juridical independence of the third person was not prejudiced thereby, inasmuch as he was free to exercise or not to exercise that right. In draft article 32 the Commission had squared the juridical circle by admitting that a right in favour of a third State arose only through a second collateral agreement and then deciding, nevertheless, that the third State's assent should be presumed so long as the contrary was not indicated. (Mr. de Luna, XXIst session, 912th meeting, para. 39)

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Tunisia

See XXIst session, 913th meeting, para. 39, quoted *infra* under article 69.

See XXIInd session, 981st meeting, para. 2, quoted *infra* under article 69.

Uganda

His delegation had noted with regret, however, 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, he 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.
(Mr. Isingoma, XXIst session, 910th meeting, para. 2)

Ukrainian Soviet Socialist Republic

...article 32 should indicate more clearly that the provisions of its paragraph 1 did not prevent a State party to a treaty from concluding with a State which was not a party an agreement providing that the treaty would apply to their mutual relations.
(Mr. Yakimenko, XXIInd session, 978th meeting, para. 19)

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Part III, section 4, article 32

Union of Soviet Socialist Republics

It would seem appropriate to specify in... article [32] that the provisions of its paragraph 1 do not prevent the parties to the treaty from concluding agreements with third States under which the third States are granted rights similar to those arising from the treaty.

(Note verbale of 21 July 1967 from the Permanent Mission to the United Nations (A/6827, p. 26))

United Republic of Tanzania

See XXIst session, 912th meeting, para. 45, quoted *supra* under article 1.

United States of America

...[some] sections of the draft convention are replete with provisions which will result in dispute. To list but a few:

....

(d) How is the intent of the parties to accord third States' rights determined under article 32?

(Note verbale of 2 October 1967 from the Permanent Representative to the United Nations (A/6827/Add.2, p. 12))

Yugoslavia

As is known, sovereign States may propose to create by treaty rights in favour of a third State. The question arises of the most suitable conditions to be laid down for the institution, the exercise and, possibly, the extinction of such a right. In addition, a beneficiary third State has the sovereign right to accept or refuse the exercise of such a right.

In order to avoid division of opinion as to the acceptance or waiver by a third State of a right conferred upon it, it would be desirable, in the interest

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of maintaining unrestricted friendly relations among States, to ensure a degree of certainty in international treaties and, in the given instance, not to proceed on the assumption of the beneficiary State's consent. In other words, the Government of the Socialist Federal Republic of Yugoslavia considers that a provision should be included in the text of this article concerning the necessity for the consent of the third State to which the right is granted as an independent subject of international law, unless all the parties concerned decide otherwise. (Letter of 28 June 1967 from the Chief Legal Adviser of the Ministry of Foreign Affairs (A/6827, pp. 29-30))

ARTICLE 33

Revocation or modification of obligations or rights of third States

MEMBER STATES

Canada

See XXIInd session, 976th meeting, para. 4, quoted *infra* under article 62.

Poland

See XXIst session, 913th meeting, para.10, quoted *supra* under Comments and observations on the draft articles as a whole.

ARTICLE 34

Rules in a treaty becoming binding through international custom

MEMBER STATES

Bulgaria

It would... be desirable to have at the beginning a statement of the principle that nothing in the convention may be considered as precluding the application of the customary rules of international law in a field not regulated by this convention. In the present draft of the convention, this principle is expressed only partially in article 34 and might be inferred from the text of article 3.

(Note verbale of 17 August 1967 from the Permanent Mission to the United Nations (A/6827/Add.1, p. 5))

Czechoslovakia

The draft convention concerns the international law of treaties. In view of that the inclusion of an article dealing with establishment of a customary rule does not accord with the purpose of the convention. The deletion of that article should be considered.

(Note verbale of 15 August 1967 from the Chargé d'Affaires ad interim to the United Nations (A/6827, p. 12))

Part III, section 4, article 34

Finland

See document A/6827, quoted *supra* under Comments and observations on the draft articles as a whole.

Syria

.../Mr. Nachabe referred to/ the question of the rules in a treaty becoming generally binding through international custom, which the Commission had dealt with in article 62 of its provisional draft and later in article 34 of its final draft (see A/6309). As his delegation had pointed out at the twentieth session of the General Assembly, 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 the view of his delegation, that was an essential point that ought to be expressly mentioned in the text of article 34.
(Mr. Nachabe, XXIst session, 906th meeting, para. 24)