UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES

First and second sessions

Vienna, 26 March—24 May 1968 and 9 April—22 May 1969

OFFICIAL RECORDS

Documents of the Conference

UNITED NATIONS

New York, 1971

INTRODUCTORY NOTE

This volume contains the documents of the first and second sessions of the United Nations Conference on the Law of Treaties.

* * *

The summary records of the plenary meetings of the Conference (documents A/CONF.39/SR.1 to SR.5 and A/CONF.39/SR.6 to SR.36) and those of the Committee of the Whole (A/CONF.39/C.1/SR.1 to SR.83 and A/CONF.39/C.1/SR.84 to SR.105) are reproduced in documents A/CONF.39/11 and A/CONF.39/11/Add.1 (for further details, see Index to the documents of the Conference, p. iv of this volume).

* * *

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

A/CONF.39/11/Add.2

UNITED NATIONS PUBLICATION

Sales number: E.70. V. 5

Price: $U.S. 4.00
(or equivalent in other currencies)

CONTENTS

INDEX TO THE DOCUMENTS OF THE CONFERENCE

NOTE. Where the symbol is followed by an asterisk, the document is not included in this volume.

PROPOSALS, REPORTS AND OTHER DOCUMENTS

Blank page

Page blanche

A.—REPORTS OF THE CREDENTIALS COMMITTEE

Document A/CONF.39/9 *

REPORT OF THE CREDENTIALS COMMITTEE ON THE FIRST SESSION OF THE CONFERENCE

[Original: English]
[21 May 1968]

1. At its second and third plenary meetings, held on 27 March 1968, the Conference, in accordance with rule 4 of its rules of procedure (A/CONF.39/10), appointed a Credentials Committee consisting of the following States: Ceylon, Dominican Republic, Japan, Madagascar, Mali, Mexico, Switzerland, the Union of Soviet Socialist Republics and the United States of America.

2. The Credentials Committee met on 16 May 1968.

3. Mr. Eduardo Suarez (Mexico) was unanimously elected Chairman.

4. The Secretariat reported to the Committee as follows:

(*a*) Credentials for the representatives of the following States issued by the Head of State or Government or the Minister for Foreign Affairs had been submitted to the Executive Secretary of the Conference in accordance with rule 3 of the rules of procedure: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mauritania, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia.

(*b*) In the case of the representative of Mauritius, an authorization to represent his Government at the Conference had been received by cable from the Head of Government.

(*c*) The name of the representative of Yemen had been submitted in a letter from the Permanent Mission of that State to the United Nations.

5. The representative of the Union of Soviet Socialist Republics raised the question of the representation of China and stated that the participation in the Conference of the representatives of the Chiang Kai-shek régime was unlawful. He said that only representatives appointed by the Government of the People's Republic of China were qualified to represent China at the Conference. He further stated that the delegation of the Union of Soviet Socialist Republics could not recognize credentials submitted on behalf of China by any other persons and requested that those credentials should be considered as not valid.

6. The representatives of Ceylon and Mali supported the views expressed by the representative of the Soviet Union. The representative of Ceylon stressed that the responsibilities of the Committee required that, in examining the credentials, it should make certain that the persons holding the credentials were the true representatives of the State concerned. He held that the representatives of the Chiang Kai-shek régime had no legitimate right to speak on behalf of China, which was properly represented by the Government of the People's Republic of China.

7. The representative of Japan stated that the question of the representation of China was not within the competence of the Committee. In his view, the Committee's task was limited to the question whether the credentials of participating States were duly issued in accordance with rule 3 of the rules of procedure of the Conference. The credentials of the representatives of the Republic of China having been issued by the competent authorities, he saw no ground to challenge the validity of such credentials. Accordingly, the representative of Japan considered that the statement made by the representative of the Union of Soviet Socialist Republics was out of order.

8. The representative of the United States of America endorsed the views expressed by the representative of Japan. The representative of the United States of America further stated that the issue had already been decided by General Assembly resolution 2166 (XXI) by which the Conference was convened. He added that under operative paragraph 4 of resolution 2166 (XXI) the Government of the Republic of China, a Member of the United Nations and of the specialized agencies, was fully entitled to participate in the Conference.

---

* Incorporating A/CONF.39/9/Corr.2.

9. The representative of Switzerland declared that his delegation would abstain on the question. He pointed out that Switzerland had recognized the People's Republic of China. However, he said his country had been invited to participate in the Conference by the competent organs of the United Nations in their present composition, on which as an invited State, not a member of the United Nations, Switzerland did not feel called upon to comment.

10. The Chairman referred to General Assembly resolution 2166 (XXI) in which the General Assembly requested the Secretary-General of the United Nations to convoke the Conference on the Law of Treaties and invited States Members of the United Nations, States members of the specialized agencies, States Parties to the Statute of the International Court of Justice and States that the General Assembly decided specially to invite, to participate in the Conference. As the Secretary-General had, pursuant to the said resolution, invited the Government of the Republic of China to attend the Conference, the only question within the competence of the Credentials Committee was whether the credentials issued by the Government of the Republic of China were in proper order. The Chairman then stated that since those credentials were issued in accordance with rule 3 of the rules of procedure, the proposal of the representative of the Union of Soviet Socialist Republics was out of order.

11. The representative of the Union of Soviet Socialist Republics challenged the Chairman's ruling. The Committee upheld the Chairman's ruling by rejecting the appeal by 5 votes to 3, with 1 abstention.

12. The representative of Mali expressed formal reservations concerning the credentials of the representatives of South Africa, since they emanated from a racist and fascist régime which practised *apartheid* and defied the United Nations Charter, and not from the people of South Africa. He believed that those credentials should be rejected.

13. The representatives of the Union of Soviet Socialist Republics and Madagascar associated themselves with the view expressed by the representative of Mali. The representative of the Union of Soviet Socialist Republics further stated that his delegation had repeatedly expressed its opposition to the minority Government of South Africa, which deprived the rightful masters of the country —the indigenous population—of their rights and freedoms and which had persistently flouted the General Assembly resolutions calling upon it to end its policies of *apartheid* and racial discrimination.

14. The representative of the United States of America stated that his Government also categorically rejected the policies of racial discrimination and *apartheid* practised by the Government of South Africa. He was of the view, however, that his Government's detestation of those policies did not affect the validity of the credentials of the South African delegation, which fulfilled the requirements of rule 3 of the rules of procedure of the Conference.

15. The representative of the Union of Soviet Socialist Republics stated that his delegation did not recognize the credentials of the representatives of South Viet-Nam as the lawful representatives of the people of South Viet-Nam. The representative of Mali supported the views expressed by the representative of the Union of Soviet Socialist Republics and stated that his country had recognized the Democratic Republic of Viet-Nam.

16. The representative of Japan stated that the Republic of Viet-Nam was invited by the Secretary-General in accordance with General Assembly resolution 2166 (XXI) and that the credentials of its representatives at the Conference had been duly issued by the competent authorities of the country.

17. The Chairman proposed that the Credentials Committee should find in order all the representatives' credentials received and submit to the Conference a report with a recommendation that it be approved. All the reservations expressed in the Committee concerning the representation of China, the Republic of Viet-Nam and South Africa would be recorded in the Committee's report to the Conference.

18. The Chairman's proposal was unanimously adopted.

19. The representative of the Union of Soviet Socialist Republics said that his vote in favour of the report of the Credentials Committee should not be interpreted as signifying consent by his delegation to recognize the credentials of the representatives of the Chiang Kai-shek régime, South Africa and South Viet-Nam. The representative of Mali stated that his vote should not be construed as a recognition of the credentials of the representatives of China, the Republic of Viet-Nam and South Africa. The representative of Ceylon stated that he would vote for the report on the understanding that the reservations made during the debate would be recorded in the report.

20. Accordingly, the Credentials Committee recommends that the Conference approve its report.

Document A/CONF.39/23/Rev.1

REPORT OF THE CREDENTIALS COMMITTEE ON THE SECOND SESSION OF THE CONFERENCE

[*Original: English*]
[*21 May 1969*]

1. During the first session, at its second and third plenary meetings, held on 27 March 1968, the Conference, in accordance with rule 4 of its rules of procedure (A/CONF. 39/10), appointed a Credentials Committee consisting of the following States: Ceylon, Dominican Republic, Japan, Madagascar, Mali, Mexico, Switzerland, the Union of Soviet Socialist Republics and the United States of America. Mr. Eduardo Suarez (Mexico) was unanimously elected Chairman by the Credentials Committee. The report of the Credentials Committee on the

first session (A/CONF.39/9) was approved by the Conference at its fifth plenary meeting, held on 24 May 1968. At the same meeting, the President of the Conference said that the remarks made during the consideration of the Committee's report would be noted.

2. Mali having been unable to attend the second session, the Conference, at its 30th plenary meeting, held on 19 May 1969, appointed the United Republic of Tanzania to replace Mali as a member of the Credentials Committee.

3. The Credentials Committee, during the second session, met on 20 May 1969.

4. As provided in rules 3 and 4 of the rules of procedure, the Credentials Committee examined only the credentials of representatives newly accredited to the second session of the Conference, namely the credentials submitted for representatives of States which did not participate in the first session of the Conference and the credentials superseding or supplementing previous ones submitted for representatives of States which participated in the first session of the Conference.

5. The Secretariat reported to the Committee as follows:

(*a*) Formal credentials issued by the Head of State or Government or by the Minister for Foreign Affairs, as provided for in rule 3 of the rules of procedure of the Conference, had been submitted to the Executive Secretary of the Conference for representatives of eleven out of the twelve participating States which did not attend the first session, namely: Barbados, Burma, Cameroon, El Salvador, Lesotho, Libya, Luxembourg, Malta, Panama, Sudan and Uganda. In the case of the representative of Iceland, an authorization to represent his Government at the Conference had been received by cable from the Minister for Foreign Affairs.

(*b*) Formal new credentials superseding or supplementing previous credentials had been submitted to the Executive Secretary of the Conference for representatives of sixty-one States which participated in the first session of the Conference. The participating States which had submitted formal new credentials were: Afghanistan, Algeria, Australia, Austria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, Colombia, Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Holy See, Indonesia, Iran, Israel, Kenya, Kuwait, Liechtenstein, Madagascar, Malaysia, Mauritius, Mexico, Mongolia, Nepal, Netherlands, New Zealand, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Senegal, Singapore, Syria, Thailand, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Venezuela and Zambia. All those formal new credentials had been issued by the Head of the State or Government or by the Minister for Foreign Affairs, as provided for in rule 3 of the rules of procedure of the Conference. Representatives of the Dominican Republic and Sierra Leone had been authorized to represent their respective Governments at the Conference by cable from the Minister for Foreign Affairs.

6. After recalling that the Credentials Committee was at present confining itself to the examination of the credentials presented at the second session of the Conference, the representative of the Union of Soviet Socialist Republics stated that his delegation could not recognize the credentials of the persons claiming to represent South Viet-Nam and South Korea, since the Saigon ruling group and the Seoul régime could not be regarded as representing the people of South Viet-Nam and the people of South Korea respectively. The representative of the United Republic of Tanzania supported the views expressed by the representative of the Union of Soviet Socialist Republics. He added that once these countries were united and democratic and sent their true representatives to international conferences, his delegation would be happy to recognize the credentials of their representatives.

7. The representative of Japan stated that the Republic of Korea had been duly invited by the Secretary-General of the United Nations in accordance with resolution 2166 (XXI) of the General Assembly and that there was no ground for challenging the validity of the credentials of its representatives which had been issued by the competent authorities of the Republic of Korea. The representative of the United States of America stated that the Republic of Viet-Nam had been invited by the Secretary-General of the United Nations in accordance with General Assembly resolution 2166 (XXI), that the credentials of its representatives at the Conference had been duly issued by the competent authorities of the country and that consequently no ground existed for challenging their validity.

8. The Chairman proposed that the Credentials Committee should find all credentials of representatives examined by the Committee at the second session in order and submit to the Conference a report with the recommendation that it be approved. All the reservations expressed in the Committee concerning the representation of the Republic of Korea and of the Republic of Viet-Nam would be recorded in the Committee's report to the Conference.

9. The Chairman's proposal was unanimously adopted.

10. The representative of the Union of Soviet Socialist Republics declared that his vote in favour of the report of the Credentials Committee should not be interpreted as signifying his delegation's consent to recognize the credentials of the representatives of the South Vietnamese and South Korean authorities. The representative of the United Republic of Tanzania stated that his vote should not be construed as a recognition of the credentials submitted on behalf of South Korea and South Viet-Nam.

11. Accordingly, the Credentials Committee recommends that the Conference approve its report.

Blank page

Page blanche

B.—DRAFT ARTICLES ON THE LAW OF TREATIES WITH COMMENTARIES, ADOPTED BY THE INTERNATIONAL LAW COMMISSION AT ITS EIGHTEENTH SESSION

[This text is as printed in the *Yearbook of the International Law Commission, 1966*, vol. II.]

Part I.—Introduction

Article 1.[35] The scope of the present articles

The present articles relate to treaties concluded between States.

Commentary

(1) This provision defining the scope of the present articles as relating to "treaties concluded between States" has to be read in close conjunction not only with article 2(1)(*a*), which states the meaning with which the term "treaty" is used in the articles, but also with article 3, which contains a general reservation regarding certain other categories of international agreements. The sole but important purpose of this provision is to underline at the outset that all the articles which follow have been formulated with particular reference to treaties concluded between States and are designed for application only to such treaties.

(2) Article 1 gives effect to and is the logical consequence of the Commission's decision at its fourteenth session not to include any special provisions dealing with the treaties of international organizations and to confine the draft articles to treaties concluded between States. Treaties concluded by international organizations have many special characteristics; and the Commission considered that it would both unduly complicate and delay the drafting of the present articles if it were to attempt to include in them satisfactory provisions concerning treaties of international organizations. It is true that in the draft provisionally adopted in 1962, article 1 defined the term treaty "for the purpose of the present articles" as covering treaties "concluded between two or more States or other subjects of international law". It is also true that article 3 of that draft contained a very general reference to the capacity of "other subjects of international law" to conclude treaties and a very general rule concerning the capacity of international organizations in particular. But no other article of that draft or of those provisionally adopted in 1963 and 1964 made any specific reference to the treaties of international organizations or of any other "subject of international law".

(3) The Commission, since the draft articles were being prepared as a basis for a possible convention, considered it essential, first, to remove from former articles 1 and 3 (articles 2 and 5 of the present draft) the provisions relating to treaties not specifically the subject of the present articles and, secondly, to indicate clearly the restriction of the present articles to treaties concluded between States. Accordingly, it decided to make the appropriate adjustments in articles 1 and 5 and to insert article 1 restricting the scope of the draft articles to treaties concluded between States. The Commission examined whether the object could be more appropriately achieved by merely amending the definition of treaty in article 2. But considerations of emphasis and of drafting convenience led it to conclude that the definition of the scope of the draft articles in the first article is desirable.

(4) The Commission considered it no less essential to prevent any misconception from arising from the express restriction of the draft articles to treaties concluded between States or from the elimination of the references to treaties of "other subjects of international law" and of "international organizations". It accordingly decided to underline in the present commentary that the elimination of those references is not to be understood as implying any change of opinion on the part of the Commission as to the legal nature of those forms of international agreements. It further decided to add to article 3 (former article 2) a specific reservation with respect to their legal force and the rules applicable to them.

Article 2.[36] Use of terms

1. For the purposes of the present articles:

(*a*) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(*b*) "Ratification", "Acceptance", "Approval", and "Accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

(*c*) "Full powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.

(*d*) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

[35] 1965 draft, article 0.

[36] 1962 and 1965 drafts, article 1.

(e) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty.

(f) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.

(g) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force.

(h) "Third State" means a State not a party to the treaty.

(i) "International organization" means an intergovernmental organization.

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

Commentary

(1) This article, as its title and the introductory words of paragraph 1 indicate, is intended only to state the meanings with which terms are used in the draft articles.

(2) "*Treaty*". The term "treaty" is used throughout the draft articles as a generic term covering all forms of international agreement in writing concluded between States. Although the term "treaty" in one sense connotes only the single formal instrument, there also exist international agreements, such as exchanges of notes, which are not a single formal instrument, and yet are certainly agreements to which the law of treaties applies. Similarly, very many single instruments in daily use, such as an "agreed minute" or a "memorandum of understanding", could not appropriately be called *formal* instruments, but they are undoubtedly international agreements subject to the law of treaties. A general convention on the law of treaties must cover all such agreements, and the question whether, for the purpose of describing them, the expression "treaties" should be employed rather than "international agreements" is a question of terminology rather than of substance. In the opinion of the Commission a number of considerations point strongly in favour of using the term "treaty" for this purpose.

(3) First, the treaty in simplified form, far from being at all exceptional, is very common, and its use is steadily increasing.[37] Secondly, the juridical differences, in so far as they really exist at all, between formal treaties and treaties in simplified form lie almost exclusively in the method of conclusion and entry into force. The law relating to such matters as validity, operation and effect, execution and enforcement, interpretation, and termination, applies to all classes of international agreements. In relation to these matters, there are admittedly some important differences of a juridical character between certain classes or categories of international agreements.[38] But these differences spring neither from the form, the appellation, nor any other outward characteristic of the instrument in which they are embodied: they spring exclusively from the content of the agreement, whatever its form. It would therefore be inadmissible to exclude certain forms of international agreements from the general scope of a convention on the law of treaties merely because, in regard to the method of conclusion and entry into force, there may be certain differences between such agreements and formal agreements. Thirdly, even in the case of single formal agreements an extraordinarily varied nomenclature has developed which serves to confuse the question of classifying international agreements. Thus, in addition to "treaty", "convention" and "protocol", one not infrequently finds titles such as "declaration", "charter", "covenant", "pact", "act", "statute", "agreement", "concordat", whilst names like "declaration" "agreement" and "*modus vivendi*" may well be found given both to formal and less formal types of agreements. As to the latter, their nomenclature is almost illimitable, even if some names such as "agreement", "exchange of notes", "exchange of letters", "memorandum of agreement", or "agreed minute" may be more common than others.[39] It is true that some types of instruments are used more frequently for some purposes rather than others; it is also true that some titles are more frequently attached to some types of transaction rather than to others. But there is no exclusive or systematic use of nomenclature for particular types of transaction. Fourthly, the use of the term "treaty" as a generic term embracing all kinds of international agreements in written form is accepted by the majority of jurists.

(4) Even more important, the generic use of the term "treaty" is supported by two provisions of the Statute of the International Court of Justice. In Article 36, paragraph 2, amongst the matters in respect of which States parties to the Statute can accept the compulsory jurisdiction of the Court, there is listed "*a.* the interpretation of a treaty". But clearly, this cannot be intended to mean that States cannot accept the compulsory jurisdiction of the Court for purposes of the interpretation of international agreements not actually called treaties, or embodied in instruments having another designation. Again, in Article 38, paragraph 1, the Court is directed to apply in reaching its decisions, "*a.* international conventions". But equally, this cannot be intended to mean that the Court is precluded from applying other kinds of instruments embodying international agreements, but not styled "conventions". On the contrary, the Court must and does apply them. The fact that in one of these two provisions dealing with the whole range of international agreements the term employed is "treaty" and in the other the even more formal term "convention" is used serves to confirm that the use of the term "treaty" generically in the present articles to embrace all international agreements is perfectly legitimate. Moreover, the only real alternative would be to use for the generic

[37] See first report by Sir H. Lauterpacht, *Yearbook of the International Law Commission, 1953*, vol. II, pp. 101-106.

[38] See on this subject the commentaries to Sir G. Fitzmaurice's second report (*Yearbook of the International Law Commission, 1957*, vol. II, p. 16, paras. 115, 120, 125-128 and 165-168); and his third report (*Yearbook of the International Law Commission, 1958*, vol. II, p. 20, paras. 90-93).

[39] See the list given in Sir H. Lauterpacht's first report (*Yearbook of the International Law Commission, 1953*, vol. II, p. 101), paragraph 1 of the commentary to his article 2. Article 1 of the General Assembly regulation concerning registration speaks of "every treaty or international agreement, whatever its form and descriptive name".

term the phrase "international agreement", which would not only make the drafting more cumbrous but would sound strangely today, when the "law of treaties" is the term almost universally employed to describe this branch of international law.

(5) The term "treaty", as used in the draft articles, covers only international agreements made between "two or more States". The fact that the term is so defined here and so used throughout the articles is not, as already underlined in the commentary to the previous article, in any way intended to deny that other subjects of international law, such as international organizations and insurgent communities, may conclude treaties. On the contrary, the reservation in article 3 regarding the legal force of and the legal principles applicable to their treaties was inserted by the Commission expressly for the purpose of refuting any such interpretation of its decision to confine the draft articles to treaties concluded between States.

(6) The phrase "governed by international law" serves to distinguish between international agreements regulated by public international law and those which, although concluded between States, are regulated by the national law of one of the parties (or by some other national law system chosen by the parties). The Commission examined the question whether the element of "intention to create obligations under international law" should be added to the definition. Some members considered this to be actually undesirable since it might imply that States always had the option to choose between international and municipal law as the law to govern the treaty, whereas this was often not open to them. Others considered that the very nature of the contracting parties necessarily made an inter-State agreement subject to international law, at any rate in the first instance. The Commission concluded that, in so far as it may be relevant, the element of intention is embraced in the phrase "governed by international law", and it decided not to make any mention of the element of intention in the definition.

(7) The restriction of the use of the term "treaty" in the draft articles to international agreements expressed in writing is not intended to deny the legal force of oral agreements under international law or to imply that some of the principles contained in later parts of the Commission's draft articles on the law of treaties may not have relevance in regard to oral agreements. But the term "treaty" is commonly used as denoting an agreement in written form, and in any case the Commission considered that, in the interests of clarity and simplicity, its draft articles on the law of treaties must be confined to agreements in written form. On the other hand, although the classical form of treaty was a single formal instrument, in modern practice international agreements are frequently concluded not only by less formal instruments but also by means of two or more instruments. The definition, by the phrase "whether embodied in a single instrument or in two or more related instruments", brings all these forms of international agreement within the term "treaty".

(8) The text provisionally adopted in 1962 also contained definitions of two separate categories of treaty: (*a*) a "treaty in simplified form" and (*b*) a "general multilateral treaty". The former term was employed in articles 4 and 12 of the 1962 draft in connexion with the rules governing respectively "full powers" and "ratification". The definition, to which the Commission did not find it easy to give sufficient precision, was employed in those articles as a criterion for the application of certain rules. On re-examining the two articles at its seventeenth session, the Commission revised the formulation of their provisions considerably and in the process found it possible to eliminate the distinctions made in them between "treaties in simplified form" and other treaties which had necessitated the definition of the term. In consequence, it no longer appears in the present article. The second term "general multilateral treaty" was employed in article 8 of the 1962 draft as a criterion for the application of the rules then included in the draft regarding "participation in treaties". The article, for reasons which are explained in a discussion of the question of participation in treaties appended to the commentary to article 12, has been omitted from the draft articles, which do not now contain any rules dealing specifically with participation in treaties. Accordingly this definition also ceases to be necessary for the purposes of the draft articles and no longer appears among the terms defined in the present article.

(9) "*Ratification*", "*Acceptance*", "*Approval*" and "*Accession*". The purpose of this definition is to underline that these terms, as used throughout the draft articles, relate exclusively to the international act by which the consent of a State to be bound by a treaty is established on the international plane. The constitutions of many States contain specific requirements of internal law regarding the submission of treaties to the "ratification" or the "approval" of a particular organ or organs of the State. These procedures of "ratification" and "approval" have their effects in internal law as requirements to be fulfilled before the competent organs of the State may proceed to the international act which will establish the State's consent to be bound. The international act establishing that consent, on the other hand, is the exchange, deposit or notification internationally of the instrument specified in the treaty as the means by which States may become parties to it. Nor is there any exact or necessary correspondence between the use of the terms in internal law and international law, or between one system of internal law and another. Since it is clear that there is some tendency for the international and internal procedures to be confused and since it is only the international procedures which are relevant in the international law of treaties, the Commission thought it desirable in the definition to lay heavy emphasis on the fact that it is purely the international act to which the terms ratification, acceptance, approval and accession relate in the present articles.

(10) "*Full powers*". The definition of this term does not appear to require any comment except to indicate the significance of the final phrase "or for accomplishing any other act with respect to a treaty". Although "full powers" normally come into consideration with respect to conclusion of treaties (see articles 6, 10 and 11), it is possible that they may be called for in connexion with

other acts such as the termination or denunciation of a treaty (see article 63, paragraph 2).

(11) "*Reservation*". The need for this definition arises from the fact that States, when signing, ratifying, acceding to, accepting or approving a treaty, not infrequently make declarations as to their understanding of some matter or as to their interpretation of a particular provision. Such a declaration may be a mere clarification of the State's position or it may amount to a reservation, according as it does or does not vary or exclude the application of the terms of the treaty as adopted.

(12) "*Negotiating State*", "*Contracting State*", "*Party*". In formulating the articles the Commission decided that it was necessary to distinguish between four separate categories of State according as the particular context required, and that it was necessary to identify them clearly by using a uniform terminology. One category, "States entitled to become parties to the treaty", did not appear to require definition. The other three are those defined in sub-paragraphs 1(*e*), 1(*f*) and 1(*g*). "Negotiating States" require to be distinguished from both "contracting States" and "parties" in certain contexts, notably whenever an article speaks of the intention underlying the treaty. "States entitled to become parties" is the appropriate term in certain paragraphs of article 72. "Contracting States" require to be distinguished both from "negotiating States" and "parties" in certain contexts where the relevant point is the State's expression of consent to be bound independently of whether the treaty has yet come into force. As to "party", the Commission decided that, in principle, this term should be confined to States for which the treaty is in force. At the same time, the Commission considered it justifiable to use the term "party" in certain articles which deal with cases where, as in article 65, a treaty having purportedly come into force, its validity is challenged, or where a treaty that was in force has been terminated.

(13) "*Third State*". This term is in common use to denote a State which is not a party to the treaty and the Commission, for drafting reasons, considered it convenient to use the term in that sense in section 4 of part III.

(14) "*International organization*". Although the draft articles do not relate to the treaties of international organizations, their application to certain classes of treaties concluded between States may be affected by the rules of an international organization (see article 4). The term "international organization" is here defined as an *intergovernmental* organization in order to make it clear that the rules of non-governmental organizations are excluded.

(15) *Paragraph 2* is designed to safeguard the position of States in regard to their internal law and usages, and more especially in connexion with the ratification of treaties. In many countries, the constitution requires that international agreements in a form considered under the internal law or usage of the State to be a "treaty" must be endorsed by the legislature or have their ratification authorized by it, perhaps by a specific majority; whereas other forms of international agreement are not subject to this requirement. Accordingly, it is essential that the definition given to the term "treaty" in the present articles should do nothing to disturb or affect in any way the existing domestic rules or usages which govern the classification of international agreements under national law.

Article 3.[40] International agreements not within the scope of the present articles

The fact that the present articles do not relate:

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

(*b*) To international agreements not in written form

shall not affect the legal force of such agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.

Commentary

(1) The text of this article, as provisionally adopted in 1962, contained only the reservation in paragraph (*b*) regarding the force of international agreements not in written form.

(2) The first reservation in sub-paragraph (*a*) regarding treaties concluded between States and other subjects of international law or between such other subjects of international law was added at the seventeenth session as a result of the Commission's decision to limit the draft articles strictly to treaties concluded between States and of the consequential restriction of the definition of "treaty" in article 2 to "an international agreement concluded *between States*". This narrow definition of "treaty", although expressly limited to the purposes of the present articles, might by itself give the impression that international agreements between a State and an international organization or other subject of international law, or between two international organizations, or between any other two non-Statal subjects of international law, are outside the purview of the law of treaties. As such international agreements are now frequent—especially between States and international organizations and between two organizations—the Commission considered it desirable to make an express reservation in the present article regarding their legal force and the possible relevance to them of certain of the rules expressed in the present articles.

(3) The need for the second reservation in sub-paragraph (*b*) arises from the definition of "treaty" in article 2 as an international agreement concluded "in written form", which by itself might equally give the impression that oral or tacit agreements are not to be regarded as having any legal force or as governed by any of the rules forming the law of treaties. While the Commission considered that in the interests of clarity and simplicity the present articles on the general law of treaties must be confined to agreements in written form, it recognized that oral international agreements may possess legal force and that certain of the substantive rules set out in

[40] 1962 and 1965 drafts, article 2.

the draft articles may have relevance also in regard to such agreements.

(4) The article accordingly specifies that the fact that the present articles do not relate to either of those categories of international agreements is not to affect their legal force or the "application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles".

Article 4.[41] Treaties which are constituent instruments of international organizations or which are adopted within international organizations

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

Commentary

(1) The draft articles, as provisionally adopted at the fourteenth, fifteenth and sixteenth sessions, contained a number of specific reservations with regard to the application of the established rules of an international organization. In addition, in what was then part II of the draft articles and which dealt with the invalidity and termination of treaties, the Commission had inserted an article (article 48 of that draft) making a broad reservation in the same sense with regard to all the articles on termination of treaties. On beginning its re-examination of the draft articles at its seventeenth session, the Commission concluded that the article in question should be transferred to its present place in the introduction and should be reformulated as a general reservation covering the draft articles as a whole. It considered that this would enable it to simplify the drafting of the articles containing specific reservations. It also considered that such a general reservation was desirable in case the possible impact of rules of international organizations in any particular context of the law of treaties should have been inadvertently overlooked.

(2) The Commission at the same time decided that the categories of treaties which should be regarded as subject to the impact of the rules of an international organization and to that extent excepted from the application of this or that provision of the law of treaties ought to be narrowed. Some reservations regarding the rules of international organizations inserted in articles of the 1962 draft concerning the conclusion of treaties had embraced not only constituent instruments and treaties drawn up within an organization but also treaties drawn up "under its auspices". In reconsidering the matter in 1963 in the context of termination and suspension of the operation of treaties, the Commission decided that only constituent instruments and treaties actually drawn up within an organization should be regarded as covered by the reservation. The general reservation regarding the rules of international organizations inserted in the text of the present article at the seventeenth session was accordingly formulated in those terms.

(3) Certain Governments, in their comments upon what was then part III of the draft articles (application, effects, modification and interpretation), expressed the view that care must be taken to avoid allowing the rules of international organizations to restrict the freedom of negotiating States unless the conclusion of the treaty was part of the work of the organization, and not merely when the treaty was drawn up within it because of the convenience of using its conference facilities. Noting these comments, the Commission revised the formulation of the reservation at its present session so as to make it cover only "constituent instruments" and treaties which are "*adopted* within an international organization". 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.

Part II.—Conclusion and entry into force of treaties

Section 1: Conclusion of treaties

Article 5.[42] Capacity of States to conclude treaties

1. Every State possesses capacity to conclude treaties.

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

Commentary

(1) Some members of the Commission considered that there was no need for an article on capacity in international law to conclude treaties. They pointed out that capacity to enter into diplomatic relations had not been dealt with in the Vienna Convention on Diplomatic Relations and suggested that, if it were to be dealt with in the law of treaties, the Commission might find itself codifying the whole law concerning the "subjects" of international law. Other members felt that the question of capacity was more prominent in the law of treaties than in the law of diplomatic intercourse and immunities and that the draft articles should contain at least some general provisions concerning capacity to conclude treaties.

(2) In 1962 the Commission, while holding that it would not be appropriate to enter into all the detailed problems of capacity which might arise, decided to include in the present article three broad provisions concerning the capacity to conclude treaties of (i) States and other subjects of international law, (ii) Member States of a federal union and (iii) international organizations. The third of these provisions—capacity of international organizations to conclude treaties—was an echo from a period when the Commission contemplated including a separate part dealing with the treaties of international organizations. Although at its session in 1962 the Commission had decided to confine the draft articles to treaties concluded between States, it retained this provision in the present article dealing with capacity to conclude

[41] 1963 draft, article 48; 1965 draft, article 3(*bis*).

[42] 1962 and 1965 drafts, article 3.

treaties. On re-examining the article, however, at its seventeenth session the Commission concluded that the logic of its decision that the draft articles should deal only with the treaties concluded between States necessitated the omission from the first paragraph of the reference to the capacity of "other subjects of international law", and also required the deletion of the entire third paragraph dealing specifically with the treaty-making capacity of international organizations.

(3) Some members of the Commission were of the opinion that the two provisions which remained did not justify the retention of the article. They considered that to proclaim that States possess capacity to conclude treaties would be a pleonasm since the proposition was already implicit in the definition of the scope of the draft articles in article 1. They also expressed doubts about the adequacy of and need for the provision in paragraph 2 regarding the capacity of member States of a federal union; in particular, they considered that the role of international law in regard to this question should have been included in the paragraph. The Commission, however, decided to retain the two provisions, subject to minor drafting changes. It considered that it was desirable to underline the capacity possessed by every State to conclude treaties; and that, having regard to the examples which occur in practice of treaties concluded by member States of certain federal unions with foreign States in virtue of powers given to them by the constitution of the particular federal union, a general provision covering such cases should be included.

(4) *Paragraph 1* proclaims the general principle that every State possesses capacity to conclude treaties. The term "State" is used in this paragraph with the same meaning as in the Charter of the United Nations, the Statute of the Court, the Geneva Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations; i.e. it means a State for the purposes of international law.

(5) *Paragraph 2*, as already mentioned, deals with the case of federal States whose constitutions, in some instances, allow to their member States a measure of treaty-making capacity. It does not cover treaties made between two units of a federation. Agreements between two member states of a federal State have a certain similarity to international treaties and in some instances certain principles of treaty law have been applied to them in internal law by analogy. However, those agreements operate within the legal régime of the constitution of the federal State, and to bring them within the terms of the present articles would be to overstep the line between international and domestic law. Paragraph 2, therefore, is concerned only with treaties made by a unit of the federation with an outside State. More frequently, the treaty-making capacity is vested exclusively in the federal government, but there is no rule of international law which precludes the component States from being invested with the power to conclude treaties with third States. Questions may arise in some cases as to whether the component State concludes the treaty as an organ of the federal State or in its own right. But on this point also the solution must be sought in the provisions of the federal constitution.

Article 6.[43] Full powers to represent the State in the conclusion of treaties

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:

(*a*) He produces appropriate full powers; or

(*b*) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

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

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

Commentary

(1) The rules contained in the text of the article provisionally adopted in 1962 have been rearranged and shortened. At the same time, in the light of the comments of Governments, the emphasis in the statement of the rules has been changed. The 1962 text set out the law from the point of view of the authority of the different categories of representatives to perform the various acts relating to the conclusion of a treaty. The text finally adopted by the Commission approaches the matter rather from the point of view of stating the cases in which another negotiating State may call for the production of full powers and the cases in which it may safely proceed without doing so. In consequence, the motif of the formulation of the rules is a statement of the conditions under which a person is considered in international law as representing his State for the purpose of performing acts relating to the conclusion of a treaty.

(2) The article must necessarily be read in conjunction with the definition of "full powers" in article 2(1)(*c*), under which they are expressed to mean: "a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty". The 1962 text of the present article dealt with certain special aspects of "full powers" such as the use of a letter or telegram as provisional evidence of a grant of full powers. On re-examining the matter the Commission concluded that it would be better to leave such details to practice and to the decision of those concerned rather than to try to cover them by a general

[43] 1962 and 1965 drafts, article 4.

rule. Those provisions of the 1962 text have therefore been dropped from the article.

(3) *Paragraph 1* lays down the general rule for all cases except those specifically listed in the second paragraph. It provides that a person is considered as representing his State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound only if he produces an appropriate instrument of full powers or it appears from the circumstances that the intention of the States concerned was to dispense with them. The rule makes it clear that the production of full powers is the fundamental safeguard for the representatives of the States concerned of each other's qualifications to represent their State for the purpose of performing the particular act in question; and that it is for the States to decide whether they may safely dispense with the production of full powers. In earlier times the production of full powers was almost invariably requested; and it is still common in the conclusion of more formal types of treaty. But a considerable proportion of modern treaties are concluded in simplified form, when more often than not the production of full powers is not required.

(4) *Paragraph 2* sets out three categories of case in which a person is considered in international law as representing his State without having to produce an instrument of full powers. In these cases, therefore, the other representatives are entitled to rely on the qualification of the person concerned to represent his State without calling for evidence of it. The first of these categories covers Heads of State, Heads of Government and Ministers for Foreign Affairs, who are considered as representing their State for the purpose of performing all acts relating to the conclusion of a treaty. In the case of Foreign Ministers, their special position as representatives of their State for the purpose of entering into international engagements was expressly recognized by the Permanent Court of International Justice in the *Legal Status of Eastern Greenland* case [44] in connexion with the "Ihlen declaration".

(5) The second special category of cases is heads of diplomatic missions, who are considered as representing their State for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited. Article 3, paragraph 1(*c*) of the Vienna Convention on Diplomatic Relations provides that the "functions of a diplomatic mission consist, *inter alia*, in . . . negotiating with the government of the receiving State". However, the qualification of heads of diplomatic missions to represent their States is not considered in practice to extend, without production of full powers, to expressing the consent of their State to be bound by the treaty. Accordingly, sub-paragraph (*b*) limits their automatic qualification to represent their State up to the point of "adoption" of the text.

(6) The third special category is representatives of States accredited to an international conference or to an organ of an international organization, for which the same rule is laid down as for the head of a diplomatic mission: namely, automatic qualification to represent their States for the purpose of adopting the text of a treaty but no more. This category replaces paragraph 2(*b*) of the 1962 text, which treated heads of permanent missions to international organizations on a similar basis to heads of diplomatic missions, so that they would automatically have been considered as representing their States in regard to treaties drawn up under the auspices of the organization and also in regard to treaties between their State and the organization. In the light of the comments of Governments and on a further examination of the practice, the Commission concluded that it was not justified in attributing to heads of permanent missions such a general qualification to represent the State in the conclusion of treaties. At the same time, it concluded that the 1962 rule was too narrow in referring only to heads of permanent missions since other persons may be accredited to an organ of an international organization in connexion with the drawing up of the text of the treaty, or to an international conference.

Article 7. [45] Subsequent confirmation of an act performed without authority

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

Commentary

(1) This article contains the substance of what appeared in the draft provisionally adopted in 1963 as paragraph 1 of article 32, dealing with lack of authority to bind the State as a ground of invalidity. That article then contained two paragraphs dealing respectively with acts purporting to express a State's consent to be bound (i) performed by a person lacking any authority from the State to represent it for that purpose; and (ii) performed by a person who had authority to do so subject to certain restrictions but failed to observe those restrictions. In re-examining article 32 at the second part of its seventeenth session, however, the Commission concluded that only the second of these cases could properly be regarded as one of invalidity of consent. It considered that in the first case, where a person lacking any authority to represent the State in this connexion purported to express its consent to be bound by a treaty, the true legal position was that his acts was not attributable to the State and that, in consequence, there was no question of any consent having been expressed by it. Accordingly, the Commission decided that the first case should be dealt with in the present part in the context of representation of a State in the conclusion of treaties; and that the rule stated in the article should be that the unauthorized act of the representative *is without legal effect* unless afterwards confirmed by the State.

(2) Article 6 deals with the question of full powers to represent the State in the conclusion of treaties. The present article therefore provides that "An act relating

[44] *P.C.I.J.* (1933) Series A/B, No. 53, p. 71.

[45] 1963 draft, article 32, para. 1.

to the conclusion of a treaty *performed by a person who cannot be considered under article 6 as representing his State for that purpose* is without legal effect *unless afterwards confirmed by the competent authority of the State*". Such cases are not, of course, likely to happen frequently, but instances have occurred in practice. In 1908, for example, the United States Minister to Romania signed two conventions without having any authority to do so.[46] With regard to one of these conventions his Government had given him no authority at all, while he had obtained full powers for the other by leading his Government to understand that he was to sign a quite different treaty. Again, in 1951 a convention concerning the naming of cheeses concluded at Stresa was signed by a delegate on behalf both of Norway and Sweden, whereas it appears that he had authority to do so only from the former country. In both these instances the treaty was subject to ratification and was in fact ratified. A further case, in which the same question may arise, and one more likely to occur in practice, is where an agent has authority to enter into a particular treaty, but goes beyond his full powers by accepting unauthorized extensions or modifications of it. An instance of such a case was Persia's attempt, in discussions in the Council of the League, to disavow the Treaty of Erzerum of 1847 on the ground that the Persian representative had gone beyond his authority in accepting a certain explanatory note when exchanging ratifications.

(3) Where there is no authority to enter into a treaty, it seems clear, on principle, that the State must be entitled to disavow the act of its representative, and the article so provides. On the other hand, it seems equally clear that, notwithstanding the representative's original lack of authority, the State may afterwards endorse his act and thereby establish its consent to be bound by the treaty. It will also be held to have done so by implication if it invokes the provisions of the treaty or otherwise acts in such a way as to appear to treat the act of its representative as effective.

Article 8.[47] Adoption of the text

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

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

Commentary

(1) This article deals with the voting rule by which the text of the treaty is "adopted", i.e. the voting rule by which the form and content of the proposed treaty are settled. At this stage, the negotiating States are concerned only with drawing up the text of the treaty as a document setting out the provisions of the proposed treaty and their votes, even when cast at the end of the negotiations in favour of adopting the text as a whole, relate solely to this process. A vote cast at this stage, therefore, is not in any sense an expression of the State's agreement to be bound by the provisions of the text, which can only become binding upon it by a further expression of its consent (signature, ratification, accession or acceptance).

(2) In former times the adoption of the text of a treaty almost always took place by the agreement of all the States participating in the negotiations and unanimity could be said to be the general rule. The growth of the practice of drawing up treaties in large international conferences or within international organizations has, however, led to so normal a use of the procedure of majority vote that, in the opinion of the Commission, it would be unrealistic to lay down unanimity as the general rule for the adoption of the texts of treaties drawn up at conferences or within organizations. Unanimity remains the general rule for bilateral treaties and for treaties drawn up between a few States. But for other multilateral treaties a different general rule must be specified, although, of course, it will always be open to the States concerned to apply the rule of unanimity in a particular case if they should so decide.

(3) *Paragraph 1* states the classical principle of unanimity as the applicable rule for the adoption of the text except in the case of a text adopted at an international conference. This rule, as already indicated, will primarily apply to bilateral treaties and to treaties drawn up between only a few States. Of course, under paragraph 2, the States participating in a conference may decide beforehand or at the Conference to apply the unanimity principle. But in the absence of such a decision, the unanimity principle applies under the present article to the adoption of the texts of treaties other than those drawn up at an international conference.

(4) *Paragraph 2* concerns treaties the texts of which are adopted at an international conference, and the Commission considered whether a distinction should be made between conferences convened by the State concerned and those convened by an international organization. The question at issue was whether in the latter case the voting rule of the organization should automatically apply. When the General Assembly convenes a conference, the practice of the Secretariat of the United Nations is, after consultation with the States mainly concerned, to prepare provisional or draft rules of procedure for the conference, including a suggested voting rule, for adoption by the conference itself. But it is left to the conference to decide whether to adopt the suggested rule or replace it by another. The Commission therefore concluded that both in the case of a conference convened by the States themselves and of one convened by an organization, the voting rule for adopting the text is a matter for the States at the conference.

(5) The general rule proposed in paragraph 2 is that a two-thirds majority should be necessary for the adoption of a text at any international conference unless the States at the conference should be the same majority decide to apply a different voting rule. While the States at the conference must retain the ultimate power to decide the voting rule by which they will adopt the text of the treaty, it appeared to the Commission to be desirable to

[46] Hackworth's *Digest of International Law*, vol. IV, p. 467.

[47] 1962 and 1965 drafts, article 6.

fix in the present articles the procedure by which a conference is to arrive at its decision concerning that voting rule. Otherwise there is some risk of the work of the conference being delayed by long procedural debates concerning the preliminary voting rule by which it is to decide upon its substantive voting rule for adopting the text of the treaty. Some members of the Commission considered that the procedural vote should be taken by simple majority. Others felt that such a rule might not afford sufficient protection to minority groups at the conference, for the other States would be able in every case to decide by a simple majority to adopt the text of the treaty by the vote of a simple majority and in that way override the views of what might be quite a substantial minority group of States at the conference. The rule in paragraph 2 takes account of the interests of minorities to the extent of requiring at least two-thirds of the States to be in favour of proceeding by simple majorities before recourse can be had to simple majority votes for adopting the text of a treaty. It leaves the ultimate decision in the hands of the conference but at the same time establishes a basis upon which the procedural questions can be speedily and fairly resolved. The Commission felt all the more justified in proposing this rule, seeing that the use of a two-thirds majority for adopting the text of multilateral treaties is now so frequent.

(6) The Commission considered the further case of treaties like the Genocide Convention or the Convention on the Political Rights of Women, which are actually drawn up within an international organization. Here, the voting rule for adopting the text of the treaty must clearly be the voting rule applicable in the particular organ in which the treaty is adopted. This case is, however, covered by the general provision in article 4 regarding the application of the rules of an international organization, and need not receive mention in the present article.

Article 9.[48] Authentication of the text

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

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

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

Commentary

(1) Authentication of the text of a treaty is necessary in order that the negotiating States, before they are called upon to decide whether they will become parties to the treaty, may know finally and definitively what is the content of the treaty to which they will be subscribing. There must come a point, therefore, at which the draft which the parties have agreed upon is established as being the text of the proposed treaty and not susceptible of alteration. Authentication is the process by which this definitive text is established, and it consists in some act or procedure which certifies the text as the correct and authentic text.

(2) In the past jurists have not usually spoken of authentication as a distinct part of the treaty-making process. The reason appears to be that until comparatively recently signature was the general method of authenticating a text and signature has another function as a first step towards ratification, acceptance or approval of the treaty or an expression of the State's consent to be bound by it. The authenticating function of signature is thus merged in its other function.[49] In recent years, however, other methods of authenticating texts of treaties on behalf of all or most of the negotiating States have been devised. Examples are the incorporation of unsigned texts of projected treaties in Final Acts of diplomatic conferences, the procedure of international organizations under which the signatures of the President or other competent authority of the organization authenticate the texts of conventions, and treaties whose texts are authenticated by being incorporated in a resolution of an international organization. It is these developments in treaty-making practice which emphasize the need to deal separately with authentication as a distinct procedural step in the conclusion of a treaty. Another consideration is that the text of a treaty may be "adopted" in one language but "authenticated" in two or more languages.

(3) The procedure of authentication will often be fixed either in the text itself or by agreement of the negotiating States. Failing any such prescribed or agreed procedure and except in the cases covered by the next paragraph authentication takes place by the signature, signature *ad referendum* or initialling of the text by the negotiating States, or alternatively of the Final Act of a conference incorporating the text.

(4) As already indicated, authentication today not infrequently takes the form of a resolution of an organ of an international organization or of an act of authentication performed by a competent authority of an organization. These, however, are cases in which the text of the treaty has been adopted within an international organization and which are therefore covered by the general provision in article 4 regarding the established rules of international organizations. Accordingly, they do not require specific mention here.

(5) The present article, therefore, simply provides for the procedures mentioned in paragraph (3) above and leaves the procedures applicable within international organizations to the operation of article 4.

Article 10.[50] Consent to be bound by a treaty expressed by signature

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

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

[48] 1962 and 1965 drafts, article 7.

[49] See *Yearbook of the International Law Commission, 1950*, vol. II, pp. 233 and 234.

[50] 1962 draft, articles 10 and 11, and 1965 draft, article 11.

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

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

2. For the purposes of paragraph 1:

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

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

Commentary

(1) The draft provisionally adopted in 1962 dealt with various aspects of "signature" in three separate articles: article 7, which covered the authenticating effect of signature, initialling and signature *ad referendum*; article 10, which covered certain procedural aspects of the three forms of signatures; and article 11, which covered their legal effects. This treatment of the matter involved some repetition of certain points and tended to introduce some complication into the rules. At the same time, certain provisions were expository in character rather than formulated as legal rules. Accordingly, in re-examining articles 10 and 11 at its seventeenth session, the Commission decided to deal with the authenticating effects of signature exclusively in the present article 9, to delete article 10 of the previous draft, to incorporate such of its remaining elements as required retention in what is now the present article, and to confine the article to operative legal rules.

(2) The present article, as its title indicates, deals with the institution of signature only as a means by which the definitive consent of a State to be bound by a treaty is expressed. It does not deal with signature subject to "ratification" or subject to "acceptance" or "approval", as had been the case in paragraph 2 of the 1962 text of article 11. The Commission noted that one of the points covered in that paragraph went without saying and that the other was no more than a cross-reference to former article 17 (now article 15). It also noted that the other principal effect of signature subject to ratification, etc.—authentication—was already covered in the present article 9. In addition, it noted that this institution received further mention in article 11. Accordingly, while not in any way underestimating the significance or usefulness of the institution of signature subject to ratification, acceptance or approval, the Commission concluded that it was unnecessary to give it particular treatment in a special article or provision.

(3) *Paragraph 1* of the article admits the signature of a treaty by a representative as an expression of his State's consent to be bound by the treaty in three cases. The first is when the treaty itself provides that such is to be the effect of signature as is common in the case of many types of bilateral treaties. The second is when it is otherwise established that the negotiating States were agreed that signature should have that effect. In this case it is simply a question of demonstrating the intention from the evidence. The third case, which the Commission included in the light of the comments of Governments, is when the intention of an individual State to give its signature that effect appears from the full powers issued to its representative or was expressed during the negotiation. It is not uncommon in practice that even when ratification is regarded as essential by some States from the point of view of their own requirements, another State is ready to express its consent to be bound definitively by its signature. In such a case, when the intention to be bound by signature alone is made clear, it is superfluous to insist upon ratification; and under paragraph 1(*c*) signature will have that effect for the particular State in question.

(4) *Paragraph 2* covers two small but not unimportant subsidiary points. Paragraph 2(*a*) concerns the question whether initialling of a text may constitute a signature expressing the State's consent to be bound by the treaty. In the 1962 draft[51] the rule regarding initialling of the text was very strict, initialling being treated as carrying only an authenticating effect and as needing in all cases to be followed by a further act of signature. In short it was put on a basis similar to that of signature *ad referendum*. Certain Governments pointed out, however, that in practice initialling, especially by a Head of State, Prime Minister or Foreign Minister, is not infrequently intended as the equivalent of full signature. The Commission recognized that this was so, but at the same time felt that it was important that the use of initials as a full signature should be understood and accepted by the other States. It also felt that it would make the rule unduly complicated to draw a distinction between initialling by a high minister of State and by other representatives, and considered that the question whether initialling amounts to an expression of consent to be bound by the treaty should be regarded simply as a question of the intentions of the negotiating States. Paragraph 2(*a*) therefore provides that initialling is the equivalent of a signature expressing such consent when it is established that the negotiating States so agreed.

(5) *Paragraph 2*(b) concerns signature *ad referendum* which, as its name implies, is given provisionally and subject to confirmation. When confirmed, it constitutes a full signature and will operate as one for the purpose of the rules in the present article concerning the expression of the State's consent to be bound by a treaty. Unlike "ratification", the "confirmation" of a signature *ad referendum* is not a confirmation of the treaty but simply of the signature; and in principle therefore the confirmation renders the State a signatory as of the original date of signature. The 1962 text of the then article 10 stated this specifically and as an absolute rule. A suggestion was made in the comments of Governments that the rule should be qualified by the words "unless the State concerned specifies a later date when it confirms its signature". As this would enable a State to choose unilaterally, in the light of what had happened in the interval, whether to be considered a party from the earlier or later date, the Commission felt that to add such an express qualification of the normal rule would be undesirable. The point, it considered, should be left in each case to the negotiating

[51] Article 10, para. 3 of that draft.

States. If these raised no objection to a later date's being specified at the time of confirmation of a signature *ad referendum*, the question would solve itself. Paragraph 2(*b*) therefore simply states that a signature *ad referendum*, if confirmed, constitutes a full signature for the purposes of the rules regarding the expression of a State's consent to be bound by a treaty.

Article 11.[52] Consent to be bound by a treaty expressed by ratification, acceptance or approval

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

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

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

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

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

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

Commentary

(1) This article sets out the rules determining the cases in which ratification is necessary in addition to signature in order to establish the State's consent to be bound by the treaty. The word "ratification", as the definition in article 2 indicates, is used here and throughout these draft articles exclusively in the sense of ratification on the international plane. Parliamentary "ratification" or "approval" of a treaty under *municipal* law is not, of course, unconnected with "ratification" on the international plane, since without it the necessary constitutional authority to perform the international act of ratification may be lacking. But it remains true that the international and constitutional ratifications of a treaty are entirely separate procedural acts carried out on two different planes.

(2) The modern institution of ratification in international law developed in the course of the nineteenth century. Earlier, ratification had been an essentially formal and limited act by which, after a treaty had been drawn up, a sovereign confirmed, or finally verified, the full powers previously issued to his representative to negotiate the treaty. It was then not an approval of the treaty itself but a confirmation that the representative had been invested with authority to negotiate it and, that being so, there was an obligation upon the sovereign to ratify his representative's full powers, if these had been in order. Ratification came, however, to be used in the majority of cases as the means of submitting the treaty-making power of the executive to parliamentary control, and ultimately the doctrine of ratification underwent a fundamental change. It was established that the treaty itself was subject to subsequent ratification by the State before it became binding. Furthermore, this development took place at a time when the great majority of international agreements were formal treaties. Not unnaturally, therefore, it came to be the opinion that the general rule is that ratification is necessary to render a treaty binding.

(3) Meanwhile, however, the expansion of intercourse between States, especially in economic and technical fields, led to an ever-increasing use of less formal types of international agreements, amongst which were exchanges of notes, and these agreements are usually intended by the parties to become binding by signature alone. On the other hand, an exchange of notes or other informal agreement, though employed for its ease and convenience, has sometimes expressly been made subject to ratification because of constitutional requirements in one or the other of the contracting States.

(4) The general result of these developments has been to complicate the law concerning the conditions under which treaties need ratification in order to make them binding. The controversy which surrounds the subject is, however, largely theoretical.[53] The more formal types of instrument include, almost without exception, express provisions on the subject of ratification, and occasionally this is so even in the case of exchanges of notes or other instruments in simplified form. Moreover, whether they are of a formal or informal type, treaties normally either provide that the instrument shall be ratified or, by laying down that the treaty shall enter into force upon signature or upon a specified date or event, dispense with ratification. Total silence on the subject is exceptional, and the number of cases that remain to be covered by a general rule is very small. But, if the general rule is taken to be that ratification is necessary unless it is expressly or impliedly excluded, large exceptions qualifying the rule have to be inserted in order to bring it into accord with modern practice, with the result that the number of cases calling for the operation of the general rule is small. Indeed, the practical effect of choosing either that version of the general rule, or the opposite rule that ratification is unnecessary unless expressly agreed upon by the parties, is not very substantial.

(5) The text provisionally adopted in 1962 began by declaring in its first paragraph that treaties in principle required to be ratified except as provided in the second paragraph. The second paragraph then excluded from the principle four categories of case in which the intention to dispense with ratification was either expressed, established or to be presumed; and one of those categories was treaties "in simplified form". A third paragraph then qualified the second by listing three contrary categories of case where the intention to require ratification was expressed or established. The operation of paragraph 2 of the article was dependent to an important extent on its being possible to identify easily a "treaty in simplified form". But although the general concept is well enough understood, the Commission found it difficult to formulate

[52] 1962 draft, articles 12 and 14, and 1965 draft, article 12.

[53] See the reports of Sir H. Lauterpacht, *Yearbook of the International Law Commission, 1953*, vol. II, p. 112; and *ibid., 1954* vol. II, p. 127; and the first report of Sir G. Fitzmaurice, *Yearbook of the International Law Commission, 1956*, vol. II, p. 123.

a practical definition of such treaties. And article 1(*b*) of the 1962 text was a description rather than a definition of a treaty in simplified form.

(6) Certain Governments in their comments suggested that the basic rule in paragraph 1 of the 1962 text should be reversed so as to dispense with the need for ratification unless a contrary intention was expressed or established, or that the law should be stated in purely pragmatic terms; while others appeared to accept the basic rule. At the same time criticism was directed at the elaborate form of the rules in paragraphs 2 and 3 and at their tendency to cancel each other out.

(7) The Commission recognized that the 1962 text, which had been the outcome of an attempt to reconcile two opposing points of view amongst States on this question, might give rise to difficulty in its application and especially in regard to the presumption in the case of treaties in simplified form. It re-examined the matter *de novo* and, in the light of the positions taken by Governments and of the very large proportion of treaties concluded to-day without being ratified, it 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 is expressed by ratification in modern international law. This would have the advantage, in its view, of enabling it to state the substance of paragraphs 2 and 3 of the 1962 text in much simpler form, to dispense with the distinction between treaties in simplified form and other treaties, and to leave the question of ratification as a matter of the intention of the negotiating States without recourse to a statement of a controversial residuary rule.

(8) The present article accordingly provides in paragraph 1 that the consent of a State to be bound by a treaty is expressed by ratification in four cases: (i) when there is an express provision to that effect in the treaty; (ii) when it is otherwise established that the negotiating States agreed ratification should be required; (iii) when the representative of an individual State has expressly signed "subject to ratification"; and (iv) when the intention of an individual State to sign "subject to ratification" appears from the full powers of its representative or was expressed during the negotiations. The Commission considered that these rules give every legitimate protection to any negotiating State in regard to its constitutional requirements; for under the rules it may provide for ratification by agreement with the other negotiating States either in the treaty itself or in a collateral agreement, or it may do so unilaterally by the form of its signature, the form of the full powers of its representative or by making its intention clear to the other negotiating States during the negotiations. At the same time, the position of the other negotiating States is safeguarded, since in each case the intention to express consent by ratification must either be subject to their agreement or brought to their notice.

(9) Paragraph 2 provides simply that the consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification. In the 1962 draft "acceptance" and "approval" were dealt with in a separate article. As explained in the paragraphs which follow, each of them is used in two ways: either as an expression of consent to be bound without a prior signature, or as a ratification after a non-binding prior signature. Nevertheless the Commission considered that their use also is essentially a matter of intention, and that the same rules should be applicable as in the case of ratification.

(10) Acceptance has become established in treaty practice during the past twenty years as a new procedure for becoming a party to treaties. But it would probably be more correct to say that "acceptance" has become established as a name given to two new procedures, one analogous to ratification and the other to accession. For, on the international plane, "acceptance" is an innovation which is more one of terminology than of method. If a treaty provides that it shall be open to signature "subject to acceptance", the process on the international plane is like "signature subject to ratification". Similarly, if a treaty is made open to "acceptance" without prior signature, the process is like accession. In either case the question whether the instrument is framed in the terms of "acceptance", on the one hand, or of ratification or acceptance, on the other, simply depends on the phraseology used in the treaty. [54] Accordingly the same name is found in connexion with two different procedures; but there can be no doubt that to-day "acceptance" takes two forms, the one an act establishing the State's consent to be bound after a prior signature and the other without any prior signature.

(11) "Signature subject to acceptance" was introduced into treaty practice principally in order to provide a simplified form of "ratification" which would allow the government a further opportunity to examine the treaty when it is not necessarily obliged to submit it to the State's constitutional procedure for obtaining ratification. Accordingly, the procedure of "signature subject to acceptance" is employed more particularly in the case of treaties whose form or subject matter is not such as would normally bring them under the constitutional requirements of parliamentary "ratification" in force in many States. In some cases, in order to make it as easy as possible for States with their varying constitutional requirements to enter into the treaty, its terms provide for either ratification or acceptance. Nevertheless, it remains broadly true that "acceptance" is generally used as a simplified procedure of "ratification".

(12) The observations in the preceding paragraph apply *mutatis mutandis* to "approval", whose introduction into the terminology of treaty-making is even more recent than that of "acceptance". "Approval", perhaps, appears more often in the form of "signature subject to approval" than in the form of a treaty which is simply made open to "approval" without signature. [55] But it appears in both forms. Its introduction into treaty-making practice seems, in fact, to have been inspired by the constitutional procedures or practices of approving treaties which exist in some countries.

---

[54] For examples, see *Handbook of Final Clauses* (ST/LEG/6), pp. 6-17.

[55] The *Handbook of Final Clauses* (ST/LEG/6), p. 18, even gives an example of the formula "signature subject to approval followed by acceptance".

Article 12.[56] Consent to be bound by a treaty expressed by accession

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

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

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

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

Commentary

(1) Accession is the traditional method by which a State, in certain circumstances, becomes a party to a treaty of which it is not a signatory. One type of accession is when the treaty expressly provides that certain States or categories of States may accede to it. Another type is when a State which was not entitled to become a party to a treaty under its terms is subsequently invited to become a party.

(2) Divergent opinions have been expressed in the past as to whether it is legally possible to accede to a treaty which is not yet in force and there is some support for the view that it is not possible.[57] However, an examination of the most recent treaty practice shows that in practically all modern treaties which contain accession clauses the right to accede is made independent of the entry into force of the treaty, either expressly by allowing accession to take place before the date fixed for the entry into force of the treaty, or impliedly by making the entry into force of the treaty conditional on the deposit, *inter alia*, of instruments of accession. The modern practice has gone so far in this direction that the Commission does not consider it appropriate to give any currency, even in the form of a residuary rule, to the doctrine that treaties are not open to accession until they are in force. In this connexion it recalls the following observation of a previous Special Rapporteur:[58]

> "Important considerations connected with the effectiveness of the procedure of conclusion of treaties seem to call for a contrary rule. Many treaties might never enter into force but for accession. Where the entire tendency in the field of conclusion of treaties is in the direction of elasticity and elimination of restrictive rules it seems undesirable to burden the subject of accession with a presumption which practice has shown to be in the nature of an exception rather than the rule."

Accordingly, in the present article accession is not made dependent upon the treaty having entered into force.

(3) Occasionally, a purported instrument of accession is expressed to be "subject to ratification", and the Commission considered whether anything should be said on the point either in the present article or in article 13 dealing with instruments of accession. The question arises whether it should be indicated in the present article that the deposit of an instrument of accession in this form is ineffective as an accession. The question was considered by the Assembly of the League of Nations in 1927, which, however, contented itself with emphasizing that an instrument of accession would be taken to be final unless the contrary were expressly stated. At the same time it said that the procedure was one which "the League should neither discourage or encourage".[59] As to the actual practice to-day, the Secretary-General has stated that he takes a position similar to that taken by the League of Nations Secretariat. He considers such an instrument "simply as a notification of the government's intention to become a party", and he does not notify the other States of its receipt. Furthermore, he draws the attention of the government to the fact that the instrument does not entitle it to become a party and underlines that "it is only when an instrument containing no reference to subsequent ratification is deposited that the State will be included among the parties to the agreement and the other governments concerned notified to that effect".[60] The attitude adopted by the Secretary-General towards an instrument of accession expressed to be "subject to ratification" is considered by the Commission to be entirely correct. The procedure of accession subject to ratification is somewhat anomalous, but it is infrequent and does not appear to cause difficulty in practice. The Commission has not, therefore, thought it necessary to deal with it specifically in these articles.

(4) If developments in treaty-making procedures tend even to blur the use of accession in some cases, it remains true that accession is normally the act of a State which was not a negotiating State. It is a procedure normally indicated for States which did not take part in the drawing up of the treaty but for the participation of which the treaty makes provision, or alternatively to which the treaty is subsequently made open either by a formal amendment to the treaty or by the agreement of the parties. The rule laid down for accession has therefore to be a little different from that set out in the previous article for ratification, acceptance and approval. The present article provides that consent of a State to be bound by a treaty is expressed by accession in three cases: (i) when a treaty or an amendment to the treaty provides for its accession; (ii) when it is otherwise established that the negotiating States intended to admit its accession; and (iii) when all the parties have subsequently agreed to admit its accession. The third case is, of course, also a case of "amendment" of the treaty. But, as the procedures of formal amendment by the conclusion of an amending agreement under article 36 and of informal agreement to invite a State to accede are somewhat different, the Commission thought

[56] 1962 draft, article 13.

[57] See Sir G. Fitzmaurice's first report on the law of treaties, *Yearbook of the International Law Commission, 1956*, vol. II, pp. 125-126; and Mr. Brierly's second report, *Yearbook of the International Law Commission, 1951*, vol. II, p. 73.

[58] See Sir H. Lauterpacht, *Yearbook of the International Law Commission, 1953*, vol. II, p. 120.

[59] *Official Journal of the League of Nations, Eighth Ordinary Session, Plenary Meetings*, p. 141.

[60] *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7), para. 48.

that they should be distinguished in separate sub-paragraphs. A recent example of the use of the procedure of informal agreement to open treaties to accession was the question of extended participation in general multilateral treaties concluded under the auspices of the League of Nations, which formed the subject of General Assembly resolution 1903 (XVIII) and on which the Commission submitted its views in chapter III of its report on the work of its fifteenth session. [61]

Question of participation in a treaty

(1) Article 8 of the 1962 draft contained two provisions, the first relating to general multilateral treaties and the second to all other treaties. The second provision gave rise to no particular difficulty, but the Commission was divided with respect to the rule to be proposed for general multilateral treaties. Some members considered that these treaties should be regarded as open to participation by "every State" regardless of any provision in the treaty specifying the categories of States entitled to become parties. Some members, on the other hand, while not in favour of setting aside so completely the principle of the freedom of States to determine by the clauses of the treaty itself the States with which they would enter into treaty relations, considered it justifiable and desirable to specify as a residual rule that, in the absence of a contrary provision in the treaty, general multilateral treaties should be open to "every State". Other members, while sharing the view that these treaties should in principle be open to all States, did not think that a residuary rule in this form would be justified, having regard to the existing practice of inserting in a general multilateral treaty a formula opening it to all Members of the United Nations and members of the specialized agencies, all parties to the Statute of the International Court and to any other State invited by the General Assembly. By a majority the Commission adopted a text stating that unless otherwise provided by the treaty or by the established rules of an international organization, a general multilateral treaty should be open to participation by "every State". In short, the 1962 text recognized the freedom of negotiating States to fix by the provisions of the treaty the categories of States to which the treaty may be open; but in the absence of any such provision, recognized the right of "every State" to participate.

(2) The 1962 draft also included in article 1 a definition of "general multilateral treaty". This definition, for which the Commission did not find it easy to devise an altogether satisfactory formula, read as follows: "a multilateral treaty which concerns general norms of international law or deals with matters of general interest to States as a whole".

(3) A number of Governments in their comments on article 8 of the 1962 draft expressed themselves in favour of opening general multilateral treaties to all States, and at the same time proposed that this principle should be recognized also in article 9 so as automatically to open to all States general multilateral treaties having provisions limiting participation to specified categories of States. Certain other Governments objected to the 1962 text from the opposite point of view, contending that no presumption of universal participation should be laid down, even as a residuary rule, for cases when the treaty is silent on the question. A few Governments in their comments on article 1 made certain criticisms of the Commission's definition of a "general multilateral treaty".

(4) At its seventeenth session, in addition to the comments of Governments, the Commission had before it further information concerning recent practice in regard to participation clauses in general multilateral treaties and in regard to the implications of an "every State" formula for depositaries of multilateral treaties. [62] It re-examined the problem of participation in general multilateral treaties *de novo* at its 791st to 795th meetings, at the conclusion of which a number of proposals were put to the vote but none was adopted. In consequence, the Commission requested its Special Rapporteur, with the assistance of the Drafting Committee, to try to submit a proposal for subsequent discussion. At its present session, it concluded that in the light of the division of opinion it would not be possible to formulate any general provision concerning the right of States to participate in treaties. It therefore decided to confine itself to setting out pragmatically the cases in which a State expresses its consent to be bound by signature, ratification, acceptance, approval or accession. Accordingly, the Commission decided that the question, which has more than once been debated in the General Assembly, and recently in the Special Committees on the Principles of International Law concerning Friendly Relations among States, [63] should be left aside from the draft articles. In communicating this decision to the General Assembly, the Commission decided to draw the General Assembly's attention to the records of its 791st-795th meetings [64] at which the question of participation in treaties was discussed at its seventeenth session, and to its commentary on articles 8 and 9 of the draft articles in its report for its fourteenth session, [65] which contains a summary of the points of view expressed by members in the earlier discussion of the question at that session.

Article 13. [66] Exchange or deposit of instruments of ratification, acceptance, approval or accession

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

[61] *Yearbook of the International Law Commission, 1963*, vol. II, p. 217.

[62] Fourth report of the Special Rapporteur (A/CN.4/177), commentary to article 8; answers of the Secretariat to questions posed by a member of the Commission concerning the practice of the Secretary-General as registering authority and as depositary and the practice of States as depositaries (*Yearbook of the International Law Commission, 1965*, vol. I, 791st meeting, para. 61 and 801st meeting, paras. 17-20).

[63] A/5746, Chapter VI, and A/6230, Chapter V.

[64] *Yearbook of the International Law Commission, 1965*, vol. I, pp. 113-142.

[65] *Yearbook of the International Law Commission, 1962*, vol. II, pp. 168 and 169.

[66] 1962 draft, articles 15 and 16, and 1965 draft, article 15.

(*a*) Their exchange between the contracting States;

(*b*) Their deposit with the depositary; or

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

Commentary

(1) The draft provisionally adopted in 1962 contained two articles (articles 15 and 16), covering respectively the procedure and legal effects of ratification, accession, acceptance and approval. On re-examining these articles at its seventeenth session the Commission concluded that certain elements which were essentially descriptive should be eliminated; that two substantive points regarding "consent to a part of a treaty" and "choice of differing provisions" should be detached and made the subject of a separate article; and that the present article should be confined to the international acts—exchange, deposit, or notification of the instrument—by which ratification, acceptance, approval and accession are accomplished and the consent of the State to be bound by the treaty is established.

(2) The present article thus provides that instruments of ratification, etc. establish the consent of a State upon either their exchange between the contracting States, their deposit with the depositary or their notification to the contracting States or to the depositary. These are the acts usually specified in a treaty, but if the treaty should lay down a special procedure, it will, of course, prevail, and the article so provides.

(3) The point of importance is the moment at which the consent to be bound is established and in operation with respect to other contracting States. In the case of exchange of instruments there is no problem; it is the moment of exchange. In the case of the deposit of an instrument with a depositary, the problem arises whether the deposit by itself establishes the legal nexus between the depositing State and other contracting States or whether the legal nexus arises only upon their being informed by the depositary. The Commission considered that the existing general rule clearly is that the act of deposit by itself establishes the legal nexus. Some treaties, e.g. the Vienna Conventions on Diplomatic and Consular Relations, specifically provide that the treaty is not to enter into force with respect to the depositing State until after the expiry of a short interval of time. But, even in these cases the legal nexus is established by the act of deposit alone. The reason is that the negotiating States, for reasons of practical convenience, have chosen to specify this act as the means by which participation in the treaty is to be established. This may involve a certain time-lag before each of the other contracting States is aware that the depositing State has established its consent to be bound by the treaty. But, the parties having prescribed that deposit of the instrument shall establish consent, the deposit by itself establishes the legal nexus at once with other contracting States, unless the treaty otherwise provides. This was the view taken by the International Court in the *Right of Passage over Indian Territory* (preliminary objections) case [67] in the analogous situation of the deposit of instruments of acceptance of the optional clause under Article 36, paragraph 2 of the Statute of the Court. If this case indicates the possibility that difficult problems may arise under the rule in special circumstances, the existing rule appears to be well-settled. Having regard to the existing practice and the great variety of the objects and purposes of treaties, the Commission did not consider that it should propose a different rule, but that it should be left to the negotiating States to modify it if they should think this necessary in the light of the provisions of the particular treaty.

(4) The procedure of notifying instruments to the contracting States or to the depositary mentioned in subparagraph (*c*), if less frequent, is sometimes used to-day as the equivalent, in the one case, of a simplified form of exchange of instruments and in the other, of a simplified form of deposit of the instrument. If the procedure agreed upon is notification to the contracting States, article 73 will apply and the consent of the notifying State to be bound by the treaty vis-à-vis another contracting State will be established only upon its receipt by the latter. On the other hand, if the procedure agreed upon is notification to the depositary, the same considerations apply as in the case of the deposit of an instrument; in other words, the consent will be established on receipt of the notification by the depositary.

Article 14. [68] Consent relating to a part of a treaty and choice of differing provisions

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

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

Commentary

(1) The two paragraphs of this article contain the provisions of what were paragraphs 1(*b*) and 1(*c*) of article 15 of the draft provisionally adopted in 1962. At the same time, they frame those provisions as substantive legal rules rather than as descriptive statements of procedure.

(2) Some treaties expressly authorize States to consent to a part or parts only of the treaty or to exclude certain parts, and then, of course, partial ratification, acceptance, approval or accession is admissible. But in the absence of such a provision, the established rule is that the ratification, accession etc. must relate to the treaty as a whole. Although it may be admissible to formulate reservations to selected provisions of the treaty under the rules stated in article 16, it is inadmissible to subscribe only to selected parts of the treaty. Accordingly, paragraph 1 of the article lays down that without prejudice to the provisions of articles 16 to 20 regarding reservations to multilateral treaties, an expression of consent

[67] *I.C.J. Reports 1956*, p. 170.

[68] 1962 draft, article 15, paras. 1(*b*) and (*c*), and 1965 draft, article 16.

by a State to be bound by part of a treaty is effective only if the treaty or the other contracting States authorize such a partial consent.

(3) Paragraph 2 takes account of a practice which is not very common but which is sometimes found, for example, in the General Act for the Pacific Settlement of International Disputes and in some international labour conventions. The treaty offers to each State a choice between differing provisions of the treaty. The paragraph states that in such a case an expression of consent is effective only if it is made plain to which of the provisions the consent relates.

Article 15.[69] Obligation of a State not to frustrate the object of a treaty prior to its entry into force

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

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

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

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

Commentary

(1) That an obligation of good faith to refrain from acts calculated to frustrate the object of the treaty attaches to a State which has signed a treaty subject to ratification appears to be generally accepted. Certainly, in the *Certain German Interests in Polish Upper Silesia* case,[70] the Permanent Court of International Justice appears to have recognized that, if ratification takes place, a signatory State's misuse of its rights in the interval preceding ratification may amount to a violation of its obligations in respect of the treaty. The Commission considered that this obligation begins at an earlier stage when a State agrees to enter into negotiations for the conclusion of a treaty. *A fortiori*, it attaches also to a State which actually ratifies, accedes to, accepts or approves a treaty if there is an interval before the treaty actually comes into force.

(2) Paragraph (*a*) of the article covers the stage when a State has merely agreed to enter into negotiations for the conclusion of a proposed treaty; and then the obligation to refrain from acts tending to frustrate the object of the treaty lasts only so long as the negotiations continue in progress.

(3) Paragraph (*b*) covers the case in which a State has signed the treaty subject to ratification, acceptance or approval, and provides that such a State is to be subject to the obligation provided for in the article until it shall have made its intention clear not to become a party.

(4) The obligation of a State which has committed itself to be bound by the treaty to refrain from such acts is obviously of particular cogency and importance. As, however, treaties, and especially multilateral treaties, sometimes take a very long time to come into force or never come into force at all, it is necessary to place some limit of time upon the obligation. Paragraph (*c*) therefore states that the obligation attaches "pending the entry into force of the treaty and provided that such entry into force is not unduly delayed."

Section 2: Reservations to multilateral treaties

Article 16.[71] Formulation of reservations

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

(*a*) The reservation is prohibited by the treaty;

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

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

Article 17.[72] Acceptance of and objection to reservations

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

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

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

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

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

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

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

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

[69] 1962 and 1965 drafts, article 17.

[70] *P.C.I.J.* (1926), Series A, No. 7, p. 30.

[71] 1962 and 1965 drafts, article 18.

[72] 1962 draft, articles 19 and 20, and 1965 draft, article 19.

Commentary

Introduction

(1) Articles 16 and 17 have to be read together because the legal effect of a reservation, when formulated, is dependent on its acceptance or rejection by the other States concerned. A reservation to a bilateral treaty presents no problem, because it amounts to a new proposal reopening the negotiations between the two States concerning the terms of the treaty. If they arrive at an agreement—either adopting or rejecting the reservation—the treaty will be concluded; if not, it will fall to the ground. But as soon as more than two States are involved problems arise, since one State may be disposed to accept the reservation while another objects to it, and, when large multilateral treaties are in question, these problems become decidedly complex.

(2) The subject of reservations to multilateral treaties has been much discussed in recent years and has been considered by the General Assembly itself on more than one occasion, [73] as well as by the International Court of Justice in its opinion concerning the Genocide Convention [74] and by the Commission. Divergent views have been expressed in the Court, the Commission and the General Assembly on the fundamental question of the extent to which the consent of other interested States is necessary to the effectiveness of a reservation to this type of treaty.

(3) In 1951, the doctrine under which a reservation, in order to be valid, must have the assent of all the other interested States was not accepted by the majority of the Court as applicable in the particular circumstances of the Genocide Convention; moreover, while they considered the "traditional" doctrine to be of "undisputed value", they did not consider it to have been "transformed into a rule of law". [75] Four judges, on the other hand, dissented from this view and set out their reasons for holding that the traditional doctrine must be regarded as a generally accepted rule of customary law. The Court's reply to the question put to it by the General Assembly was as follows:

"On Question I:

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

"On Question II:

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

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

"On Question III:

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

"(*b*) That an objection to a reservation made by a State which is entitled to sign or accede but which has not yet done so, is without legal effect." [76]

In giving these replies to the General Assembly's questions the Court emphasized that they were strictly limited to the Genocide Convention; and said that, in determining what kind of reservations might be made to the Genocide Convention and what kind of objections might be taken to such reservations, the solution must be found in the special characteristics of that Convention. Amongst these special characteristics it mentioned: (*a*) the fact that the principles underlying the Convention—the condemnation and punishment of genocide—are principles recognized by civilized nations as binding upon governments even without a convention, (*b*) the consequently universal character of the Convention, and (*c*) its purely humanitarian and civilizing purpose without individual advantages or disadvantages for the contracting States.

(4) Although limiting its replies to the case of the Genocide Convention itself, the Court expressed itself more generally on certain points amongst which may be mentioned:

(*a*) In its treaty relations a State cannot be bound without its consent and consequently, no reservation can be effective against any State without its agreement thereto.

(*b*) The traditional concept, that no reservation is valid unless it has been accepted by all the contracting parties without exception, as would have been required if it had been stated during the negotiations, is of undisputed value.

(*c*) Nevertheless, extensive participation in conventions of the type of the Genocide Convention has already given rise to greater flexibility in the international practice concerning multilateral conventions, as manifested by the more general resort to reservations, the very great allowance made for tacit assent to reservations and the existence of practices which, despite the fact that a reservation has been rejected by certain States, go so far as to admit the reserving State as a party to the Convention vis-à-vis those States which have accepted it.

(*d*) In the present state of international practice it cannot be inferred from the mere absence of any article providing for reservations in a multilateral convention that the contracting States are prohibited from making certain reservations. The character of a multilateral con-

[73] Notably in 1951 in connexion with reservations to the Genocide Convention and in 1959 concerning the Indian "reservation" to the IMCO Convention.

[74] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1951*, p. 15.

[75] *Ibid.*, p. 24.

[76] *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), para. 16.

vention, its purpose, provisions, mode of preparation and adoption, are factors which must be considered in determining, in the absence of any express provision on the subject, the possibility of making reservations, as well as their validity and effect.

(*e*) The principle of the integrity of the convention, which subjects the admissibility of a reservation to the express or tacit assent of all the contracting parties, does not appear to have been transformed into a rule of law.

(5) Later in 1951, as had been requested by the General Assembly, the Commission presented a general report on reservations to multilateral conventions. [77] It expressed the view that the Court's criterion—"compatibility with the object and purpose of the convention"—was open to objection as a criterion of general application, because it considered the question of "compatibility with the object and purpose of the convention" to be too subjective for application to multilateral conventions generally. Noting that the Court's opinion was specifically confined to the Genocide Convention and recognizing that no single rule uniformly applied could be wholly satisfactory to cover all cases, the Commission recommended the adoption of the doctrine requiring unanimous consent for the admission of a State as a party to a treaty subject to a reservation. At the same time, it proposed certain minor modifications in the application of the rule.

(6) The Court's opinion and the Commission's report were considered together at the sixth session of the General Assembly, which adopted resolution 598 (VI) dealing with the particular question of reservations to the Genocide Convention separately from that of reservations to other multilateral conventions. With regard to the Genocide Convention it requested the Secretary-General to conform his practice to the Court's Advisory Opinion and recommended to States that they should be guided by it. With regard to all other *future* multilateral conventions concluded under the auspices of the United Nations of which he is the depositary, it requested the Secretary-General:

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

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

The resolution, being confined to *future* conventions, was limited to conventions concluded after 12 January 1952, the date of the adoption of the resolution, so that the former practice still applied to conventions concluded before that date. As to future conventions, the General Assembly did not endorse the Commission's proposal to retain the former practice subject to minor modifications. Instead, it directed the Secretary-General, in effect, to act simply as a channel for receiving and circulating instruments containing reservations or objections to reservations, without drawing any legal consequences from them.

(7) In the General Assembly, as already mentioned, opinion was divided in the debates on this question in 1951. One group of States favoured the unanimity doctrine, though there was some support in this group for replacing the need for unanimous consent by one of acceptance by a two-thirds majority of the States concerned. Another group of States, however, was definitely opposed to the unanimity doctrine and favoured a flexible system making the acceptance and rejection of reservations a matter for each State individually. They argued that such a system would safeguard the position of outvoted minorities and make possible a wider acceptance of conventions. The opposing group maintained, on the other hand, that a flexible system of this kind, although it might be suitable for a homogeneous community like the Pan-American Union, was not suitable for universal application. Opinion being divided in the United Nations, the only concrete result was the directives given to the Secretary-General for the performance of his depositary functions with respect to reservations.

(8) The situation with regard to this whole question has changed in certain respects since 1951. First, the international community has undergone rapid expansion since 1951, so that the very number of potential participants in multilateral treaties now seems to make the unanimity principle less appropriate and less practicable. Secondly, since 12 January 1952, i.e. during the past fourteen years, the system which has been in operation *de facto* for all new multilateral treaties of which the Secretary-General is the depositary has approximated to the "flexible" system. For the Secretariat's practice with regard to all treaties concluded after the General Assembly's resolution of 12 January 1952 has been officially stated to be as follows:

> "In the absence of any clause on reservations in agreements concluded after the General Assembly resolution on reservations to multilateral conventions, the Secretary-General adheres to the provisions of that resolution and communicates to the States concerned the text of the reservation accompanying an instrument of ratification or accession without passing on the legal effect of such documents, and 'leaving it to each State to draw legal consequences from such communications'. He transmits the observations received on reservations to the States concerned, also without comment. A general table is kept up to date for each convention, showing the reservations made and the observations transmitted thereon by the States concerned. A State which has deposited an instrument accompanied by reservations is counted among the parties required for the entry into force of the agreement." [78]

It is true that the Secretary-General, in compliance with the General Assembly's resolution, does not "pass upon" the legal effect either of reservations or of objections to reservations, and each State is free to draw its own

[77] *Ibid.*, paras. 12-34.

[78] *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7), para. 80.

conclusions regarding their legal effects. But, having regard to the opposition of many States to the unanimity principle and to the Court's refusal to consider that principle as having been "transformed into a rule of law", a State making a reservation is now in practice considered a party to the convention by the majority of those States which do not give notice of their objection to the reservation.

(9) A further point is that in 1959 the question of reservations to multilateral conventions again came before the General Assembly in the particular context of a convention which was the constituent instrument of an international organization—namely the Inter-Governmental Maritime Consultative Organization. The actual issue raised by India's declaration in accepting that Convention was remitted to IMCO and settled without the legal questions having been resolved. But the General Assembly reaffirmed its previous directive to the Secretary-General concerning his depositary functions and extended it to cover all conventions concluded under the auspices of the United Nations (unless they contain contrary provisions), not merely those concluded after 12 January 1952.

(10) At its session in 1962, the Commission was agreed that, where the treaty itself deals with the question of reservations, the matter is concluded by the terms of the treaty. Reservations expressly or impliedly prohibited by the terms of the treaty are excluded, while those expressly or impliedly authorized are *ipso facto* effective. The problem concerns only the cases where the treaty is silent in regard to reservations, and here the Commission was agreed that the Court's principle of "compatibility with the object and purpose of the treaty" is one suitable for adoption as a general criterion of the legitimacy of reservations to multilateral treaties and of objection to them. The difficulty lies in the process by which that principle is to be applied, and especially where there is no tribunal or other organ invested with standing competence to interpret the treaty. The Commission was agreed that where the treaty is one concluded between a small group of States, unanimous agreement to the acceptance of a reservation must be presumed to be necessary in the absence of any contrary indication, and that the problem essentially concerned multilateral treaties which contain no provisions in regard to reservations. On this problem, opinion in the Commission, as in the Court and the General Assembly, was divided.

(11) Some members of the Commission considered it essential that the effectiveness of a reservation to a multilateral treaty should be dependent on at least some measure of common acceptance of it by the other States concerned. They thought it inadmissible that a State, having formulated a reservation incompatible with the objects of a multilateral treaty, should be entitled to regard itself as a party to the treaty, on the basis of the acceptance of the reservation by a single State or by a very few States. They instanced a reservation which undermined the basis of the treaty or of a compromise made in the negotiations. As tacit consent, derived from a failure to object to a reservation, plays a large role in the practice concerning multilateral treaties and is provided for in the draft articles, such a rule would mean in practice that a reserving State, however objectionable its reservation, could always be sure of being able to consider itself a party to the treaty vis-à-vis a certain number of States. Accordingly these members advocated a rule under which, if more than a certain proportion of the interested States (for example, one third) objected to a reservation, the reserving State would be barred altogether from considering itself a party to the treaty unless it withdrew the reservation.

(12) The Commission, while giving full weight to the arguments in favour of maintaining the integrity of the Convention as adopted to the greatest extent possible, felt that the detrimental effect of reservations upon the integrity of the treaty should not be overestimated. The treaty itself remains the sole authentic statement of the common agreement between the participating States. The majority of reservations relate to a particular point which a particular State for one reason or another finds difficult to accept, and the effect of the reservation on the general integrity of the treaty is often minimal; and the same is true even if the reservation in question relates to a comparatively important provision of the treaty, so long as the reservation is not made by more than a few States. In short, the integrity of the treaty would only be materially affected if a reservation of a somewhat substantial kind were to be formulated by a number of States. This might, no doubt, happen; but even then the treaty itself would remain the master agreement between the other participating States. What is essential to ensure both the effectiveness and the integrity of the treaty is that a sufficient number of States should become parties to it, accepting the great bulk of its provisions. The Commission in 1951 said that the history of the conventions adopted by the Conference of American States had failed to convince it "that an approach to universality is necessarily assured or promoted by permitting a State which offers a reservation to which objection is taken to become a party vis-à-vis non-objecting States".[79] Nevertheless, a power to formulate reservations must in the nature of things tend to make it easier for some States to execute the act necessary to bind themselves finally to participating in the treaty and therefore tend to promote a greater measure of universality in the application of the treaty. Moreover, in the case of general multilateral treaties, it appears that not infrequently a number of States have, to all appearances, only found it possible to participate in the treaty subject to one or more reservations. Whether these States, if objection had been taken to their reservations, would have preferred to remain outside the treaty rather than to withdraw their reservation is a matter which is not known. But when to-day the number of the negotiating States may be upwards of one hundred States with very diverse cultural, economic and political conditions, it seems necessary to assume that the power to make reservations without the risk of being totally excluded by the objection of one or even of a few States may be a factor in promoting a more general acceptance of multi-

[79] *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), para. 22.

lateral treaties. Moreover, the failure of negotiating States to take the necessary steps to become parties to multilateral treaties appears a greater obstacle to the development of international law through the medium of treaties than the possibility that the integrity of such treaties may be unduly weakened by the liberal admission of reserving States as parties to them. The Commission also considered that, in the present era of change and of challenge to traditional concepts, the rule calculated to promote the widest possible acceptance of whatever measure of common agreement can be achieved and expressed in a multilateral treaty may be the one most suited to the immediate needs of the international community.

(13) Another consideration which influenced the Commission was that, in any event the essential interests of individual States are in large measure safeguarded by the two well-established rules:

(*a*) That a State which within a reasonable time signifies its objection to a reservation is entitled to regard the treaty as not in force between itself and the reserving State;

(*b*) That a State which assents to another State's reservation is nevertheless entitled to object to any attempt by the reserving State to invoke against it the obligations of the treaty from which the reserving State has exempted itself by its reservation.

It has, it is true, been suggested that the equality between a reserving and non-reserving State, which is the aim of the above-mentioned rules, may in practice be less than complete. For a non-reserving State, by reason of its obligations towards other non-reserving States, may feel bound to comply with the whole of the treaty, including the provisions from which the reserving State has exempted itself by its reservation. Accordingly, the reserving State may be in the position of being exempt itself from certain of the provisions of the treaty, while having the assurance that the non-reserving States will observe those provisions. Normally however a State wishing to make a reservation would equally have the assurance that the non-reserving State would be obliged to comply with the provisions of the treaty by reason of its obligations to other States, even if the reserving State remained completely outside the treaty. By entering into the treaty subject to its reservation, the reserving State at least submits itself in some measure to the régime of the treaty. The position of the non-reserving State is not therefore made more onerous if the reserving State becomes a party to the treaty on a limited basis by reason of its reservation. Even in those cases where there is such a close connexion between the provisions to which the reservation relates and other parts of the treaty that the non-reserving State is not prepared to become a party to the treaty at all vis-à-vis the reserving State on the limited basis which the latter proposes, the non-reserving State can prevent the treaty coming into force between itself and the reserving State by objecting to the reservation. Thus, the point only appears to have significance in cases where the non-reserving State would never itself have consented to become a party to the treaty, if it had known that the other State would do so subject to the reservation in question. And it may not be unreasonable to suggest that, if a State attaches so much importance to maintaining the absolute integrity of particular provisions, its appropriate course is to protect itself during the drafting of the treaty by obtaining the insertion of an express clause prohibiting the making of the reservations which it considers to be so objectionable.

(14) The Commission accordingly concluded in 1962 that, in the case of general multilateral treaties, the considerations in favour of a flexible system, under which it is for each State individually to decide whether to accept a reservation and to regard the reserving State as a party to the treaty for the purpose of the relations between the two States, outweigh the arguments advanced in favour of retaining a "collegiate" system under which the reserving State would only become a party if the reservation were accepted by a given proportion of the other States concerned. Having arrived at this decision, the Commission also decided that there were insufficient reasons for making a distinction between different kinds of multilateral treaties other than to exempt from the general rule those concluded between a small number of States for which the unanimity rule is retained.

(15) Governments, while criticizing one or another point in the articles proposed by the Commission, appeared in their comments to endorse its decision to try to work out a solution of the question of reservations to multilateral treaties on the basis of the flexible system embodied in the 1962 draft. Accordingly, at its seventeenth session the Commission confined itself to revising the articles provisionally adopted in 1962 in the light of the detailed points made by Governments. [79a]

(16) The 1962 draft contained five articles dealing with reservations to multilateral treaties covering: "Formulation of reservations" (article 18), "Acceptance of and objections to reservations" (article 19), "Effect of reservations" (article 20), "Application of reservations" (article 21) and "Withdrawal of reservations" (article 22). The two last-mentioned articles, subject to drafting changes, remain much as they were in the 1962 draft (present articles 19 and 20). The other three have undergone considerable rearrangement and revision. The procedural aspects of formulating, accepting and objecting to reservations have been detached from the former articles 18 and 19 and placed together in present article 18. Article 16 now deals only with the substantive rules regarding the formulation of reservations, while the substantive provisions of the former articles 19 and 20 regarding acceptance of and objection to reservations have been brought together in present article 17. The final draft therefore sets out the topic of reservations also in five articles, but with the differences mentioned. The main foundations of the régime for reservations to multilateral treaties proposed by the Commission are laid down in articles 16 and 17, to which the remainder of this commentary is therefore devoted.

[79a] The Commission also had before it a report from the Secretary-General on *Depositary Practice in Relation to Reservations* (A/5687).

Commentary to article 16

(17) This article states the general principle that the formulation of reservations is permitted except in three cases. The first two are cases in which the reservation is expressly or impliedly prohibited by the treaty itself. The third case is where the treaty is silent in regard to reservation but the particular reservation is incompatible with the object and purpose of the treaty. The article, in short, adopts the Court's criterion as a general rule governing the formulation of reservations not provided for in the treaty. The legal position when a reservation is one expressly or impliedly prohibited in unambiguous terms under paragraphs (*a*) or (*b*) of the article is clear. The admissibility or otherwise of a reservation under paragraph (*c*), on the other hand, is in every case very much a matter of the appreciation of the acceptability of the reservation by the other contracting States; and this paragraph has, therefore, to be read in close conjunction with the provisions of article 17 regarding acceptance of and objection to reservations.

Commentary to article 17

(18) Paragraph 1 of this article covers cases where a reservation is expressly or impliedly authorized by the treaty; in other words, where the consent of the other contracting States has been given in the treaty. No further acceptance of the reservation by them is therefore required.

(19) Paragraph 2, as foreshadowed in paragraph (14) of this commentary, makes a certain distinction between treaties concluded between a large group of States and treaties concluded between a limited number for the purpose of the application of the "flexible" system of reservations to multilateral treaties. The 1962 text simply excepted from that system "a treaty which has been concluded between a small group of States". Governments in their comments questioned whether the expression "a small group of States" was precise enough to furnish by itself a sufficient criterion of the cases excepted from the general rules of the flexible system. The Commission therefore re-examined the point and concluded that, while the limited number of the negotiating States is an important element in the criterion, the decisive point is their intention that the treaty should be applied in its entirety between all the parties. Accordingly, the rule now proposed by the Commission provides that acceptance of a reservation by all the parties is necessary "when it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty".

(20) Paragraph 3 lays down a special rule also in the case of a treaty which is a constituent instrument of an international organization and states that the reservation requires the acceptance of the competent organ of the organization unless the treaty otherwise provides. The question has arisen a number of times, and the Secretary-General's report in 1959 in regard to his handling of an alleged "reservation" to the IMCO Convention stated that it had "invariably been treated as one for reference to the body having authority to interpret the Convention in question". [80] The Commission considers that in the case of instruments which form the constitutions of international organizations, the integrity of the instrument is a consideration which outweighs other considerations and that it must be for the members of the organization, acting through its competent organ, to determine how far any relaxation of the integrity of the instrument is acceptable. The Commission noted that the question would be partially covered by the general provision now included in article 4 regarding the rules of international organizations. But it considered the retention of the present paragraph to be desirable to provide a rule in cases where the rules of the international organization contain no provision touching the question.

(21) Paragraph 4 contains the three basic rules of the "flexible" system which are to govern the position of the contracting States in regard to reservations to any multilateral treaties not covered by the preceding paragraphs. Sub-paragraph (*a*) provides that acceptance of a reservation by another contracting State constitutes the reserving State a party to the treaty *in relation to that State* if or when the treaty is in force. Sub-paragraph (*b*), on the other hand, states that a contracting States's objection precludes the entry into force of the treaty *as between the objecting and reserving States*, unless a contrary intention is expressed by the objecting State. Although an objection to a reservation normally indicates a refusal to enter into treaty relations on the basis of the reservation, objections are sometimes made to reservations for reasons of principle or policy without the intention of precluding the entry into force of the treaty between the objecting and reserving States. Sub-paragraph (*c*) then provides that an act expressing the consent of a State to be bound and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation. This provision is important since it determines the moment at which a reserving State may be considered as a State which has ratified, accepted or otherwise become bound by the treaty.

(22) The rules in paragraph 4 establish a relative system of participation in a treaty, which envisages the possibility of every party to a multilateral treaty not being bound by the treaty vis-à-vis every other party. They have the result that a reserving State may be a party to the treaty vis-à-vis State X, but not vis-à-vis State Y, although States X and Y are themselves mutually bound. But in the case of a treaty drawn up between a large number of States, the Commission considered this to be preferable to allowing State Y by its objection to prevent the treaty from coming into force between the reserving State and State X which accepted the reservation.

(23) Paragraph 5 completes the rules regarding acceptance of and objection to reservations by proposing that for the purposes of paragraphs 2 and 4 (i.e. for cases where the reservation is not expressly or impliedly authorized and is not a reservation to a constituent instrument of an international organization), absence of

[80] *Official Records of the General Assembly, Fourteenth Session, Annexes*, agenda item 65, document A/4235.

objection should under certain conditions be considered as constituting a tacit acceptance of it. The paragraph lays down that a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date in which it expressed its consent to be bound by the treaty, whichever is later. That the principle of implying consent to a reservation from absence of objection has been admitted into State practice cannot be doubted; for the Court itself in the *Reservations to the Genocide Convention* case spoke of "very great allowance" being made in international practice for "tacit assent to reservations". Moreover, a rule specifically stating that consent will be presumed after a period of three, or in some cases six, months is to be found in some modern conventions; [81] while other conventions achieve the same result by limiting the right of objection to a period of three months. [82] Again, in 1959, the Inter-American Council of Jurists [83] recommended that, if no reply had been received from a State to which a reservation had been communicated, it should be presumed after one year that the State concerned had no objection to the reservation.

Article 18. [84] Procedure regarding reservations

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

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

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

Commentary

(1) This article reproduces, in a considerably revised and shortened form, procedural provisions regarding formulating, accepting and objecting to reservations which were formerly included in articles 18 and 19 of the 1962 draft.

(2) Paragraph 1 merely provides that a reservation, an express acceptance of a reservation and an objection to a reservation must be in writing and communicated to the other States entitled to become parties. In the case of acceptance the rule is limited to *express* acceptance, because tacit consent to a reservation plays a large role in the acceptance of reservations, as is specifically recognized in paragraph 5 of the previous article.

(3) Statements of reservations are made in practice at various stages in the conclusion of a treaty. Thus, a reservation is not infrequently expressed during the negotiations and recorded in the minutes. Such embryo reservations have sometimes been relied upon afterwards as amounting to formal reservations. The Commission, however, considered it essential that the State concerned should formally reiterate the statement when signing, ratifying, accepting, approving or acceding to a treaty in order that it should make its intention to formulate the reservation clear and definitive. Accordingly, a statement during the negotiations expressing a reservation is not, as such, recognized in article 16 as a method of formulating a reservation and equally receives no mention in the present article.

(4) Paragraph 2 concerns reservations made at a later stage: on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval. Here again the Commission considered it essential that, when definitely committing itself to be bound, the State should leave no doubt as to its final standpoint in regard to the reservation. The paragraph accordingly requires the State formally to confirm the reservation if it desires to maintain it. At the same time, it provides that in these cases the reservation shall be considered as having been made on the date of its confirmation, a point which is of importance for the operation of paragraph 5 of article 17.

(5) On the other hand, the Commission did not consider that an objection to a reservation made previously to the latter's confirmation would need to be reiterated after that event; and paragraph 3 therefore makes it clear that the objection need not be confirmed in such a case.

Article 19. [85] Legal effects of reservations

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

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

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

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

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

Commentary

(1) Paragraphs 1 and 2 of this article set out the rules concerning the legal effects of a reservation which has been established under the provisions of articles 16, 17

[81] e.g., International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, 1952 (90 days); and International Convention for the Suppression of Counterfeiting Currency, 1929 (6 months).

[82] e.g., Conventions on the Declaration of Death of Missing Persons, 1950, and on the Nationality of Married Women, 1957 (both 90 days).

[83] Final Act of the Fourth Meeting of the Inter-American Council of Jurists, p. 29; A/CN.4/124, *Yearbook of the International Law Commission, 1960*, vol. II, p. 133.

[84] 1962 draft, articles 18 and 19, and 1965 draft, article 20.

[85] 1962 and 1965 drafts, article 21.

and 18, assuming that the treaty is in force. These rules, which appear not to be questioned, follow directly from the consensual basis of the relations between parties to a treaty. A reservation operates reciprocally between the reserving State and any other party, so that it modifies the treaty for both of them in their mutual relations to the extent of the reserved provisions. But it does not modify the provisions of the treaty for the other parties, *inter se*, since they have not accepted it as a term of the treaty in their mutual relations.

(2) Paragraph 3 of the article covers the special case, contemplated in article 17, paragraph 4(*b*), where a State in objecting to a reservation nevertheless states that it agrees to the treaty's coming into force between it and the reserving State. The Commission concurred with the view expressed in the comments of certain Governments that it is desirable, for the sake of completeness, to cover this possibility and that in such cases the provisions to which the reservation relates should not apply in the relations between the two States to the extent of the reservation. Such is the rule prescribed in the paragraph.

Article 20.[86] Withdrawal of reservations

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

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

Commentary

(1) It has sometimes been maintained that when a reservation has been accepted by another State it may not be withdrawn without the latter's consent, as the acceptance of the reservation establishes a relation between the two States which cannot be changed without the agreement of both. The Commission, however, considered that the preferable rule is that unless the treaty otherwise provides, the reserving State should always be free to bring its position into full conformity with the provisions of the treaty as adopted by withdrawing its reservation. The parties to a treaty, in its view, ought to be presumed to wish a reserving State to abandon its reservation, unless a restriction on the withdrawal of reservations has been inserted in the treaty. Paragraph 1 of the article accordingly so states the general rule.

(2) Since a reservation is a derogation from the provisions of the treaty made at the instance of the reserving State, the Commission considered that the onus should lie upon that State to bring the withdrawal to the notice of the other States; and that the latter could not be responsible for any breach of a term of the treaty, to which the reservation relates, committed in ignorance of the withdrawal of the reservation. Paragraph 2 therefore provides that unless the treaty otherwise provides or the parties otherwise agree, a withdrawal of a reservation becomes operative only when notice of it has been received by the other contracting States. The Commission appreciated that, even when the other States had received notice of the withdrawal of the reservation, they might in certain types of treaty require a short period of time within which to adapt their internal law to the new situation resulting from it. It concluded, however, that it would be going too far to formulate this requirement as a general rule, since in many cases it would be desirable that the withdrawal of a reservation should operate at once. It felt that the matter should be left to be regulated by a specific provision in the treaty. It also considered that, even in the absence of such a provision, if a State required a short interval of time in which to bring its internal law into conformity with the situation resulting from the withdrawal of the reservation, good faith would debar the reserving State from complaining of the difficulty which its own reservation had occasioned.

[86] 1962 and 1965 drafts, article 22.

Section 3: Entry into force of treaties

Article 21.[87] Entry into force

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

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

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

Commentary

(1) The text of this article, as provisionally adopted in 1962, was a little more elaborate since it recognized that, where a treaty fixed a date by which instruments of ratification, acceptance, etc. were to be exchanged or deposited, or signatures were to take place, there would be a certain presumption that this was intended to be the date of the entry into force of the treaty. Thus if the treaty failed to specify the time of its entry into force, paragraph 2 of the 1962 text would have made the date fixed for ratifications, acceptances, approvals or signatures become the date of entry into force, subject to any requirement in the treaty as to the number of such ratifications, etc. necessary to bring it into force. Although this paragraph did not meet with objection from Governments, the Commission decided at its seventeenth session that it should be omitted. It doubted whether the negotiating States would necessarily have intended in all cases that the date fixed for deposit of instruments of ratification, etc. or for attaching signatures should be the date of entry into force. Accordingly, it concluded that it might be going too far to convert the indication given by the fixing of such dates into a definite legal presumption.

(2) Paragraph 1 of the article specifies the basic rule that a treaty enters into force in such manner and upon

[87] 1962 and 1965 drafts, article 23.

such date as it may provide or as the negotiating States may agree. The Commission noted that, if in a particular case the fixing of a date for the exchange or deposit of instruments or for signatures were to constitute a clear indication of the intended date of entry into force, the case would fall within the words "in such manner or upon such date as it may provide".

(3) Paragraph 2 states that failing any specific provision in the treaty or other agreement, a treaty enters into force as soon as all the negotiating States have consented to be bound by the treaty. This was the only general presumption which the Commission considered was justified by existing practice and should be stated in the article.

(4) Paragraph 3 lays down what is believed to be an undisputed rule, namely, that after a treaty has come into force, it enters into force for each new party on the date when its consent to be bound is established, unless the treaty otherwise provides. The phrase "enters into force for that State" is the one normally employed in this connexion in practice, [88] and simply denotes the commencement of the participation of the State in the treaty which is already in force.

(5) In re-examining this article in conjunction with article 73 regarding notifications and communications the Commission noted that there is an increasing tendency, more especially in the case of multilateral treaties, to provide for a time-lag between the establishment of consent to be bound and the entry into force of the treaty. The Geneva Conventions on the Law of the Sea and the Vienna Conventions on Diplomatic and Consular Relations, for example, provide for a thirty-day interval between these two stages of participation in a treaty. Having regard, however, to the great variety of treaties and of the circumstances in which they are concluded, the Commission concluded that it would be inappropriate to introduce *de lege ferenda* the concept of such a time-lag into the article as a general rule, and that it should be left to the negotiating States to insert it in the treaty as and when they deemed it necessary. The existing general rule, in its opinion, is undoubtedly that entry into force takes place at once upon the relevant consents having been established, unless the treaty otherwise provides.

Article 22. [89] Entry into force provisionally

1. A treaty may enter into force provisionally if:

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

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

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

Commentary

(1) This article recognizes a practice which occurs with some frequency to-day and requires notice in the draft articles. Owing to the urgency of the matters dealt with in the treaty or for other reasons the States concerned may specify in a treaty, which it is necessary for them to bring before their constitutional authorities for ratification or approval, that it shall come into force provisionally. Whether in these cases the treaty is to be considered as entering into force in virtue of the treaty or of a subsidiary agreement concluded between the States concerned in adopting the text may be a question. But there can be no doubt that such clauses have legal effect and bring the treaty into force on a provisional basis.

(2) An alternative procedure having the same effect is for the States concerned, without inserting such a clause in the treaty, to enter into an agreement in a separate protocol or exchange of letters, or in some other manner, to bring the treaty into force provisionally. Paragraph 1 of the article provides for these two contingencies.

(3) No less frequent to-day is the practice of bringing into force provisionally only a certain part of a treaty in order to meet the immediate needs of the situation or to prepare the way for the entry into force of the whole treaty a little later. What has been said above of the entry into force of the whole treaty also holds good in these cases. Accordingly, paragraph 2 of the article simply applies the same rule to the entry into force provisionally of part of a treaty.

(4) The text of the article, as provisionally adopted in 1962, contained a provision regarding the termination of the application of a treaty which has been brought into force provisionally. On re-examining the article and in the light of the comments of Governments, however, the Commission decided to dispense with the provision and to leave the point to be determined by the agreement of the parties and the operation of the rules regarding termination of treaties.

Part III.—Observance, application and interpretation of treaties

Section 1: Observance of treaties

Article 23. [90] *Pacta sunt servanda*

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

Commentary

(1) *Pacta sunt servanda*—the rule that treaties are binding on the parties and must be performed in good faith—is the fundamental principle of the law of treaties. Its importance is underlined by the fact that it is enshrined in the Preamble to the Charter of the United Nations. As to the Charter itself, paragraph 2 of Article 2 expressly provides that Members are to "fulfil in good faith the obligations assumed by them in accordance with the present Charter".

(2) There is much authority in the jurisprudence of international tribunals for the proposition that in the present context the principle of good faith is a legal prin-

[88] e.g., in the Geneva Conventions on the Law of the Sea and the Vienna Conventions on Diplomatic and Consular Relations.

[89] 1962 and 1965 drafts, article 24.

[90] 1964 draft, article 55.

ciple which forms an integral part of the rule *pacta sunt servanda*. Thus, speaking of certain valuations to be made under articles 95 and 96 of the Act of Algeciras, the Court said in the *Case concerning Rights of Nationals of the United States of America in Morocco* (Judgment of 27 August 1954[91]): "The power of making the valuation rests with the Customs authorities, but it is a power which must be exercised reasonably and in good faith". Similarly, the Permanent Court of International Justice, in applying treaty clauses prohibiting discrimination against minorities, insisted in a number of cases,[92] that the clauses must be so applied as to ensure the absence of discrimination in fact as well as in law; in other words, the obligation must not be evaded by a merely literal application of the clauses. Numerous precedents could also be found in the jurisprudence of arbitral tribunals. To give only one example, in the *North Atlantic Coast Fisheries* arbitration the Tribunal dealing with Great Britain's right to regulate fisheries in Canadian waters in which she had granted certain fishing rights to United States nationals by the Treaty of Ghent, said:[93]

> ". . . from the Treaty results an obligatory relation whereby the right of Great Britain to exercise its right of sovereignty by making regulations is limited to such regulations as are made in good faith, and are not in violation of the Treaty".

(3) Accordingly, the article provides that "A treaty in force is binding upon the parties to it and must be performed by them in good faith". Some members hesitated to include the words "in force" as possibly lending themselves to interpretations which might weaken the clear statement of the rule. Other members, however, considered that the words give expression to an element which forms part of the rule and that, having regard to other provisions of the draft articles, it was necessary on logical grounds to include them. The Commission had adopted a number of articles which dealt with the entry into force of treaties, with cases of provisional entry into force of treaties, with certain obligations resting upon the contracting States prior to entry into force, with the nullity of treaties and with their termination. Consequently, from a drafting point of view, it seemed necessary to specify that it is treaties in force in accordance with the provisions of the present articles to which the *pacta sunt servanda* rule applies. The words "in force" of course cover treaties in force *provisionally* under article 22 as well as treaties which enter into force definitively under article 21.

(4) Some members felt that there would be advantage in also stating that a party must abstain from acts calculated to frustrate the object and purpose of the treaty. The Commission, however, considered that this was clearly implicit in the obligation to perform the treaty in good faith and preferred to state the *pacta sunt servanda* rule in as simple a form as possible.

(5) The Commission considered whether this article containing the *pacta sunt servanda* rule should be placed in its present position in the draft articles or given special prominence by being inserted towards the beginning of the articles. Having regard to the introductory character of the provisions in part I and on logical grounds, it did not feel that the placing of the article towards the beginning would be appropriate. On the other hand, it was strongly of the opinion that a means should be found in the ultimate text of any convention on the law of treaties that may result from its work to emphasize the fundamental nature of the obligation to perform treaties *in good faith*. The motif of good faith, it is true, applies throughout international relations; but it has a particular importance in the law of treaties and is indeed reiterated in article 27 in the context of the interpretation of treaties. The Commission desired to suggest that the principle of *pacta sunt servanda* might suitably be given stress in the preamble to the convention just as it is already stressed in the Preamble to the Charter.

Section 2: Application of treaties

Article 24.[94] Non-retroactivity of treaties

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

Commentary

(1) There is nothing to prevent the parties from giving a treaty, or some of its provisions, retroactive effects if they think fit. It is essentially a question of their intention. The general rule, however, is that a treaty is not to be regarded as intended to have retroactive effects unless such an intention is expressed in the treaty or is clearly to be implied from its terms. This rule was endorsed and acted upon by the International Court of Justice in the *Ambatielos* case (Preliminary Objection),[95] where the Greek Government contended that under a treaty of 1926 it was entitled to present a claim based on acts which had taken place in 1922 and 1923. Recognizing that its argument ran counter to the general principle that a treaty does not have retroactive effects, that Government sought to justify its contention as a special case by arguing that during the years 1922 and 1923 an earlier treaty of 1886 had been in force between the parties containing provisions similar to those of the 1926 treaty. This argument was rejected by the Court, which said:

> "To accept this theory would mean giving retroactive effect to Article 29 of the Treaty of 1926, whereas Article 32 of this Treaty states that the Treaty, which must mean all the provisions of the Treaty, shall come into force immediately upon ratification. Such a con-

[91] *I.C.J. Reports 1952*, p. 212.

[92] e.g. *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, P.C.I.J.* (1932), Series A/B, No. 44, p. 28; *Minority Schools in Albania, P.C.I.J.* (1935), Series A/B, No. 64, pp. 19 and 20.

[93] (1910) *Reports of International Arbitral Awards*, vol. XI, p. 188. The Tribunal also referred expressly to "the principle of international law that treaty obligations are to be executed in perfect good faith".

[94] 1964 draft, article 56.

[95] *I.C.J. Reports 1952*, p. 40.

clusion might have been rebutted if there had been any special clause or any special object necessitating retroactive interpretation. There is no such clause or object in the present case. It is therefore impossible to hold that any of its provisions must be deemed to have been in force earlier".

A good example of a treaty having such a "special clause" or "special object" necessitating retroactive interpretation is to be found in the *Mavrommatis Palestine Concessions* case.[96] The United Kingdom contested the Court's jurisdiction on the ground, *inter alia*, that the acts complained of had taken place before Protocol XII to the Treaty of Lausanne had come into force, but the Court said:

"Protocol XII was drawn up in order to fix the conditions governing the recognition and treatment by the contracting Parties of certain concessions granted by the Ottoman authorities before the conclusion of the Protocol. An essential characteristic therefore of Protocol XII is that its effects extend to legal situations dating from a time previous to its own existence. If provision were not made in the clauses of the Protocol for the protection of the rights recognized therein as against infringements before the coming into force of that instrument, the Protocol would be ineffective as regards the very period at which the rights in question are most in need of protection. The Court therefore considers that the Protocol guarantees the rights recognized in it against any violation regardless of the date at which it may have taken place."

(2) The question has come under consideration in international tribunals in connexion with jurisdictional clauses providing for the submission to an international tribunal of "disputes", or specified categories of "disputes", between the parties. The Permanent Court said in the *Mavrommatis Palestine Concessions* case:

"The Court is of opinion that, in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment. . . . The reservation made in many arbitration treaties regarding disputes arising out of events previous to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction and, consequently, the correctness of the rule of interpretation enunciated above."[97]

This is not to give retroactive effect to the agreement because, by using the word "disputes" without any qualification, the parties are to be understood as accepting jurisdiction with respect to all disputes *existing* after the entry into force of the agreement. On the other hand, when a jurisdictional clause is attached to the substantive clauses of a treaty as a means of securing their due application, the non-retroactivity principle may operate to limit *ratione temporis* the application of the jurisdictional clause. Thus in numerous cases under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Commission of Human Rights has held that it is incompetent to entertain complaints regarding alleged violations of human rights said to have occurred prior to the entry into force of the Convention with respect to the State in question.[98]

(3) If, however, an act or fact or situation which took place or arose prior to the entry into force of a treaty continues to occur or exist after the treaty has come into force, it will be caught by the provisions of the treaty. The non-retroactivity principle cannot be infringed by applying a treaty to matters that occur or exist when the treaty is in force, even if they first began at an earlier date. Thus, while the European Commission of Human Rights has not considered itself competent to inquire into the propriety of legislative, administrative or judicial acts completed and made final before the entry into force of the European Convention, it has assumed jurisdiction where there were fresh proceedings or recurring applications of those acts after the Convention was in force.[99]

(4) The article accordingly states that unless it otherwise appears from the treaty, its provisions do not apply to a party in relation to any act or fact which took place or any situation which ceased to exist before the date of entry into force of the treaty with respect to that party. In other words, the treaty will not apply to acts or facts which are *completed* or to situations which have ceased to exist before the treaty comes into force. The general phrase "unless a different intention appears from the treaty or is otherwise established" is used in preference to "unless the treaty otherwise provides" in order to allow for cases where the very nature of the treaty rather than its specific provisions indicates that it is intended to have certain retroactive effects.

(5) The Commission re-examined the question whether it was necessary to state any rule concerning the application of a treaty with respect to acts, facts or situations which take place or exist after the treaty has ceased to be in force. Clearly, the treaty continues to have certain effects for the purpose of determining the legal position in regard to any act or fact which took place or any situation which was created in application of the treaty while it was in force. The Commission, however, concluded that this question really belonged to and was covered by the provisions of articles 66 and 67, paragraph 2, dealing with the consequences of the termination

[96] *P.C.I.J.* (1924) Series A, No. 2, p. 34.

[97] *Ibid.*, p. 35; cf. the *Phosphates in Morocco* case, *P.C.I.J.* (1938) Series A/B, No. 74, p. 24. The application of the different forms of clause limiting *ratione temporis* the acceptance of the jurisdiction of international tribunals has not been free from difficulty, and the case law of the Permanent Court of International Justice and the International Court of Justice now contains a quite extensive jurisprudence on the matter. Important though this jurisprudence is in regard to the Court's jurisdiction, it concerns the application of particular treaty clauses, and the Commission does not consider that it calls for detailed examination in the context of the general law of treaties.

[98] See *Yearbook of the European Convention of Human Rights*, (1955-57) pp. 153-159; *ibid.* (1958-59) pp. 214, 376, 382, 407, 412, 492-494; *ibid.* (1960) pp. 222, 280, 444; and *ibid.* (1961) pp. 128, 132-145, 240, 325.

[99] Case of De Becker, see *Yearbook of the European Convention of Human Rights* (1958-59), pp. 230-235; Application No. 655/59; *Yearbook of the European Convention of Human Rights* (1960), p. 284.

of a treaty. Accordingly, it decided to confine the present article to the principle of the non-retroactivity of treaties.

Article 25.[100] Application of treaties to territory

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

Commentary

(1) Certain types of treaty, by reason of their subject-matter, are hardly susceptible of territorial application in the ordinary sense. Most treaties, however, have application to territory and a question may arise as to what is their precise scope territorially. In some cases the provisions of the treaty expressly relate to a particular territory or area, for example the Treaty of 21 October 1920 recognizing the sovereignty of Norway over Spitzbergen[101] and the Antarctic Treaty of 1 December 1959.[102] In other cases, the terms of the treaty indicate that it relates to particular areas. Certain United Kingdom treaties dealing with domestic matters are expressly limited to Great Britain and Northern Ireland and do not relate to the Channel Islands and the Isle of Man.[103] Again, States whose territory includes a free zone may find it necessary to except this zone from the scope of a commercial treaty. Another example is a boundary treaty which applies to particular areas and regulates problems arising from mixed populations, such as the languages used for official purposes. On the other hand, many treaties which are applicable territorially contain no indication of any restriction of their territorial scope, for example treaties of extradition or for the execution of judgments.

(2) The Commission considered that the territorial scope of a treaty depends on the intention of the parties and that it is only necessary in the present article to formulate the general rule which should apply in the absence of any specific provision or indication in the treaty as to its territorial application. State practice, the jurisprudence of international tribunals and the writings of jurists appear to support the view that a treaty is to be presumed to apply to all the territory of each party unless it otherwise appears from the treaty.[104] Accordingly, it is this rule which is formulated in the present article.

(3) The term "the entire territory of each party" is a comprehensive term designed to embrace all the land and appurtenant territorial waters and air space which constitute the territory of the State. The Commission preferred this term to the term "all the territory or territories for which the parties are internationally responsible", which is found in some recent multilateral conventions. It desired to avoid the association of the latter term with the so-called "colonial clause". It held that its task in codifying the modern law of treaties should be confined to formulating the general rule regarding the application of a treaty to territory.

(4) One Government proposed that a second paragraph should be added to the article providing specifically that a State, which is composed of distinct autonomous parts, should have the right to declare to which of the constituent parts of the State a treaty is to apply. Under this proposal the declaration was not to be considered a reservation but a limitation of the consent to certain parts only of the State. The Commission was of the opinion that such a provision, however formulated, might raise as many problems as it would solve. It further considered that the words "unless a different intention appears from the treaty or is otherwise established" in the text now proposed give the necessary flexibility to the rule to cover all legitimate requirements in regard to the application of treaties to territory.

(5) Certain Governments in their comments expressed the view that the article was defective in that it might be understood to mean that the application of a treaty is necessarily confined to the territory of the parties. They proposed that the article should be revised so as to make it deal also with the extra-territorial application of treaties. The Commission recognized that the title of the article, as provisionally adopted in 1964, might create the impression that the article was intended to cover the whole topic of the application of treaties from the point of view of space; and that the limited provision which it in fact contained might in consequence give rise to misunderstandings of the kind indicated by these Governments. On the other hand, it considered that the proposal to include a provision regarding the extra-territorial application of treaties would at once raise difficult problems in regard to the extra-territorial competence of States; and that the drafts suggested in the comments of Governments were unsatisfactory in this respect. The article was intended by the Commission to deal only with the limited topic of the application of a treaty to the territory of the respective parties; and the Commission concluded that the preferable solution was to modify the title and the text of the article so as to make precise the limited nature of the rule. In its view, the law regarding the extra-territorial application of treaties could not be stated simply in terms of the intention of the parties or of a presumption as to their intention; and it considered that to attempt to deal with all the delicate problems of extra-territorial competence in the present article would be inappropriate and inadvisable.

(6) The point was raised in the Commission whether the territorial scope of a treaty may be affected by questions of State succession. The Commission, however, decided

---

[100] 1964 draft, article 57.

[101] League of Nations, *Treaty Series*, vol. II, p. 8.

[102] United Nations, *Treaty Series*, vol. 402, p. 71.

[103] e.g. Agreement between the Government of Great Britain and Northern Ireland and the USSR on Relations in the Scientific, Technological, Educational and Social Fields 1963-65 (*United Kingdom Treaty Series* No. 42 of 1963); the Convention of 1961 between Austria and Great Britain for the Reciprocal Recognition and Enforcement of Foreign Judgments defines the United Kingdom as comprising England and Wales, Scotland and Northern Ireland (*United Kingdom Treaty Series* No. 70 of 1962).

[104] *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements* (ST/LEG/7), paras. 102-103; *Succession of States in relation to General Multilateral Treaties of which the Secretary-General is Depositary* (A/CN.4/150), paras. 73, 74 and 138. *Yearbook of the International Law Commission, 1962*, vol. II, pp. 115, 123.

not to deal with this question and, as explained in paragraph (5) of the commentary to article 39, decided to reserve it in a general provision (article 69).

Article 26.[105] Application of successive treaties relating to the same subject-matter

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

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

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

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

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

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

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

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

Commentary

(1) The rules set out in the text of this article provisionally adopted in 1964 were formulated in terms of the priority of application of treaties having incompatible provisions. On re-examining the article at the present session the Commission felt that, although the rules may have particular importance in cases of incompatibility, they should be stated more generally in terms of the application of successive treaties relating to the same subject-matter. One advantage of this formulation of the rules, it thought, would be that it would avoid any risk of paragraph 4(*c*) being interpreted as sanctioning the conclusion of a treaty incompatible with obligations undertaken towards another State under another treaty. Consequently, while the substance of the article remains the same as in the 1964 text, its wording has been revised in the manner indicated.

(2) Treaties not infrequently contain a clause intended to regulate the relation between the provisions of the treaty and those of another treaty or of any other treaty relating to the matters with which the treaty deals. Sometimes the clause concerns the relation of the treaty to a prior treaty, sometimes its relation to a future treaty and sometimes to any treaty past or future. Whatever the nature of the provision, the clause has necessarily to be taken into account in appreciating the priority of successive treaties relating to the same subject-matter.

(3) Pre-eminent among such clauses is Article 103 of the Charter of the United Nations which provides: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". The precise effect of the provision in the relations between Members of the United Nations and non-member States may not be entirely clear. But the position of the Charter of the United Nations in modern international law is of such importance, and the States Members of the United Nations constitute so large a part of the international community, that it appeared to the Commission to be essential to give Article 103 of the Charter special mention and a special place in the present article. Therefore, without prejudging in any way the interpretation of Article 103 or its application by the competent organs of the United Nations, it decided to recognize the overriding character of Article 103 of the Charter with respect to any treaty obligations of Members. Paragraph 1 accordingly provides that the rules laid down in the present article for regulating the obligations of parties to successive treaties are subject to Article 103 of the Charter.

(4) Paragraph 2 concerns clauses inserted in other treaties for the purpose of determining the relation of their provisions to those of other treaties entered into by the contracting States. Some of these clauses do no more than confirm the general rules of priority contained in paragraphs 3 and 4 of this article. Others, like paragraph 2 of article 73 of the Vienna Convention of 1963 on Consular Relations,[106] which recognizes the right to *supplement* its provisions by bilateral agreements, merely confirm the legitimacy of bilateral agreements which do not derogate from the obligations of the general Convention. Certain types of clause may, however, influence the operation of the general rules, and therefore require special consideration. For example, a number of treaties contain a clause in which the parties declare either that the treaty is not incompatible with, or that it is not to affect, their obligations under another designated treaty. Many older treaties[107] provided that nothing contained in them was to be regarded as imposing upon the parties obligations inconsistent with their obligations under the Covenant of the League; and to-day a similar clause giving pre-eminence to the Charter is found in certain treaties.[108] Other examples are: article XVII of the

[105] 1964 draft, article 63.

[106] United Nations Conference on Consular Relations, *Official Records*, vol. II, p. 187.

[107] See e.g. article 16 of the Statute of 1921 on the Régime of Navigable Waterways of International Concern (League of Nations, *Treaty Series*, vol. VII, p. 61); and article 4 of the Pan-American Treaty of 1936 on Good Offices and Mediation (League of Nations, *Treaty Series*, vol. CLXXXVIII, p. 82).

[108] e.g. article 10 of the Inter-American Treaty of Reciprocal Assistance (United Nations, *Treaty Series*, vol. 21, p. 101).

Universal Copyright Convention of 1952,[109] which disavows any intention to affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works; article 30 of the Geneva Convention of 1958 on the High Seas[110] and article 73 of the Vienna Convention on Consular Relations, all of which disavow any intention of overriding existing treaties. Such clauses, in so far as they relate to existing treaties concluded by the contracting States with third States, merely confirm the general rule *pacta tertiis non nocent*. But they may go beyond that rule because in some cases not only do they affect the priority of the respective treaties as between States parties to both treaties, but they may also concern future treaties concluded by a contracting State with a third State. They appear in any case of incompatibility to give pre-eminence to the other treaty. Paragraph 2 accordingly lays down that, whenever a treaty specifies that it is subject to, or is not to be considered as inconsistent with, an earlier or a later treaty, the provisions of that other treaty should prevail.

(5) On the other hand, Article 103 apart, clauses in treaties which purport to give the treaty priority over another treaty, whether earlier or later in date, do not by themselves appear to alter the operation of the general rules of priority set out in paragraphs 3 and 4 of the article.

(6) One form of such clause looks only to the past, providing for the priority of the treaty over earlier treaties relating to the same subject-matter. This form of clause presents no difficulty when all the parties to the earlier treaty are also parties to the treaty which seeks to override it. As is pointed out in the commentary to article 56, the parties to the earlier treaty are always competent to abrogate it, whether in whole or in part, by concluding another treaty with that object. That being so, when they conclude a second treaty incompatible with the first, they are to be presumed to have intended to terminate the first treaty or to modify it to the extent of the incompatibility, unless there is evidence of a contrary intention. Accordingly, in these cases the inclusion of a clause in the second treaty expressly proclaiming its priority over the first does no more than confirm the absence of any contrary intention. When, on the other hand, the parties to a treaty containing a clause purporting to override an earlier treaty do not include all the parties to the earlier one, the rule *pacta tertiis non nocent* automatically restricts the legal effect of the clause. The later treaty, clause or no clause, cannot deprive a State which is not a party thereto of its rights under the earlier treaty. It is, indeed, clear that an attempt by some parties to a treaty to deprive others of their rights under it by concluding amongst themselves a later treaty incompatible with those rights would constitute an infringement of the earlier treaty. For this reason clauses of this kind are normally so framed as expressly to limit their effects to States parties to the later treaty. Article XIV of the Convention of 25 May 1962 on the Liability of Operators of Nuclear Ships, for example, provides:

> "This Convention shall supersede any International Conventions in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such International Conventions."[111]

Similarly, many treaties amending earlier treaties provide for the supersession of the earlier treaty in whole or in part, but at the same time confine the operation of the amending instrument to those States which become parties to it.[112] In these cases therefore, as between two States which are parties to both treaties, the later treaty prevails, but as between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty prevails. These are the very rules laid down in paragraphs 4(*a*) and (*b*) of the article, so that the insertion of this type of clause in no way modifies the application of the normal rules.

(7) Another form of clause looks only to the future, and specifically requires the parties not to enter into any future agreement which would be inconsistent with its obligations under the treaty. Some treaties, like the Statute on the Régime of Navigable Waterways of International Concern[113] contain both forms of clause; a few like the League Covenant (Article 20) and the United Nations Charter (Article 103), contain single clauses which look both to the past and the future. In these cases, the clause can be of no significance if all the parties to the earlier treaty are also parties to the later one, because when concluding the later treaty they are fully competent to abrogate or modify the earlier treaty which they themselves drew up. More difficult, however, and more important, is the effect of such a clause in cases where the parties to the later treaty do not include all the parties to the earlier one. The clause in the earlier treaty may be so framed as to prohibit the parties from concluding with any State whatever a treaty conflicting with the earlier treaty; e.g. article 2 of the Nine-Power Pact of 1922 with respect to China.[114] Or it may refer only to agreements with third States, as in the case of article 18

[109] United Nations, *Treaty Series*, vol. 216, p. 148.

[110] United Nations Conference on the Law of the Sea, *Official Records*, vol. II, p. 138.

[111] *American Journal of International Law*, vol. 57 (1963), p. 275.

[112] Article 1 of all the United Nations protocols amending League of Nations treaties declares: "The Parties to the present Protocol undertake that *as between themselves* they will, in accordance with the provisions of the present Protocol, attribute full legal force and effect to, and duly apply, the amendments to this instrument as they are set forth in the annex to the present Protocol." See, for example, Protocol of 1948 amending the International Convention of 1928 relating to Economic Statistics (United Nations, *Treaty Series*, vol. 20, p. 229); Protocol of 1953 amending the Geneva Slavery Convention of 1926 (United Nations, *Treaty Series*, vol. 182, p. 51). Cf. also article 59 of the Geneva Convention 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (United Nations, *Treaty Series*, vol. 75, p. 66).

[113] Articles 13 and 18, League of Nations, *Treaty Series*, vol. VII, p. 36.

[114] League of Nations, *Treaty Series*, vol. XXXVIII, p. 281: "The Contracting Powers agree not to enter into any treaty, agreement, arrangement, or understanding, either with one another, or, individually or collectively, with any Power or Powers which would infringe or impair the principles stated in article 1."

of the Statute on the Régime of Navigable Waterways of International Concern:

> "Each of the contracting States undertakes not to grant, either by agreement or in any other way, to a non-contracting State treatment with regard to navigation over a navigable waterway of international concern which, as between Contracting States, would be contrary to the provisions of this Statute." [115]

Or, again, the aim of the clause may be to prohibit the contracting States from entering into agreement *inter se* which would derogate from their general obligations under a convention. [116] These clauses do not appear to modify the application of the normal rules for resolving conflicts between incompatible treaties. Some obligations contained in treaties are in the nature of things intended to apply generally to all the parties all the time. An obvious example is the Nuclear Test-Ban Treaty, and a subsequent agreement entered into by any individual party contracting out of its obligations under that Treaty would manifestly be incompatible with the Treaty. Other obligations may be of a purely reciprocal kind, so that a bilateral treaty modifying the application of the convention *inter se* the contracting States is compatible with its provisions. Even then the parties may in particular cases decide to establish a single compulsive régime for matters susceptible of being dealt with on a reciprocal basis, e.g. copyright or the protection of industrial property. The chief legal relevance of a clause asserting the priority of a treaty over subsequent treaties which conflict with it therefore appears to be in making explicit the intention of the parties to create a single "integral" or "interdependent" treaty régime not open to any contracting out; in short, by expressly forbidding contracting out, the clause predicates in unambiguous terms the incompatibility with the treaty of any subsequent agreement concluded by a party which derogates from the provisions of the treaty.

(8) The Commission accordingly concluded that none of the forms of clause asserting the priority of a particular treaty over other treaties requires to be dealt with specially in the article except Article 103 of the Charter. It considered that the real issue, which does not depend on the presence or absence of such a clause, is whether the conclusion of a treaty providing for obligations of an "interdependent" or "integral" character [117] affects the actual capacity of each party unilaterally to enter into a later treaty derogating from those obligations or leaves the matter as one of international responsibility for breach of the treaty. This issue arises in connexion with the rule in paragraph 4(*c*) of the article and is dealt with in paragraphs (12) and (13) below.

(9) Paragraph 3 states the general rule for cases where all the parties to a treaty (whether without or with additional States) conclude a later treaty relating to the same subject-matter. The paragraph has to be read in conjunction with article 56 which provides that in such cases the earlier treaty is to be considered as terminated if (*a*) it appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or (*b*) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time. The second paragraph of that article provides, however, that the treaty is only to be considered as suspended if it appears from the treaty or is otherwise established that such was the intention. The present article applies only when both treaties are in force and in operation: in other words, when the termination or suspension of the operation of the treaty has not occurred under article 56. Paragraph 3, in conformity with the general rule that a later expression of intention is to be presumed to prevail over an earlier one, then states that "the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty".

(10) Paragraph 4 deals with the more complex problem of the cases where some, but not all, of the parties to the earlier treaty are parties to a later treaty relating to the same subject-matter. In such cases the rule in article 30 precludes the parties to the later treaty from depriving the other parties to the earlier treaty of their rights under that treaty without their consent. Accordingly, apart from the question whether the case of an earlier treaty containing obligations of an "interdependent" or "integral" character should be subject to a special rule, the rules generally applicable in such cases appeared to the Commission to work out automatically as follows:

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

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

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

The rules contained in sub-paragraphs (*a*) and (*c*) are, again, no more than an application of the general principle that a later expression of intention is to be presumed

---

[115] League of Nations, *Treaty Series*, vol. VII, pp. 36-61.

[116] e.g. article 15 of the 1883 Convention for the International Protection of Industrial Property (de Martens, *Nouveau Recueil général*, 2e série, vol. X, p. 133); article 20 of the Berlin Convention of 1908 for the Protection of Literary Property (de Martens, *Nouveau Recueil général*, 3e série, vol. IV, p. 590).

[117] A treaty containing "interdependent type" obligations as defined by a previous Special Rapporteur (Sir G. Fitzmaurice, third report in the *Yearbook of the International Law Commission, 1958*, vol. II, article 19 and commentary) is one where the obligations of each party are only meaningful in the context of the corresponding obligations of every other party, so that the violation of its obligations by one party prejudices the treaty régime applicable between them all and not merely the relations between the defaulting State and the other parties. Examples given by him were treaties of disarmament, treaties prohibiting the use of particular weapons, treaties requiring abstention from fishing in certain areas or during certain seasons, etc. A treaty containing "integral type" obligations was defined by the same Special Rapporteur as one where "the force of the obligation is self-existent, absolute and inherent for each party and not dependent on a corresponding performance by the others". The examples given by him were the Genocide Convention, Human Rights Conventions, the Geneva Conventions of 1949 on prisoners of war, etc., International Labour Conventions and treaties imposing an obligation to maintain a certain régime or system in a given area, such as the régime of the Sounds and the Belts at the entrance to the Baltic Sea.

to prevail over an earlier one; and sub-paragraph (*b*) is no more than a particular application of the rule in article 30. These rules, the Commission noted, are the rules applied in cases of amendment of a multilateral treaty, as in the case of the United Nations protocols for amending League of Nations treaties,[118] when not all the parties to the treaty become parties to the amending agreement.

(11) The rules in paragraph 4 determine the mutual rights and obligations of the particular parties in each situation merely *as between themselves*. They do not relieve any party to a treaty of any international responsibilities it may incur by concluding or by applying a treaty the provisions of which are incompatible with its obligations towards another State under another treaty. If the conclusion or application of the treaty constitutes an infringement of the rights of parties to another treaty, all the normal consequences of the breach of a treaty follow with respect to that other treaty. The injured party may invoke its right to terminate or suspend the operation of the treaty under article 57 and it may equally invoke the international responsibility of the party which has infringed its rights. Paragraph 5 accordingly makes an express reservation with respect to both these matters. At the same time, it makes a reservation with respect to the provisions of article 37 concerning *inter se* modification of multilateral treaties. Those provisions lay down the conditions under which an agreement may be made to modify the operation of a multilateral treaty as between some of its parties only, and nothing in paragraph 4 of the present article is to be understood as setting aside those provisions.

(12) The Commission re-examined, in the light of the comments of Governments, the problem whether an earlier treaty which contains obligations of an "interdependent" or "integral" type should constitute a special case in which a later treaty incompatible with it should be considered as void, at any rate if all the parties to the later treaty were aware that they were infringing the rights of other States under the earlier treaty. An analogous aspect of this problem was submitted to the Commission by the Special Rapporteur in his second report,[119] the relevant passages from which were reproduced, for purposes of information, in paragraph (14) of the Commission's commentary to the present article contained in its report on the work of its sixteenth session.[120] Without adopting any position on the detailed considerations advanced by the Special Rapporteur, the Commission desired in the present commentary to draw attention to his analysis of certain aspects of the problem.

(13) Certain members of the Commission were inclined to favour the idea of a special rule in the case of an earlier treaty containing obligations of an "interdependent" or "integral" character, at any rate if the parties to the later treaty were all aware of its incompatibility with the earlier one. The Commission, however, noted that under the existing law the question appeared to be left as a matter of international responsibility if a party to a treaty of such a type afterwards concluded another treaty derogating from it. The Commission also noted that obligations of an "interdependent" or "integral" character may vary widely in importance. Some, although important in their own spheres, may deal with essentially technical matters; others may deal with vital matters, such as the maintenance of peace, nuclear tests or human rights. It pointed out that in some cases the obligations, by reason of their subject-matter, might be of a *jus cogens* character and the case fall within the provisions of articles 50 and 61. But the Commission felt that it should in other cases leave the question as one of international responsibility. At the same time, as previously mentioned, in order to remove any impression that paragraph 4(*c*) justifies the conclusion of the later treaty, the Commission decided to reorient the formulation of the article so as to make it refer to the priority of successive treaties dealing with the same subject-matter rather than of treaties having incompatible provisions. The conclusion of the later treaty may, of course, be perfectly legitimate if it is only a development of or addition to the earlier treaty.

Section 3: Interpretation of treaties

Article 27.[121] General rule of interpretation

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

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

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

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

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

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

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

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

4. A special meaning shall be given to a term if it is established that the parties so intended.[122]

[118] See Resolutions of the General Assembly concerning the Law of Treaties (document A/CN.4/154, *Yearbook of the International Law Commission, 1963*, vol. II, pp. 5-9).

[119] Commentary to article 14 of that report, paras. 6-30; *Yearbook of the International Law Commission, 1963*, vol. II, pp. 54-61.

[120] *Yearbook of the International Law Commission, 1964*, vol. II, pp. 189-191.

[121] 1964 draft, article 69.

[122] 1964 draft, article 71.

Article 28.[123] Supplementary means of interpretation

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

(*a*) Leaves the meaning ambiguous or obscure; or

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

Commentary

Introduction

(1) The utility and even the existence of rules of international law governing the interpretation of treaties are sometimes questioned. The first two of the Commission's Special Rapporteurs on the law of treaties in their private writings also expressed doubts as to the existence in international law of any general rules for the interpretation of treaties. Other jurists, although they express reservations as to the obligatory character of certain of the so-called canons of interpretation, show less hesitation in recognizing the existence of some general rules for the interpretation of treaties. Sir G. Fitzmaurice, the previous Special Rapporteur on the law of treaties, in his private writings deduced six principles from the jurisprudence of the Permanent Court and the International Court which he regarded as the major principles of interpretation. In 1956, the Institute of International Law[124] adopted a resolution in which it formulated, if in somewhat cautious language, two articles containing a small number of basic principles of interpretation.

(2) Jurists also differ to some extent in their basic approach to the interpretation of treaties according to the relative weight which they give to:

(*a*) The text of the treaty as the authentic expression of the intentions of the parties;

(*b*) The intentions of the parties as a subjective element distinct from the text; and

(*c*) The declared or apparent objects and purposes of the treaty.

Some place the main emphasis on the intentions of the parties and in consequence admit a liberal recourse to the *travaux préparatoires* and to other evidence of the intentions of the contracting States as means of interpretation. Some give great weight to the object and purpose of the treaty and are in consequence more ready, especially in the case of general multilateral treaties, to admit teleological interpretations of the text which go beyond, or even diverge from, the original intentions of the parties as expressed in the text. The majority, however, emphasizes the primacy of the text as the basis for the interpretation of a treaty, while at the same time giving a certain place to extrinsic evidence of the intentions of the parties and to the objects and purposes of the treaty as means of interpretation. It is this view which is reflected in the 1956 resolution of the Institute of International Law mentioned in the previous paragraph.

(3) Most cases submitted to international adjudication involve the interpretation of treaties, and the jurisprudence of international tribunals is rich in reference to principles and maxims of interpretation. In fact, statements can be found in the decisions of international tribunals to support the use of almost every principle or maxim of which use is made in national systems of law in the interpretation of statutes and contracts. Treaty interpretation is, of course, equally part of the everyday work of Foreign Ministries.

(4) Thus, it would be possible to find sufficient evidence of recourse to principles and maxims in international practice to justify their inclusion in a codification of the law of treaties, if the question were simply one of their relevance on the international plane. But the question raised by jurists is rather as to the non-obligatory character of many of these principles and maxims. They are, for the most part, principles of logic and good sense valuable only as guides to assist in appreciating the meaning which the parties may have intended to attach to the expressions that they employed in a document. Their suitability for use in any given case hinges on a variety of considerations which have first to be appreciated by the interpreter of the document; the particular arrangement of the words and sentences, their relation to each other and to other parts of the document, the general nature and subject-matter of the document, the circumstances in which it was drawn up, etc. Even when a possible occasion for their application may appear to exist, their application is not automatic but depends on the conviction of the interpreter that it is appropriate in the particular circumstances of the case. In other words, recourse to many of these principles is discretionary rather than obligatory and the interpretation of documents is to some extent an art, not an exact science.

(5) Any attempt to codify the conditions of the application of those principles of interpretation whose appropriateness in any given case depends on the particular context and on a subjective appreciation of varying circumstances would clearly be inadvisable. Accordingly the Commission confined itself to trying to isolate and codify the comparatively few general principles which appear to constitute general rules for the interpretation of treaties. Admittedly, the task of formulating even these rules is not easy, but the Commission considered that there were cogent reasons why it should be attempted. First, the interpretation of treaties in good faith and according to law is essential if the *pacta sunt servanda* rule is to have any real meaning. Secondly, having regard to the divergent opinions concerning methods of interpretation, it seemed desirable that the Commission should take a clear position in regard to the role of the text in treaty interpretation. Thirdly, a number of articles adopted by the Commission contain clauses which distinguish between matters expressly provided in the treaty and matters to be implied in it by reference to the intention of the parties; and clearly, the operation

[123] 1964 draft, article 70.

[124] *Annuaire de l'Institut de droit international*, vol. 46 (1956), p. 359.

of such clauses can be fully appreciated and determined only in the light of the means of interpretation admissible for ascertaining the intention of the parties. In addition the establishment of some measure of agreement in regard to the basic rules of interpretation is important not only for the application but also for the drafting of treaties.

(6) Some jurists in their exposition of the principles of treaty interpretation distinguish between law-making and other treaties, and it is true that the character of a treaty may affect the question whether the application of a particular principle, maxim or method of interpretation is suitable in a particular case (e.g. the *contra proferentem* principle or the use of *travaux préparatoires*). But for the purpose of formulating the general rules of interpretation the Commission did not consider it necessary to make such a distinction. Nor did it consider that the principle expressed in the maxim *ut res magis valeat quam pereat* should not be included as one of the general rules. It recognized that in certain circumstances recourse to the principle may be appropriate and that it has sometimes been invoked by the International Court. In the *Corfu Channel* case,[125] for example, in interpreting a Special Agreement the Court said:

> "It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a Special Agreement should be devoid of purport or effect."

And it referred to a previous decision of the Permanent Court to the same effect in the *Free Zones of Upper Savoy and the District of Gex*[126] case. The Commission, however, took the view that, in so far as the maxim *ut res magis valeat quam pereat* reflects a true general rule of interpretation, it is embodied in article 27, paragraph 1, which requires that a treaty shall be interpreted *in good faith* in accordance with the ordinary meaning to be given to its terms in the context of the treaty *and in the light of its object and purpose*. When a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted. Properly limited and applied, the maxim does not call for an "extensive" or "liberal" interpretation in the sense of an interpretation going beyond what is expressed or necessarily to be implied in the terms of the treaty. Accordingly, it did not seem to the Commission that there was any need to include a separate provision on this point. Moreover, to do so might encourage attempts to extend the meaning of treaties illegitimately on the basis of the so-called principle of "effective interpretation". The Court, which has by no means adopted a narrow view of the extent to which it is proper to imply terms in treaties, has nevertheless insisted that there are definite limits to the use which may be made of the principle *ut res magis valeat* for this purpose. In the *Interpretation of Peace Treaties* Advisory Opinion[127] it said:

> "The principle of interpretation expressed in the maxim: *ut res magis valeat quam pereat*, often referred to as the rule of effectiveness, cannot justify the Court in attributing to the provisions for the settlement of disputes in the Peace Treaties a meaning which . . . would be contrary to their letter and spirit."

And it emphasized that to adopt an interpretation which ran counter to the clear meaning of the terms would not be to interpret but to revise the treaty.

(7) At its session in 1964 the Commission provisionally adopted three articles (69-71) dealing generally with the interpretation of treaties, and two articles dealing with treaties having plurilingual texts. The Commission's attempt to isolate and codify the basic rules of interpretation was generally approved by Governments in their comments and the rules contained in its draft appeared largely to be endorsed by them. However, in the light of the comments of Governments and as part of its normal process of tightening and streamlining the draft, the Commission has reduced these five articles to three by incorporating the then article 71 (terms having a special meaning) in the then article 69 (general rule of interpretation) and by amalgamating the then articles 72 and 73 (plurilingual treaties) into a single article. Apart from these changes the rules now proposed by the Commission do not differ materially in their general structure and substance from those transmitted to Governments in 1964.

(8) Having regard to certain observations in the comments of Governments the Commission considered it desirable to underline its concept of the relation between the various elements of interpretation in article 27 and the relation between these elements and those in article 28. Those observations appeared to indicate a possible fear that the successive paragraphs of article 27 might be taken as laying down a hierarchical order for the application of the various elements of interpretation in the article. The Commission, by heading the article "General rule of interpretation" in the singular and by underlining the connexion between paragraphs 1 and 2 and again between paragraph 3 and the two previous paragraphs, intended to indicate that the application of the means of interpretation in the article would be a single combined operation. All the various elements, as they were present in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation. Thus, article 27 is entitled "General *rule* of interpretation" in the singular, not "General *rules*" in the plural, because the Commission desired to emphasize that the process of interpretation is a unity and that the provisions of the article form a single, closely integrated rule. In the same way the word "context" in the opening phrase of paragraph 2 is designed to link all the elements of interpretation mentioned in this paragraph to the word "context" in the first paragraph and thereby incorporate them in the provision contained in that paragraph. Equally, the opening phrase of paragraph 3 "There shall be

[125] *I.C.J. Reports 1949*, p. 24.

[126] *P.C.I.J.* (1929), Series A, No. 22, p. 13; cf. *Acquisition of Polish Nationality*, *P.C.I.J.* (1923), Series B, No. 7, pp. 16 and 17, and *Exchange of Greek and Turkish Populations*, *P.C.I.J.* (1925), Series B, No. 10, p. 25.

[127] *I.C.J. Reports 1950*, p. 229.

taken into account *together with the context*" is designed to incorporate in paragraph 1 the elements of interpretation set out in paragraph 3. If the provision in paragraph 4 (article 71 of the 1964 draft) is of a different character, the word "special" serves to indicate its relation to the rule in paragraph 1.

(9) The Commission re-examined the structure of article 27 in the light of the comments of Governments and considered other possible alternatives. It concluded, however, that subject to transferring the provision regarding rules of international law from paragraph 1 to paragraph 3 and adding the former article 71 as paragraph 4, the general structure of the article, as provisionally adopted in 1964, should be retained. It considered that the article, when read as a whole, cannot properly be regarded as laying down a legal hierarchy of norms for the interpretation of treaties. The elements of interpretation in the article have in the nature of things to be arranged in some order. But it was considerations of logic, not any obligatory legal hierarchy, which guided the Commission in arriving at the arrangement proposed in the article. Once it is established—and on this point the Commission was unanimous—that the starting point of interpretation is the meaning of the text, logic indicates that "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" should be the first element to be mentioned. Similarly, logic suggests that the elements comprised in the "context" should be the next to be mentioned since they form part of or are intimately related to the text. Again, it is only logic which suggests that the elements in paragraph 3—a subsequent agreement regarding the interpretation, subsequent practice establishing the understanding of the parties regarding the interpretation and relevant rules of international law applicable in the relations between the parties—should follow and not precede the elements in the previous paragraphs. The logical consideration which suggests this is that these elements are extrinsic to the text. But these three elements are all of an obligatory character and by their very nature could not be considered to be norms of interpretation in any way inferior to those which precede them.

(10) The Commission also re-examined in the light of the comments of Governments the relation between the further (supplementary) means of interpretation mentioned in former article 70 and those contained in former article 69, giving special attention to the role of preparatory work as an element of interpretation. Although a few Governments indicated a preference for allowing a larger role to preparatory work and even for including it in the present article, the majority appeared to be in agreement with the Commission's treatment of the matter. Certain members of the Commission also favoured a system which would give a more automatic role to preparatory work and other supplementary means in the process of interpretation. But the Commission considered that the relationship established between the "supplementary" elements of interpretation in present article 28 and those in present article 27—which accords with the jurisprudence of the International Court on the matter—should be retained. The elements of interpretation in article 27 all relate to the agreement between the parties *at the time when or after it received authentic expression in the text. Ex hypothesi* this is not the case with preparatory work which does not, in consequence, have the same authentic character as an element of interpretation, however valuable it may sometimes be in throwing light on the expression of the agreement in the text. Moreover, it is beyond question that the records of treaty negotiations are in many cases incomplete or misleading, so that considerable discretion has to be exercised in determining their value as an element of interpretation. Accordingly, the Commission was of the opinion that the distinction made in articles 27 and 28 between authentic and supplementary means of interpretation is both justified and desirable. At the same time, it pointed out that the provisions of article 28 by no means have the effect of drawing a rigid line between the "supplementary" means of interpretation and the means included in article 27. The fact that article 28 admits recourse to the supplementary means for the purpose of "confirming" the meaning resulting from the application of article 27 establishes a general link between the two articles and maintains the unity of the process of interpretation.

Commentary to article 27

(11) The article as already indicated is based on the view that the text must be presumed to be the authentic expression of the intentions of the parties; and that, in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation *ab initio* into the intentions of the parties. The Institute of International Law adopted this—the textual—approach to treaty interpretation. The objections to giving too large a place to the intentions of the parties as an independent basis of interpretation find expression in the proceedings of the Institute. The textual approach, on the other hand, commends itself by the fact that, as one authority[128] has put it, "*le texte signé est, sauf de rares exceptions, la seule et la plus récente expression de la volonté commune des parties*". Moreover, the jurisprudence of the International Court contains many pronouncements from which it is permissible to conclude that the textual approach to treaty interpretation is regarded by it as established law. In particular, the Court has more than once stressed that it is not the function of interpretation to revise treaties or to read into them what they do not, expressly or by implication, contain.[129]

(12) *Paragraph 1* contains three separate principles. The first—interpretation in good faith—flows directly from the rule *pacta sunt servanda*. The second principle is the very essence of the textual approach: the parties are to be presumed to have that intention which appears from the ordinary meaning of the terms used by them. The third principle is one both of common sense and good faith; the ordinary meaning of a term is not to be determined in the abstract but in the context of the treaty and in the light of its object and purpose. These principles

[128] *Annuaire de l'Institut de droit international*, vol. 44, tome 1 (1952), p. 199.

[129] e.g., in the *United States Nationals in Morocco* case, *I.C.J. Reports 1952*, pp. 196 and 199.

have repeatedly been affirmed by the Court. The present Court in its Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* said:[130]

> "The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter."

And the Permanent Court in an early Advisory Opinion[131] stressed that the context is not merely the article or section of the treaty in which the term occurs, but the treaty as a whole:

> "In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense."

Again the Court has more than once had recourse to the statement of the object and purpose of the treaty in the preamble in order to interpret a particular provision.[132]

(13) *Paragraph 2* seeks to define what is comprised in the "context" for the purposes of the interpretation of the treaty. That the preamble forms part of a treaty for purposes of interpretation is too well settled to require comment, as is also the case with documents which are specifically made annexes to the treaty. The question is how far other documents connected with the treaty are to be regarded as forming part of the "context" for the purposes of interpretation. Paragraph 2 proposes that two classes of documents should be so regarded: (*a*) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; and (*b*) any instrument which was made in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. The principle on which this provision is based is that a unilateral document cannot be regarded as forming part of the "context" within the meaning of article 27 unless not only was it made in connexion with the conclusion of the treaty but its relation to the treaty was accepted in the same manner by the other parties. On the other hand, the fact that these two classes of documents are recognized in paragraph 2 as forming part of the "context" does not mean that they are necessarily to be considered as an integral part of the treaty. Whether they are an actual part of the treaty depends on the intention of the parties in each case.[133] What is proposed in paragraph 2 is that, for purposes of interpreting the treaty, these categories of documents should not be treated as mere evidence to which recourse may be had for the purpose of resolving an ambiguity or obscurity, but as part of the context for the purpose of arriving at the ordinary meaning of the terms of the treaty.

(14) *Paragraph 3*(a) specifies as a further authentic element of interpretation to be taken into account together with the context any subsequent agreement between the parties regarding the interpretation of the treaty. A question of fact may sometimes arise as to whether an understanding reached during the negotiations concerning the meaning of a provision was or was not intended to constitute an agreed basis for its interpretation.[134] But it is well settled that when an agreement as to the interpretation of a provision is established as having been reached before or at the time of the conclusion of the treaty, it is to be regarded as forming part of the treaty. Thus, in the *Ambatielos* case[135] the Court said: ". . . the provisions of the Declaration are in the nature of an interpretation clause, and, as such, should be regarded as an integral part of the Treaty. . .". Similarly, an agreement as to the interpretation of a provision reached after the conclusion of the treaty represents an authentic interpretation by the parties which must be read into the treaty for purposes of its interpretation.

(15) *Paragraph 3*(b) then similarly specifies as an element to be taken into account together with the context: "any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation". The importance of such subsequent practice in the application of the treaty, as an element of interpretation, is obvious; for it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty.[136] Recourse to it as a means of interpretation is well-established in the jurisprudence of international tribunals. In its opinion on the *Competence of the ILO to Regulate Agricultural Labour*[137] the Permanent Court said:

> "If there were any ambiguity, the Court might, for the purpose of arriving at the true meaning, consider the action which has been taken under the Treaty."

At the same time, the Court[138] referred to subsequent practice in confirmation of the meaning which it had deduced from the text and which it considered to be

---

[130] *I.C.J. Reports 1950*, p. 8.

[131] *Competence of the ILO to Regulate Agricultural Labour*, *P.C.I.J.* (1922), Series B, Nos. 2 and 3, p. 23.

[132] e.g., *United States Nationals in Morocco* case, *I.C.J. Reports 1952*, pp. 183, 184, 197 and 198.

[133] *Ambatielos* case (Preliminary Objection), *I.C.J. Reports 1952*, pp. 43 and 75.

[134] cf. the *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)* case, *I.C.J. Reports 1948*, p. 63.

[135] (Preliminary Objection), *I.C.J. Reports 1952*, p. 44.

[136] In the *Russian Indemnity* case the Permanent Court of Arbitration said: "... *l'exécution des engagements est, entre Etats, comme entre particuliers, le plus sûr commentaire du sens de ces engagements*". *Reports of International Arbitral Awards*, vol. XI, p. 433. ("...the fulfilment of engagements between States, as between individuals is the surest commentary on the effectiveness of those engagements". English translation from J. B. Scott, *The Hague Court* Reports (1916), p. 302.)

[137] *P.C.I.J.* (1922), Series B, No. 2, p. 39; see also *Interpretation of Article 3, paragraph 2, of the Treaty of Lausanne*, *P.C.I.J.* (1925), Series B, No. 12, p. 24; the *Brazilian Loans* case, *P.C.I.J.* (1929), Series A, No. 21, p. 119.

[138] *Ibid.*, pp. 40 and 41.

unambiguous. Similarly in the *Corfu Channel* case,[139] the International Court said:

> "The subsequent attitude of the Parties shows it has not been their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation."

The value of subsequent practice varies according as it shows the common understanding of the parties as to the meaning of the terms. The Commission considered that subsequent practice establishing the understanding of the parties regarding the interpretation of a treaty should be included in paragraph 3 as an authentic means of interpretation alongside interpretative agreements. The text provisionally adopted in 1964 spoke of a practice which "establishes the understanding of all the parties". By omitting the word "all" the Commission did not intend to change the rule. It considered that the phrase "the understanding of the parties" necessarily means "the parties as a whole". It omitted the word "all" merely to avoid any possible misconception that every party must individually have engaged in the practice where it suffices that it should have accepted the practice.

(16) *Paragraph 3*(c) adds as a third element to be taken into account together with the context: "any relevant rules of international law applicable in the relations between the parties". This element, as previously indicated, appeared in paragraph 1 of the text provisionally adopted in 1964, which stated that, *inter alia*, the ordinary meaning to be given to the terms of a treaty is to be determined "in the light of the general rules of international law *in force at the time of its conclusion*". The words in italics were a reflection of the general principle that a juridical fact must be appreciated in the light of the law contemporary with it. When this provision was discussed at the sixteenth session[140] some members suggested that it failed to deal with the problem of the effect of an evolution of the law on the interpretation of legal terms in a treaty and was therefore inadequate. Some Governments in their comments endorsed the provision, others criticized it from varying points of view. On re-examining the provision, the Commission considered that the formula used in the 1964 text was unsatisfactory, since it covered only partially the question of the so-called intertemporal law in its application to the interpretation of treaties and might, in consequence, lead to misunderstanding. It also considered that, in any event, the relevance of rules of international law for the interpretation of treaties in any given case was dependent on the intentions of the parties, and that to attempt to formulate a rule covering comprehensively the temporal element would present difficulties. It further considered that correct application of the temporal element would normally be indicated by interpretation of the term in good faith. The Commission therefore concluded that it should omit the temporal element and revise the reference to international law so as to make it read "any relevant rules of international law applicable in the relations between the parties". At the same time, it decided to transfer this element of interpretation to paragraph 3 as being an element which is extrinsic both to the text and to the "context" as defined in paragraph 2.

(17) *Paragraph 4* incorporates in article 27 the substance of what was article 71 of the 1964 text. It provides for the somewhat exceptional case where, notwithstanding the apparent meaning of a term in its context, it is established that the parties intended it to have a special meaning. Some members doubted the need to include a special provision on this point, although they recognized that parties to a treaty not infrequently employ a term with a technical or other special meaning. They pointed out that technical or special use of the term normally appears from the context and the technical or special meaning becomes, as it were, the ordinary meaning in the particular context. Other members, while not disputing that the technical or special meaning of the term may often appear from the context, considered that there was a certain utility in laying down a specific rule on the point, if only to emphasize that the burden of proof lies on the party invoking the special meaning of the term. They pointed out that the exception had been referred to more than once by the Court. In the *Legal Status of Eastern Greenland* case, for example, the Permanent Court had said:

> "The geographical meaning of the word 'Greenland', i.e. the name which is habitually used in the maps to denominate the whole island, must be regarded as the ordinary meaning of the word. If it is alleged by one of the Parties that some unusual or exceptional meaning is to be attributed to it, it lies on that Party to establish its contention."[141]

Commentary to article 28

(18) There are many dicta in the jurisprudence of international tribunals stating that where the ordinary meaning of the words is clear and makes sense in the context, there is no occasion to have recourse to other means of interpretation. Many of these statements relate to the use of *travaux préparatoires*. The passage from the Court's Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* cited in paragraph (12) above is one example, and another is its earlier Opinion on *Admission of a State to the United Nations*:[142]

> "The Court considers that the text is sufficiently clear; consequently it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself."

As already indicated, the Commission's approach to treaty interpretation was on the basis that the text of the treaty must be presumed to be the authentic expression of the intentions of the parties, and that the elucidation of the meaning of the text rather than an investigation *ab initio* of the supposed intentions of the parties constitutes the object of interpretation. It formulated

[139] *I.C.J. Reports 1949*, p. 25.

[140] Paragraph (11) of the commentary to articles 69-71; *Yearbook of the International Law Commission, 1964*, vol. II, pp. 202 and 203.

[141] *P.C.I.J.* (1933), Series A/B, No. 53, p. 49.

[142] *I.C.J. Reports 1948*, p. 63.

article 27 on that basis, making the ordinary meaning of the terms, the context of the treaty, its object and purpose, and the general rules of international law, together with authentic interpretations by the parties, the primary criteria for interpreting a treaty. Nevertheless, it felt that it would be unrealistic and inappropriate to lay down in the draft articles that no recourse whatever may be had to extrinsic means of interpretation, such as *travaux préparatoires*, until after the application of the rules contained in article 27 has disclosed no clear or reasonable meaning. In practice, international tribunals, as well as States and international organizations, have recourse to subsidiary means of interpretation, more especially *travaux préparatoires*, for the purpose of confirming the meaning that appears to result from an interpretation of the treaty in accordance with article 27. The Court itself has on numerous occasions referred to the *travaux préparatoires* for the purpose of confirming its conclusions as to the "ordinary" meaning of the text. For example, in its opinion on the *Interpretation of the Convention of 1919 concerning Employment of Women during the Night*[143] the Permanent Court said:

> "The preparatory work thus confirms the conclusion reached on a study of the text of the Convention that there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words."

(19) Accordingly, the Commission decided to specify in article 28 that recourse to further means of interpretation, including preparatory work, is permissible for the purpose of confirming the meaning resulting from the application of article 27 and for the purpose of determining the meaning when the interpretation according to article 27:

(*a*) Leaves the meaning ambiguous or obscure; or

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

The word "supplementary" emphasizes that article 28 does not provide for alternative, autonomous, means of interpretation but only for means to aid an interpretation governed by the principles contained in article 27. Sub-paragraph (*a*) admits the use of these means for the purpose of deciding the meaning in cases where there is no clear meaning. Sub-paragraph (*b*) does the same in cases where interpretation according to article 27 gives a meaning which is "manifestly absurd or unreasonable". The Court has recognized[144] this exception to the rule that the ordinary meaning of the terms must prevail. On the other hand, the comparative rarity of the cases in which it has done so suggest that it regards this exception as limited to cases where the absurd or unreasonable character of the "ordinary" meaning is manifest. The Commission considered that the exception must be strictly limited, if it is not to weaken unduly the authority of the ordinary meaning of the terms. Sub-paragraph (*b*) is accordingly confined to cases where interpretation under article 27 gives a result which is manifestly absurd or unreasonable.

(20) The Commission did not think that anything would be gained by trying to define *travaux préparatoires*; indeed, to do so might only lead to the possible exclusion of relevant evidence. It also considered whether, in regard to multilateral treaties, the article should authorize the use of *travaux préparatoires* only as between States which took part in the negotiations or, alternatively, only if they have been published. In the *Territorial Jurisdiction of the International Commission of the River Oder* case[145] the Permanent Court excluded from its consideration the *travaux préparatoires* of certain provisions of the Treaty of Versailles on the ground that three of the States before the Court had not participated in the conference which prepared the Treaty of Versailles; and in making this ruling it expressly refused to differentiate between published and unpublished documents. The Commission doubted, however, whether this ruling reflects the actual practice regarding the use of *travaux préparatoires* in the case of multilateral treaties that are open to accession by States which did not attend the conference at which they were drawn up. Moreover, the principle behind the ruling did not seem to be so compelling as might appear from the language of the Court in that case. A State acceding to a treaty in the drafting of which it did not participate is perfectly entitled to request to see the *travaux préparatoires*, if it wishes, before acceding. Nor did the rule seem likely to be practically convenient, having regard to the many important multilateral treaties open generally to accession. These considerations apply to unpublished, but accessible, *travaux préparatoires* as well as to published ones; and in the case of bilateral treaties or "closed" treaties between small groups of States, unpublished *travaux préparatoires* will usually be in the hands of all the parties. Accordingly, the Commission decided that it should not include any special provision in the article regarding the use of *travaux préparatoires* in the case of multilateral treaties.

Article 29.[146] Interpretation of treaties in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

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

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

[143] *P.C.I.J.* (1932), Series A/B, No. 50, p. 380; cf. the *Serbian and Brazilian Loans* cases, *P.C.I.J.* (1929), Series A, Nos. 20-21, p. 30.

[144] e.g., *Polish Postal Service in Danzig*, *P.C.I.J.* (1925), Series B, No. 11, p. 39; *Competence of the General Assembly for the Admission of a State to the United Nations*, *I.C.J. Reports 1950*, p. 8.

[145] *P.C.I.J.* (1929), Series A, No. 23.

[146] 1964 draft, articles 72 and 73.

Commentary

(1) The phenomenon of treaties drawn up in two or more languages has become extremely common and, with the advent of the United Nations, general multilateral treaties drawn up, or finally expressed, in five different languages have become quite numerous. When a treaty is plurilingual, there may or may not be a difference in the status of the different language versions for the purpose of interpretation. Each of the versions may have the status of an authentic text of the treaty; or one or more of them may be merely an "official text", that is a text which has been signed by the negotiating States but not accepted as authoritative; [147] or one or more of them may be merely an "official translation", that is a translation prepared by the parties or an individual Government or by an organ of an international organization.

(2) To-day the majority of more formal treaties contain an express provision determining the status of the different language versions. If there is no such provision, it seems to be generally accepted that each of the versions in which the text of the treaty was "drawn up" is to be considered authentic, and therefore authoritative for purposes of interpretation. In other words, the general rule is the equality of the languages and the equal authenticity of the texts in the absence of any provision to the contrary. In formulating this general rule *paragraph 1* refers to languages in which the text of the treaty has been "authenticated" rather than "drawn up" or "adopted". This is to take account of article 9 of the present articles in which the Commission recognized "authentication of the text" as a distinct procedural step in the conclusion of a treaty.

(3) The proviso in paragraph 1 is necessary for two reasons. First, treaties sometimes provide expressly that only certain texts are to be authoritative, as in the case of the Peace Treaties concluded after the Second World War which make the French, English and Russian texts authentic while leaving the Italian, Bulgarian, Hungarian etc. texts merely "official". [148] Indeed, cases have been known where one text has been made authentic between some parties and a different text between others. [149] Secondly, a plurilingual treaty may provide that in the event of divergence between the texts a specified text is to prevail. Indeed, it is not uncommon for a treaty between two States, because the language of one is not well understood by the other or because neither State wishes to recognize the supremacy of the other's language, to agree upon a text in a third language and designate it as the authoritative text in case of divergence. An example is the Treaty of Friendship concluded between Japan and Ethiopia in 1957 [150] in Japanese, Amharic and French, article 6 of which makes the French text authentic "*en cas de divergence d'interprétation*". A somewhat special case was the Peace Treaties of St. Germain, Neuilly and Trianon, which were drawn up in French, English and Italian, and which provided that in case of divergence the French text should prevail, except with regard to parts I and XII, containing respectively the Covenant of the League of Nations and the articles concerning the International Labour Organisation.

(4) The application of provisions giving priority to a particular text in case of divergence may raise a difficult problem as to the exact point in the interpretation at which the provision should be put into operation. Should the "master" text be applied automatically as soon as the slightest difference appears in the wording of the texts? Or should recourse first be had to all, or at any rate some, of the normal means of interpretation in an attempt to reconcile the texts before concluding that there is a case of "divergence"? The jurisprudence of international tribunals throws an uncertain light on the solution of this problem. Sometimes the tribunal has simply applied the "master" text at once without going into the question whether there was an actual divergence between the authentic texts, as indeed the Permanent Court appears to have done in the case concerning the interpretation of the Treaty of Neuilly. [151] Sometimes the tribunal has made some comparison at least of the different texts in an attempt to ascertain the intention of the parties. [152] This was also the method adopted by the Supreme Court of Poland in the case of the *Archdukes of the Habsburg-Lorraine House* v. *The Polish State Treasury*. [153] The question is essentially one of the intention of the parties in inserting the provision in the treaty, and the Commission doubted whether it would be appropriate for the Commission to try to resolve the problem in a formulation of the general rules of interpretation. Accordingly, it seemed to the Commission sufficient in paragraph 1 to make a general reservation of cases where the treaty contains this type of provision.

(5) *Paragraph 2* provides for the case of a version of the treaty which is not "authenticated" as a text in the sense of article 9, but which is nevertheless prescribed by the treaty or accepted by the parties as authentic for purposes of interpretation. For example, a boundary treaty of 1897 between Great Britain and Ethiopia was drawn up in English and Amharic and it was stated that both texts were to be considered authentic, [154] but a French translation was annexed to the treaty which was to be authoritative in the event of a dispute.

(6) The plurality of the authentic texts of a treaty is always a material factor in its interpretation, since both or all the texts authoritatively state the terms of the

[147] e.g., the Italian text of the Treaty of Peace with Italy is "official", but not "authentic", since article 90 designates only the French, English and Russian texts as authentic.

[148] See the Peace Treaties with Italy (article 90), Bulgaria (article 38), Hungary (article 42), Romania (article 40) and Finland (article 36).

[149] e.g., Treaty of Brest-Litovsk of 1918 (article 10).

[150] United Nations, *Treaty Series*, vol. 325, p. 300.

[151] *P.C.I.J.* (1924), Series A, No. 3.

[152] e.g., *De Paoli* v. *Bulgarian State, Tribunaux arbitraux mixtes, Recueil des décisions*, vol. 6, p. 456.

[153] *Annual Digest of International Law Cases*, 1929-1930, case No. 235.

[154] The treaty actually said "official", but it seems clear that in this instance by "official" was meant "authentic"; Hertslet, *The Map of Africa by Treaty* (3rd ed.), vol. 2, pp. 42-47; cf. the Convention for the Unification of Certain Rules concerning Collisions in Inland Navigation, Hudson, *International Legislation*, vol. 5, pp. 819-822.

agreement between the parties. But it needs to be stressed that in law there is only one treaty—one set of terms accepted by the parties and one common intention with respect to those terms—even when two authentic texts appear to diverge. In practice, the existence of authentic texts in two or more languages sometimes complicates and sometimes facilitates the interpretation of a treaty. Few plurilingual treaties containing more than one or two articles are without some discrepancy between the texts. The different genius of the languages, the absence of a complete *consensus ad idem*, or lack of sufficient time to co-ordinate the texts may result in minor or even major discrepancies in the meaning of the texts. In that event the plurality of the texts may be a serious additional source of ambiguity or obscurity in the terms of the treaty. On the other hand, when the meaning of terms is ambiguous or obscure in one language but it is clear and convincing as to the intentions of the parties in another, the plurilingual character of the treaty facilitates interpretation of the text the meaning of which is doubtful.

(7) The existence of more than one authentic text clearly introduces a new element—comparison of the texts—into the interpretation of the treaty. But it does not involve a different system of interpretation. Plurilingual in expression, the treaty remains a single treaty with a single set of terms the interpretation of which is governed by the rules set out in articles 27 and 28. The unity of the treaty and of each of its terms is of fundamental importance in the interpretation of plurilingual treaties and it is safeguarded by combining with the principle of the equal authority of authentic texts the presumption that the terms are intended to have the same meaning in each text. This presumption requires that every effort should be made to find a common meaning for the texts before preferring one to another. A term of the treaty may be ambiguous or obscure because it is so in all the authentic texts, or because it is so in one text only but it is not certain whether there is a difference between the texts, or because on their face the authentic texts seem not to have exactly the same meaning. But whether the ambiguity or obscurity is found in all the texts or arises from the plurilingual form of the treaty, the first rule for the interpreter is to look for the meaning intended by the parties to be attached to the term by applying the standard rules for the interpretation of treaties. The plurilingual form of the treaty does not justify the interpreter in simply preferring one text to another and discarding the normal means of resolving an ambiguity or obscurity on the basis of the objects and purposes of the treaty, *travaux préparatoires*, the surrounding circumstances, subsequent practice, etc. On the contrary, the equality of the texts means that every reasonable effort should first be made to reconcile the texts and to ascertain the intention of the parties by recourse to the normal means of interpretation.

(8) *Paragraph 3* therefore provides, first, that the terms of a treaty are presumed to have the same meaning in each authentic text. Then it adds that—apart from cases where the parties have agreed upon the priority of a particular text—in the event of a divergence between authentic texts a meaning which so far as possible reconciles the different texts shall be adopted. These provisions give effect to the principle of the equality of texts. In the *Mavrommatis Palestine Concessions* case,[155] the Permanent Court was thought by some jurists to lay down a general rule of restrictive interpretation in cases of divergence between authentic texts when it said:

> ". . .where two versions possessing equal authority exist one of which appears to have a wider bearing than the other, it [the Court] is bound to adopt the more limited interpretation which can be made to harmonize with both versions and which, as far as it goes, is doubtless in accordance with the common intention of the Parties. In the present case this conclusion is indicated with especial force because the question concerns an instrument laying down the obligations of Great Britain in her capacity as Mandatory for Palestine and because the original draft of this instrument was probably made in English".

But the Court does not appear necessarily to have intended by the first sentence of this passage to lay down as a general rule that the more limited interpretation which can be made to harmonize with both texts is the one which must always be adopted. Restrictive interpretation was appropriate in that case. But the question whether in case of ambiguity a restrictive interpretation ought to be adopted is a more general one the answer to which hinges on the nature of the treaty and the particular context in which the ambiguous term occurs. The mere fact that the ambiguity arises from a difference of expression in a plurilingual treaty does not alter the principles by which the presumption should or should not be made in favour of a restrictive interpretation. Accordingly, while the *Mavrommatis* case[156] gives strong support to the principle of conciliating—i.e. harmonizing—the texts, it is not thought to call for a general rule laying down a presumption in favour of restrictive interpretation in the case of an ambiguity in plurilingual texts.

(9) The Commission considered whether there were any further principles which it might be appropriate to codify as general rules for the interpretation of plurilingual treaties. For example, it examined whether it should be specified that there is a legal presumption in favour of the text with a clear meaning or of the language version in which the treaty was drafted. It felt, however, that this might be going too far, since much might depend on the circumstances of each case and the evidence of the intention of the parties. Nor did it think that it would be appropriate to formulate any general rule regarding recourse to non-authentic versions, though these are sometimes referred to for such light as they may throw on the matter.

---

[155] *P.C.I.J.*(1924), Series A, No. 2, p. 19.

[156] cf. *Venezuelan Bond* cases, Moore, *International Arbitrations*, vol. 4, p. 3623; and *German Reparations under Article 260 of the Treaty of Versailles* (1924), *Reports of International Arbitral Awards*, vol. I, pp. 437-439.

Section 4: Treaties and third States

Article 30.[157] General rule regarding third States

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

Commentary

(1) A third State, as defined in article 2(1)(*h*), is any State not a party to the treaty, and there appears to be almost universal agreement that in principle a treaty creates neither obligations nor rights for third States without their consent. The rule underlying the present article appears originally to have been derived from Roman law in the form of the well-known maxim *pacta tertiis nec nocent nec prosunt*—agreements neither impose obligations nor confer rights upon third parties. In international law, however, the justification for the rule does not rest simply on this general concept of the law of contract but on the sovereignty and independence of States. There is abundant evidence of the recognition of the rule in State practice and in the decisions of international tribunals, as well as in the writings of jurists.

(2) *Obligations.* International tribunals have been firm in laying down that in principle treaties, whether bilateral or multilateral, neither impose any obligation on States which are not parties to them nor modify in any way their legal rights without their consent. In the *Island of Palmas* case,[158] for example, dealing with a supposed recognition of Spain's title to the island in treaties concluded by that country with other States, Judge Huber said: "It appears further to be evident that Treaties concluded by Spain with third Powers recognizing her sovereignty over the 'Philippines' could not be binding upon the Netherlands . . .".[159] In another passage he said:[160] ". . .whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers"; and in a third passage[161] he emphasized that ". . .the inchoate title of the Netherlands could not have been modified by a treaty concluded between third Powers". In short, treaties concluded by Spain with other States were *res inter alios acta* which could not, as treaties, be in any way binding upon the Netherlands. In the case of the *Free Zones of Upper Savoy and the District of Gex*[162] it was a major multilateral treaty—the Versailles Peace Treaty—which was in question, and the Permanent Court held that article 435 of the Treaty was "not binding upon Switzerland, who is not a Party to that Treaty, except to the extent to which that country accepted it". Similarly, in the *Territorial Jurisdiction of the International Commission of the River Oder* case[163] the Permanent Court declined to regard a general multilateral treaty—the Barcelona Convention of 1921 on the Régime of Navigable Waterways of International Concern—as binding upon Poland, who was not a party to the treaty. Nor in the *Status of Eastern Carelia* case[164] did the Permanent Court take any different position with regard to the Covenant of the League of Nations.

(3) *Rights.* Examples of the application of the underlying rule to rights can also be found in the decisions of arbitral tribunals, which show that a right cannot arise for a third State from a treaty which makes no provision for such a right; and that in these cases only parties may invoke a right under the treaty. In the *Clipperton Island*[165] arbitration the arbitrator held that Mexico was not entitled to invoke against France the provision of the Act of Berlin of 1885 requiring notification of occupations of territory, *inter alia*, on the ground that Mexico was not a signatory to that Act. In the *Forests of Central Rhodopia* case[166] the arbitrator, whilst upholding Greece's claim on the basis of a provision in the Treaty of Neuilly, went on to say: ". . .until the entry into force of the Treaty of Neuilly, the Greek Government, not being a signatory of the Treaty of Constantinople, had no legal grounds to set up a claim based upon the relevant stipulations of that Treaty".[167]

(4) The question whether the rule *pacta tertiis nec nocent nec prosunt* admits of any actual exceptions in international law is a controversial one which divided the Commission. There was complete agreement amongst the members that there is no exception in the case of obligations; a treaty never by its own force alone creates obligations for non-parties. The division of opinion related to the question whether a treaty may of its own force confer rights upon a non-party. One group of members considered that, if the parties so intend, a treaty may have this effect, although the non-party is not, of course, obliged to accept or exercise the right. Another group of members considered that no actual right exists in favour of the non-party unless and until it is accepted by the non-party. This matter is discussed more fully in the commentary to article 32.

(5) The title of the article, as provisionally adopted in 1964, was "General rule limiting the effects of treaties to the parties". As this title gave rise to a misconception on the part of at least one Government that the article purports to deal generally with the question of the "effects of treaties on third States", the Commission decided to change it to "General rule regarding third States". For the same reason and in order not to appear to prejudge in any way the question of the application of treaties with respect to individuals, it deleted the first limb of the article "A treaty *applies only between the parties and*" etc. It thus confined the article to the short and simple statement: "A treaty does not create either obligations or rights for a third State without its consent". The formulation of both the title and the text were

[157] 1964 draft, article 58.

[158] (1928) *Reports of International Arbitral Awards*, vol. II, p. 831.

[159] *Ibid.*, p. 850.

[160] *Ibid.*, p. 842.

[161] *Ibid.*, p. 870.

[162] *P.C.I.J.* (1932), Series A/B, No. 46, p. 141; and *ibid.* (1929), Series A, No. 22, p. 17.

[163] *Ibid.* (1929), Series A, No. 23, pp. 19-22.

[164] *Ibid.* (1923), Series B, No. 5, pp. 27 and 28; cf. the somewhat special case of the *Aerial Incident of 27 July 1955, I.C.J. Reports 1959*, p. 138.

[165] *Reports of International Arbitral Awards*, vol. II, p. 1105.

[166] *Ibid.*, vol. III, p. 1405.

[167] English translation from *Annual Digest and Reports of International Law Cases*, 1933-34, case No. 39, p. 92.

designed to be as neutral as possible so as to maintain a certain equilibrium between the respective doctrinal points of view of members of the Commission.

Article 31.[168] Treaties providing for obligations for third States

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

Commentary

(1) The primary rule, formulated in the previous article, is that the parties to a treaty cannot impose an obligation on a third State without its consent. That rule is one of the bulwarks of the independence and equality of States. The present article also underlines that the consent of a State is always necessary if it is to be bound by a provision contained in a treaty to which it is not a party. Under it two conditions have to be fulfilled before a non-party can become bound: first, the parties to the treaty must have intended the provision in question to be the means of establishing an obligation for the State not a party to the treaty; and secondly, the third State must have expressly agreed to be bound by the obligation. The Commission appreciated that when these conditions are fulfilled there is, in effect, a second collateral agreement between the parties to the treaty, on the one hand, and the third State on the other; and that the juridical basis of the latter's obligation is not the treaty itself but the collateral agreement. However, even if the matter is viewed in this way, the case remains one where a provision of a treaty concluded between certain States becomes directly binding upon another State which is not and does not become a party to the treaty.

(2) The operation of the rule in this article is illustrated by the Permanent Court's approach to article 435 of the Treaty of Versailles in the *Free Zones* case.[169] Switzerland was not a party to the Treaty of Versailles, but the text of the article had been referred to her prior to the conclusion of the treaty. The Swiss Federal Council had further addressed a note[170] to the French Government informing it that Switzerland found it possible to "acquiesce" in article 435, but only on certain conditions. One of those conditions was that the Federal Council made the most express reservations as to the statement that the provisions of the old treaties, conventions, etc., were no longer consistent with present conditions, and said that it would not wish its acceptance of the article to lead to the conclusion that it would agree to the suppression of the régime of the free zones. France contended before the Court that the provisions of the old treaties, conventions, etc., concerning the free zones had been abrogated by article 435. In rejecting this contention, the Court pointed out that Switzerland had not accepted that part of article 435 which asserted the obsolescence and abrogation of the free zones:

> "Whereas, in any event, Article 435 of the Treaty of Versailles is not binding on Switzerland, which is not a Party to this Treaty, except to the extent to which that country has itself accepted it; as this extent is determined by the note of the Swiss Federal Council of May 5th, 1919, an extract from which constitutes Annex I to this article; as it is by this action and by this action alone that the Swiss Government has 'acquiesced' in the 'provisions of Article 435', namely 'under the conditions and reservations' which are set out in the said note."

(3) Some Governments in their comments referred to treaty provisions imposed upon an aggressor State and raised the question of the application of the present article to such provisions. The Commission recognized that such cases would fall outside the principle laid down in this article, provided that the action taken was in conformity with the Charter. At the same time, it noted that article 49, which provides for the nullity of any treaty procured by the threat or use of force, is confined to cases where the threat or use of force is "in violation of the principles of the Charter of the United Nations". A treaty provision imposed upon an aggressor State in conformity with the Charter would not run counter to the principle in article 49 of the present articles. The Commission decided by a majority vote to include in the draft a separate article containing a general reservation in regard to any obligation in relation to a treaty which arises for an aggressor State in consequence of measures taken in conformity with the Charter. The text of this reservation is in article 70.

Article 32.[171] Treaties providing for rights for third States

1. A right arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to accord that right either to the State in question, or to a group of States to which it belongs, or to all States, and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated.

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

Commentary

(1) This article deals with the conditions under which a State may be entitled to invoke a right under a treaty to which it is not a party. The case of rights is more controversial than that of obligations, because the question of the need for the consent of the third State presents itself in a somewhat different light. The parties to a treaty cannot, in the nature of things, effectively *impose* a right on a third State because a right may always be disclaimed or waived. Consequently, under the present article the question is simply whether the third State's "acceptance" of the provision is or is not legally necessary

[168] 1964 draft, article 59.

[169] *P.C.I.J.* (1929), Series A, No. 22, pp. 17 and 18; *ibid.* (1932), Series A/B, No. 46, p. 141.

[170] The text of the relevant part of this note was annexed to article 435 of the Treaty of Versailles.

[171] 1964 draft, article 60.

for the creation of the right, or whether the treaty of its own force creates the right.

(2) The Commission noted that treaty practice shows a not inconsiderable number of treaties containing stipulations in favour of third States. In some instances, the stipulation is in favour of individual States as, for example, provisions in the Treaty of Versailles in favour of Denmark [172] and Switzerland. [173] In some instances, it is in favour of a group of States, as in the case of the provisions in the Peace Treaties after the two world wars which stipulated that the defeated States should waive any claims arising out of the war in favour of certain States not parties to the treaties. A further case is Article 35 of the Charter, which stipulates that non-members have a right to bring disputes before the Security Council or General Assembly. Again, the Mandate and Trusteeship Agreements contain provisions stipulating for certain rights in favour respectively of members of the League and of the United Nations, though in these cases the stipulations are of a special character as being by one member of an international organization in favour of the rest. [174] In other instances, the stipulation is in favour of States generally, as in the case of provisions concerning freedom of navigation in certain international rivers, and through certain maritime canals and straits.

(3) Some jurists maintain that, while a treaty may certainly confer, either by design or by its incidental effects, a *benefit* on a third State, the latter can only acquire an actual right through some form of collateral agreement between it and the parties to the treaty. In other words, as with the case of an obligation they hold that a right will be created only when the treaty provision is intended to constitute an offer of a right to the third State which the latter has accepted. They take the position that neither State practice nor the pronouncements of the Permanent Court in the *Free Zones* case [175] furnish any clear evidence of the recognition of the institution of *stipulation pour autrui* in international law.

(4) Other jurists, [176] who include all the four Special Rapporteurs on the law of treaties, take a different position. Broadly, their view is that there is nothing in international law to prevent two or more States from effectively creating a right in favour of another State by treaty, if they so intend; and that it is always a question of the intention of the parties in concluding the particular treaty. According to them, a distinction has to be drawn between a treaty in which the intention of the parties is merely to confer a benefit on the other State and one in which their intention is to invest it with an actual right. In the latter case they hold that the other State acquires a legal right to invoke directly and on its own account the provision conferring the benefit, and does not need to enlist the aid of one of the parties to the treaty in order to obtain the execution of the provision. This right is not, in their opinion, conditional upon any specific act of acceptance by the other State or any collateral agreement between it and the parties to the treaty. These writers maintain that State practice confirms this view and that authority for it is also to be found in the report of the Committee of Jurists to the Council of the League on the Aaland Islands question, [177] and more especially in the judgment of the Permanent Court in 1932 in the *Free Zones* case where it said:

> "It cannot be lightly presumed that stipulations favourable to a third State have been adopted with the object of creating an actual right in its favour. There is however nothing to prevent the will of sovereign States from having this object and this effect. The question of the existence of a right acquired under an instrument drawn between other States is therefore one to be decided in each particular case: it must be ascertained whether the States which have stipulated in favour of a third State meant to create for that State an actual right which the latter has accepted as such." [178]

(5) In 1964, some members of the Commission shared the view of the first group of jurists set out in paragraph (3) above, while other members in general shared the view of the second group set out in paragraph (4). The Commission, however, concluded that this division of opinion amongst its members was primarily of a doctrinal character and that the two opposing doctrines did not differ very substantially in their practical effects. Both groups considered that a treaty provision may be a means of establishing a right in favour of a third State, and that the third State is free to accept or reject the right as it thinks fit. The difference was that according to one group the treaty provision constitutes no more than the offer of a right until the beneficiary State has in some manner manifested its acceptance of the right, whereas according to the other group the right arises at once and exists unless and until disclaimed by the beneficiary State. The first group, on the other hand, conceded that acceptance of a right by a third State, unlike acceptance of an obligation, need not be express but may take the form of a simple exercise of the right offered in the treaty. Moreover, the second group, for its part, conceded that a disclaimer of what they considered to be an already existing right need not be express but may in certain cases occur tacitly through failure to exercise it. Consequently, it seemed to the Commission that in practice the two doctrines would be likely to give much the same results in almost every case. Nor did the Commission consider that the difference in doctrine necessarily led to different conclusions in regard to the right of the parties to the treaty to revoke or amend the provisions relating to the right. On the contrary, it was unanimous in thinking that until the beneficiary State had manifested its assent

[172] Article 109 of the Treaty of Versailles.

[173] Articles 358 and 374 of the Treaty of Versailles.

[174] See the *South-West Africa* cases, *I.C.J. Reports 1962*, pp. 329-331 and p. 410; the *Northern Cameroons* case, *I.C.J. Reports 1963*, p. 29.

[175] *P.C.I.J.* (1932), Series A/B, No. 46, p. 147.

[176] e.g., Sir G. Fitzmaurice, fifth report on the law of treaties, *Yearbook of the International Law Commission, 1960*, vol. II, pp. 81 and 102-104.

[177] League of Nations, *Official Journal*, Special Supplement No. 3 (October 1920), p. 18.

[178] *P.C.I.J.* (1932), Series A/B, No. 46, pp. 147 and 148; in the course of that case, however, three judges expressly dissented from the view that a stipulation in favour of a State not a party to the treaty may of itself confer an actual right upon that State.

to the grant of the right, the parties should remain free to revoke or amend the provision without its consent; and that afterwards its consent should always be required if it was established that the right was intended not to be revocable or subject to modification without the third State's consent. Being of the opinion that the two doctrines would be likely to produce different results only in very exceptional circumstances,[179] the Commission decided to frame the article in a form which, while meeting the requirements of State practice, would not prejudge the doctrinal basis of the rule.

(6) Governments in their comments showed no inclination to take up a position on the doctrinal point and, in general, appeared to endorse the rule proposed in the article. Certain Governments, if from somewhat divergent points of view, raised a query in regard to the second condition contained in paragraph 1(*b*) of the text provisionally adopted in 1964, namely "and the State *expressly or impliedly* assents thereto". As a result of these comments and in order to improve the formulation of the rule with reference to cases where the intention is to dedicate a right, such as a right of navigation, to States generally, the Commission modified the drafting of paragraph 1 of the article on this point. It deleted the words "expressly or impliedly" and at the same time added a provision that the assent of the third State was to be presumed so long as the contrary was not indicated. This modification, it noted, would still further diminish any practical significance there might be between the two doctrinal points of view as to the legal effect of a treaty provision purporting to confer a right on a third State.

(7) *Paragraph 1* lays down that a right may arise for a State from a provision of a treaty to which it is not a party under two conditions. First, the parties must intend the provision to accord the right either to the particular State in question, or to a group of States to which it belongs, or to States generally. The intention to accord the right is of cardinal importance, since it is only when the parties have such an intention that a legal right, as distinct from a mere benefit, may arise from the provision. Examples of stipulations in favour of individual States, groups of States or States generally have already been mentioned in paragraph (2). The second condition is the assent of the beneficiary State. The formulation of this condition in the present tense "and the State assents thereto" leaves open the question whether juridically the right is created by the treaty or by the beneficiary State's act of acceptance. In one view, as already explained, the assent of the intended beneficiary, even although it may merely be implied from the exercise of the right, constitutes an "acceptance" of an offer made by the parties; in the other view the assent is only significant as an indication that the right is not disclaimed by the beneficiary. The second sentence of the paragraph then provides that the assent of the State is to be presumed so long as the contrary is not indicated. This provision the Commission considered desirable in order to give the necessary flexibility to the operation of the rule in cases where the right is expressed to be in favour of States generally or of a large group of States. The provision, as previously mentioned, also has the effect of further narrowing the gap between the two theories as to the source of the right arising from the treaty.

(8) *Paragraph 2* specifies that in exercising the right a beneficiary State must comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty. The words "or established in conformity with the treaty" take account of the fact that not infrequently conditions for the exercise of the right may be laid down in a supplementary instrument or in some cases unilaterally by one of the parties. For example, in the case of a provision allowing freedom of navigation in an international river or maritime waterway, the territorial State has the right in virtue of its sovereignty to lay down relevant conditions for the exercise of the right provided, of course, that they are in conformity with its obligations under the treaty. One Government expressed the fear that this paragraph might be open to the interpretation that it restricts the power of the parties to the treaty to amend the right conferred on third States. In the Commission's opinion, such an interpretation would be wholly inadmissible since the paragraph manifestly deals only with the obligation of the third State to comply with the conditions applicable to the exercise of the right. The question of the power of the parties to modify the right is certainly an important one, but it arises under article 33, not under paragraph 2 of the present article.

Article 33.[180] Revocation or modification of obligations or rights of third States

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

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

Commentary

(1) Article 33 deals with the position of the parties to a treaty in regard to the revocation or modification of an obligation or of a right which has arisen for a third State under article 31 or 32. The text of the article, as provisionally adopted in 1964, contained a single rule covering both obligations and rights and laying down that neither could be revoked or modified by the parties without the consent of the third State unless it appeared from the treaty that the provision giving rise to them was intended to be revocable. The formulation of this rule was criticized in some respect by certain Governments in their comments, and certain others expressed

[179] For example, in the controversy between the United States Treasury and the State Department as to whether the Finnish Peace Treaty had actually vested a right in the United States to avail itself or not to avail itself of a waiver of Finland's claims.

[180] 1964 draft, article 61.

the view that the article went too far in protecting the right of the third State. The Commission, while not fully in accord with the particular criticisms, agreed that the rule proposed in 1964 was not altogether satisfactory and that the article needed to be reformulated in a slightly different way.

(2) The Commission considered that, although analogous, the considerations affecting revocation or modification of an obligation are not identical with those applicable in the case of a right. Indeed the respective positions of the parties and of the third State are reversed in the two cases. It also considered that regard must be had to the possibility that the initiative for revoking or modifying an obligation might well come from the third State rather than from the parties; and that in such a case the third State, having accepted the obligation, could not revoke or modify it without the consent of the parties unless they had otherwise agreed. Accordingly, it decided to reformulate the article in two paragraphs, one covering the case of an obligation and the other the case of a right. The Commission also decided that the article should refer to the revocation or modification of the third State's obligation or right rather than of the provision of the treaty giving rise to the obligation or right; for the revocation or modification of the provision as such is a matter which concerns the parties alone and it is the mutual relations between the parties and the third State which are in question in the present article.

(3) *Paragraph 1* lays down that the obligation of a third State may be revoked or modified only with the mutual consent of the parties and of the third State, unless it is established that they had otherwise agreed. As noted in the previous paragraph this rule is clearly correct if it is the third State which seeks to revoke or modify the obligation. When it is the parties who seek the revocation or modification, the position is less simple. In a case where the parties were simply renouncing their right to call for the performance of the obligation, it might be urged that the consent of the third State would be superfluous; and in such a case it is certainly very improbable that any difficulty would arise. But the Commission felt that in international relations such simple cases are likely to be rare, and that in most cases a third State's obligation is likely to involve a more complex relation which would make it desirable that any change in the obligation should be a matter of mutual consent. Accordingly it concluded that the general rule stated in the paragraph should require the mutual consent of the parties and of the third State, unless it was established that they had otherwise agreed.

(4) *Paragraph 2*, for the reason indicated above, deals only with the revocation or modification of a third State's right *by the parties to the treaty*. The Commission took note of the view of some Governments that the 1964 text went too far in restricting the power of the parties to revoke or modify a stipulation in favour of the third State and in giving the latter a veto over any modification of the treaty provision. It considered however, that there are conflicting considerations to be taken into account. No doubt, it was desirable that States should not be discouraged from creating rights in favour of third States, especially in such matters as navigation in international waterways, by the fear that they might be hampering their freedom of action in the future. But it was no less important that such rights should have a measure of solidity and firmness. Furthermore, there was force in the argument that, if the parties wished the third State's rights to be revocable, they could so specify in the treaty or in negotiations with the third State. Taking account of these conflicting considerations and of the above-mentioned view expressed by certain Governments, the Commission reformulated the rule in paragraph 2 so as to provide that a third State's right may not be revoked if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State. The irrevocable character of the right would normally be established either from the terms or nature of the treaty provision giving rise to the right or from an agreement or understanding arrived at between the parties and the third State.

Article 34.[181] Rules in a treaty becoming binding through international custom

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

Commentary

(1) The role played by custom in sometimes extending the application of rules contained in a treaty beyond the contracting States is well recognized. A treaty concluded between certain States may formulate a rule, or establish a territorial, fluvial or maritime régime, which afterwards comes to be generally accepted by other States and becomes binding upon other States by way of custom, as for example the Hague Conventions regarding the rules of land warfare,[182] the agreements for the neutralization of Switzerland, and various treaties regarding international riverways and maritime waterways. So too a codifying convention purporting to state existing rules of customary law may come to be regarded as the generally accepted formulation of the customary rules in question even by States not parties to the convention.

(2) In none of these cases, however, can it properly be said that the treaty itself has legal effects for third States. They are cases where, without establishing any treaty relation between themselves and the parties to the treaty, other States recognize rules formulated in a treaty as binding customary law. In short, for these States the source of the binding force of the rules is custom, not the treaty. For this reason the Commission did not think that this process should be included in the draft articles as a case of a treaty having legal effects for third States. It did not, therefore, formulate any specific provisions concerning the operation of custom in extending the

[181] 1964 draft, article 62.

[182] Held by the International Military Tribunal at Nuremberg to enunciate rules which had become generally binding rules of customary law.

application of treaty rules beyond the contracting States. On the other hand, having regard to the importance of the process and to the nature of the provisions in articles 30 to 33, it decided to include in the present article a general reservation stating that nothing in those articles precludes treaty rules from becoming binding on non-parties as customary rules of international law.

(3) The Commission desired to emphasize that the provision in the present article is purely and simply a reservation designed to negative any possible implication from articles 30 to 33 that the draft articles reject the legitimacy of the above-mentioned process. In order to make it absolutely plain that this is the sole purpose of the present article, the Commission slightly modified the wording of the text provisionally adopted in 1964.

(4) The Commission considered whether treaties creating so-called "objective régimes", that is, obligations and rights valid *erga omnes*, should be dealt with separately as a special case.[183] Some members of the Commission favoured this course, expressing the view that the concept of treaties creating objective régimes existed in international law and merited special treatment in the draft articles. In their view, treaties which fall within this concept are treaties for the neutralization or demilitarization of particular territories or areas, and treaties providing for freedom of navigation in international rivers or maritime waterways; and they cited the Antarctic Treaty as a recent example of such a treaty. Other members, however, while recognizing that in certain cases treaty rights and obligations may come to be valid *erga omnes*, did not regard these cases as resulting from any special concept or institution of the law of treaties. They considered that these cases resulted either from the application of the principle in article 32 or from the grafting of an international custom upon a treaty under the process which is the subject of the reservation in the present article. Since to lay down a rule recognizing the possibility of the creation of objective régimes directly by treaty might be unlikely to meet with general acceptance, the Commission decided to leave this question aside in drafting the present articles on the law of treaties. It considered that the provision in article 32, regarding treaties intended to create rights in favour of States generally, together with the process mentioned in the present article, furnish a legal basis for the establishment of treaty obligations and rights valid *erga omnes*, which goes as far as is at present possible. Accordingly, it decided not to propose any special provision on treaties creating so-called objective régimes.

Part IV.—Amendment and modification of treaties

Article 35.[184] General rule regarding the amendment of treaties

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

Article 36.[185] Amendment of multilateral treaties

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

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

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

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

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

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

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

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

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

Commentary

Introduction

(1) The development of international organization and the tremendous increase in multilateral treaty-making have made a considerable impact on the process of amending treaties. In the first place, the amendment of many multilateral treaties is now a matter which concerns an international organization. This is clearly the case where the treaty is the constituent instrument of an organization or where the treaty, like international labour conventions, is drawn up within an organization. But it is also to some extent the case where the treaty is concluded under the auspices of an organization and the secretariat of the organization is made the depositary for executing its procedural provisions. In all these cases the drawing up of an amending instrument is caught up in the machinery of the organization or in the functions of the depositary. As a result, the right of each party to be consulted with regard to the amendment or revision of the treaty is largely safeguarded. In the second place, the proliferation of multilateral treaties has led to an increased awareness of the importance of making provision in advance, in the treaty itself, for the possibility of its future amendment. In the third place, the growth of multilateral treaties having a very large number of parties has made it virtually impossible to limit the amending process to amendments brought into force by an agree-

[183] See generally Sir G. Fitzmaurice's fifth report on the law of treaties, *Yearbook of the International Law Commission, 1960*, vol. II, pp. 69-107; and Sir H. Waldock's third report, A/CN.4/167, article 63 and commentary, *Yearbook of the International Law Commission, 1964*, vol. II, pp. 26-34.

[184] 1964 draft, article 65.

[185] 1964 draft, article 66.

ment entered into by all the parties to the original treaty; and has led to an increasing practice of bringing amending agreements into force as between those States willing to accept the amendment, while at the same time leaving the existing treaty in force with respect to the other parties to the earlier treaty. Thus, in 1906 the Geneva Convention of 1864 for the Amelioration of the Condition of Wounded in Armies in the Field was revised by a new Convention which expressly provided that, when duly ratified, it should supersede the 1864 Convention in the relations between the contracting States, but that the 1864 Convention should remain in force in the relations of parties to that Convention who did not ratify the new Convention. A similar provision was inserted in the Hague Convention of 1907 on the Laws and Customs of War on Land, which revised the earlier Convention of 1899. There are numerous later examples of the same technique, notably the United Nations protocols revising certain League of Nations conventions.

(2) Amendment clauses found in multilateral treaties take a great variety of forms, as appears from the examples given in the *Handbook of Final Clauses*.[186] Despite their variety, many amendment clauses are far from dealing comprehensively with the legal aspects of amendment. Some, for example, merely specify the conditions under which a proposal for amendment may be put forward, without providing for the procedure for considering it. Others, while also specifying the procedure for considering a proposal, do not deal with the conditions under which an amendment may be adopted and come into force, or do not define the exact effect on the parties to the existing treaty. As to clauses regarding the adoption and entry into force of an amendment, some require its acceptance by all the parties to the treaty, but many admit some form of qualified majority as sufficient. In general, the variety of the clauses makes it difficult to deduce from the treaty practice the development of detailed customary rules regarding the amendment of multilateral treaties; and the Commission did not therefore think that it would be appropriate for it to try to frame a comprehensive code of rules regarding the amendment of treaties. On the other hand, it seemed to the Commission desirable that the draft articles should include a formulation of the basic rules concerning the process of amendment.

(3) Some treaties use the term "amendment" in relation to individual provisions of the treaty and the term "revision" for a general review of the whole treaty.[187] If this phraseology has a certain convenience, it is not one which is found uniformly in State practice, and there does not appear to be any difference in the legal process. The Commission therefore considered it sufficient in the present articles to speak of "amendment" as being a term which covers both the amendment of particular provisions and a general review of the whole treaty.[188] As to the term "revision", the Commission recognized that it is frequently found in State practice and that it is also used in some treaties. Nevertheless, having regard to the nuances that became attached to the phrase "revision of treaties" in the period preceding the Second World War, the Commission preferred the term "amendment". This term is here used to denote a *formal* amendment of a treaty intended to alter its provisions with respect to all the parties. The more general term "modification" is used in article 37 in connexion with an *inter se* agreement concluded between certain of the parties only, and intended to vary provisions of the treaty between themselves alone, and also in connexion with a variation of the provisions of a treaty resulting from the practice of the parties in applying it.

Commentary to article 35

(4) Article 35 provides that a treaty may be amended by agreement between the parties, and that the rules laid down in part II apply to it except in so far as the treaty may otherwise provide. Having regard to the modern practice of amending multilateral treaties by another multilateral treaty which comes into force only for those States which become bound by it, the Commission did not specify that the agreement must be that of all the parties, as in the case of termination of a treaty under article 51. It felt that the procedure for the adoption of the text and the entry into force of the amending agreement should simply be governed by articles 8, 21 and 22 of part II. On the other hand, it sought in article 36 to lay down strict rules guaranteeing the right of each party to participate in the process of amendment. The amendment of a treaty is normally effected through the conclusion of another treaty in written form and this is reflected in the provision that the rules of part II are to apply to the amending agreement. However, as explained in paragraph (3) of its commentary to article 51, the Commission did not consider that the theory of the "*acte contraire*" has any place in international law. An amending agreement may take whatever form the parties to the original treaty may choose. Indeed, the Commission recognized that a treaty may sometimes be modified even by an oral agreement or by a tacit agreement evidenced by the conduct of the parties in the application of the treaty. Accordingly, in stating that the rules of part II regarding the conclusion and entry into force of treaties apply to amending agreements, the Commission did not mean to imply that the modification of a treaty by an oral or tacit agreement is inadmissible. On the contrary, it noted that the legal force of an oral agreement modifying a treaty would be preserved by the provision in article 3, sub-paragraph (*b*), and it made express provision in article 38 for the modification of a treaty by the subsequent practice of the parties in its application.

Commentary to article 36

(5) This article deals with the complex process of the amendment of multilateral treaties. The Commission considered whether to formulate any rule specifically for bilateral treaties, but concluded that it would not serve any useful purpose. Where only two parties are involved, the question is essentially one of negotiation and agreement between them, and the rules contained

[186] ST/LEG/6, pp. 130-152.

[187] Articles 108 and 109 of the Charter; see also *Handbook of Final Clauses* (ST/LEG/6), pp. 130 and 150.

[188] Thus, while Chapter XVIII of the Charter is entitled "Amendments", Article 109 speaks of "reviewing" the Charter.

in part II suffice to regulate the procedure and to protect the positions of the individual parties. Moreover, although the Commission was of the opinion that a party is under a certain obligation of good faith to give due consideration to a proposal from the other party for the amendment of a treaty, it felt that such a principle would be difficult to formulate as a legal rule without opening the door to arbitrary denunciations of treaties on the pretended ground that the other party had not given serious attention to a proposal for amendment.

(6) Article 36 is concerned only with the amendment *stricto sensu* of a multilateral treaty, that is, where the intention is to draw up a formal agreement between the parties generally for modifying the treaty between them all, and not to draw up an agreement between certain parties only for the purpose of modifying the treaty between themselves alone. The Commission recognized that an amending agreement drawn up between the parties generally may not infrequently come into force only with respect to some of them owing to the failure of the others to proceed to ratification, acceptance or approval of the agreement. Nevertheless, it considered that there is an essential difference between amending agreements designed to amend a treaty between the parties generally and agreements designed *ab initio* to modify the operation of the treaty as between certain of the parties only. Although an amending instrument may equally turn out to operate only between certain of the parties, the Commission considered that a clear-cut distinction must be made between the amendment process *stricto sensu* and *inter se* agreements modifying the operation of the treaty between a restricted circle of the parties. For this reason, *inter se* agreements are dealt with separately in article 37 while the opening phrase of paragraph 2 of the present article underlines that it is concerned only with proposals to amend the treaty as between *all* the parties.

(7) *Paragraph 1* merely emphasizes that the rules stated in the article are residuary rules in the sense that they apply only in the absence of a specific provision in the treaty laying down a different rule. Modern multilateral treaties, as indicated in paragraph (3) of this commentary, not infrequently contain some provisions regarding their amendment and the rules contained in the present articles must clearly be subject to any such specific provisions in the treaty.

(8) *Paragraph 2* provides that any proposal to amend a multilateral treaty as between all the parties must be notified to every party and that each party has the right to take part in the decision as to the action, if any, to be taken in regard to the proposal and to take part in the negotiation and conclusion of any agreement designed to amend the treaty. Treaties have often in the past been amended or revised by certain of the parties without consultation with the others. This had led some jurists to conclude that there is no general rule entitling every party to a multilateral treaty to take part in any negotiations for the amendment of the treaty and that, correspondingly, parties to a multilateral treaty are under no legal obligation to invite all the original parties to participate in such negotiations. Although recognizing that instances have been common enough in which individual parties to a treaty have not been consulted in regard to its revision, the Commission does not think that State practice leads to that conclusion or that such a view should be the one adopted by the Commission.

(9) If a group of parties has sometimes succeeded in effecting an amendment of a treaty régime without consulting the other parties, equally States left out of such a transaction have from time to time reacted against the failure to bring them into consultation as a violation of their rights as parties. Moreover, there are also numerous cases where the parties have, as a matter of course, all been consulted. The Commission, however, considers that the very nature of the legal relation established by a treaty requires that every party should be consulted in regard to any amendment or revision of the treaty. The fact that this has not always happened in the past is not a sufficient reason for setting aside a principle which seems to flow directly from the obligation assumed by the parties to perform the treaty in good faith. There may be special circumstances when it is justifiable not to bring a particular party into consultation, as in the case of an aggressor. But the general rule is believed to be that every party is entitled to be brought into consultation with regard to an amendment of the treaty; and paragraph 2 of article 36 so states the law.

(10) *Paragraph 3*, which was added to the article at the present session, provides that every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended. This rule recognizes that States entitled to become parties to a treaty, and notably those which took part in its drawing up but have not yet established their consent to be bound by it, have a definite interest in the amendment of the treaty. The Commission considered whether this interest should be expressed in the form of an actual right to take part in the negotiation and conclusion of the amending agreement, or whether it should be limited to a right to become a party to the amending agreement. The problem, in its view, was to strike a balance between the right of the parties to adapt the treaty to meet requirements which experience of the working of the treaty had revealed, and the right of the States which had participated in drawing up the text to become parties to the treaty which they had helped to fashion. The Commission appreciated that in practice the parties would very often think it desirable to associate States entitled to become parties with the negotiation and conclusion of an amending agreement in order to encourage the widest possible participation in the treaty as amended. But it concluded that the right of those which had committed themselves to be bound by the treaty to proceed alone, if they thought fit, to embody desired improvements in an amending agreement should be recognized. It therefore decided that paragraph 3 should not go beyond conferring on the States entitled to become parties to the treaty a right to become parties to it as modified by the amending agreement; in other words, the paragraph should give them a right to become parties simultaneously to the treaty and to the amending agreement.

(11) *Paragraph 4* provides that an amending agreement does not bind a party to the treaty which does not become a party to the amending agreement. And, by its reference to article 26, paragraph 4(*b*), it further provides that as between such a party to the treaty and one which has become bound by the amending agreement, it is the unamended treaty which governs their mutual rights and obligations. This paragraph is, of course, no more than an application, in the case of amending agreements, of the general rule in article 30 that a treaty does not impose any obligation upon a State not a party to it. Nevertheless, without this paragraph the question might be thought to be left open whether by its very nature an instrument amending a prior treaty necessarily has legal effects for parties to the treaty. In some modern treaties the general rule in this paragraph is indeed displaced by a different provision laid down in the original treaty or by a contrary rule applied to treaties concluded within a particular international organization.[189] Article 3 of the Geneva Convention on Road Traffic (1949), for example, provides that any amendment adopted by a two-thirds majority of a conference shall come into force for all parties except those which make a declaration that they do not adopt the amendment. Article 16 of the International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail provides for amendments to come into force for all parties unless it is objected to by at least one-third.

(12) *Paragraph 5*, which has also been added at the present session, deals with the rather more complex case of a State which becomes a party to the treaty after the amending agreement has come into force between at least some of the parties to the treaty. As previously indicated, it is in practice very common that an amending agreement is ratified only by some of the parties to the original treaty. As a result two categories of parties to the treaty come into being: (*a*) those States which are parties only to the unamended treaty, and (*b*) those which are parties both to the treaty and to the amending agreement. Yet all are, in a general sense, parties to the treaty and have mutual relations under the treaty. Any State party only to the unamended treaty is bound by the treaty alone in its relations both with any other such State and with any State which is a party both to the treaty and to the amending agreement; for that is the effect of the rule in paragraph 4. On the other hand, as between any two States which are parties both to the treaty and the amending agreement it is the treaty as amended which applies. The problem then is what is to be the position of a State which only becomes a party to the original treaty after the amending agreement is already in force. This problem raises two basic questions. (1) Must the new party become or, in the absence of a contrary expression of intention, be presumed to become, a party both to the treaty and the amending agreement? (2) Must the new party become or, in the absence of a contrary expression of intention, be presumed to become a party to the unamended treaty vis-à-vis any State party to the treaty but not party to the amending agreement? These questions are far from being theoretical since they are apt to arise in practice whenever a general multilateral treaty is amended. Moreover, the Commission was informed by the Secretariat that it is by no means uncommon for a State to ratify or otherwise establish its consent to the treaty without giving any indication as to its intentions regarding the amending agreement; and that in these cases the instrument of ratification, acceptance, etc. is presumed by the Secretary-General in his capacity as a depositary to cover the treaty with its amendments.

(13) Some modern treaties foresee and determine the matter by a specific provision but the majority of treaties do not. The Commission accordingly thought it necessary that the present article should lay down a general rule to apply in the absence of any expression of intention in the treaty or by the State concerned. It considered that this rule should be based on two principles: (*a*) the right of the State, on becoming a party to the treaty, to decide whether to become a party to the treaty alone, to the treaty plus the amending agreement or to the amended treaty alone; (*b*) in the absence of any indication by the State, it is desirable to adopt a solution which will bring the maximum number of States into mutual relations under the treaty. Paragraph 5 therefore provides that, failing an expression of a different intention, a State which becomes a party after the amending agreement has come into force is to be considered as: (*a*) a party to the treaty as amended, and (*b*) a party also to the unamended treaty in its relations with any party to the treaty which is not bound by the amending agreement.

(14) The text of the article provisionally adopted by the Commission in 1964 contained a provision (paragraph 3 of the 1964 text) applying the principle *nemo potest venire contra factum proprium* to States which participate in the drawing up of an amending agreement but afterwards fail to become parties to it. The effect of the provision was to preclude them from objecting to the amending agreement's being brought into force between those States which did become parties to it. On re-examining this provision in the light of the comments of Governments the Commission concluded that it should be dispensed with. While recognizing that it would be very unusual for States which participate in the drawing up of an amending agreement to complain of the putting into force of the agreement as a breach of their rights under the original treaty, the Commission felt that it might be going too far to lay down an absolute rule in the sense of paragraph 3 of the 1964 text, applicable for every case.

Article 37.[190] Agreements to modify multilateral treaties between certain of the parties only

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

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

[189] See the *Handbook of Final Clauses* (ST/LEG/6) pp. 135-148.

[190] 1964 draft, article 67.

(*b*) The modification in question:

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

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

(iii) is not prohibited by the treaty.

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

Commentary

(1) This article, as already explained in the commentary to articles 35 and 36, deals not with "amendment" of a treaty but with an "*inter se* agreement" for its "modification"; that is, with an agreement entered into by some only of the parties to a multilateral treaty and intended to modify it between themselves alone. Clearly, a transaction in which two or a small group of parties set out to modify the treaty between themselves alone without giving the other parties the option of participating in it is on a different footing from an amending agreement drawn up between the parties generally, even if ultimately they do not all ratify it. For an *inter se* agreement is more likely to have an aim and effect incompatible with the object and purpose of the treaty. History furnishes a number of instances of *inter se* agreements which substantially changed the régime of the treaty and which overrode the objections of interested States. Nor can there be any doubt that the application, and even the conclusion, of an *inter se* agreement incompatible with the object and purpose of the treaty may raise a question of State responsibility. Under the present article, therefore, the main issue is the conditions under which *inter se* agreements may be regarded as permissible.

(2) *Paragraph 1*(a) necessarily recognizes that an *inter se* agreement is permissible if the possibility of such an agreement was provided for in the treaty: in other words, if "contracting out" was contemplated in the treaty. *Paragraph 1*(b) states that *inter se* agreements are to be permissible in other cases only if three conditions are fulfilled. First, the modification must not affect the enjoyment of the rights or the performance of the obligations of the other parties; that is, it must not prejudice their rights or add to their burdens. Secondly, it must not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of the treaty; for example, an *inter se* agreement modifying substantive provisions of a disarmament or neutralization treaty would be incompatible with its object and purpose and not permissible under the present article. Thirdly, the modification must not be one prohibited by the treaty, as for example the prohibition on contracting out contained in article 20 of the Berlin Convention of 1908 for the Protection of Literary Property. These conditions are not alternative, but cumulative. The second and third conditions, it is true, overlap to some extent since an *inter se* agreement incompatible with the object and purpose of the treaty may be said to be impliedly prohibited by the treaty. Nevertheless, the Commission thought it desirable for the principle contained in the second condition to be stated separately; and it is always possible that the parties might explicitly forbid any *inter se* modifications, thus excluding even minor modifications not caught by the second condition.

(3) *Paragraph 2* seeks to add a further protection to the parties against illegitimate modifications of the treaty by some of the parties through an *inter se* agreement by requiring them to notify the other parties in advance of their intention to conclude the agreement and of the modifications for which it provides. The text of this paragraph, as provisionally adopted in 1964, would have required them to notify the other parties only of the actual *conclusion* of the *inter se* agreement. On re-examining the paragraph in the light of the comments of Governments, however, the Commission concluded at the present session that the rule should require the notice to be given in advance of the conclusion of the agreement. The Commission considered that it is unnecessary and even inadvisable to require notice to be given while a proposal is merely germinating and still at an exploratory stage. It therefore expressed the requirement in terms of notifying their "intention to conclude the agreement and . . . the modifications to the treaty for which it provides" in order to indicate that it is only when a negotiation of an *inter se* agreement has reached a mature stage that notification need be given to the other parties. The Commission also concluded at the present session that, when a treaty contemplates the possibility of *inter se* agreements, it is desirable that the intention to conclude one should be notified to the other parties, unless the treaty itself dispenses with the need for notification. Even in such cases, it thought, the other parties ought to have a reasonable opportunity of satisfying themselves that the *inter se* agreement does not exceed what is contemplated by the treaty.

Article 38. [191] Modification of treaties by subsequent practice

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

Commentary

(1) This article covers cases where the parties by common consent in fact apply the treaty in a manner which its provisions do not envisage. Subsequent practice in the application of a treaty, as stated in article 27, paragraph 3(*b*), is authoritative evidence as to its interpretation when the practice is consistent, and establishes their understanding regarding the meaning of the provisions of the treaty. Equally, a consistent practice, establishing the common consent of the parties to the application of the treaty in a manner different from that laid down in certain of its provisions, may have the effect of modifying the treaty. In a recent arbitration between

[191] 1964 draft, article 68.

France and the United States regarding the interpretation of a bilateral air transport services agreement the tribunal, speaking of the subsequent practice of the parties, said:

> "This course of conduct may, in fact, be taken into account not merely as a means useful for interpreting the Agreement, but also as something more: that is, as a possible source of a subsequent modification, arising out of certain actions or certain attitudes, having a bearing on the juridical situation of the parties and on the rights that each of them could properly claim." [192]

And the tribunal in fact found that the agreement had been modified in a certain respect by the subsequent practice. Although the line may sometimes be blurred between interpretation and amendment of a treaty through subsequent practice, legally the processes are distinct. Accordingly, the effect of subsequent practice in amending a treaty is dealt with in the present article as a case of modification of treaties.

(2) The article thus provides that a treaty may be modified by subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions. In formulating the rule in this way the Commission intended to indicate that the subsequent practice, even if every party might not itself have actively participated in the practice, must be such as to establish the agreement of the parties as a whole to the modification in question.

(3) The text of the article, as provisionally adopted in 1964, contained two other paragraphs recognizing that a treaty may be modified:

(i) by a subsequent treaty between the parties relating to the same subject-matter, to the extent that their provisions are incompatible; and

(ii) by the subsequent emergence of a new rule of customary law relating to matters dealt with in the treaty and binding upon all the parties.

However, after re-examining these paragraphs in the light of the comments of Governments, the Commission decided to dispense with them. It considered that the case of a modification effected through the conclusion of a subsequent treaty relating to the same subject-matter is sufficiently covered by the provisions of article 26, paragraphs 3 and 4. As to the case of modification through the emergence of a new rule of customary law, it concluded that the question would in any given case depend to a large extent on the particular circumstances and on the intentions of the parties to the treaty. It further considered that the question formed part of the general topic of the relation between customary norms and treaty norms which is too complex for it to be safe to deal only with one aspect of it in the present article.

[192] Decided at Geneva on 22 December 1963, the arbitrators being R. Ago (President), P. Reuter and H. P. de Vries. (Mimeographed text of decision of the Tribunal, pp. 104 and 105.)

Part V.—Invalidity, termination and suspension of the operation of treaties

Section 1: General provisions

Article 39. [193] Validity and continuance in force of treaties

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

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

Commentary

(1) The substantive provisions of the present part of the draft articles concern a series of grounds upon which the question of the invalidity or termination of a treaty or of the withdrawal of a party from a treaty or the suspension of its operation may be raised. The Commission accordingly considered it desirable, as a safeguard for the stability of treaties, to underline in a general provision at the beginning of this part that the validity and continuance in force of a treaty is the normal state of things which may be set aside only on the grounds and under the conditions provided for in the present articles.

(2) *Paragraph 1* thus provides that the validity of a treaty may be impeached only through the application of the present articles.

(3) *Paragraph 2* is necessarily a little different in its wording since a treaty not infrequently contains specific provisions regarding its termination or denunciation, the withdrawal of parties or the suspension of the operation of its provisions. This paragraph consequently provides that a treaty may be terminated or denounced or withdrawn from or its operation suspended only as a result of the application *of the terms of the treaty or of the present articles.*

(4) The phrase "application of the present articles" used in both paragraphs refers, it needs to be stressed, to the draft articles as a whole and not merely to the particular article dealing with the particular ground of invalidity or termination in question in any given case. In other words, it refers not merely to the article dealing with the ground of invalidity or termination relevant in the case but also to other articles governing the conditions for putting that article into effect; for example, article 4 (treaties which are constituent instruments of international organizations), article 41 (separability of treaty provisions), article 42 (loss of a right to invoke a ground for invalidating, terminating, etc.) and, notably, articles 62 (procedure to be followed) and 63 (instruments to be used).

(5) The words "only through the application of the present articles" and "only as a result of the application of the present articles" used respectively in the two paragraphs are also intended to indicate that the grounds

[193] 1963 draft, article 30.

of invalidity, termination, denunciation, withdrawal and suspension provided for in the draft articles are exhaustive of all such grounds, apart from any special cases expressly provided for in the treaty itself. In this connexion, the Commission considered whether "obsolescence" or "desuetude" should be recognized as a distinct ground of termination of treaties. But it concluded that, while "obsolescence" or "desuetude" may be a factual cause of the termination of a treaty, the legal basis of such termination, when it occurs, is the consent of the parties to abandon the treaty, which is to be implied from their conduct in relation to the treaty. In the Commission's view, therefore, cases of "obsolescence" or "desuetude" may be considered as covered by article 51, paragraph (*b*), under which a treaty may be terminated "at any time by consent of all the parties". Again, although a change in the legal personality of a party resulting in its disappearance as a separate international person may be a factual cause of the termination of a bilateral treaty, this does not appear to be a distinct legal ground for terminating a treaty requiring to be covered in the present articles. A bilateral treaty, lacking two parties, may simply cease any longer to exist, while a multilateral treaty in such circumstances may simply lose a party. The Commission also considered the questions whether account should be taken of the possible implications of a succession of States or of the international responsibility of a State in regard to the termination of treaties. However, without adopting any position on the substance of these questions, the Commission decided that cases of a succession of States and of the international responsibility of a State, both of which topics it has under separate study, should be left aside from the present articles on the law of treaties. Since these cases may possibly have implications in other parts of the law of treaties, the Commission further decided to make in article 69 a general reservation regarding them covering the draft articles as a whole.

Article 40.[194] Obligations under other rules of international law

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

Commentary

(1) This article did not appear, in its present general form, among the articles of part II transmitted to Governments in 1963. A similar provision was included in paragraph 4 of article 53 but was there confined to cases of "termination". In that context the Commission considered that although the point might be regarded as axiomatic, it was desirable to underline that the termination of a treaty would not release the parties from obligations embodied in the treaty to which they were also subject under any other rule of international law. In re-examining the articles on invalidity and suspension of operation of treaties at the second part of its seventeenth session[195] the Commission concluded that it was no less desirable to underline the point in these contexts. Accordingly, it decided to delete paragraph 4 from article 53 of the 1963 draft and to replace it with a general article at the beginning of this part applying the rule in every case where a treaty is invalidated, terminated or denounced or its operation suspended.

Article 41.[196] Separability of treaty provisions

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

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

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

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

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

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

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

Commentary

(1) The separability of treaty provisions was until comparatively recently considered almost exclusively in connexion with the right to terminate a treaty on the ground of a breach of the other party. Certain modern authorities, however, have advocated recognition of the principle of separability in cases of invalidity and in determining the effect of war upon treaties. They have urged that in some cases one provision of a treaty may be struck out or suspended without necessarily disturbing the balance of the rights and obligations established by the other provisions of the treaty. These authorities cite in support of their contentions certain pronouncements of the Permanent Court of International Justice in regard to the interpretation of self-contained parts of treaties.[197] The question of the separability of treaty provisions for the purposes of interpretation raises quite different issues from the application of the principle of separability to

[194] New article. A similar provision was included in article 53, paragraph 4, of the 1963 draft, but was there confined to cases of termination.

[195] See 842nd meeting.

[196] 1963 draft, article 46.

[197] e.g. the *Free Zones* case, Series A/B, No. 46, p. 140; the s.s. *Wimbledon* case, Series A, No. 1, p. 24.

the invalidity or termination of treaties. However, if the jurisprudence of the two Courts does not throw much light on these latter questions, it is clear that certain judges in separate opinions in the *Norwegian Loans*[198] and *Interhandel*[199] cases accepted the applicability of the principle of separating treaty provisions in the case of the alleged nullity of a unilateral declaration under the Optional Clause, by reason of a reservation the validity of which was contested.

(2) In the circumstances, the Commission decided that it should examine *de novo* the appropriateness and utility of recognizing the principle of separability of treaty provisions in the context of the invalidity, termination and suspension of the operation of treaties. It further decided that in order to determine the appropriateness of applying the principle in these contexts each article should be examined in turn, since different considerations might well apply in the various articles. The Commission concluded that, subject to certain exceptions, it was desirable to admit the relevance of the principle of separability in the application of grounds of invalidity, termination and suspension. In general, it seemed to the Commission inappropriate that treaties between sovereign States should be capable of being invalidated, terminated or suspended in operation in their entirety even in cases where the ground of invalidity, termination or suspension may relate to quite secondary provisions in the treaty. It also seemed to the Commission that it would sometimes be possible in such cases to eliminate those provisions without materially upsetting the balance of the interests of the parties under the treaty. On the other hand, the Commission recognized that the consensual character of all treaties, whether contractual or law-making, requires that the principle of separability should not be applied in such a way as materially to alter the basis of obligation upon which the consents to the treaty were given. Accordingly, it sought to find a solution which would respect the original basis of the treaty and which would also prevent the treaty from being brought to nothing on grounds relating to provisions which were not an essential basis of the consent.

(3) The Commission did not consider that the principle of separability should be made applicable to a right of denunciation, termination, etc. provided for in the treaty. In the case of a right provided for in the treaty, it is for the parties to lay down the conditions for the exercise of the right; and, if they have not specifically contemplated a right to denounce, terminate, etc. parts only of the treaty, the presumption is that they intended the right to relate to the whole treaty. *Paragraph 1* of the article accordingly provides that a right provided for in the treaty is exercisable only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

(4) The Commission, while favouring the recognition of the principle of separability in connexion with the application of grounds of invalidity, termination, etc., considered it desirable to underline that the integrity of the provisions of the treaty is the primary rule. Accordingly, *paragraph 2* of the article lays down that a ground of invalidity, termination, etc. may be invoked only with respect to the whole treaty except in the cases provided for in the later paragraphs and in cases of breach of the treaty.

(5) *Paragraph 3* then lays down that, if a ground relates to particular clauses alone which are clearly separable from the remainder of the treaty in regard to their application and the acceptance of which was not an essential basis of the consent of the other party or parties to the treaty as a whole, the ground may only be invoked with respect to those clauses. Thus, if these conditions are satisfied, the paragraph requires the separation of the invalid, terminated, denounced or suspended clauses from the remainder of the treaty and the maintenance of the remainder in force. The question whether the condition in sub-paragraph (*b*)—whether acceptance of the clause was not an essential basis of the consent to the treaty as a whole—was met would necessarily be a matter to be established by reference to the subject-matter of the clauses, their relation to the other clauses, to the *travaux préparatoires* and to the circumstances of the conclusion of the treaty.

(6) *Paragraph 4*, while still making the question of the separability of the clauses subject to the conditions contained in paragraph 3, lays down a different rule for cases of fraud (article 46) and corruption (article 47). In these cases the ground of invalidity may, of course, be invoked only by the State which was the victim of the fraud or corruption, and the Commission considered that it should have the option either to invalidate the whole treaty or the particular clauses to which the fraud or corruption related.

(7) *Paragraph 5* excepts altogether from the principle of separability cases of coercion of a representative (article 48) and coercion of a State (article 49). The Commission considered that where a treaty has been procured by the coercion either of the State or of its representative, there were imperative reasons for regarding it as absolutely void in all its parts. Only thus, in the opinion of the Commission, would it be possible to ensure that the coerced State, when deciding upon its future treaty relations with the State which had coerced it, would be able to do so in a position of full freedom from the coercion.

(8) Paragraph 5 also excepts altogether from the principle of separability the case of a treaty which, when concluded, conflicts with a rule of *jus cogens* (article 50). Some members were of the opinion that it was undesirable to prescribe that the whole treaty should be brought to the ground in cases where only one part—and that a small part—of the treaty was in conflict with a rule of *jus cogens*. The Commission, however, took the view that rules of *jus cogens* are of so fundamental a character that, when parties conclude a treaty which conflicts in any of its clauses with an already existing rule of *jus cogens*, the treaty must be considered totally invalid. In such a case it was open to the parties themselves to revise the treaty so as to bring it into conformity with

[198] *I.C.J. Reports 1957*, pp. 55-59.

[199] *I.C.J. Reports 1959*, pp. 57, 77, 78, 116 and 117.

the law; and if they did not do so, the law must attach the sanction of nullity to the whole transaction.

Article 42.[200] Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 43 to 47 inclusive or articles 57 to 59 inclusive if, after becoming aware of the facts:

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

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

Commentary

(1) The foundation of the principle that a party is not permitted to benefit from its own inconsistencies is essentially good faith and fair dealing *(allegans contraria non audiendus est)*. The relevance of this principle in international law is generally admitted and has been expressly recognized by the International Court of Justice itself in two recent cases.[201]

(2) The principle[202] has a particular importance in the law of treaties. As already mentioned in previous commentaries, the grounds upon which treaties may be invalidated, terminated or suspended in operation involve certain risks of abuse. Another risk is that a State, after becoming aware of an essential error in the conclusion of the treaty, an excess of authority committed by its representative, a breach by the other party, etc., may continue with the treaty as if nothing had happened, and only raise the matter at a much later date when it desires for quite other reasons to put an end to its obligations under the treaty. The principle now under consideration places a limit upon the cases in which such claims can be asserted with any appearance of legitimacy. Such was the role played by the principle in the *Temple* case and in the case of the *Arbitral Award of the King of Spain*. Accordingly, while recognizing the general character of the principle, the Commission considered that its importance in the sphere of the invalidity and termination of treaties called for its particular mention in this part of the law of treaties.

(3) The most obvious instance is where after becoming aware of a possible ground of invalidity, termination, withdrawal or suspension the party concerned has expressly agreed that the treaty is, as the case may be, valid, in force or in operation. Clearly, in those circumstances the State must be considered to have given up once and for all its right to invoke the particular ground of invalidity, termination, withdrawal or suspension in question; and sub-paragraph (*a*) of the article so provides.

(4) Sub-paragraph (*b*) provides that a right to invoke a ground of invalidity, termination, etc. shall also be no longer exercisable if after becoming aware of the facts a State's conduct has been such that it must be considered as having acquiesced, as the case may be, in the validity of the treaty or its maintenance in force or in operation. In such a case the State is not permitted to take up a legal position which is in contradiction with the position which its own previous conduct must have led the other parties to suppose that it had taken up with respect to the validity, maintenance in force or maintenance in operation of the treaty. The Commission noted that in municipal systems of law this principle has its own particular manifestations reflecting technical features of the particular system. It felt that these technical features of the principle in municipal law might not necessarily be appropriate for the application of the principle in international law. For this reason, it preferred to avoid the use of such municipal law terms as "estoppel".

(5) The Commission considered that the application of the rule in any given case would necessarily turn upon the facts and that the governing consideration would be that of good faith. This being so, the principle would not operate if the State in question had not been aware of the facts giving rise to the right or had not been in a position freely to exercise its right to invoke the nullity of the treaty. For the latter reason the Commission did not think that the principle should be applicable at all in cases of coercion of a representative under article 48 or coercion of the State itself under article 49. The effects and the implications of coercion in international relations are of such gravity that the Commission felt that a consent so obtained must be treated as absolutely void in order to ensure that the victim of the coercion should afterwards be in a position freely to determine its future relations with the State which coerced it. To admit the application of the present article in cases of coercion might, in its view, weaken the protection given by articles 48 and 49 to the victims of coercion. The Commission also considered it inappropriate that the principle should be admitted in cases of *jus cogens* or of supervening *jus cogens*; and, clearly, it would not be applicable to termination under a right conferred by the treaty or to termination by agreement. Consequently, it confined the operation of the rule to articles 43-47 and 57-59.

Section 2: Invalidity of treaties

Article 43.[203] Provisions of internal law regarding competence to conclude a treaty

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

[200] 1963 draft, article 47.

[201] *The Arbitral Award made by the King of Spain, I.C.J. Reports 1960*, pp. 213 and 214; *The Temple of Preah Vihear, I.C.J. Reports 1962*, pp. 23-32.

[202] See opinion of Judges Alfaro and Fitzmaurice in *The Temple of Preah Vihear, I.C.J. Reports 1962*, pp. 39-51, 62-65.

[203] 1963 draft, article 31.

Commentary

(1) Constitutional limitations affecting the exercise of the treaty-making power take various forms.[204] Some constitutions seek to preclude the executive from entering into treaties, or particular kinds of treaties, except with the previous consent of a legislative organ; some provide that treaties shall not be effective as law within the State unless "approved" or confirmed in some manner by a legislative organ; others contain fundamental laws which are not susceptible of alteration except by a special procedure of constitutional amendment and which in that way indirectly impose restrictions upon the power of the executive to conclude treaties. Legally, a distinction can be drawn under internal law between those types of provision which place constitutional limits upon the power of a government to enter into treaties and those which merely limit the power of a government to enforce a treaty within the State's internal law without some form of endorsement of the treaty by the legislature. The former can be said to affect the actual power of the executive to conclude a treaty, the latter merely the power to implement a treaty when concluded. The question which arises under this article is how far any of these constitutional limitations may affect the validity under international law of a consent to a treaty given by a State agent ostensibly authorized to declare that consent; and on this question opinion has been divided.

(2) Some jurists maintain that international law leaves it to the internal law of each State to determine the organs and procedures by which the will of a State to be bound by a treaty shall be formed and expressed; and that constitutional laws governing the formation and expression of a State's consent to a treaty have always to be taken into account in considering whether an international act of signature, ratification, acceptance, approval or accession is effective to bind the State. On this view, internal laws limiting the power of State organs to enter into treaties are to be considered part of international law so as to avoid, or at least render voidable, any consent to a treaty given on the international plane in disregard of a constitutional limitation; the agent purporting to bind the State in breach of the constitution is totally incompetent in international as well as national law to express its consent to the treaty. If this view were to be accepted, it would follow that other States would not be entitled to rely on the authority to commit the State ostensibly possessed by a Head of State, Prime Minister, Foreign Minister, etc., under article 6; they would have to satisfy themselves in each case that the provisions of the State's constitution are not infringed or take the risk of subsequently finding the treaty void.

(3) In 1951 the Commission itself adopted an article based upon this view.[205] Some members, however, were strongly critical of the thesis that constitutional limitations are incorporated into international law, while the Assistant Secretary-General for Legal Affairs expressed misgivings as to the difficulties with which it might confront depositaries. During the discussion at that session it was said that the Commission's decision had been based less on legal principles than on a belief that States would not accept any other rule.

(4) Other jurists, while basing themselves on the incorporation of constitutional limitations into international law, recognize that some qualification of that doctrine is essential if it is not to undermine the security of treaties. According to them, good faith requires that only notorious constitutional limitations with which other States can reasonably be expected to acquaint themselves should be taken into account. On this view, a State contesting the validity of a treaty on constitutional grounds may invoke only those provisions of the constitution which are notorious. A compromise solution based upon the initial hypothesis of the invalidity in international law of an unconstitutional signature, ratification, etc., of a treaty presents certain difficulties. If a limitation laid down in the internal law of a State is to be regarded as effective in international law to curtail the authority of a Head of State or other State agent to declare the State's consent to a treaty, it is not clear upon what principle a "notorious" limitation is effective for that purpose but a "non-notorious" one is not. Under the State's internal law both kinds of limitation are legally effective to curtail the agent's authority to enter into the treaty. The practical difficulties are even greater, because in many cases it is quite impossible to make a clear-cut distinction between notorious and non-notorious limitations. Some constitutional provisions are capable of subjective interpretation, such as a requirement that "political" treaties or treaties of "special importance" should be submitted to the legislature; some laws do not make it clear on their face whether the limitation refers to the power to conclude the treaty or to its effectiveness within domestic law. But even when the provisions are apparently uncomplicated and precise, the superficial clarity and notoriety of the limitations may be quite deceptive. Where the constitution itself contains apparently strict and precise limitations it has usually been found necessary to admit a wide freedom for the executive to conclude treaties in simplified form without following the strict procedures prescribed in internal law; and this use of the treaty-making power is reconciled with the letter of the law either by a process of interpretation or by the development of political understandings. Furthermore, the constitutional practice in regard to treaties in simplified form tends to be somewhat flexible; and the question whether or not to deal with a particular treaty under the procedures laid down in the constitution then becomes to some extent a matter of the political judgment of the executive, whose decision may afterwards be challenged in the legislature or in the courts. Accordingly, in many cases it may be difficult to say with any certainty whether, if contested, a given treaty would be held under national law to fall within an internal limitation, or whether an international tribunal would hold the internal provision to be one that is "notorious" and "clear" for the purposes of international law.

[204] See *United Nations Legislative Series, Laws and Practices concerning the Conclusion of Treaties* (ST/LEG/SER.B/3).

[205] Article 2: "A treaty becomes binding in relation to a State by signature, ratification, accession or any other means of expressing the will of the State, in accordance with its constitutional law and practice through an organ competent for that purpose." (*Yearbook of the International Law Commission, 1951*, vol. II, p. 73.)

(5) A third group of jurists considers that international law leaves to each State the determination of the organs and procedures by which its will to conclude treaties is formed, and is itself concerned exclusively with the external manifestations of this will on the international plane. According to this view, international law determines the procedures and conditions under which States express their consent to treaties on the international plane; and it also regulates the conditions under which the various categories of State organs and agents will be recognized as competent to carry out such procedures on behalf of their State. In consequence, if an agent, competent under international law to commit the State, expresses the consent of the State to a treaty through one of the established procedures, the State is held bound by the treaty in international law. Under this view, failure to comply with internal requirements may entail the invalidity of the treaty as domestic law, and may also render the agent liable to legal consequences under domestic law; but it does not affect the validity of the treaty in international law so long as the agent acted within the scope of his authority under international law. Some of these writers[206] modify the stringency of the rule in cases where the other State is actually aware of the failure to comply with internal law or where the lack of constitutional authority is so manifest that the other State must be deemed to have been aware of it. As the basic principle, according to the third group, is that a State is entitled to assume the regularity of what is done within the authority possessed by an agent under international law, it is logical enough that the State should not be able to do so when it knows, or must in law be assumed to know, that in the particular case the authority does not exist.

(6) The decisions of international tribunals and State practice, if they are not conclusive, appear to support a solution based upon the position taken by the third group. The international jurisprudence is admittedly not very extensive. The *Cleveland* award[207] (1888) and the *George Pinson* case[208] (1928), although not involving actual decisions on the point, contain observations favouring the relevance of constitutional provisions to the international validity of treaties. On the other hand, the *Franco-Swiss Custom* case[209] (1912) and the *Rio Martin* case[210] (1924) contain definite decisions by arbitrators declining to take account of alleged breaches of constitutional limitations when upholding the validity respectively of a protocol and an exchange of notes, while the *Metzger* case[211] contains an observation in the same sense. Furthermore, pronouncements in the *Eastern Greenland*[212] and *Free Zones*[213] cases, while not directly in point, seem to indicate that international tribunals will not readily go behind the ostensible authority under international law of a State agent—a Foreign Minister and an Agent in international proceedings in the cases mentioned—to commit his State.

(7) State practice furnishes examples of claims that treaties were invalid on constitutional grounds, but in none of them was that claim admitted by the other party to the dispute. Moreover, in three instances—the admission of Luxembourg to the League, the Politis incident and the membership of Argentina—the League of Nations seems to have acted upon the principle that a consent given on the international plane by an ostensibly competent State agent is not invalidated by the subsequent disclosure that the agent lacked constitutional authority to commit his State. Again, in one case a depositary, the United States Government, seems to have assumed that an ostensibly regular notice of adherence to an agreement could not be withdrawn on a plea of lack of constitutional authority except with the consent of the other parties. Nor is it the practice of State agents, when concluding treaties, to cross-examine each other as to their constitutional authority to affix their signatures to a treaty or to deposit an instrument of ratification, acceptance, etc.

(8) The view that a failure to comply with constitutional provisions should not normally be regarded as vitiating a consent given in due form by an organ or agent ostensibly competent to give it, appears to derive support from two further considerations. The first is that international law has devised a number of treaty-making procedures—ratification, acceptance, approval and accession—specifically for the purpose of enabling Governments to reflect fully upon the treaty before deciding whether or not the State should become a party to it, and also of enabling them to take account of any domestic constitutional requirements. When a treaty has been made subject to ratification, acceptance or approval, the negotiating States would seem to have done all that can reasonably be demanded of them in the way of taking account of each other's constitutional requirements. It would scarcely be reasonable to expect each Government subsequently to follow the internal handling of the treaty by each of the other Governments, while any questioning on constitutional grounds of the internal handling of the treaty by another Government would certainly be regarded as an inadmissible interference in its affairs. The same considerations apply in cases of accession where the Government has the fullest opportunity to study the treaty and give effect to constitutional requirements before taking any action on the international plane to declare the State's accession to the treaty. Again, in the case of a treaty binding upon signature it is the Government which authorizes the use of this procedure; the Government is aware of the object of the treaty before the negotiations begin and, with modern methods of communication, it normally has knowledge of the exact contents of the treaty before its representative proceeds to the act of signature; moreover, if necessary, its representative can be instructed to sign *ad referendum*. Admittedly, in the case of treaties binding upon signature, and more especially those in simplified form, there may be a slightly greater risk of a constitutional provision being

[206] UNESCO, "*Survey on the Ways in which States interpret their International Obligations*", p. 8.

[207] Moore, *International Arbitrations*, vol. 2, p. 1946.

[208] *Reports of International Arbitral Awards*, vol. V, p. 327.

[209] *Ibid.*, vol. XI, p. 411.

[210] *Ibid.*, vol. II, p. 724.

[211] *Foreign Relations of the United States*, 1901, p. 262.

[212] *P.C.I.J.*, Series A/B, No. 53, pp. 56-71 and p. 91.

[213] *P.C.I.J.*, Series A/B, No. 46, p. 170.

overlooked. But even in those cases the Government had the necessary means of controlling the acts of its representative and of giving effect to any constitutional requirements. In other words, in every case any failure to comply with constitutional provisions in entering into a treaty will be the clear responsibility of the Government of the State concerned.

(9) The second consideration is that the majority of the diplomatic incidents in which States have invoked their constitutional requirements as a ground of invalidity have been cases in which for quite other reasons they have desired to escape from their obligations under the treaty. Where a Government has genuinely found itself in constitutional difficulties after concluding a treaty and has raised the matter promptly, it appears normally to be able to get the constitutional obstacle removed by internal action and to obtain any necessary indulgence in the meanwhile from the other parties. Confronted with a challenge under national law of the constitutional validity of a treaty, a Government will normally seek to regularize its position under the treaty by taking appropriate action in the domestic or international sphere.

(10) At the fifteenth session some members of the Commission expressed the opinion that international law has to take account of internal law to the extent of recognizing that internal law determines the organ or organs competent in the State to exercise the treaty-making power. On this view, any treaty concluded by an organ or representative not competent to do so under internal law would be invalidated by reason of the lack of authority under internal law to give the State's consent to the treaty. The majority, however, considered that the complexity and uncertain application of provisions of internal law regarding the conclusion of treaties creates too large a risk to the security of treaties. They considered that the basic principle of the present article should be that non-observance of a provision of internal law regarding competence to enter into treaties does not affect the validity of a consent given in due form by a State organ or agent competent under international law to give that consent. Some members, indeed, took the view that it was undesirable to weaken this basic principle in any way by admitting any exception to it. Other members, however, considered that it would be admissible to allow an exception in cases where the violation of the internal law regarding competence to enter into treaties was absolutely manifest. They had in mind cases, such as have occurred in the past, where a Head of State enters into a treaty on his own responsibility in contravention of an unequivocal provision of the constitution. They did not feel that to allow this exception would compromise the basic principle, since the other State could not legitimately claim to have relied upon a consent given in such circumstances. This view prevailed in the Commission.

(11) The great majority of the Governments which have commented on this article have indicated their approval of the position taken up by the Commission on this problem: namely, that a violation of a provision of internal law regarding competence to conclude treaties may not be invoked as invalidating consent unless that violation was manifest. Some Governments suggested that the text should indicate, on the one hand, to whom the violation must be "manifest" for the purpose of bringing the exception into play and, on the other, what constitutes a "manifest violation". The Commission considered, however, that it is unnecessary to specify further to whom the violation must be manifest. The rule embodied in the article is that, when the violation of internal law regarding competence to conclude treaties would be *objectively evident to any State dealing with the matter normally and in good faith*, the consent to the treaty purported to be given on behalf of the State may be repudiated. In the Commission's view, the word "manifest" according to its ordinary meaning is sufficient to indicate the objective character of the criterion to be applied. It was also of the opinion that it would be impracticable and inadvisable to try to specify in advance the cases in which a violation of internal law may be held to be "manifest", since the question must depend to a large extent on the particular circumstances of each case.

(12) In order to emphasize the exceptional character of the cases in which this ground of invalidity may be invoked, the Commission decided that the rule should be stated in negative form. The article thus provides that "A State may *not* invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent *unless* that violation of its internal law was manifest".

Article 44.[214] Specific restrictions on authority to express the consent of the State

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

Commentary

(1) This article covers cases where a representative has purported to execute an act binding his State but in fact lacked authority to do so, because in the particular case his authority was made subject to specific restrictions which he omitted to observe.

(2) Where a treaty is not to become binding without subsequent ratification, acceptance or approval, any excess of authority committed by a representative in establishing the text of the treaty will automatically be dealt with at the subsequent stage of ratification, acceptance or approval. The State in question will then have the clear choice either of repudiating the text established by its representative or of ratifying, accepting or approving the treaty; and if it does the latter, it will necessarily be held to have endorsed the unauthorized act of its representative and, by doing so, to have cured the original defect of authority. Accordingly, the article is confined

[214] 1963 draft, article 32, para. 2.

to cases in which the defect of authority relates to the execution of an act by which a representative purports *finally* to establish his State's consent to be bound. In other words, it is confined to cases where a representative authorized, subject to specific conditions, reservations or limitations, to express the consent of his State to be bound by a particular treaty exceeds his authority by omitting to observe those restrictions upon it.

(3) The Commission considered that in order to safeguard the security of international transactions, the rule must be that specific instructions given by a State to its representative are only effective to limit his authority vis-à-vis other States if they are made known to them in some appropriate manner before the State in question concludes the treaty. That this is the rule acted on by States is suggested by the rarity of cases in which a State has sought to disavow the act of its representative by reference to undisclosed limitations upon his authority. The article accordingly provides that specific restrictions on a representative's authority are not to affect a consent to a treaty expressed by him unless they had been brought to the notice of the other negotiating States prior to his expressing that consent.

Article 45.[215] Error

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

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

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

Commentary

(1) In municipal law error occupies a comparatively large place as a factor which vitiates consent to a contract. Some types of error found in municipal law are, however, unlikely to arise in international law. Moreover, treaty-making processes are such as to reduce to a minimum the risk of errors on material points of substance. In consequence, the instances in which errors of substance have been invoked as affecting the essential validity of a treaty have not been frequent. Almost all the recorded instances concern geographical errors, and most of them concern errors in maps. In some instances, the difficulty was disposed of by a further treaty; in others the error was treated more as affecting the application of the treaty than its validity and the point was settled by arbitration.

(2) The effect of error was discussed in the *Legal Status of Eastern Greenland* case before the Permanent Court of International Justice, and again in the *Temple of Preah Vihear* case before the present Court. In the former case[216] the Court contented itself with saying that the Norwegian Foreign Minister's reply had been definitive and unconditional and appears not to have considered that there was any relevant error in the case. Judge Anzilotti, while also considering that there was no error, said: "But even accepting, for a moment, the supposition that M. Ihlen was mistaken as to the results which might ensue from an extension of Danish sovereignty, it must be admitted that this mistake was not such as to entail the nullity of the agreement. If a mistake is pleaded it must be of an excusable character; and one can scarcely believe that a Government could be ignorant of the legitimate consequences following upon an extension of sovereignty . . .".[217]

(3) In the first stage of the *Temple* case[218] the Court said: "Any error of this kind would evidently have been an error of law, but in any event the Court does not consider that the issue in the present case is really one of error. Furthermore, the principal juridical relevance of error, where it exists, is that it may affect the reality of the consent supposed to have been given." A plea of error was also raised in the second stage of the case on the merits; and the error, which was geographical, arose in somewhat special circumstances. There was no error in the conclusion of the original treaty, in which the parties were agreed that the boundary in a particular area should be the line of a certain watershed; the error concerned the subsequent acceptance of the delimitation of the boundary on a map. As to this error, the Court said: "It is an established rule of law that the plea of error cannot be allowed as an element vitiating consent, if the party advancing it contributed by its own conduct to the error, or could have avoided it, or if the circumstances were such as to put that party on notice of a possible error."[219]

(4) The *Eastern Greenland* and *Temple* cases throw light on the conditions under which error will *not* vitiate consent rather than on those under which it will do so. However, in the *Readaptation of the Mavrommatis Jerusalem Concessions* case,[220] which concerned a concession not a treaty, the Court held that an error in regard to a matter not constituting a *condition* of the agreement would not suffice to invalidate the consent; and it seems to be generally agreed that, to vitiate the consent of a State to a treaty, an error must relate to a matter constituting an essential basis of its consent to the treaty.

(5) The Commission recognized that some systems of law distinguish between mutual and unilateral error; but it did not consider that it would be appropriate to make this distinction in international law. Accordingly, the present article applies to an error made by only one party no less than to a mutual error made by both or all the parties.

(6) *Paragraph 1* formulates the general rule that an error in a treaty may be invoked by a party as vitiating its consent where the error related to a fact or situation

[215] 1963 draft, article 34.

[216] *P.C.I.J* (1933), Series A/B, No. 53, pp. 71 and 91.

[217] *Ibid.*, p. 92.

[218] *I.C.J. Reports 1961*, p. 30.

[219] *I.C.J. Reports 1962*, p. 26. See also the individual opinion of Sir G. Fitzmaurice (*ibid.*, p. 57).

[220] *P.C.I.J.*, Series A, No. 11.

assumed by that party to exist at the time that the treaty was concluded and constituting an essential basis of its consent to the treaty. The Commission appreciated that an error in a treaty may sometimes involve mixed questions of fact and of law and that the line between an error of fact and of law may not always be an easy one to draw. Nevertheless, it considered that to introduce into the article a provision appearing to admit an error of law as in itself a ground for invalidating consent would dangerously weaken the stability of treaties. Accordingly, the paragraph speaks only of errors relating to a "fact" or "situation".

(7) Under paragraph 1 error affects consent only if it was an essential error in the sense of an error as to a matter which formed an essential basis of the consent given to the treaty. Furthermore, such an error does not make the treaty automatically void, but gives a right to the party whose consent to the treaty was caused by the error to invoke the error as invalidating its consent. On the other hand, if the invalidity of the treaty is established in accordance with the present articles, the effect will be to make the treaty void *ab initio.*

(8) *Paragraph 2* excepts from the rule cases where the mistaken party in some degree brought the error upon itself. The terms in which the exception is formulated are drawn from those used by the Court in the sentence from its judgment in the *Temple* case which is cited at the end of paragraph (3) above. The Commission felt, however, that there is substance in the view that the Court's formulation of the exception "if the party contributed by its own conduct to the error, or could have avoided it, or if the circumstances were such as to put that party on notice of a possible error" is so wide as to leave little room for the operation of the rule. This applies particularly to the words "or could have avoided it". Accordingly, without questioning the Court's formulation of the exception in the context of the particular case, the Commission concluded that, in codifying the general rule regarding the effect of error in the law of treaties, those words should be omitted.

(9) *Paragraph 3,* in order to prevent any misunderstanding, distinguishes errors in the *wording* of the text from errors in the treaty. The paragraph merely underlines that such an error does not affect the validity of the consent and falls under the provisions of article 74 relating to the correction of errors in the texts of treaties.

Article 46.[221] Fraud

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

Commentary

(1) Clearly, cases in which Governments resort to deliberate fraud in order to procure the conclusion of a treaty are likely to be rare, while any fraudulent misrepresentation of a material fact inducing an essential error would be caught by the provisions of the preceding article dealing with error; the question therefore arises whether it is necessary to have a separate article dealing specifically with fraud. On balance the Commission considered that it was advisable to keep fraud and error distinct in separate articles. Fraud, when it occurs, strikes at the root of an agreement in a somewhat different way from innocent misrepresentation and error. It does not merely affect the consent of the other party to the terms of the agreement; it destroys the whole basis of mutual confidence between the parties.

(2) Fraud is a concept found in most systems of law, but the scope of the concept is not the same in all systems. In international law, the paucity of precedents means that there is little guidance to be found either in practice or in the jurisprudence of international tribunals as to the scope to be given to the concept. In these circumstances, the Commission considered whether it should attempt to define fraud in the law of treaties. The Commission concluded, however, that it would suffice to formulate the general concept of fraud applicable in the law of treaties and to leave its precise scope to be worked out in practice and in the decisions of international tribunals.

(3) The article uses the English word "fraud", the French word "*dol*" and the Spanish word "*dolo*" as the nearest terms available in those languages for identifying the concept with which the article is concerned. These words are not intended to convey that all the detailed connotations given to them in internal law are necessarily applicable in international law. It is the broad concept comprised in each of these words, rather than its detailed applications in internal law, that is dealt with in the present article. The word used in each of the three texts is accordingly intended to have the same meaning and scope in international law. The Commission sought to find a non-technical expression of as nearly equivalent meaning as possible: fraudulent conduct, *conduite frauduleuse* and *conducta fraudulenta.* This expression is designed to include any false statements, misrepresentations or other deceitful proceedings by which a State is induced to give a consent to a treaty which it would not otherwise have given.

(4) The effect of fraud, the Commission considers, is not to render the treaty *ipso facto* void but to entitle the injured party, if it wishes, to invoke the fraud as invalidating its consent; the article accordingly so provides.

Article 47.[222] Corruption of a representative of the State

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

Commentary

(1) The draft articles on the invalidity of treaties provisionally adopted by the Commission in 1963 and

[221] 1963 draft, article 33.

[222] New article.

transmitted to Governments for their observations did not contain any provision dealing specifically with the corruption of a State's representative by another negotiating State. The only provision of the 1963 text under which the corruption of a representative might be subsumed was article 33 dealing with fraud. At the second part of the seventeenth session, however, in connexion with its re-examination of article 35 (personal coercion of a representative)—now article 48—some members of the Commission expressed doubts as to whether corruption of a representative can properly be regarded as a case of fraud. The Commission therefore decided to reconsider the question at the present session with a view to the possible addition of a specific provision concerning corruption in either former article 33 or 35.

(2) At the present session certain members of the Commission were opposed to the inclusion in the draft articles of any specific provision regarding "corruption". These members considered such a provision to be unnecessary especially since the use of corruption, if it occurred, would in their view fall under the present article 46 as a case of fraud. Corruption, they maintained, is not an independent cause of defective consent but merely one of the possible means of securing consent through "fraud" or "*dol*". It would thus be covered by the expression "fraudulent conduct" (*conduite frauduleuse*, *conducta fraudulenta*) in article 46.

(3) The majority of the Commission, however, considered that the corruption of a representative by another negotiating State undermines the consent which the representative purports to express on behalf of his State in a quite special manner which differentiates the case from one of fraud. Again, although the corruption of a representative may in some degree be analogous to his coercion by acts directed against him personally, the Commission considered that cases of threat or use of force against a representative are of such particular gravity as to make it desirable to treat the two grounds of invalidity in separate articles. Nor did it think that "corruption" could be left aside altogether from the draft articles. It felt that in practice attempts to corrupt are more likely than attempts to coerce a representative; and that, having regard to the great volume of treaties concluded to-day and the great variety of the methods of concluding them, a specific provision on the subject is desirable. Accordingly, it decided to cover "corruption" in a new article inserted between the article dealing with "fraud" and that dealing with "coercion of a representative of a State".

(4) The strong term "corruption" is used in the article expressly in order to indicate that only acts calculated to exercise a substantial influence on the disposition of the representative to conclude the treaty may be invoked as invalidating the expression of consent which he has purported to give on behalf of his State. The Commission did not mean to imply that under the present article a small courtesy or favour shown to a representative in connexion with the conclusion of a treaty may be invoked as a pretext for invalidating the treaty.

(5) Similarly, the phrase "directly or indirectly by another negotiating State" is used in the article in order to make it plain that the mere fact of the representative's having been corrupted is not enough. The Commission appreciated that corruption by another negotiating State, if it occurs, is unlikely to be overt. But it considered that, in order to be a ground for invalidating the treaty, the corrupt acts must be shown to be directly or indirectly imputable to the other negotiating State.

(6) The Commission was further of the opinion that in regard to its legal incidence "corruption" should be assimilated to "fraud" rather than to "coercion of a representative". Accordingly, for the purposes of article 41, paragraph 4, concerning the separability of treaty provisions, article 42, concerning loss of a right to invoke a ground of invalidity, and article 65, paragraph 3, concerning the consequences of the invalidity of a treaty, cases of corruption are placed on the same footing as cases of fraud.

Article 48.[223] Coercion of a representative of the State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him personally shall be without any legal effect.

Commentary

(1) There is general agreement that acts of coercion or threats applied to individuals *with respect to their own persons or in their personal capacity* in order to procure the signature, ratification, acceptance or approval of a treaty will unquestionably invalidate the consent so procured. History provides a number of instances of the employment of coercion against not only negotiators but also members of legislatures in order to procure the signature or ratification of a treaty. It is true that in some instances it may not be possible to distinguish completely between coercion of a Head of State or Minister as a means of coercing the State itself and coercion of them in their personal capacities. For example, something like third-degree methods of pressure were employed in 1939 for the purpose of extracting the signatures of President Hacha and the Foreign Minister of Czechoslovakia to a treaty creating a German protectorate over Bohemia and Moravia, as well as the gravest threats against their State. Nevertheless, the two forms of coercion, although they may sometimes be combined, are, from a legal point of view, somewhat different; the Commission has accordingly placed them in separate articles.

(2) The present article deals with the coercion of the individual representatives "through acts or threats directed against him personally". This phrase is intended to cover any form of constraint of or threat against a representative affecting him as an individual and not as an organ of his State. It would therefore include not only a threat to his person, but a threat to ruin his career by exposing a private indiscretion, as also a threat to injure a member of the representative's family with a view to coercing the representative.

(3) The Commission gave consideration to the question whether coercion of a representative, as distinct from

[223] 1963 draft, article 35.

coercion of the State, should render the treaty *ipso facto* void or whether it should merely entitle it to invoke the coercion of its representative as invalidating its consent to the treaty. It concluded that the use of coercion against the representative of a State for the purpose of procuring the conclusion of a treaty would be a matter of such gravity that the article should provide for the absolute nullity of a consent to a treaty so obtained.

Article 49.[224] Coercion of a State by the threat or use of force

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

Commentary

(1) The traditional doctrine prior to the Covenant of the League of Nations was that the validity of a treaty was not affected by the fact that it had been brought about by the threat or use of force. However, this doctrine was simply a reflection of the general attitude of international law during that era towards the legality of the use of force for the settlement of international disputes. With the Covenant and the Pact of Paris there began to develop a strong body of opinion which held that such treaties should no longer be recognized as legally valid. The endorsement of the criminality of aggressive war in the Charters of the Allied Military Tribunals for the trial of the Axis war criminals, the clear-cut prohibition of the threat or use of force in Article 2(4) of the Charter of the United Nations, together with the practice of the United Nations itself, have reinforced and consolidated this development in the law. The Commission considers that these developments justify the conclusion that the invalidity of a treaty procured by the illegal threat or use of force is a principle which is *lex lata* in the international law of to-day.

(2) Some jurists, it is true, while not disputing the moral value of the principle, have hesitated to accept it as a legal rule. They fear that to recognize the principle as a legal rule may open the door to the evasion of treaties by encouraging unfounded assertions of coercion, and that the rule will be ineffective because the same threat or compulsion that procured the conclusion of the treaty will also procure its execution, whether the law regards it as valid or invalid. These objections do not appear to the Commission to be of such a kind as to call for the omission from the present articles of a ground of invalidity springing from the most fundamental provisions of the Charter, the relevance of which in the law of treaties as in other branches of international law cannot to-day be regarded as open to question.

(3) If the notion of coercion is confined, as the Commission thinks it must be, to a threat or use of force in violation of the principles of the Charter, this ground of invalidity would not appear to be any more open to the possibility of illegitimate attempts to evade treaty obligations than other grounds. Some members of the Commission expressed the view that any other forms of pressure, such as a threat to strangle the economy of a country, ought to be stated in the article as falling within the concept of coercion. The Commission, however, decided to define coercion in terms of a "threat or use of force in violation of the principles of the Charter", and considered that the precise scope of the acts covered by this definition should be left to be determined in practice by interpretation of the relevant provisions of the Charter.

(4) Again, even if sometimes a State should initially be successful in achieving its objects by a threat or use of force, it cannot be assumed in the circumstances of to-day that a rule nullifying a treaty procured by such unlawful means would not prove meaningful and effective. The existence, universal character and effective functioning of the United Nations in themselves provide for the necessary framework for the operation of the rule formulated in the present article.

(5) The Commission considered that the rule should be stated in as simple and categorical terms as possible. The article therefore provides that "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of the Charter of the United Nations". The principles regarding the threat or use of force laid down in the Charter are, in the opinion of the Commission, rules of general international law which are to-day of universal application. It accordingly appears to be both legitimate and appropriate to frame the article in terms of the principles of the Charter. At the same time, the phrase "violation of the principles of the Charter" has been chosen rather than "violation of the Charter", in order that the article should not appear to be confined in its application to Members of the United Nations. Clearly the same rule would apply in the event of an individual State's being coerced into expressing its consent to be bound by a multilateral treaty. The Commission discussed whether it should add a second paragraph to the article specifically applying the rule to such a case, but concluded that this was unnecessary, since the nullity of the consent so procured is beyond question implicit in the general rule stated in the article.

(6) The Commission further considered that a treaty procured by a threat or use of force in violation of the principles of the Charter must be characterized as void, rather than as voidable at the instance of the injured party. The prohibitions on the threat or use of force contained in the Charter are rules of international law the observance of which is legally a matter of concern to every State. Even if it were conceivable that after being liberated from the influence of a threat or of a use of force a State might wish to allow a treaty procured from it by such means, the Commission considered it essential that the treaty should be regarded in law as void *ab initio*. This would enable the State concerned to take its decision in regard to the maintenance of the treaty in a position of full legal equality with the other State. If, therefore, the treaty were maintained in force, it would in effect be by the conclusion of a new treaty and not by the recognition of the validity of a treaty

[224] 1963 draft, article 36.

procured by means contrary to the most fundamental principles of the Charter of the United Nations.

(7) The question of the time element in the application of the article was raised in the comments of Governments from two points of view: (*a*) the undesirability of allowing the rule contained in the article to operate retroactively upon treaties concluded prior to the establishment of the modern law regarding recourse to the threat or use of force; and (*b*) the date from which that law should be considered as having been in operation. The Commission considered that there is no question of the article having retroactive effects on the validity of treaties concluded prior to the establishment of the modern law.[225] "A juridical fact must be appreciated in the light of the law contemporary with it."[226] The present article concerns the conditions for the valid conclusion of a treaty—the conditions, that is, for the *creation* of a legal relation by treaty. An evolution of the law governing the conditions for the carrying out of a legal act does not operate to deprive of validity a legal act already accomplished in conformity with the law previously in force. The rule codified in the present article cannot therefore be properly understood as depriving of validity *ab initio* a peace treaty or other treaty procured by coercion prior to the establishment of the modern law regarding the threat or use of force.

(8) As to the date from which the modern law should be considered as in force for the purposes of the present article, the Commission considered that it would be illogical and unacceptable to formulate the rule as one applicable only from the date of the conclusion of a convention on the law of treaties. As pointed out in paragraph (1) above, the invalidity of a treaty procured by the illegal threat or use of force is a principle which is *lex lata*. Moreover, whatever differences of opinion there may be about the state of the law prior to the establishment of the United Nations, the great majority of international lawyers to-day unhesitatingly hold that Article 2, paragraph 4, together with other provisions of the Charter, authoritatively declares the modern customary law regarding the threat or use of force. The present article, by its formulation, recognizes by implication that the rule which it lays down is applicable at any rate to all treaties concluded since the entry into force of the Charter. On the other hand, the Commission did not think that it was part of its function, in codifying the modern law of treaties, to specify on what precise date in the past an existing general rule in another branch of international law came to be established as such. Accordingly, it did not feel that it should go beyond the temporal indication given by the reference in the article to "the principles of the Charter of the United Nations".

Article 50.[227] Treaties conflicting with a peremptory norm of general international law (*jus cogens*)

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

Commentary

(1) The view that in the last analysis there is no rule of international law from which States cannot at their own free will contract out has become increasingly difficult to sustain, although some jurists deny the existence of any rules of *jus cogens* in international law, since in their view even the most general rules still fall short of being universal. The Commission pointed out that the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*. Moreover, if some Governments in their comments have expressed doubts as to the advisability of this article unless it is accompanied by provision for independent adjudication, only one questioned the existence of rules of *jus cogens* in the international law of to-day. Accordingly, the Commission concluded that in codifying the law of treaties it must start from the basis that to-day there are certain rules from which States are not competent to derogate at all by a treaty arrangement, and which may be changed only by another rule of the same character.

(2) The formulation of the article is not free from difficulty, since there is no simple criterion by which to identify a general rule of international law as having the character of *jus cogens*. Moreover, the majority of the general rules of international law do not have that character, and States may contract out of them by treaty. It would therefore be going much too far to state that a treaty is void if its provisions conflict with a rule of general international law. Nor would it be correct to say that a provision in a treaty possesses the character of *jus cogens* merely because the parties have stipulated that no derogation from that provision is to be permitted, so that another treaty which conflicted with that provision would be void. Such a stipulation may be inserted in any treaty with respect to any subject-matter for any reasons which may seem good to the parties. The conclusion by a party of a later treaty derogating from such a stipulation may, of course, engage its responsibility for a breach of the earlier treaty. But the breach of the stipulation does not, simply as such, render the treaty void (see article 26). It is not the form of a general rule of international law but the particular nature of the subject-matter with which it deals that may, in the opinion of the Commission, give it the character of *jus cogens*.

(3) The emergence of rules having the character of *jus cogens* is comparatively recent, while international law is in process of rapid development. The Commission considered the right course to be to provide in general terms that a treaty is void if it conflicts with a rule of *jus cogens* and to leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals. Some members of the Commission felt that there might be advantage in specifying, by way of illustration, some of the most obvious and best settled rules of *jus cogens* in order to indicate by these examples the general nature and scope of the rule con-

[225] See also paragraph (6) of the commentary on article 50.

[226] *Island of Palmas* arbitration, *Reports of International Arbitral Awards*, vol. II, p. 845.

[227] 1963 draft, article 37.

tained in the article. Examples suggested included (*a*) a treaty contemplating an unlawful use of force contrary to the principles of the Charter, (*b*) a treaty contemplating the performance of any other act criminal under international law, and (*c*) a treaty contemplating or conniving at the commission of acts, such as trade in slaves, piracy or genocide, in the suppression of which every State is called upon to co-operate. Other members expressed the view that, if examples were given, it would be undesirable to appear to limit the scope of the article to cases involving acts which constitute crimes under international law; treaties violating human rights, the equality of States or the principle of self-determination were mentioned as other possible examples. The Commission decided against including any examples of rules of *jus cogens* in the article for two reasons. First, the mention of some cases of treaties void for conflict with a rule of *jus cogens* might, even with the most careful drafting, lead to misunderstanding as to the position concerning other cases not mentioned in the article. Secondly, if the Commission were to attempt to draw up, even on a selective basis, a list of the rules of international law which are to be regarded as having the character of *jus cogens*, it might find itself engaged in a prolonged study of matters which fall outside the scope of the present articles.

(4) Accordingly, the article simply provides that a treaty is void "if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". This provision makes it plain that nullity attaches to a treaty under the article only if the rule with which it conflicts is a peremptory norm of general international law from which no derogation is permitted, even by agreement between particular States. On the other hand, it would clearly be wrong to regard even rules of *jus cogens* as immutable and incapable of modification in the light of future developments. As a modification of a rule of *jus cogens* would to-day most probably be effected through a general multilateral treaty, the Commission thought it desirable to indicate that such a treaty would fall outside the scope of the article. The article, therefore defines rules of *jus cogens* as peremptory norms of general international law from which no derogation is permitted "and which can be modified only by a subsequent norm of general international law having the same character".

(5) The Commission thinks it desirable to state its point of view with regard to two matters raised in the comments of Governments. The first, already mentioned above, concerns the difficulty of applying the article in a satisfactory manner unless it is accompanied by a system of independent adjudication or by some provision for an authoritative determination of the rules which are rules of *jus cogens*. The Commission considered that the question of the means of resolving a dispute regarding the invalidity of a treaty, if it may have particular importance in connexion with the present article, is a general one affecting the application of all the articles on the invalidity, termination and suspension of the operation of treaties. It has sought, so far as is practicable in the present state of international opinion regarding acceptance of compulsory means of pacific settlement, to cover the question by the procedural safeguards laid down in article 62. This article is designed to exclude the arbitrary determination of the invalidity, termination or suspension of a treaty by an individual State such as has happened not infrequently in the past and to ensure that recourse shall be had to the means of peaceful settlement indicated in Article 33 of the Charter. In the Commission's view, the position is essentially the same in the cases of an alleged conflict with a rule of *jus cogens* as in the case of other grounds of invalidity alleged by a State.

(6) The second matter is the non-retroactive character of the rule in the present article. The article has to be read in conjunction with article 61 (Emergence of a new rule of *jus cogens*), and in the view of the Commission, there is no question of the present article having retroactive effects. It concerns cases where a treaty is void *at the time of its conclusion* by reason of the fact that its provisions are in conflict with an already existing rule of *jus cogens*. The treaty is wholly void because its actual conclusion conflicts with a peremptory norm of general international law from which no States may derogate even by mutual consent. Article 61, on the other hand, concerns cases where a treaty, valid when concluded, becomes void and terminates by reason of the subsequent establishment of a new rule of *jus cogens* with which its provisions are in conflict. The words "*becomes* void and *terminates*" make it quite clear, the Commission considered, that the emergence of a new rule of *jus cogens* is not to have retroactive effects on the validity of a treaty. The invalidity is to attach only as from the time of the establishment of the new rule of *jus cogens*. The non-retroactive character of the rules in articles 50 and 61 is further underlined in article 67, paragraph 2 of which provides in the most express manner that the *termination* of a treaty as a result of the emergence of a new rule of *jus cogens* is not to have retroactive effects.

Section 3: Termination and suspension of the operation of treaties

Article 51.[228] Termination of or withdrawal from a treaty by consent of the parties

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

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

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

Commentary

(1) The majority of modern treaties contain clauses fixing their duration or the date of their termination or a condition or event which is to bring about their termination, or providing for a right to denounce or withdraw from the treaty. In these cases the termination of the treaty is brought about by the provisions of the treaty itself, and how and when this is to happen is essentially a question of interpreting and applying the treaty. The present article sets out the basic rules governing the termination of a treaty through the application of its own provisions.

[228] 1963 draft, article 38.

(2) The treaty clauses are very varied.[229] Many treaties provide that they are to remain in force for a specified period of years or until a particular date or event; others provide for the termination of the treaty through the operation of a resolutory condition. Specific periods fixed by individual treaties may be of very different lengths, periods between one and twelve years being usual but longer periods up to twenty, fifty and even ninety-nine years being sometimes found. More common in modern practice are treaties which fix a comparatively short initial period for their duration, such as five or ten years, but at the same time provide for their continuance in force after the expiry of the period subject to a right of denunciation or withdrawal. These provisions normally take the form either of an indefinite continuance in force of the treaty subject to a right of denunciation on six or twelve months' notice, or of a renewal of the treaty for successive periods of years subject to a right of denunciation or withdrawal on giving notice to that effect six months before the expiry of each period. Some treaties fix no period for their duration and simply provide for a right to denounce or withdraw from the treaty, either with or without a period of notice. Occasionally, a treaty which fixes a single specific period, such as five or ten years, for its duration allows a right of denunciation or withdrawal even during the currency of the period.

(3) The Commission considered that, whatever may be the provisions of a treaty regarding its own termination, it is always possible for all the parties to agree together to put an end to the treaty. It also considered that the particular form which such an agreement may take is a matter for the parties themselves to decide in each case. The theory has sometimes been advanced that an agreement terminating a treaty must be cast in the same form as the treaty which is to be terminated or at least constitute a treaty form of equal weight. The Commission, however, concluded that this theory reflects the constitutional practice of particular States[230] and not a rule of international law. In its opinion, international law does not accept the theory of the "*acte contraire*". The States concerned are always free to choose the form in which they arrive at their agreement to terminate the treaty. In doing so, they will doubtless take into account their own constitutional requirements, but international law requires no more than that they should consent to the treaty's termination. At the same time, the Commission considered it important to underline that, when a treaty is terminated otherwise than under its provisions, the consent of *all* the parties is necessary. The termination, unlike the amendment, of a treaty necessarily deprives all the parties of all their rights and, in consequence, the consent of all of them is necessary.

(4) The Commission gave careful consideration to the question whether, at any rate for a certain period of time after the adoption of the text of a treaty, the consent even of all the *parties* should not be regarded as sufficient for its termination. It appreciated that the other States still entitled to become parties to the treaty have a certain interest in the matter; and it examined the possibility of providing that until the expiry of a specified period of years the consent of not less than two-thirds of all the States which adopted the text should be necessary. Such a provision might, it was suggested, be particularly needed in the case of treaties brought into force on the deposit only of very few instruments of ratification, etc. Although the comments of some Governments appeared not to be unfavourable to the inclusion of such a provision, the Commission concluded that it might introduce an undesirable complication into the operation of the rule regarding termination by consent of the parties. Nor did it understand this question ever to have given rise to difficulties in practice. Accordingly, it decided not to insert any provision on the point in the article.

(5) The article is thus confined to two clear and simple rules. A treaty may be terminated or a party may terminate its own participation in a treaty by agreement in two ways: (*a*) in conformity with the treaty, and (*b*) at any time by consent of all the parties.

Article 52.[231] Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

Commentary

(1) A multilateral treaty which is subject to denunciation or withdrawal sometimes provides for termination of the treaty itself, if denunciations or withdrawals should reduce the number of parties below a certain figure. For example, the Convention on the Political Rights of Women[232] states that it "shall cease to be in force as from the date when the denunciation which reduces the number of parties to less than six becomes effective". In some cases the minimum number of surviving parties required to keep the treaty alive is even smaller, e.g. five in the case of the Customs Convention on the Temporary Importation of Commercial Road Vehicles[233] and three in the case of the Convention Regarding the Measurement and Registration of Vessels Employed in Inland Navigation.[234] In other cases a larger number of parties is required. Clearly, provisions of this kind establish a resolutory condition and the termination of the treaty, should it occur, falls under article 51, sub-paragraph (*a*).

(2) A further point arises, however, as to whether a multilateral treaty, the entry into force of which was made dependent upon its ratification, acceptance, etc. by a given minimum number of States, automatically ceases to be in force, should the parties afterwards fall

[229] See *Handbook of Final Clauses* (ST/LEG/6), pp. 54-73.

[230] See an observation of the United States representative at the 49th meeting of the Social Committee of the Economic and Social Council (E/AC.7/SR.49, p. 8) to which Sir G. Fitzmaurice drew attention.

[231] 1963 draft, article 38, para. 3(*b*).

[232] United Nations *Treaty Series*, vol. 193, p. 135, art. 8.

[233] *Handbook of Final Clauses* (ST/LEG/6), p. 58.

[234] *Ibid.*, pp. 72 and 73.

below that number as a result of denunciations or withdrawals. The Commission considers that this is not a necessary effect of a drop in the number of the parties below that fixed for the treaty's entry into force. The treaty provisions in question relate exclusively to the conditions for the entry into force of the treaty and, if the negotiating States had intended the minimum number of parties fixed for that purpose to be a continuing condition for the maintenance in force of the treaty, it would have been both easy and natural for them so to provide. In some cases, it is true, a treaty which fixes a low minimum number of parties for entry into force prescribes the same number for the cessation of the treaty. But there is no general practice to that effect, and the fact that this has not been a regular practice in cases where a larger minimum number, such as ten or twenty, has been fixed for entry into force seems significant. At any rate, when the number for entry into force is of that order of magnitude, it does not seem desirable that the application of the treaty should be dependent on the number of parties not falling below that number. The remaining parties, if unwilling to continue to operate the treaty with the reduced number, may themselves either join together to terminate it or separately exercise their own right of denunciation or withdrawal.

(3) More often than not multilateral treaties fail to cover the point mentioned in the previous paragraph, thereby leaving the question of the continuance of the treaty in doubt. The Commission accordingly considered it desirable that the draft articles should contain a general provision on the point. The present article, for the reasons given above, lays down as the general rule that unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

Article 53.[235] Denunciation of a treaty containing no provision regarding termination

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

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

Commentary

(1) Article 53 covers the termination of treaties which neither contain any provision regarding their duration or termination nor mention any right for the parties to denounce or withdraw from them. Such treaties are not uncommon, recent examples being the four Geneva Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations. The question is whether they are to be regarded as terminable only by unanimous agreement or whether individual parties are under any conditions to be considered as having an implied right to withdraw from the treaty upon giving reasonable notice to that effect.

(2) In principle, the answer to the question must depend on the intention of the parties in each case, and the very character of some treaties excludes the possibility that the contracting States intended them to be open to unilateral denunciation or withdrawal at the will of an individual party. Treaties of peace and treaties fixing a territorial boundary are examples of such treaties. Many treaties, however, are not of a kind with regard to which it can be said that to allow a unilateral right of denunciation or withdrawal would be inconsistent with the character of the treaty. No doubt, one possible point of view might be that, since the parties in many cases do provide expressly for a unilateral right of denunciation or withdrawal, their silence on the point in other cases must be interpreted as excluding such a right. Some jurists, basing themselves on the Declaration of London of 1871 and certain State practice, take the position that an individual party may denounce or withdraw from a treaty only when such denunciation or withdrawal is provided for in the treaty or consented to by all the other parties. A number of other jurists,[236] however, take the position that a right of denunciation or withdrawal may properly be implied under certain conditions in some types of treaties.

(3) The difficulty of the problem is well illustrated by the discussions which took place at the Geneva Conference on the Law of the Sea concerning the insertion of denunciation clauses in the four conventions drawn up at that conference.[237] None of the conventions contains a denunciation clause. They provide only that after five years from the date of their entry into force any party may at any time request the revision of the Convention, and that it will be for the General Assembly to decide upon the steps, if any, to be taken in respect of the request. The Drafting Committee, in putting forward this revision clause, observed that its inclusion "made unnecessary any clause on denunciation". Proposals had previously been made for the inclusion of a denunciation clause and these were renewed in the plenary meeting, notwithstanding the view of the Drafting Committee. Some delegates thought it wholly inconsistent with the nature of codifying conventions to allow denunciation; some thought that a right of denunciation existed anyhow under customary law; others considered it desirable to provide expressly for denunciation in order to take account of possible changes of circumstances. The proposal to include the clause in the "codifying" conventions was rejected by 32 votes to 12, with 23 abstentions. A similar proposal was also made with reference to the Convention on Fishing and Conservation of the Living Resources of the High Seas, which formulated entirely new law. Here, opponents of the clause argued that a right of denunciation would be out of place in a convention which created new law and was the result of negotia-

[235] 1963 draft, article 39.

[236] Sir G. Fitzmaurice, second report on the law of treaties, *Yearbook of the International Law Commission, 1957*, vol. II, p. 22.

[237] United Nations Conference on the Law of the Sea, *Official Records*, vol. II, pp. 19, 56 and 58.

tion. Advocates of the clause, on the other hand, regarded the very fact that the convention created new law as justifying and indeed requiring the inclusion of a right of denunciation. Again, the proposal was rejected, by 25 votes to 6, with no less than 35 abstentions. As already mentioned, no clause of denunciation or withdrawal was inserted in these conventions and at the subsequent Vienna Conferences on Diplomatic and Consular Relations, the omission of the clause from the conventions on those subjects was accepted without discussion. However, any temptation to generalize from these Conferences as to the intentions of the parties in regard to the denunciation of "law-making" treaties is discouraged by the fact that other conventions, such as the Genocide Convention and the Geneva Conventions of 1949 for the Protection of War Victims, expressly provide for a right of denunciation.

(4) Some members of the Commission considered that in certain types of treaty, such as treaties of alliance, a right of denunciation or withdrawal after reasonable notice should be implied in the treaty unless there are indications of a contrary intention. Other members took the view that, while the omission of any provision for it in the treaty does not exclude the possibility of implying a right of denunciation or withdrawal, the existence of such a right is not to be implied from the character of the treaty alone. According to these members, the intention of the parties is essentially a question of fact to be determined not merely by reference to the character of the treaty but by reference to all the circumstances of the case. This view prevailed in the Commission.

(5) The article states that a treaty not making any provision for its termination or for denunciation or withdrawal is not subject to denunciation or withdrawal unless "it is established that the parties intended to admit the possibility of denunciation or withdrawal". Under this rule, the character of the treaty is only one of the elements to be taken into account, and a right of denunciation or withdrawal will not be implied unless it appears from the general circumstances of the case that the parties intended to allow the possibility of unilateral denunciation or withdrawal.

(6) The Commission considered it essential that any implied right to denounce or withdraw from a treaty should be subject to the giving of a reasonable period of notice. A period of six months' notice is sometimes found in termination clauses, but this is usually where the treaty is of the renewable type and is open to denunciation by a notice given before or at the time of renewal. Where the treaty is to continue indefinitely subject to a right of denunciation, the period of notice is more usually twelve months, though admittedly in some cases no period of notice is required. In formulating a general rule, the Commission considered it to be desirable to lay down a longer rather than a shorter period in order to give adequate protection to the interests of the other parties to the treaty. Accordingly, it preferred in paragraph 2 to specify that not less than twelve months' notice must be given of an intention to denounce or withdraw from a treaty under the present article.

Article 54.[238] Suspension of the operation of a treaty by consent of the parties

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

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

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

Commentary

(1) This article parallels for the suspension of the operation of a treaty the provisions of article 51 relating to the termination of a treaty. Treaties sometimes specify that in certain circumstances or under certain conditions the operation of a treaty or of some of its provisions may be suspended. Whether or not a treaty contains such a clause, it is clear that the operation of the treaty or of some of its provisions may be suspended at any time by consent of *all* the parties. Similarly, it is equally possible by consent of *all* the parties to suspend the operation of the treaty in regard only to a particular party (or group of parties) which finds itself in temporary difficulties concerning the performance of its obligations under the treaty.

(2) The question, on the other hand, whether a multilateral treaty may be suspended by agreement of only some of the parties raises the quite different problem of the conditions under which suspension of the operation of the treaty *inter se* two parties or a group of parties is admissible. This question, which is a delicate one, is covered in the next article.

(3) The present article accordingly provides that the operation of a treaty in regard to all the parties or to a particular party may be suspended either in conformity with the treaty or at any time by consent of all the parties.

Article 55.[239] Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only

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

(*a*) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; and

(*b*) Is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

Commentary

(1) In re-examining article 40[240] of the 1963 draft at the second part of its seventeenth session in January 1966, the Commission concluded that, whereas the *termination*

[238] 1963 draft, article 40.

[239] New article.

[240] Article 40 then covered "termination or suspension of the operation of treaties by agreement".

of a treaty must, on principle, require the consent of *all* the parties, this might not necessarily be so in the case of the suspension of a treaty's operation. Since many multilateral treaties function primarily in the bilateral relations of the parties, it seemed to the Commission that the possibility of *inter se* suspension of the operation of a multilateral treaty in certain cases called for further investigation.[241] At the present session the Commission considered that the question is analogous to that raised by the *inter se* modification of multilateral treaties but that, as the situation is not identical in the two cases, the *inter se* suspension of the operation of a treaty could not be completely equated with its *inter se* modification. The Commission decided that it was desirable to deal with it in the present article and to attach to it the safeguards necessary to protect the position of other parties.

(2) The present article accordingly provides that, in the absence of any specific provision in the treaty on the subject, two or more parties may agree to suspend the operation of provisions of the treaty temporarily and as between themselves alone under two conditions. The first is that the suspension does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations. The second is that the suspension is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty. Article 37, dealing with the modification of a treaty as between certain parties only, prescribes a third condition, namely, that formal notice of the intended modification should be given in advance. Although the Commission did not think that this requirement should be made a specific condition for a temporary suspension of the operation of a treaty, its omission from the present article is not to be understood as implying that the parties in question may not have a certain general obligation to inform the other parties of their *inter se* suspension of the operation of the treaty.

Article 56.[242] Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and:

(*a*) It appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or

(*b*) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the treaty or is otherwise established that such was the intention of the parties when concluding the later treaty.

Commentary

(1) The present article deals with cases where the parties, without expressly terminating or modifying the first treaty, enter into another treaty which is so far incompatible with the earlier one that they must be considered to have intended to abrogate it. Where the parties to the two treaties are identical, there can be no doubt that, in concluding the second treaty, they are competent to abrogate the earlier one; for that is the very core of the rule contained in article 51. Even where the parties to the two treaties are not identical, the position is clearly the same if the parties to the later treaty include all the parties to the earlier one; for what the parties to the earlier treaty are competent to do together, they are competent to do in conjunction with other States. The sole question therefore is whether and under what conditions the conclusion of the further incompatible treaty must be held by implication to have terminated the earlier one. This question is essentially one of the construction of the two treaties in order to determine the intentions of the parties with respect to the maintenance in force of the earlier one.

(2) *Paragraph 1* therefore seeks to formulate the conditions under which the parties to a treaty are to be understood as having intended to terminate it by concluding a later treaty conflicting with it. The wording of the two clauses in paragraph 1 is based upon the language used by Judge Anzilotti in his separate opinion in the *Electricity Company of Sofia and Bulgaria* case,[243] where he said:

> "There was no express abrogation. But it is generally agreed that, beside express abrogation, there is also tacit abrogation resulting from the fact that the new provisions are incompatible with the previous provisions, or that the whole matter which formed the subject of these latter is henceforward governed by the new provisions."

That case, it is true, concerned a possible conflict between unilateral declarations under the Optional Clause and a treaty, and the Court itself did not accept Judge Anzilotti's view that there was any incompatibility between the two instruments. Nevertheless, the two tests put forward by Judge Anzilotti for determining whether a tacit abrogation had taken place appeared to the majority of the Commission to contain the essence of the matter.

(3) *Paragraph 2* provides that the earlier treaty shall not be considered to have been terminated where it appears from the circumstances that a later treaty was intended only to suspend the operation of the earlier one. Judge Anzilotti, it is true, in the above-mentioned opinion considered that the declarations under the Optional Clause, although in his view incompatible with the earlier treaty, had not abrogated it because of the fact that the treaty was of indefinite duration whereas the declarations were for limited terms. But it could not be said to be a general principle that a later treaty for a fixed term does not abrogate an earlier treaty expressed to have a longer or indefinite duration. It would depend entirely upon the intention of the States in concluding the second treaty, and in most cases it is probable that their intention would have been to cancel rather than suspend the earlier treaty.

[241] See 829th and 841st meetings.

[242] 1963 draft, article 41.

[243] *P.C.I.J.* (1939), Series A/B, No. 77, p. 92.

(4) Article 26 also concerns the relation between successive treaties relating to the same subject-matter, paragraphs 3 and 4(*a*) of that article stating that the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. The practical effect of those paragraphs, no doubt, is temporarily to negative and in that way suspend the operation of the incompatible provisions of the earlier treaty so long as the later treaty is in force. But article 26 deals only with the *priority* of inconsistent obligations of treaties both of which are to be considered as in force and in operation. That article does not apply to cases where it is clear that the parties intended the earlier treaty to be abrogated or its operation to be wholly suspended by the conclusion of the later treaty; for then there are not two sets of incompatible treaty provisions in force and in operation, but only those of the later treaty. In other words, article 26 comes into play only *after it has been determined under the present article that the parties did not intend to abrogate, or wholly to suspend the operation of, the earlier treaty.* The present article, for its part, is not concerned with the *priority* of treaty provisions which are incompatible, but with cases where it clearly appears that the intention of the parties in concluding the later treaty was either definitively or temporarily to supersede the régime of the earlier treaty by that of the later one. In these cases the present article terminates or suspends the operation of the earlier treaty altogether, so that it is either no longer in force or no longer in operation. In short, the present article is confined to cases of termination or of the suspension of the operation of a treaty implied from entering into a subsequent treaty.

Article 57.[244] Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) The other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(*b*) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(*c*) Any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(*a*) A repudiation of the treaty not sanctioned by the present articles; or

(*b*) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

Commentary

(1) The great majority of jurists recognize that a violation of a treaty by one party may give rise to a right in the other party to abrogate the treaty or to suspend the performance of its own obligations under the treaty. A violation of a treaty obligation, as of any other obligation, may give rise to a right in the other party to take non-forcible reprisals, and these reprisals may properly relate to the defaulting party's rights under the treaty. Opinion differs, however, as to the extent of the right to abrogate the treaty and the conditions under which it may be exercised. Some jurists, in the absence of effective international machinery for securing the observance of treaties, are more impressed with the innocent party's need to have this right as a sanction for the violation of the treaty. They tend to formulate the right in unqualified terms, giving the innocent party a general right to abrogate the treaty in the event of a breach. Other jurists are more impressed with the risk that a State may allege a trivial or even fictitious breach simply to furnish a pretext for denouncing a treaty which it now finds embarrassing. These jurists tend to restrict the right of denunciation to "material" or "fundamental" breaches and also to subject the exercise of the right to procedural conditions.

(2) State practice does not give great assistance in determining the true extent of this right or the proper conditions for its exercise. In many cases, the denouncing State has decided for quite other reasons to put an end to the treaty and, having alleged the violation primarily to provide a pretext for its action, has not been prepared to enter into a serious discussion of the legal principles involved. The other party has usually contested the denunciation primarily on the basis of the facts; and, if it has sometimes used language appearing to deny that *unilateral* denunciation is ever justified, this has usually appeared rather to be a protest against the one-sided and arbitrary pronouncements of the denouncing State than a rejection of the right to denounce when serious violations are established.

(3) Municipal courts have not infrequently made pronouncements recognizing the principle that the violation of a treaty may entitle the innocent party to denounce it. But they have nearly always done so in cases where their Government had not in point of fact elected to denounce the treaty, and they have not found it necessary to examine the conditions for the application of the principle at all closely.[245]

[244] 1963 draft, article 42.

[245] e.g. *Ware* v. *Hylton* (1796), 3 Dallas 261; *Charlton* v. *Kelly*. 229 U.S.447; *Lepeschkin* v. *Gosweiler et Cie.*, *Journal du droit international* (1924) vol. 51, p. 1136; *In re Tatarko*, *Annual Digest and Reports of Public International Law Cases*, 1949, No. 110, p. 314.

(4) In the case of the *Diversion of Water from the Meuse*,[246] Belgium contended that, by constructing certain works contrary to the terms of the Treaty of 1863, Holland had forfeited the right to invoke the treaty against it. Belgium did not claim to denounce the treaty, but it did assert a right, as a defence to Holland's claim, to suspend the operation of one of the provisions of the treaty on the basis of Holland's alleged breach of that provision, although it pleaded its claim rather as an application of the principle *inadimplenti non est adimplendum*. The Court, having found that Holland had not violated the treaty, did not pronounce upon the Belgian contention. In a dissenting opinion, however, Judge Anzilotti expressed the view[247] that the principle underlying the Belgian contention is "so just, so equitable, so universally recognized that it must be applied in international relations also". The only other case that seems to be of much significance is the *Tacna-Arica* arbitration.[248] There Peru contended that by preventing the performance of article 3 of the Treaty of Ancon, which provided for the holding of a plebiscite under certain conditions in the disputed area, Chile had discharged Peru from her obligations under that article. The Arbitrator,[249] after examining the evidence, rejected the Peruvian contention, saying:

> "It is manifest that if abuses of administration could have the effect of terminating such an agreement, it would be necessary to establish such serious conditions as the consequence of administrative wrongs as would operate to frustrate the purpose of the agreement, and, in the opinion of the Arbitrator, a situation of such gravity has not been shown."

This pronouncement seems to assume that only a "fundamental" breach of article 3 by Chile could have justified Peru in claiming to be released from its provisions.

(5) The Commission was agreed that a breach of a treaty, however serious, does not *ipso facto* put an end to the treaty, and also that it is not open to a State simply to allege a violation of the treaty and pronounce the treaty at an end. On the other hand, it considered that within certain limits and subject to certain safeguards the right of a party to invoke the breach of a treaty as a ground for terminating it or suspending its operation must be recognized. Some members considered that it would be dangerous for the Commission to endorse such a right, unless its exercise were to be made subject to control by compulsory reference to the International Court of Justice. The Commission, while recognizing the importance of providing proper safeguards against arbitrary denunciation of a treaty on the ground of an alleged breach, concluded that the question of providing safeguards against arbitrary action was a general one which affected several articles. It, therefore, decided to formulate in the present article the substantive conditions under which a treaty may be terminated or its operation suspended in consequence of a breach, and to deal with the question of the procedural safeguards in article 62.

(6) *Paragraph 1* provides that a "material" breach of a bilateral treaty by one party entitles the other to *invoke* the breach as a ground for terminating the treaty or suspending its operation in whole or in part. The formula "invoke as a ground" is intended to underline that the right arising under the article is not a right arbitrarily to pronounce the treaty terminated. If the other party contests the breach or its character as a "material" breach, there will be a "difference" between the parties with regard to which the normal obligations incumbent upon the parties under the Charter and under general international law to seek a solution of the question through pacific means will apply. The Commission considered that the action open to the other party in the case of a material breach is to invoke either the termination or the suspension of the operation of the treaty, in whole or in part. The right to take this action arises under the law of treaties independently of any right of reprisal, the principle being that a party cannot be called upon to fulfil its obligations under a treaty when the other party fails to fulfil those which it undertook under the same treaty. This right would, of course, be without prejudice to the injured party's right to present an international claim for reparation on the basis of the other party's responsability with respect to the breach.

(7) *Paragraph 2* deals with a material breach of a multilateral treaty, and here the Commission considered it necessary to distinguish between the right of the other parties to react jointly to the breach and the right of an individual party specially affected by the breach to react alone. Sub-paragraph (*a*) provides that the other parties may, by a unanimous agreement, suspend the operation of the treaty or terminate it and may do so either only in their relations with the defaulting State or altogether as between all the parties. When an individual party reacts alone the Commission considered that its position is similar to that in the case of a bilateral treaty, but that its right should be limited to suspending the operation of the treaty in whole or in part as between itself and the defaulting State. In the case of a multilateral treaty the interests of the other parties have to be taken into account and a right of suspension normally provides adequate protection to the State specially affected by the breach. Moreover, the limitation of the right of the individual party to a right of suspension seemed to the Commission to be particularly necessary in the case of general multilateral treaties of a law-making character. Indeed, a question was raised as to whether even suspension would be admissible in the case of law-making treaties. The Commission felt, however, that it would be inequitable to allow a defaulting State to continue to enforce the treaty against the injured party, whilst itself violating its obligations towards that State under the treaty. Moreover, even such treaties as the Genocide Convention and the Geneva Conventions on the treatment of prisoners of war, sick and wounded allowed an express right of denunciation independently of any breach of the convention. The Commission concluded that general law-making treaties should not, simply as

[246] *P.C.I.J.* (1937), Series A/B, No. 70.

[247] *Ibid.*, p. 50; cf. Judge Hudson, pp. 76 and 77.

[248] *Reports of International Arbitral Awards*, vol. II, pp. 929, 943 and 944.

[249] President Coolidge.

such, be dealt with differently from other multilateral treaties in the present connexion. Accordingly, sub-paragraph (*b*) lays down that on a material breach of a multilateral treaty any party specially affected by the breach may *invoke* it as a *ground* for suspending the operation of the treaty in whole or in part *in the relations between itself and the defaulting State.*

(8) Paragraph 2(*c*) is designed to deal with the problem raised in the comments of Governments of special types of treaty, e.g. disarmament treaties, where a breach by one party tends to undermine the whole régime of the treaty as between all the parties. In the case of a material breach of such a treaty the interests of an individual party may not be adequately protected by the rules contained in paragraphs 2(*a*) and (*b*). It could not suspend the performance of its own obligations under the treaty vis-à-vis the defaulting State without at the same time violating its obligations to the other parties. Yet, unless it does so, it may be unable to protect itself against the threat resulting from the arming of the defaulting State. In these cases, where a material breach of the treaty by one party radically changes the position of every party with respect to the further performance of its obligations, the Commission considered that any party must be permitted without first obtaining the agreement of the other parties to suspend the operation of the treaty with respect to itself generally in its relations with all the other parties. Paragraph 2(*c*) accordingly so provides.

(9) *Paragraph 3* defines the kind of breach which may give rise to a right to terminate or suspend the treaty. Some authorities have in the past seemed to assume that any breach of any provision would suffice to justify the denunciation of the treaty. The Commission, however, was unanimous that the right to terminate or suspend must be limited to cases where the breach is of a serious character. It preferred the term "material" to "fundamental" to express the kind of breach which is required. The word "fundamental" might be understood as meaning that only the violation of a provision directly touching the *central* purposes of the treaty can ever justify the other party in terminating the treaty. But other provisions considered by a party to be essential to the effective execution of the treaty may have been very material in inducing it to enter into the treaty at all, even although these provisions may be of an ancillary character. Clearly, an unjustified repudiation of the treaty—a repudiation not sanctioned by any of the provisions of the present articles—would automatically constitute a material breach of the treaty; and this is provided for in sub-paragraph (*a*) of the definition. The other and more general form of material breach is that in sub-paragraph (*b*), and is there defined as a violation of a provision essential to the accomplishment of any object or purpose of the treaty.

(10) *Paragraph 4* merely reserves the rights of the parties under any specific provisions of the treaty applicable in the event of a breach.

Article 58.[250] Supervening impossibility of performance

A party may invoke an impossibility of performing a treaty as a ground for terminating it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

Commentary

(1) The present article concerns the termination of a treaty or the suspension of its operation in consequence of the permanent or temporary total disappearance or destruction of an object indispensable for its execution. The next article concerns the termination of a treaty in consequence of a fundamental change in the circumstances existing at the time when it was entered into. Cases of supervening impossibility of performance are *ex hypothesi* cases where there has been a fundamental change in the circumstances existing at the time when the treaty was entered into. Some members of the Commission felt that it was not easy to draw a clear distinction between the types of cases dealt with in the two articles and were in favour of amalgamating them. The Commission, however, considered that juridically "impossibility of performance" and "fundamental change of circumstances" are distinct grounds for regarding a treaty as having been terminated, and should be kept separate. Although there might be borderline cases in which the two articles tended to overlap, the criteria to be employed in applying the articles were not the same, and to combine them might lead to misunderstanding.

(2) The article provides that the permanent disappearance or destruction of an object indispensable for the execution of the treaty may be invoked as a ground for putting an end to the treaty. State practice furnishes few examples of the termination of a treaty on this ground. But the type of cases envisaged by the article is the submergence of an island, the drying up of a river or the destruction of a dam or hydro-electric installation indispensable for the execution of a treaty.

(3) The article further provides that, if the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty. The Commission appreciated that such cases might be regarded simply as cases where *force majeure* could be pleaded as a defence exonerating a party from liability for non-performance of the treaty. But it considered that, when there is a continuing impossibility of performing recurring obligations of a treaty, it is desirable to recognize, *as part of the law of treaties*, that the operation of a treaty may be suspended temporarily.

(4) The fact that the article deals first with cases of termination is not meant to imply that termination is to be regarded as the normal result in such cases or that there is any presumption that the disappearance or destruction of an object indispensable to the execution of the treaty will be permanent. On the contrary, the Commission considered it essential to underline that,

[250] 1963 draft, article 43.

unless it is clear that the impossibility will be permanent, the right of the party must be limited to invoking it as a ground for suspending the operation of the treaty. In other words, it regarded "suspension of the operation of the treaty" rather than "termination" as the desirable course of action, not *vice versa.*

(5) The Commission appreciated that in cases under this article, unlike cases of breach, the ground of termination, when established, might be said to have automatic effects on the validity of the treaty. But it felt bound to state the rule in the form not of a provision automatically terminating the treaty but one entitling the parties to invoke the impossibility of performance as a ground for terminating the treaty. The point is that disputes may arise as to whether a total disappearance or destruction of the subject-matter of the treaty has in fact occurred, and in the absence of compulsory adjudication it would be inadvisable to adopt, without any qualification, a rule bringing about the automatic abrogation of the treaty by operation of law. Otherwise, there would be a risk of arbitrary assertions of a supposed impossibility of performance as a mere pretext for repudiating a treaty. For this reason, the Commission formulated the article in terms of a right to *invoke* the impossibility of performance as a ground for terminating the treaty and made this right subject to the procedural requirements of article 62.

(6) The Commission appreciated that the total extinction of the international personality of one of the parties to a bilateral treaty is often cited as an instance of impossibility of performance, but decided against including it in the present article for two reasons. First, it would be misleading to formulate a provision concerning the extinction of the international personality of a party without at the same time dealing with, or at least reserving, the question of the succession of States to treaty rights and obligations. The subject of succession is a complex one which is already under separate study in the Commission and it would be undesirable to prejudge the outcome of that study. Accordingly, the Commission did not think that it should deal with this subject in the present article, and, as already mentioned in paragraph (5) of the commentary to article 39, it decided to reserve the question in a general provision in article 69.

(7) Certain Governments in their comments raised the question whether, in connexion with both the present article and article 59 (fundamental change of circumstances), special provision should be made for cases where the treaty has been partly performed and benefits obtained by one party before the cause of termination supervenes. The Commission, while recognizing that problems of equitable adjustment may arise in such cases, doubted the advisability of trying to regulate them by a general provision in articles 58 and 59. It did not seem to the Commission possible to go beyond the provisions of article 66 and 67, paragraph 2, dealing with the consequences of the termination of a treaty.

Article 59.[251] Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(*a*) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) The effect of the change is radically to transform the scope of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked:

(*a*) As a ground for terminating or withdrawing from a treaty establishing a boundary;

(*b*) If the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

Commentary

(1) Almost all modern jurists, however reluctantly, admit the existence in international law of the principle with which this article is concerned and which is commonly spoken of as the doctrine of *rebus sic stantibus.* Just as many systems of municipal law recognize that, quite apart from any actual *impossibility* of performance, contracts may become inapplicable through a fundamental change of circumstances, so also treaties may become inapplicable for the same reason. Most jurists, however, at the same time enter a strong *caveat* as to the need to confine the scope of the doctrine within narrow limits and to regulate strictly the conditions under which it may be invoked; for the risks to the security of treaties which this doctrine presents in the absence of any general system of compulsory jurisdiction are obvious. The circumstances of international life are always changing and it is easy to allege that the changes render the treaty inapplicable.

(2) The evidence of the principle in customary law is considerable, but the International Court has not yet committed itself on the point. In the *Free Zones* case,[252] having held that the facts did not in any event justify the application of the principle, the Permanent Court expressly reserved its position. It observed that it became unnecessary for it to consider "any of the questions of principle which arise in connexion with the theory of the lapse of treaties by reason of change of circumstances, such as the extent to which the theory can be regarded as constituting a rule of international law, the occasions on which and the methods by which effect can be given to the theory, if recognized, and the question whether it would apply to treaties establishing rights such as that which Switzerland derived from the treaties of 1815 and 1816".

[251] 1963 draft, article 44.

[252] *P.C.I.J.* (1932), Series A/B, No. 46, pp. 156-158.

(3) Municipal courts, on the other hand, have not infrequently recognized the relevance of the principle in international law, though for one reason or another they have always ended by rejecting the application of it in the particular circumstances of the case before them.[253] These cases contain the propositions that the principle is limited to changes in circumstances the continuance of which, having regard to the evident intention of the parties at the time, was regarded as a tacit condition of the agreement,[254] that the treaty is not dissolved automatically by law upon the occurrence of the change but only if the doctrine is invoked by one of the parties,[255] and that the doctrine must be invoked within a reasonable time after the change in the circumstances was first perceived.[256] Moreover, in *Bremen* v. *Prussia*[257] the German *Reichsgericht*, while not disputing the general relevance of the doctrine, considered it altogether inapplicable to a case where one party was seeking to release itself not from the whole treaty but only from certain restrictive clauses which had formed an essential part of an agreement for an exchange of territory.

(4) The principle of *rebus sic stantibus* has not infrequently been invoked in State practice either *eo nomine* or in the form of a reference to a general principle claimed to justify the termination or modification of treaty obligations by reason of changed circumstances. Detailed examination of this State practice is not possible in the present report. Broadly speaking, it shows a wide acceptance of the view that a fundamental change of circumstances may justify a demand for the termination or revision of a treaty, but also shows a strong disposition to question the right of a party to denounce a treaty unilaterally on this ground. The most illuminating indications as to the attitude of States regarding the principle are perhaps statements submitted to the Court in the cases where the doctrine has been invoked. In the *Nationality Decrees* case the French Government contended that "perpetual" treaties are always subject to termination in virtue of the *rebus sic stantibus* clause and claimed that the establishment of the French protectorate over Morocco had for that reason had the effect of extinguishing certain Anglo-French treaties.[258] The British Government, while contesting the French Government's view of the facts, observed that the most forceful argument advanced by France was that of *rebus sic stantibus*.[259] In the case concerning *The Denunciation of the Sino-Belgian Treaty of 1865*, China invoked, in general terms, changes of circumstances as a justification of her denunciation of a sixty-year-old treaty, and supported her contention with a reference to Article 19 of the Covenant of the League of Nations.[260] The article, however, provided that the Assembly of the League should "from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable", and the Belgian Government replied that neither Article 19 nor the doctrine of *rebus sic stantibus* contemplated the unilateral denunciation of treaties. It further maintained that there could be no question of China's denouncing the treaty because of a change of circumstances unless she had at least tried to obtain its revision through Article 19; that where both parties were subject to the Court's jurisdiction, the natural course for China, in case of dispute, was to obtain a ruling from the Court; and that if she did not, she could not denounce the treaty without Belgium's consent.[261] In the *Free Zones* case[262] the French Government, the Government invoking the *rebus sic stantibus* principle, itself emphasized that the principle does not allow unilateral denunciation of a treaty claimed to be out of date. It argued that the doctrine would cause a treaty to lapse only "*lorsque le changement de circonstances aura été reconnu par un acte faisant droit entre les deux Etats intéressés*"; and it further said: "*cet acte faisant droit entre les deux Etats intéressés peut être soit un accord, lequel accord sera une reconnaissance du changement des circonstances et de son effet sur le traité, soit une sentence du juge international compétent s'il y en a un*".[263] Switzerland, emphasizing the differences of opinion amongst jurists in regard to the principle, disputed the existence in international law of any such *right* to the termination of a treaty because of changed circumstances enforceable through the decision of a competent tribunal. But she rested her case primarily on three contentions: (*a*) the circumstances alleged to have changed were not circumstances on the basis of whose continuance the parties could be said to have entered into the treaty; (*b*) in any event, the doctrine does not apply to treaties creating *territorial* rights; and (*c*) France had delayed unreasonably long after the alleged changes of circumstances had manifested themselves.[264] France does not appear to have disputed that the doctrine is inapplicable to territorial rights; instead, she drew a distinction between territorial rights and "personal" rights created on the occasion of a territorial settlement.[265] The Court upheld the Swiss Government's contentions on points (*a*) and (*c*), but did not pronounce on the application of the *rebus sic stantibus* principle to treaties creating territorial rights.

---

[253] e.g. *Hooper* v. *United States*, Hudson, *Cases on International Law*, second edition, p. 930; *Lucerne* v. *Aargau* (1888), *Arrêts du Tribunal Fédéral Suisse*, vol. 8, p. 57; *In re Lepeschkin*, *Annual Digest of Public International Law Cases*, 1923-24, Case No. 189; *Bremen* v. *Prussia*, *ibid.*, 1925-26, Case No. 266; *Rothschild and Sons* v. *Egyptian Government*, *ibid.*, 1925-26, Case No. 14; *Canton of Thurgau* v. *Canton of St. Gallen*, *ibid.*, 1927-28, Case No. 289; *Bertaco* v. *Bancel*, *ibid.*, 1935-37, Case No. 201; *Stransky* v. *Zivnostenska Bank*, *International Law Reports*, 1955, pp. 424-427.

[254] *Lucerne* v. *Aargau*; *Canton of Thurgau* v. *Canton of St. Gallen*; *Hooper* v. *United States*.

[255] *In re Lepeschkin*; *Stransky* v. *Zivnostenska Bank*.

[256] *Canton of Thurgau* v. *Canton of St. Gallen*.

[257] *Annual Digest of Public International Law Cases*, 1925-26, Case No. 266.

[258] *P.C.I.J.*, Series C, No. 2, pp. 187 and 188.

[259] *Ibid.*, pp. 208 and 209.

[260] *Ibid.*, No. 16, I. p. 52.

[261] *Ibid.*, pp. 22-23; the case was ultimately settled by the conclusion of a new treaty.

[262] *Ibid.*, Series A/B, No. 46.

[263] *Ibid.*, Series C, No. 58, pp. 578-579, 109-146, and 405-415; see also Series C, No. 17, I, pp. 89, 250, 256, 283-284.

[264] *Ibid.*, Series C, No. 58, pp. 463-476.

[265] *Ibid.*, pp. 136-143.

(5) The principle has also been invoked in debates in political organs of the United Nations, either expressly or by implication. In these debates, the existence of the principle has not usually been disputed, though emphasis has been placed on the conditions restricting its application. The Secretary-General also, in a study of the validity of the minorities treaties concluded during the League of Nations era, while fully accepting the existence of the principle in international law, emphasized the exceptional and limited character of its application.[266] In their comments some Governments expressed doubts as to how far the principle could be regarded as an already accepted rule of international law; and others emphasized the dangers which the principle involved for the security of treaties unless the conditions for its application were closely defined and adequate safeguards were provided against its arbitrary application.

(6) The Commission concluded that the principle, if its application were carefully delimited and regulated, should find a place in the modern law of treaties. A treaty may remain in force for a long time and its stipulations come to place an undue burden on one of the parties as a result of a fundamental change of circumstances. Then, if the other party were obdurate in opposing any change, the fact that international law recognized no legal means of terminating or modifying the treaty otherwise than through a further agreement between the same parties might impose a serious strain on the relations between the States concerned; and the dissatisfied State might ultimately be driven to take action outside the law. The number of cases calling for the application of the rule is likely to be comparatively small. As pointed out in the commentary to article 51, the majority of modern treaties are expressed to be of short duration, or are entered into for recurrent terms of years with a right to denounce the treaty at the end of each term, or are expressly or implicitly terminable upon notice. In all these cases either the treaty expires automatically or each party, having the power to terminate the treaty, has the power also to apply pressure upon the other party to revise its provisions. Nevertheless, there may remain a residue of cases in which, failing any agreement, one party may be left powerless under the treaty to obtain any legal relief from outmoded and burdensome provisions. It is in these cases that the *rebus sic stantibus* doctrine could serve a purpose as a lever to induce a spirit of compromise in the other party. Moreover, despite the strong reservations often expressed with regard to it, the evidence of the acceptance of the doctrine in international law is so considerable that it seems to indicate a recognition of a need for this safety-valve in the law of treaties.

(7) In the past the principle has almost always been presented in the guise of a tacit condition implied in every "perpetual" treaty that would dissolve it in the event of a fundamental change of circumstances. The Commission noted, however, that the tendency to-day was to regard the implied term as only a fiction by which it was attempted to reconcile the principle of the dissolution of treaties in consequence of a fundamental change of circumstances with the rule *pacta sunt servanda.* In most cases the parties gave no thought to the possibility of a change of circumstances and, if they had done so, would probably have provided for it in a different manner. Furthermore, the Commission considered the fiction to be an undesirable one since it increased the risk of subjective interpretations and abuse. For this reason, the Commission was agreed that the theory of an implied term must be rejected and the doctrine formulated as an objective rule of law by which, on grounds of equity and justice, a fundamental change of circumstances may, under certain conditions, be invoked by a party as a ground for terminating the treaty. It further decided that, in order to emphasize the objective character of the rule, it would be better not to use the term "*rebus sic stantibus*" either in the text of the article or even in the title, and so avoid the doctrinal implication of that term.

(8) The Commission also recognized that jurists have in the past often limited the application of the principle to so-called perpetual treaties, that is, to treaties not making any provision for their termination. The reasoning by which this limitation of the principle was supported by these authorities did not, however, appear to the Commission to be convincing. When a treaty had been given a duration of ten, twenty, fifty or ninety-nine years, it could not be excluded that a fundamental change of circumstances might occur which radically affected the basis of the treaty. The cataclysmic events of the present century showed how fundamentally circumstances may change within a period of only ten or twenty years. If the doctrine were regarded as an objective rule of law founded upon the equity and justice of the matter, there did not seem to be any reason to draw a distinction between "perpetual" and "long term" treaties. Moreover, practice did not altogether support the view that the principle was confined to "perpetual" treaties. Some treaties of limited duration actually contained what were equivalent to *rebus sic stantibus* provisions.[267] The principle had also been invoked sometimes in regard to limited treaties, as for instance, in the resolution of the French Chamber of Deputies of 14 December 1932, expressly invoking the principle of *rebus sic stantibus* with reference to the Franco-American war debts agreement of 1926.[268] The Commission accordingly decided that the rule should not be limited to treaties containing no provision regarding their termination, though for obvious reasons it would seldom or never have relevance for treaties of limited duration or which are terminable upon notice.

(9) *Paragraph 1* defines the conditions under which a change of circumstances may be invoked as a ground for terminating a treaty or for withdrawing from a multilateral treaty. This definition contains a series of

[266] E/CN.4/367, p. 37, see also E/CN.4/367/Add.1.

[267] e.g., article 21 of the Treaty on Limitation of Naval Armament, signed at Washington, 6 February 1922 (Hudson, *International Legislation*, vol. II, p. 820); article 26 of the Treaty for the Limitation of Naval Armament, signed at London, 25 March 1936 (*Ibid.*, vol. VII, p. 280); and Convention regarding the régime of the Straits, signed at Montreux, 20 July 1936 (*L.N.T.S.*, vol. 173, p. 229).

[268] For the text of the resolution, see A.-C. Kiss, *Répertoire français de droit international*, vol. 5, pp. 384-385.

limiting conditions: (1) the change must be of circumstances existing at the time of the conclusion of the treaty; (2) that change must be a fundamental one; (3) it must also be one not foreseen by the parties; (4) the existence of those circumstances must have constituted an essential basis of the consent of the parties to be bound by the treaty; and (5) the effect of the change must be radically to transform the scope of obligations still to be performed under the treaty. The Commission attached great importance to the strict formulation of these conditions. In addition, it decided to emphasize the exceptional character of this ground of termination or withdrawal by framing the article in negative form: "a fundamental change of circumstances . . . may *not* be invoked as a ground for terminating or withdrawing from a treaty *unless* etc.".

(10) The question was raised in the Commission whether general changes of circumstances quite outside the treaty might not sometimes bring the principle of fundamental change of circumstances into operation. But the Commission considered that such general changes could properly be invoked as a ground for terminating or withdrawing from a treaty only if their effect was to alter a circumstance constituting an essential basis of the consent of the parties to the treaty. Some members of the Commission favoured the insertion of a provision making it clear that a subjective change in the attitude or policy of a Government could never be invoked as a ground for terminating, withdrawing from or suspending the operation of a treaty. They represented that, if this were not the case, the security of treaties might be prejudiced by recognition of the principle in the present article. Other members, while not dissenting from the view that mere changes of policy on the part of a Government cannot normally be invoked as bringing the principle into operation, felt that it would be going too far to state that a change of policy could never in any circumstances be invoked as a ground for terminating a treaty. They instanced a treaty of alliance as a possible case where a radical change of political alignment by the Government of a country might make it unacceptable, *from the point of view of both parties*, to continue with the treaty. The Commission considered that the definition of a "fundamental change of circumstances" in paragraph 1 should suffice to exclude abusive attempts to terminate a treaty on the basis merely of a change of policy, and that it was unnecessary to go further into the matter in formulating the article.

(11) *Paragraph 2* excepts from the operation of the article two cases. The first concerns treaties establishing a boundary, a case which both States concerned in the *Free Zones* case appear to have recognized as being outside the rule, as do most jurists. Some members of the Commission suggested that the total exclusion of these treaties from the rule might go too far, and might be inconsistent with the principle of self-determination recognized in the Charter. The Commission, however, concluded that treaties establishing a boundary should be recognized to be an exception to the rule, because otherwise the rule, instead of being an instrument of peaceful change, might become a source of dangerous frictions. It also took the view that "self-determination", as envisaged in the Charter was an independent principle and that it might lead to confusion if, in the context of the law of treaties, it were presented as an application of the rule contained in the present article. By excepting treaties establishing a boundary from its scope the present article would not exclude the operation of the principle of self-determination in any case where the conditions for its legitimate operation existed. The expression "treaty *establishing* a boundary" was substituted for "treaty fixing a boundary" by the Commission, in response to comments of Governments, as being a broader expression which would embrace treaties of cession as well as delimitation treaties.

(12) The second exception, dealt with in paragraph 2(*b*), provides that a fundamental change may not be invoked if it has been brought about by a breach of the treaty by the party invoking it or by that party's breach of other international obligations owed to the parties to the treaty. This rule is, of course, simply an application of the general principle of law that a party cannot take advantage of its own wrong (*Factory at Chorzow* case, *P.C.I.J.* (1927), Series A, No. 9 at page 31). As such it is clearly applicable in any case arising under any of the articles. Nevertheless, having regard to the particular risk that a fundamental change of circumstances may result from a breach, or series of breaches, of a treaty, the Commission thought it desirable specifically to exclude from the operation of the present article a fundamental change of circumstances so brought about.

(13) Certain Governments in their comments emphasized the dangers which this article may have for the security of treaties unless it is made subject to some form of independent adjudication. Many members of the Commission also stressed the importance which they attached to the provision of adequate procedural safeguards against arbitrary application of the principle of fundamental change of circumstances as an essential condition of the acceptability of the article. In general, however, the Commission did not consider the risks to the security of treaties involved in the present article to be different in kind or degree from those involved in the articles dealing with the various grounds of invalidity or in articles 57, 58 and 61. It did not think that a principle, valid in itself, could or should be rejected because of a risk that a State acting in bad faith might seek to abuse the principle. The proper function of codification, it believed, was to minimize those risks by strictly defining and circumscribing the conditions under which recourse may properly be had to the principle; and this it has sought to do in the present article. In addition, having regard to the extreme importance of the stability of treaties to the security of international relations, it has attached to the present article, as to all the articles dealing with grounds of invalidity or termination, the specific procedural safeguards set out in article 62.

Article 60.[269] Severance of diplomatic relations

The severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations established between them by the treaty.

[269] 1964 draft, article 64.

Commentary

(1) This article contemplates only the situation which arises when diplomatic relations are severed between two parties to a treaty, whether bilateral or multilateral, between which normal diplomatic relations had previously subsisted. For the reasons stated in paragraph 29 of this report the question of the effect upon treaties of the outbreak of hostilities—which may obviously be a case when diplomatic relations are severed—is not dealt with in the present articles. Similarly, any problems that may arise in the sphere of treaties from the absence of recognition of a Government do not appear to be such as should be covered in a statement of the general law of treaties. It is thought more appropriate to deal with them in the context of other topics with which they are closely related, either succession of States and Governments, which is excluded from the present discussion for the reasons indicated in paragraph 30 of the Introduction to this chapter, or recognition of States and Governments, which the Commission in 1949 decided to include in its provisional list of topics selected for codification. [270]

(2) There is wide support for the general proposition that the severance of diplomatic relations does not in itself lead to the termination of treaty relationships between the States concerned. [271] Indeed, many jurists do not include the severance of diplomatic relations in their discussion of the grounds for the termination or suspension of the operation of treaties. That the breaking off of diplomatic relations does not as such affect the operation of the rules of law dealing with other aspects of international intercourse is indeed recognized in article 2(3) of the Vienna Convention on Consular Relations of 1963 [272] which provides: "The severance of diplomatic relations shall not *ipso facto* involve the severance of consular relations"; while the Vienna Convention on Diplomatic Relations of 1961 contains an article—article 45—dealing specifically with the rights and obligations of the parties in the event that diplomatic relations are broken off. It therefore seems correct to state that in principle the mere breaking off of diplomatic relations does not of itself affect the continuance in force of the treaty, or the continuance of the obligation of the parties to apply it in accordance with the rule *pacta sunt servanda.*

(3) The text of the article provisionally adopted in 1964 contained a second paragraph which expressly provided that severance of diplomatic relations may be invoked as a ground for suspending the operation of a treaty: "if it results in the disappearance of the means necessary for the application of the treaty". In other words, an exception was admitted to the general rule in the event that the severance of relations resulted in something akin to a temporary impossibility of performing the treaty through a failure of a necessary means. Certain Governments in their comments expressed anxiety lest this exception, unless it was more narrowly defined, might allow the severance of diplomatic relations to be used as a pretext for evading treaty obligations. In the light of these comments the Commission examined the question *de novo.* It noted that the text of article 58 dealing with supervening impossibility of performance, as revised at the second part of its seventeenth session, contemplates the suspension of the operation of a treaty on the ground of impossibility of performance only in case of the temporary "disappearance or destruction of an *object indispensable for the execution of the treaty*"; and that the severance of diplomatic relations relates to "means" rather than to an "object".

(4) Furthermore, the Commission revised its opinion on the question of admitting the interruption of the normal diplomatic channels as a case of the disappearance of means indispensable for the execution of a treaty. It considered that to-day the use of third States and even of direct channels as means for making necessary communications in case of severance of diplomatic relations are so common that the absence of the normal channels ought not to be recognized as a disappearance of a "means" or of an "object" indispensable for the execution of a treaty. It appreciated that, as some members pointed out, the severance of diplomatic relations might be incompatible with implementation of certain kinds of political treaty such as treaties of alliance. But it concluded that any question of the termination or suspension of the operation of such treaties in consequence of the severance of diplomatic relations should be left to be governed by the general provisions of the present articles regarding termination, denunciation, withdrawal from and suspension of the operation of treaties. It therefore decided to confine the present article to the general proposition that severance of diplomatic relations does not in itself affect the legal relations established by a treaty, and to leave any special case to be governed by the other articles.

(5) The article accordingly provides simply that the severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations between them established by the treaty. The expression "*severance of diplomatic relations*", which appears in Article 41 of the Charter and in article 2, paragraph 3, of the Vienna Convention of 1963 on Consular Relations, is used in preference to the expression "breaking off of diplomatic relations" found in article 45 of the Vienna Convention of 1961 on Diplomatic Relations.

Article 61. [273] Emergence of a new peremptory norm of general international law

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty which is in conflict with that norm becomes void and terminates.

Commentary

(1) The rule formulated in this article is the logical corollary of the rule in article 50 under which a treaty

[270] *Yearbook of the International Law Commission,* 1949, p. 281.

[271] Cf. Sir G. Fitzmaurice, second report on the law of treaties (A/CN.4/107), article 5 (iii) and paragraph 34 of the commentary, *ibid., 1957,* vol. II, p. 42; and fourth report on the law of treaties (A/CN.4/120), article 4, *ibid., 1959,* vol. II, p. 54.

[272] United Nations Conference on Consular Relations, *Official Records,* vol. II, p. 175.

[273] 1963 draft, article 45.

is void if it conflicts with a "peremptory norm of general international law from which no derogation is permitted". Article 50, as explained in the commentary to it, is based upon the hypothesis that in international law to-day there are a certain number of fundamental rules of international public order from which no State may derogate even by agreement with another State. Manifestly, if a new rule of that character—a new rule of *jus cogens*—emerges, its effect must be to render void not only future but existing treaties. This follows from the fact that a rule of *jus cogens* is an over-riding rule depriving any act or situation which is in conflict with it of legality. An example would be former treaties regulating the slave trade, the performance of which later ceased to be compatible with international law owing to the general recognition of the total illegality of all forms of slavery.

(2) The Commission discussed whether to make this rule part of article 50, but decided that it should be placed among the articles concerning the termination of treaties. Although the rule operates to deprive the treaty of validity, its effect is not to render it void *ab initio*, but only from the date when the new rule of *jus cogens* is established; in other words it does not annul the treaty, it forbids its further existence and performance. It is for this reason that the article provides that "If a new peremptory norm of general international law . . . is established", a treaty becomes void and terminates.

(3) Similarly, although the Commission did not think that the principle of separability is appropriate when a treaty is void *ab initio* under article 50 by reason of an existing rule of *jus cogens*, it felt that different considerations apply in the case of a treaty which was entirely valid when concluded but is now found with respect to some of its provisions to conflict with a newly established rule of *jus cogens*. If those provisions can properly be regarded as severable from the rest of the treaty, the Commission thought that the rest of the treaty ought to be regarded as still valid.

(4) In paragraph (6) of its commentary to article 50 the Commission has already emphasized that a rule of *jus cogens* does not have retroactive effects and does not deprive any existing treaty of its validity prior to the establishment of that rule as a rule of *jus cogens*. The present article underlines that point since it deals with the effect of the emergence of a new rule of *jus cogens* on the validity of a treaty as a case of the termination of the treaty. The point is further underlined by article 67 which limits the consequences of the termination of a treaty by reason of invalidity attaching to it under the present article to the period *after* the establishment of the new rule of *jus cogens*.

Section 4: Procedure

Article 62.[274] Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which claims that a treaty is invalid or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under the provisions of the present articles must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Commentary

(1) Many members of the Commission regarded the present article as a key article for the application of the provisions of the present part dealing with the invalidity, termination or suspension of the operation of treaties. They thought that some of the grounds upon which treaties may be considered invalid or terminated or suspended under those sections, if allowed to be arbitrarily asserted in face of objection from the other party, would involve real dangers for the security of treaties. These dangers were, they felt, particularly serious in regard to claims to denounce or withdraw from a treaty by reason of an alleged breach by the other party or by reason of a fundamental change of circumstances. In order to minimize these dangers the Commission has sought to define as precisely and as objectively as possible the conditions under which the various grounds may be invoked. But whenever a party to a treaty invokes one of these grounds, the question whether or not its claim is justified will nearly always turn upon facts the determination or appreciation of which may be controversial. Accordingly, the Commission considered it essential that the present articles should contain procedural safeguards against the possibility that the nullity, termination or suspension of the operation of a treaty may be arbitrarily asserted as a mere pretext for getting rid of an inconvenient obligation.

(2) States in the course of disputes have not infrequently used language in which they appeared to maintain that the nullity or termination of a treaty could not be established except by consent of both parties. This presentation of the matter, however, subordinates the application of the principles governing the invalidity, termination and suspension of the operation of treaties to the will of the objecting State no less than the arbitrary assertion of the nullity, termination or suspension of a treaty subordinates their application to the will of the claimant State. The

[274] 1963 draft, article 51.

problem is the familiar one of the settlement of differences between States. In the case of treaties, however, there is the special consideration that the parties by negotiating and concluding the treaty have brought themselves into a relationship in which there are particular obligations of good faith.

(3) In 1963, some members of the Commission were strongly in favour of recommending that the application of the present articles should be made subject to compulsory judicial settlement by the International Court of Justice, if the parties did not agree upon another means of settlement. Other members, however, pointed out that the Geneva Conventions on the Law of the Sea and the two Vienna Conventions respectively on Diplomatic and on Consular Relations did not provide for compulsory jurisdiction. While not disputing the value of recourse to the International Court of Justice as a means of settling disputes arising under the present articles, these members expressed the view that in the present state of international practice it would not be realistic for the Commission to put forward this solution of the procedural problem. After giving prolonged consideration to the question, the Commission concluded that its appropriate course was, first, to provide a procedure requiring a party which invoked the nullity of a treaty or a ground for terminating it to notify the other parties and give them a proper opportunity to state their views, and then, in the event of an objection being raised by the other party, to provide that the solution of the question should be sought through the means indicated in Article 33 of the Charter. In other words, the Commission considered that in dealing with this problem it should take as its basis the general obligation of States under international law to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered" which is enshrined in Article 2, paragraph 3 of the Charter, and the means for the fulfilment of which are indicated in Article 33 of the Charter.

(4) Governments in their comments appeared to be at one in endorsing the general object of the article, namely, the surrounding of the various grounds of invalidity, termination and suspension with procedural safeguards against their arbitrary application for the purpose of getting rid of inconvenient treaty obligations. A number of Governments took the position that paragraphs 1 to 3 of the article did not go far enough in their statement of the procedural safeguards and that specific provisions, including independent adjudication, should be made for cases where the parties are unable to reach agreement. Others, on the other hand, expressed the view that these paragraphs carry the safeguards as far as it is proper to go in the present state of international opinion in regard to acceptance of compulsory jurisdiction. The Commission re-examined the question in the light of these comments and in the light also of the discussions regarding the principle that States "shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered", which have taken place in the two Special Committees on Principles of International Law concerning Friendly Relations and Co-operation between States.[275] It further took into account other evidence of recent State practice, including the Charter and Protocol of the Organization of African Unity. The Commission concluded that the article, as provisionally adopted in 1963, represented the highest measure of common ground that could be found among Governments as well as in the Commission on this question. In consequence, it decided to maintain the rules set out in the 1963 text of the article, subject only to certain drafting changes.

(5) *Paragraph 1* provides that a party claiming the nullity of the treaty or alleging a ground for terminating it or withdrawing from it or suspending its operation shall put in motion a regular procedure under which it must first notify the other parties of its claim. In doing so it must indicate the measure which it proposes to take with respect to the treaty, i.e. denunciation, termination, suspension, etc. and its grounds for taking that measure. Then by *paragraph 2* it must give the other parties a reasonable period within which to reply. Except in cases of special urgency, the period must not be less than three months. The second stage of the procedure depends on whether or not objection is raised by any party. If there is none or there is no reply before the expiry of the period, the party may take the measure proposed in the manner provided in article 63, i.e. by an instrument duly executed and communicated to the other parties. If, on the other hand, objection is raised, the parties are required by *paragraph 3*, to seek a solution to the question through the means indicated in Article 33 of the Charter. The Commission did not find it possible to carry the procedural provisions beyond this point without becoming involved in some measure and in one form or another in compulsory solution to the question at issue between the parties. If after recourse to the means indicated in Article 33 the parties should reach a deadlock, it would be for each Government to appreciate the situation and to act as good faith demands. There would also remain the right of every State, whether or not a Member of the United Nations, under certain conditions, to refer the dispute to the competent organ of the United Nations.

(6) Even if, for the reasons previously mentioned in this commentary, the Commission felt obliged not to go beyond Article 33 of the Charter in providing for procedural checks upon arbitrary action, it considered that the establishment of the procedural provisions of the present article as an integral part of the law relating to the invalidity, termination and suspension of the operation of treaties would be a valuable step forward. The express subordination of the substantive rights arising under the provisions of the various articles to the procedure prescribed in the present article and the checks on unilateral action which the procedure contains would, it was thought, give a substantial measure of protection against purely arbitrary assertions of the nullity, termination or suspension of the operation of a treaty.

(7) *Paragraph 4* merely provides that nothing in the article is to affect the position of the parties under any

[275] Report of the 1964 Special Committee (A/5746), chapter IV; report of the 1966 Special Committee (A/6230), chapter III.

provisions regarding the settlement of disputes in force between the parties.

(8) *Paragraph 5* reserves the right of any party to make the notification provided in paragraph 1 by way of answer to a demand for its performance or to a complaint in regard to its violation, even though it may not previously have initiated the procedure laid down in the article. In cases of error, impossibility of performance or change of circumstances, for example, a State might well not have invoked the ground in question before being confronted with a complaint—perhaps even before a tribunal. Subject to the provisions of article 42 concerning the effect of inaction in debarring a State from invoking a ground of nullity, termination or suspension, it would seem right that a mere failure to have made a prior notification should not prevent a party from making it in answer to a demand for performance of the treaty or to a complaint alleging its violation.

Article 63.[276] Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Commentary

(1) This article and article 64 replace, with considerable modifications, articles 49 and 50 of the draft provisionally adopted in 1963.

(2) Article 50 of the 1963 draft dealt only with the procedure governing notices of termination, withdrawal or suspension under a right provided for in the treaty. In re-examining the article, the Commission noted that the procedure governing the *giving* of notices of termination under a treaty would be adequately covered by the general article on notifications and communications—now article 73—which it had decided to introduce into the draft articles. In other words, it came to the conclusion that the new article made paragraph 1 of article 50 of the 1963 draft otiose. At the same time, it decided that a general provision was required dealing with the instruments by which, either under the terms of the treaty or pursuant to paragraphs 2 and 3 of article 51 (present article 62), an act declaring invalid, terminating or withdrawing from or suspending the operation of a treaty may be carried out. This provision is contained in paragraph 1 of the present article, which the Commission considered should logically be placed after article 62, since the provision in paragraph 1 would necessarily operate only after the application of the procedures in article 62.

(3) Paragraph 2 of the present article replaces article 49 of the 1963 draft, which was entitled "authority to denounce, terminate, etc." and which in effect would have made the rules relating to "full powers" to represent the State in the *conclusion* of a treaty equally applicable in all stages of the procedure for denouncing, terminating, withdrawing from or suspending the operation of a treaty.

One Government in its comments questioned whether the matter could be disposed of satisfactorily by a simple cross reference to the article concerning "full powers". Meanwhile the Commission had itself considerably revised the formulation of the article concerning "full powers". Accordingly, it re-examined the whole question of evidence of authority to denounce, terminate, withdraw from or suspend the operation of a treaty dealt with in article 49 of the 1963 draft. It concluded that in the case of the denunciation, termination, etc. of a treaty there was no need to lay down rules governing evidence of authority in regard to the notification and negotiation stages contemplated in paragraphs 1-3 of article 51 of the 1963 draft, since the matter could be left to the ordinary workings of diplomatic practice. In consequence it decided to confine paragraph 2 of the present article to the question of evidence of authority to execute the final act purporting to declare the invalidity, termination, etc. of a treaty. The Commission considered that the rule concerning evidence of authority to denounce, terminate, etc., should be analogous to that governing "full powers" to express the consent of a State to be bound by a treaty. Paragraph 2 therefore provides that "If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers".

(4) The importance of the present article, in the view of the Commission, is that it calls for the observance of a measure of formality in bringing about the invalidation, termination, etc. of a treaty, and thereby furnishes a certain additional safeguard for the security of treaties. In moments of tension the denunciation or threat to denounce a treaty has sometimes been made the subject of a public utterance not addressed directly to the other State concerned. But it is clearly essential that any such declaration purporting to put an end to or to suspend the operation of a treaty, at whatever level it is made, should not be a substitute for the formal act which diplomatic propriety and legal regularity would seem to require.

Article 64.[277] Revocation of notifications and instruments provided for in articles 62 and 63

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

Commentary

(1) The present article replaces and reproduces the substance of paragraph 2 of article 50 of the 1963 draft.

[276] 1963 draft, articles 49 and 50, para. 1.

[277] 1963 draft, article 50, para. 2.

(2) The Commission appreciated that in their comments certain Governments had questioned the desirability of stating the rule in a form which admitted a complete liberty to revoke a notice of denunciation, termination, withdrawal or suspension prior to the moment of its taking effect. It also recognized that one of the purposes of treaty provisions requiring a period of notice is to enable the other parties to take any necessary steps in advance to adjust themselves to the situation created by the termination of the treaty or the withdrawal of a party. But, after carefully re-examining the question, it concluded that the considerations militating in favour of encouraging the revocation of notices and instruments of denunciation, termination, etc. are so strong that the general rule should admit a general freedom to do so prior to the taking effect of the notice or instrument. The Commission also felt that the right to revoke the notice is really implicit in the fact that it is not to become effective until a certain date and that it should be left to the parties to lay down a different rule in the treaty in any case where the particular subject-matter of the treaty appeared to render this necessary. Moreover, if the other parties were aware that the notice was not to become definitive until after the expiry of a given period, they would, no doubt, take that fact into account in any preparations which they might make. The rule stated in the present article accordingly provides that a notice or instrument of denunciation, termination, etc. may be revoked at any time unless the treaty otherwise provides.

Section 5: Consequences of the invalidity, termination or suspension of the operation of a treaty

Article 65.[278] Consequences of the invalidity of a treaty

1. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) Acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Commentary

(1) This article deals only with the legal effects of the invalidity of a treaty. It does not deal with any questions of responsibility or of redress arising from acts which are the cause of the invalidity of a treaty. Fraud and coercion, for example, may raise questions of responsibility and redress as well as of nullity. But those questions are excluded from the scope of the present articles by the general provision in article 69.

(2) The Commission considered that the establishment of the nullity of a treaty on any of the grounds set forth in section 2 of part V would mean that the treaty was void *ab initio* and not merely from the date when the ground was invoked. Only in the case of the treaty's becoming void and terminating under article 61 of section 3 of that part would the treaty not be invalid as from the very moment of its purported conclusion. Paragraph 1 of this article, in order to leave no doubt upon this point, states simply that the provisions of a void treaty have no legal force.

(3) Although the nullity attaches to the treaty *ab initio*, the ground of invalidity may, for unimpeachable reasons, have not been invoked until after the parties have for some period acted in reliance on the treaty in good faith as if it were entirely valid. In such cases the question arises as to what should be their legal positions in regard to those acts. The Commission considered that where neither party was to be regarded as a wrong-doer in relation to the cause of nullity (i.e. where no fraud, corruption or coercion was imputable to either party), the legal position should be determined on the basis of taking account both of the invalidity of the treaty *ab initio* and of the good faith of the parties. Paragraph 2(*a*) accordingly provides that each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed. It recognizes that in principle the invalidation of the treaty as from the date of its conclusion is to have its full effects and that any party may therefore call for the establishment, so far as possible, of the *status quo ante*. Paragraph 2(*b*), however, protects the parties from having acts performed in good faith in reliance on the treaty converted into wrongful acts simply by reason of the fact that the treaty has turned out to be invalid. The phrase "by reason only of the nullity of the treaty" was intended by the Commission to make it clear that, if the act in question were unlawful for any other reason independent of the nullity of the treaty, this paragraph would not suffice to render it lawful.

(4) Paragraph 3, for obvious reasons, excepts from the benefits of paragraph 2 a party whose fraud, coercion or corrupt act has been the cause of the nullity of the treaty. The case of a treaty void under article 50 by reason of its conflict with a rule of *jus cogens* is not mentioned in paragraph 3 because it is the subject of a special provision in article 67.

(5) Paragraph 4 applies the provisions of the previous paragraphs also in the case of the nullity of the consent of an individual State to be bound by a multilateral treaty. In that case they naturally operate only in the relations between that State and the parties to the treaty.

[278] 1963 draft, article 52.

Article 66.[279] Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Commentary

(1) Article 66, like the previous article, does not deal with any question of responsibility or redress that may arise from acts which are the cause of the termination of a treaty, such as breaches of the treaty by one of the parties; questions of State responsibility are excluded from the draft by article 69.

(2) Some treaties contain express provisions regarding consequences which follow upon their termination or upon the withdrawal of a party. Article XIX of the Convention on the Liability of Operators of Nuclear Ships,[280] for example, provides that even after the termination of the Convention, liability for a nuclear incident is to continue for a certain period with respect to ships the operation of which was licensed during the currency of the Convention. Again some treaties, for example, the European Convention on Human Rights and Fundamental Freedoms,[281] expressly provide that the denunciation of the treaty shall not release the State from its obligations with respect to acts done during the currency of the Convention. Similarly, when a treaty is about to terminate or a party proposes to withdraw, the parties may consult together and agree upon conditions to regulate the termination or withdrawal. Clearly, any such conditions provided for in the treaty or agreed upon by the parties must prevail, and the opening words of paragraph 1 of the article (which are also made applicable to paragraph 2) so provide.

(3) Subject to any conditions contained in the treaty or agreed between the parties, paragraph 1 provides, first, that the termination of a treaty releases the parties from any obligation further to perform it. Secondly, it provides that the treaty's termination does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. The Commission appreciated that different opinions are expressed concerning the exact legal basis, after a treaty has been terminated, of rights, obligations or situations resulting from executed provisions of the treaty, but did not find it necessary to take a position on this theoretical point for the purpose of formulating the rule in paragraph 1(*a*). On the other hand, by the words "any right, obligation or legal situation of the parties created through the execution of the treaty", the Commission wished to make it clear that paragraph 1(*b*) relates only to the right, obligation or legal situation of the States parties to the treaties created through the execution, and is not in any way concerned with the question of the "vested interests" of individuals.

(4) The Commission appreciated that in connexion with article 58 (supervening impossibility of performance) certain Governments raised the question of equitable adjustment in the case of a treaty which has been partially executed by one party only. The Commission, though not in disagreement with the concept behind the suggestions of these Governments, felt that the equitable adjustment demanded by each case would necessarily depend on its particular circumstances. It further considered that, having regard to the complexity of the relations between sovereign States, it would be difficult to formulate in advance a rule which would operate satisfactorily in each case. Accordingly, it concluded that the matter should be left to the application of the principle of good faith in the application of the treaties demanded of the parties by the rule *pacta sunt servanda*.

(5) Paragraph 2 applies the same rules to the case of an individual State's denunciation of or withdrawal from a multilateral treaty in the relation between that State and each of the other parties to the treaty.

(6) The present article has to be read in the light of article 67, paragraph 2 of which lays down a special rule for the case of a treaty which becomes void and terminates under article 61 by reason of the establishment of a new rule of *jus cogens* with which its provisions are in conflict.

(7) The article also has to be read in conjunction with article 40 which provides, *inter alia*, that the termination or denunciation of a treaty or the withdrawal of a party from it is not in any way to impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law. This provision is likely to be of particular importance in cases of termination, denunciation or withdrawal. Moreover, although a few treaties, such as the Geneva Conventions of 1949 for the humanizing of warfare, expressly lay down that denunciation does not impair the obligations of the parties under general international law, the majority do not.

Article 67.[282] Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law

1. In the case of a treaty void under article 50 the parties shall:

(*a*) Eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) Bring their mutual relations into conformity with the peremptory norm of general international law.

[279] 1963 draft, article 53.

[280] Signed at Brussels on 25 May 1962.

[281] Article 65; United Nations *Treaty Series*, vol. 213, p. 252.

[282] New article.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Commentary

(1) The nullity of a treaty *ab initio* by reason of its conflict with a rule of *jus cogens* in force at the time of its conclusion is a special case of nullity. The question which arises in consequence of the invalidity is not so much one of the adjustment of the position of the parties in relation to each other as of the obligation of each of them to bring its position into conformity with the rule of *jus cogens*. Similarly, the termination of a treaty which becomes void and terminates under article 61 by reason of its conflict with a new rule of *jus cogens* is a special case of termination (and indeed also a special case of invalidity, since the invalidity does not operate *ab initio*). Although the rules laid down in article 66, paragraph 1, regarding the consequences of termination are applicable in principle, account has to be taken of the new rule of *jus cogens* in considering the extent to which any right, obligation or legal situation of the parties created through the previous execution of the treaty may still be maintained.

(2) The consequences of the nullity of a treaty under article 50 and of the termination of a treaty under article 61 both being special cases arising out of the application of a rule of *jus cogens*, the Commission decided to group them together in the present article. Another consideration leading the Commission to place these cases in the same article was that their juxtaposition would serve to give added emphasis to the distinction between the original nullity of a treaty under article 50 and the subsequent annulment of a treaty under article 61 as from the time of the establishment of the new rule of *jus cogens*. Having regard to the misconceptions apparent in the comments of certain Governments regarding the possibility of the retroactive operation of these articles, this additional emphasis on the distinction between the nullifying effect of article 50 and the terminating effect of article 61 seemed to the Commission to be desirable.

(3) *Paragraph 1* requires the parties to a treaty void *ab initio* under article 50 first to eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the rule of *jus cogens*, and secondly, to bring their mutual relations into conformity with that rule. The Commission did not consider that in these cases the paragraph should concern itself with the mutual adjustment of their interests as such. It considered that the paragraph should concern itself solely with ensuring that the parties restored themselves to a position which was in full conformity with the rule of *jus cogens*.

(4) *Paragraph 2* applies to cases under article 61 and the rules regarding the consequences of the termination of a treaty set out in paragraph 1 of article 66 with the addition of one important proviso. Any right, obligation or legal situation of the parties created through the execution of the treaty may afterwards be maintained only to the extent that its maintenance is not in itself in conflict with the new rule of *jus cogens*. In other words, a right, obligation or legal situation valid when it arose is not to be made retroactively invalid; but its *further* maintenance after the establishment of the new rule of *jus cogens* is admissible only to the extent that such further maintenance is not in itself in conflict with that rule.

Article 68.[283] Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:

(*a*) Relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(*b*) Does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible.

Commentary

(1) This article, like articles 65 and 66, does not touch the question of responsibility, which is reserved by article 69, but concerns only the direct consequences of the suspension of the operation of the treaty.

(2) Since a treaty may sometimes provide for, or the parties agree upon, the conditions which are to apply during the suspension of a treaty's operation, the rule contained in paragraph 1 is subject to any such provision or agreement. This rule states in paragraph (*a*) that the suspension of the operation of a treaty relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension. The sub-paragraph speaks of relieving "the parties between which the operation of the treaty is suspended" because in certain cases the suspension may occur between only some of the parties to a multilateral treaty, for example, under article 55 (*inter se* agreement to suspend) and article 57, paragraph 2 (suspension in case of breach).

(3) Paragraph 1(*b*), however, emphasizes that the suspension of a treaty's operation "does not otherwise affect the legal relations between the parties established by the treaty". This provision is intended to make it clear that the legal nexus between the parties established by the treaty remains intact and that it is only the operation of its provisions which is suspended.

(4) This point is carried further in paragraph 2, which specifically requires the parties, during the period of the

[283] 1963 draft, article 54.

suspension, to refrain from acts calculated to render the operation of the treaty impossible as soon as the ground or cause of suspension ceases. The Commission considered this obligation to be implicit in the very concept of "suspension", and to be imposed on the parties by their obligation under the *pacta sunt servanda* rule (article 23) to perform the treaty in good faith.

Part VI.—Miscellaneous provisions

Article 69.[284] Cases of State succession and State responsibility

The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State.

Commentary

(1) The Commission, for the reasons explained in paragraphs 29-31 of the Introduction to the present chapter of this Report, decided not to include in the draft articles any provisions relating (1) to the effect of the outbreak of hostilities upon treaties, (2) to the succession of States with respect to treaties, and (3) to the application of the law of State responsibility in case of a breach of an obligation undertaken in a treaty. In reviewing the final draft, and more especially its provisions concerning the termination and suspension of the operation of treaties, the Commission concluded that it would not be adequate simply to leave the exclusion from the draft articles of provisions connected with the second and third topics for explanation in the introduction to this chapter. It decided that an express reservation in regard to the possible impact of a succession of States or of the international responsibility of a State on the application of the present articles was desirable in order to prevent any misconceptions from arising as to the interrelation between the rules governing those matters and the law of treaties. Both these matters may have an impact on the operation of certain parts of the law of treaties in conditions of entirely normal international relations, and the Commission felt that considerations of logic and of the completeness of the draft articles indicated the desirability of inserting a general reservation covering cases of succession and cases of State responsibility.

(2) Different considerations appeared to the Commission to apply to the case of an outbreak of hostilities between parties to a treaty. It recognized that the state of facts resulting from an outbreak of hostilities may have the practical effect of preventing the application of the treaty in the circumstances prevailing. It also recognized that questions may arise as to the legal consequences of an outbreak of hostilities with respect to obligations arising from treaties. But it considered that in the international law of to-day the outbreak of hostilities between States must be considered as an entirely abnormal condition, and that the rules governing its legal consequences should not be regarded as forming part of the general rules of international law applicable in the normal relations between States. Thus, the Geneva Conventions codifying the law of the sea contain no reservation in regard to the case of an outbreak of hostilities notwithstanding the obvious impact which such an event may have on the application of many provisions of those Conventions; nor do they purport in any way to regulate the consequences of such an event. It is true that one article in the Vienna Convention on Diplomatic Relations (article 44) and a similar article in the Convention on Consular Relations (article 26) contain a reference to cases of "armed conflict". Very special considerations, however, dictated the mention of cases of armed conflict in those articles and then only to underline that the rules laid down in the articles hold good even in such cases. The Vienna Conventions do not otherwise purport to regulate the consequences of an outbreak of hostilities; nor do they contain any general reservation with regard to the effect of that event on the application of their provisions. Accordingly, the Commission concluded that it was justified in considering the case of an outbreak of hostilities between parties to a treaty to be wholly outside the scope of the general law of treaties to be codified in the present articles; and that no account should be taken of that case or any mention made of it in the draft articles.

(3) The reservation regarding cases of a succession of States and of international responsibility is formulated in the present article in entirely general terms. The reason is that the Commission considered it essential that the reservation should not appear to prejudge any of the questions of principle arising in connexion with these topics, the codification of both of which the Commission already has in hand.

Article 70.[285] Case of an aggressor State

The present articles are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

Commentary

(1) In its commentary on article 31, which specifies that an obligation arises for a third State from a provision in a treaty only with its consent, the Commission noted that the case of an aggressor State would fall outside the principle laid down in the article. At the same time, it observes that article 49 prescribes the nullity of a treaty procured by the coercion of a State by the threat or use of force "in violation of the principles of the Charter of the United Nations", and that a treaty provision imposed on an aggressor State would not therefore infringe article 49. Certain Governments also made this point in their comments on article 59 of the 1964 draft (present article 31), and suggested that a reservation covering the case of an aggressor should be inserted in the article. In examining this suggestion at the present session, the Commission concluded that, if such a reservation were to be formulated, a more general reservation

[284] New article.

[285] New article.

with respect to the case of an aggressor State applicable to the draft articles as a whole might be preferable. It felt that there might be other articles, for example, those on termination and suspension of the operation of treaties, where measures taken against an aggressor State might have implications.

(2) Two main points were made in the Commission in this connexion. First, if a general reservation were to be introduced covering the draft articles as a whole, some members stressed that it would be essential to avoid giving the impression that an aggressor State is to be considered as completely *exlex* with respect to the law of treaties. Otherwise, this might impede the process of bringing the aggressor State back into a condition of normal relations with the rest of the international community.

(3) Secondly, members stressed the possible danger of one party unilaterally characterizing another as an aggressor for the purpose of terminating inconvenient treaties; and the need, in consequence, to limit any reservation relating to the case of an aggressor State to measures taken against it in conformity with the Charter.

(4) Some members questioned the need to include a reservation of the kind proposed in a general convention on the law of treaties. They considered that the case of an aggressor State belonged to a quite distinct part of international law, the possible impact of which on the operation of the law of treaties in particular circumstances could be assumed and need not be provided for in the draft articles. The Commission, however, concluded that, having regard to the nature of the above-mentioned provisions of articles 49 and 31, a general reservation in regard to the case of an aggressor State would serve a useful purpose. At the same time, it concluded that the reservation, if it was to be acceptable, must be framed in terms which would avoid the difficulties referred to in paragraphs (2) and (3) above.

(5) Accordingly, the Commission decided to insert in the present article a reservation formulated in entirely general terms and stating that the present articles on the law of treaties are "without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression".

Part VII.—Depositaries, notifications, corrections and registration

Article 71.[286] Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Commentary

(1) The depositary of a treaty, whose principal functions are set out in the next article, plays an essential procedural role in the smooth operation of a multilateral treaty. A multilateral treaty normally designates a particular State or international organization as depositary. In the case of a treaty adopted within an international organization or at a conference convened under its auspices, the usual practice is to designate the competent organ of the organization as depositary, and in other cases the State in whose territory the conference is convened. The text of this article, as provisionally adopted in 1962, gave expression to this practice in the form of residuary rules which would govern the appointment of the depositary of a multilateral treaty in the absence of any nomination in the treaty itself. No Government raised any objection to those residuary rules, but in re-examining the article at its seventeenth session, the Commission revised its opinion as to the utility of the rules and concluded that the matter should be left to the States which drew up the treaty to decide. Paragraph 1 of the article, as finally adopted, therefore simply provides that "The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner".

(2) At its seventeenth session the Commission also decided to transfer to the present article the substance of what had appeared in its 1962 draft as paragraph 1 of article 29. This paragraph stressed the representative character of the depositary's functions and its duty to act impartially in their performance. In revising the provision the Commission decided that it was preferable to speak of a depositary's functions being *international* in character. Accordingly, paragraph 2 of the present article now states that "The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance". When the depositary is a State, in its capacity as a party it may of course express its own policies; but as depositary it must be objective and perform its functions impartially.

Article 72.[287] Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:

(*a*) Keeping the custody of the original text of the treaty, if entrusted to it;

(*b*) Preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the States entitled to become parties to the treaty;

(*c*) Receiving any signatures to the treaty and any instruments and notifications relating to it;

(*d*) Examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question;

[286] 1962 draft, articles 28 and 29, para. 1, and 1965 draft, article 28.

[287] 1962 and 1965 drafts, article 29.

(*e*) Informing the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;

(*f*) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty has been received or deposited;

(*g*) Performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the other States entitled to become parties to the treaty or, where appropriate, of the competent organ of the organization concerned.

Commentary

(1) Mention is made of the depositary in various provisions of the present articles and the Commission considered it desirable to state in a single article the principal functions of a depositary. In doing so, it gave particular attention to the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements.*[288] Paragraph 1, therefore, without being exhaustive, specifies the principal functions of a depositary. The statement of these functions in the text of an article provisionally adopted in 1962 has been shortened and modified in the light of the comments of Governments.

(2) *Paragraph 1*(a) speaks of the depositary's function of "keeping the custody of the original text of the treaty, *if entrusted to it*". This is because sometimes, for example, the original text is permanently or temporarily deposited with the host State of a conference while an international organization acts as the depositary, as in the case of the Vienna Conventions on Diplomatic and Consular Relations.

(3) *Paragraph 1*(b) needs no comment other than to mention that the requirement for the preparation of texts in additional languages may possibly arise from the rules of an international organization, in which case the matter is covered by article 4. *Paragraph 1*(c) needs no comment.

(4) *Paragraph 1*(d) recognizes that a depositary has a certain duty to examine whether signatures, instruments and reservations are in conformity with any applicable provisions of the treaty or of the present articles, and if necessary to bring the matter to the attention of the State in question. That is, however, the limit of the depositary's duty in this connexion. It is no part of the functions to adjudicate on the validity of an instrument or reservation. If an instrument or reservation appears to be irregular, the proper course of a depositary is to draw the attention of the reserving State to the matter and, if the latter does not concur with the depositary, to communicate the reservation to the other interested States and bring the question of the apparent irregularity to their attention in accordance with paragraph 2 of the present article.

[288] ST/LEG/7.

(5) *Paragraph 1*(e) needs no comment except to recall the significance of article 73 in this connexion and to underline the obvious desirability of the prompt performance of this function by a depositary.

(6) *Paragraph 1*(f) notes the duty of the depositary to inform the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, etc. required for the entry into force of the treaty have been received or deposited. The question whether the required number has been reached may sometimes pose a problem, as when questionable reservations have been made. In this connexion, as in others, although the depositary has the function of making a preliminary examination of the matter, it is not invested with competence to make a final determination of the entry into force of the treaty binding upon the other States concerned. However normal it may be for States to accept the depositary's appreciation of the date of the entry into force of a treaty, it seems clear that this appreciation may be challenged by another State and that then it would be the duty of the depositary to consult all the other interested States as provided in paragraph 2 of the present article.

(7) *Paragraph 1*(g) needs no comment.

(8) *Paragraph 2* lays down the general principle that in the event of any differences appearing between any State and the depositary as to the performance of the latter's functions, the proper course and the duty of the depositary is to bring the question to the attention of the other negotiating States or, where appropriate, of the competent organ of the organization concerned. This principle really follows from the fact that, as indicated above, the depositary is not invested with any competence to adjudicate upon or to determine matters arising in connexion with the performance of its functions.

Article 73.[289] Notifications and communications

Except as the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the present articles shall:

(*a*) If there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) Be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) If transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1(*e*).

Commentary

(1) The drafts provisionally adopted by the Commission at its fourteenth, fifteenth and sixteenth sessions contained a number of articles in which reference was made to communications or notifications to be made directly to the States concerned, or if there was a depositary, to the

[289] 1965 draft, article 29(*bis*).

latter. Article 29 of the 1962 draft also contained provisions regarding the duty of a depositary to transmit such notifications or communications to the interested States. In re-examining certain of these provisions at its seventeenth session the Commission concluded that it would allow a considerable simplification to be effected in the texts of the various articles if a general article were to be introduced covering notifications and communications.

(2) If the treaty itself contains provisions regulating the making of notifications or communications required under its clauses, they necessarily prevail, as the opening phrase of the article recognizes. But the general rule contained in sub-paragraph (*a*), which reflects the existing practice, is that if there is no depositary, a notification or communication is to be transmitted directly to the State for which it is intended, whereas if there is a depositary it is to be transmitted to the latter, whose function it will be under article 72 to inform the other States of the notification or communication. Such is, therefore, the rule given in sub-paragraph (*a*) of this article. This rule relates essentially to notifications and communications relating to the "life" of the treaty—acts establishing consent, reservations, objections, notices regarding invalidity, termination, etc. Treaties which have depositaries, such as the Vienna Conventions on Diplomatic and Consular Relations, may contain provisions relating to substantive matters which require notifications. Normally, the context in which they occur will make it plain that the notifications are to be made directly to the State for which they are intended; and in any event the Commission considered that in such cases the procedure to be followed would be a matter of the interpretation of the treaty.

(3) The problem which principally occupied the Commission related to the legal questions as to the points of time at which a notification or communication was to be regarded as having been accomplished by the State making it, and as operative with respect to the State for which it was intended. Sub-paragraphs (*b*) and (*c*) express the Commission's conclusions on these questions. The Commission did not consider that there was any difficulty when the notification or communication was transmitted directly to the State for which it was intended. In these cases, in its opinion, the rule must be that a notification or communication is not to be considered as "made" by the State transmitting it until it has been received by the State for which it is intended. Equally, of course, it is not to be considered as received by, and legally in operation with respect to, the latter State until that moment. Such is the rule laid down in paragraph (*b*) for these cases.

(4) The main problem is the respective positions of the transmitting State and of the other States when a notification or communication is sent by the former to the depositary of the treaty. In these cases, there must in the nature of things be some interval of time before the notification is received by the State for which it is intended. Inevitably, the working of the administrative processes of the depositary and the act of retransmission will entail some delay. Moreover, the Commission was informed that in practice cases are known to occur where the delay is a matter of weeks rather than of days. The question of principle at issue is whether the depositary is to be considered the agent of each party so that receipt of a notification or communication by a depositary must be treated as the equivalent of receipt by the State for which it was intended. On this question the majority of the Commission concluded that the depositary is to be considered as no more than a convenient mechanism for the accomplishment of certain acts relating to a treaty and for the transmission of notifications and communications to the States parties to or entitled to become parties to the treaty. Consequently, in its view the depositary should not be regarded as the general agent of each party, and receipt by the depositary of a notification or communication should not be regarded as automatically constituting a receipt also by every State for which it is intended. If the contrary view were to be adopted, the operation of various forms of time-limits provided for in the present articles or specified in treaties might be materially affected by any lack of diligence on the part of a depositary, to the serious prejudice of the intended recipient of a notification or communication, for example, under article 17, paragraphs 4 and 5, relating to objections to reservations, and article 62, paragraphs 1 and 2, relating to notification of a claim to invalidate, terminate, etc. a treaty. Equally, the intended recipient, still unaware of a notification or communication, might in all innocence commit an act which infringed the legal rights of the State making it.

(5) The Commission recognized that, owing to the time-lag which may occur between transmission by the sending State to the depositary and receipt of the information by the intended addressee from the depositary, delicate questions of the respective rights and obligations of the two States vis-à-vis each other may arise in theory and occasionally in practice. It did not, however, think that it should attempt to solve all such questions in advance by a general rule applicable in all cases and to every type of notification or communication. It considered that they should be left to be governed by the principle of good faith in the performance of treaties in the light of the particular circumstances of each case. The Commission therefore decided to confine itself, in cases where there is a depositary, to stating two basic procedural rules regarding (*a*) the making of a notification or communication by the sending State and (*b*) its receipt by the State for which it is intended.

(6) Accordingly, paragraph (*b*) provides that, so far as the sending State is concerned, the State will be considered as having *made* a notification or communication on its receipt by the depositary; a sending State will thus be considered as having, for example, made a notice of objection to a reservation or a notice of termination when it has reached the depositary. Paragraph (*b*), on the other hand, provides that a notification or communication shall be considered as received by the State for which it is intended only upon this State's having been informed of it by the depositary. Thus, the commencing date of any time-limit fixed in the present articles would be the date of receipt of the information by the State for which the notification or communication was intended.

(7) The rules set out in paragraphs (*a*), (*b*) and (*c*) of the article are prefaced by the words "Except as the treaty or the present articles may otherwise provide". Clearly, if the treaty, as not infrequently happens, contains any specific provisions regarding notification or communication, these will prevail. The exception in regard to the "present articles" is stressed in the opening phrase primarily in order to prevent any misconception as to the relation between the present article and articles 13 (exchange or deposit of instruments of ratification, acceptance, etc.) and 21 (entry into force of treaties). As already explained in the commentary to article 13, what is involved in sub-paragraphs (*b*) and (*c*) of that article is only the performance of an act required by the treaty to establish the consent of a State to be bound. The parties have accepted that the act of deposit will be sufficient by itself to establish a legal nexus between the depositing State and any other State which has expressed its consent to be bound by the treaty. The depositary has the duty to inform the other States of the deposit but the notification, under existing practice, is not a substantive part of the transaction by which the depositing State establishes legal relations with them under the treaty. Some conventions, such as the Vienna Conventions on Diplomatic and Consular Relations, for that very reason provide that a short interval of time shall elapse before the act of ratification, etc. comes into force for the other contracting States. But unless the treaty otherwise states, "notification" is not, as such, an integral part of the process of establishing the legal nexus between the depositing State and the other contracting States. Similarly, in the case of entry into force, notification is not, unless the treaty so stipulates, an integral element in the process of entry into force. In consequence, it is not considered that there is, in truth, any contradiction between articles 13 and 21 and the present article. But in any event, the specific provisions of those articles prevail.

(8) The scope of the article is limited to notifications and communications "to be made . . . under the present articles". As already mentioned in paragraph (2) of this commentary, the notifications and communications requiring to be made under treaties are of different kinds. As the rules set out in the present article would be inappropriate in some cases, the Commission decided to limit the operation of the article to notices and communications to be made under any of the present articles.

Article 74.[290] Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected:

(*a*) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) By executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(*a*) Shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(*b*) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the contracting States;

(*c*) If an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the contracting States agree should be corrected.

4. (*a*) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide;

(*b*) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the contracting States.

Commentary

(1) Errors and inconsistencies are sometimes found in the texts of treaties and the Commission considered it desirable to include provisions in the draft articles concerning methods of rectifying them. The error or inconsistency may be due to a typographical mistake or to a misdescription or mis-statement due to a misunderstanding and the correction may affect the substantive meaning of the text as authenticated. If there is a dispute as to whether or not the alleged error or inconsistency is in fact such, the question is not one simply of correction of the text but becomes a problem of mistake which falls under article 45. The present article only concerns cases where there is no dispute as to the existence of the error or inconsistency.

(2) As the methods of correction differ somewhat according to whether there is or is not a depositary, the draft provisionally adopted in 1962 dealt with the two cases in separate articles.[291] This involved some repetition, and at its seventeenth session the Commission decided to combine the two articles. At the same time, in the light of the comments of Governments, it streamlined their provisions. The present article thus contains in shortened form the substance of the two articles adopted in 1962.

(3) *Paragraph 1* covers the correction of the text when there is no depositary. Both the decision whether to proceed to a formal correction of the text and the method

[290] 1962 draft, articles 26 and 27, and 1965 draft, article 26.

[291] Articles 26 and 27.

of correction to be adopted are essentially matters for the States in question. The rule stated in paragraph 1 is, therefore, purely residuary and its object is to indicate the appropriate method of proceeding in the event of the discovery of an error in a text. It provides that the text should be corrected by one of three regular techniques.[292] The normal methods in use are those in sub-paragraphs (*a*) and (*b*). Only in the extreme case of a whole series of errors would there be occasion for starting afresh with a new revised text as contemplated in sub-paragraph (*c*).[293]

(4) *Paragraph 2* covers the cases where the treaty is a multilateral treaty for which there is a depositary. Here the process of obtaining the agreement of the interested States to the correction or rectification of the text is affected by the number of States, and the technique used hinges upon the depositary. In formulating the paragraph the Commission based itself upon the information contained in the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements.*[294] The technique is for the depositary to notify all the interested States of the error or inconsistency and of the proposal to correct the text, while at the same time specifying an appropriate time-limit within which any objection must be raised. Then, if no objection is raised, the depositary, as the instrument of the interested States, proceeds to make the correction, draw up a *procès-verbal* recording the fact and circulate a copy of the *procès-verbal* to the States concerned. The precedent on page 9 of the *Summary of Practice* perhaps suggests that the Secretary-General considers it enough, in the case of a typographical error, to obtain the consent of those States which have already signed the offending text. In laying down a general rule, however, it seems safer to say that notification should be sent to all the contracting States, since it is conceivable that arguments might arise as to whether the text did or did not contain a typographical error, e.g. in the case of punctuation that may affect the meaning.

(5) *Paragraph 3* applies the techniques of paragraphs 1 and 2 also to cases where there is a discordance between two or more authentic language versions one of which it is agreed should be corrected. The Commission noted that the question may also arise of correcting not the authentic text but versions of it prepared in other languages; in other words, of correcting errors of translation. As, however, this is not a matter of altering an authentic text of the treaty, the Commission did not think it necessary that the article should cover the point. In these cases, it would be open to the contracting States to modify the translation by mutual agreement without any special formality. Accordingly, the Commission thought it sufficient to mention the point in the commentary.

(6) *Paragraph 4*(a), in order to remove any possible doubts, provides that the corrected text replaces the defective text *ab initio* unless it is otherwise agreed. Since what is involved is merely the correction or rectification of an already accepted text, it seems clear that, unless the contracting States otherwise agree, the corrected or rectified text should be deemed to operate from the date when the original text came into force.

(7) The rules contained in the article contemplate that in cases where there is a depositary it will be necessary to seek the assent of the "contracting States" to the making of the correction. The Commission appreciated that "negotiating States" which have not yet established their consent to be bound by the treaty also have a certain interest in any correction of the text, and that in practice a depositary will normally notify the "negotiating" as well as the "contracting" States of any proposal to make a correction to the text. Indeed, the Commission considered whether, at any rate for a certain period after the adoption of the text, the article should specifically require the depositary to notify all "negotiating States" as well as "contracting States". However, it concluded that to do this would make the article unduly complicated and that, placing the matter on the plane of a right rather than simply of diplomacy, only "contracting States" should be considered as having an actual *legal right* to a voice in any decision regarding a correction. Accordingly, it decided to confine the obligation of a depositary to notifying and seeking the assent of "contracting States". At the same time, it emphasized that the restriction of the provisions of the article to "contracting States" was not to be understood as in any way denying the desirability, on the diplomatic plane, of the depositary's also notifying all the "negotiating States", especially if no long period of time has elapsed since the adoption of the text of the treaty.

(8) *Paragraph 4*(b) provides that the correction of a text that has been registered shall be notified to the Secretariat of the United Nations. Its registration with the Secretary-General would clearly be in accordance with the spirit of article 2 of the General Assembly's Regulations concerning the Registration and Publication of Treaties and International Agreements,[295] and appeared to the Commission to be desirable.

(9) Certified copies of the text are of considerable importance in the operation of multilateral treaties, since it is the certified copy which represents a text of the treaty in the hands of the individual State. Since there exists a correct authentic text and it is only a question of making the copy accord with the correct text, the detailed procedure laid down in paragraph 2 for correcting an authentic text is unnecessary. *Paragraph 5*, therefore, provides for an appropriate *procès-verbal* to be executed and communicated to the contracting States.

[292] See *Hackworth's Digest of International Law*, vol. 5, pp. 93-101, for instances in practice.

[293] For an example, see *Hackworth's Digest of International Law*, *loc. cit.*

[294] See pages 8-10, 12, 19-20, 39 (footnote), and annexes 1 and 2.

[295] Article 2 reads: "When a treaty or international agreement has been registered with the Secretariat, a certified statement regarding any subsequent action which effects a change in the parties thereto, or the terms, scope or application thereof, shall also be registered with the Secretariat".

Article 75.[296] Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

Commentary

(1) Article 102 of the Charter, repeating in somewhat different terms an analogous provision in Article 18 of the Covenant of the League of Nations, provides in paragraph 1 that every treaty and every international agreement entered into by any Member of the United Nations after the Charter came into force shall "as soon as possible be registered with the Secretariat and published by it". Although the Charter obligation is limited to Member States, non-member States have in practice "registered" their treaties habitually with the Secretariat of the United Nations. Under article 10 of the Regulations concerning the Registration and Publication of Treaties and International Agreements adopted by the General Assembly, the term used instead of "registration" when no Member of the United Nations is party to the agreement is "filing and recording", but in substance this is a form of voluntary registration. The Commission considered that it would be appropriate that all States becoming parties to a convention on the law of treaties should undertake a positive obligation to register treaties with the Secretariat of the United Nations. The Commission appreciated that certain other international organizations have systems of registration for treaties connected with the organization. But these special systems of registration do not affect the obligation laid down in the Charter to register treaties and international agreements with the Secretariat of the United Nations nor, in the Commission's view, the desirability of generalizing this obligation so as to make the central system of registration with the United Nations as complete as possible.

(2) The present article accordingly provides that "treaties entered into by *parties to the present articles* shall as soon as possible be registered with the Secretariat of the United Nations". The term "registration" is used in its general sense to cover both "registration" and "filing and recording" within the meaning of those terms in the regulations of the General Assembly. Whether the term "filing and recording" should continue to be used, rather than "registration", would be a matter for the General Assembly and the Secretary-General to decide. The Commission hesitated to propose that the sanction applicable under Article 102 of the Charter should also be specifically applied to non-members. But since it is a matter which touches the procedures of organs of the United Nations it thought that breach of such an obligation accepted by non-members in a general Convention could logically be regarded in practice as attracting that sanction.

(3) The second sentence of the article provides that the registration and publication are to be governed by the regulations adopted by the General Assembly. The Commission considered whether it should incorporate in the draft articles the provisions of the General Assembly's Regulations adopted in its resolution 97 (I) of 14 December 1946 (as amended by its resolutions 364B (IV) of 1 December 1949 and 482 (V) of 12 December 1950). These regulations are important as they define the conditions for the application of Article 102 of the Charter. However, having regard to the administrative character of these regulations and to the fact that they are subject to amendment by the General Assembly, the Commission concluded that it should limit itself to incorporating the regulations in article 75 by reference to them in general terms.

[296] 1962 and 1965 drafts, article 25.

Blank page

Page blanche

C.—REPORTS OF THE COMMITTEE OF THE WHOLE

DOCUMENT A/CONF.39/14

Report of the Committee of the Whole on its work at the first session of the Conference

[*Original: English*]
[*1 May 1969*]

CONTENTS

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CONTENTS (*continued*)

CHAPTER I

INTRODUCTION

A. Submission of the report

1. By its resolution 2166 (XXI) of 5 December 1966, the General Assembly of the United Nations decided that an international conference of plenipotentiaries should be convened, the first session to be held early in 1968 and the second early in 1969, to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Subsequently, by its resolution 2287 (XXII) of 6 December 1967, the General Assembly decided that the first session of the Conference should be convened at Vienna, in March 1968.

2. The first session of the United Nations Conference on the Law of Treaties opened on 26 March 1968 at the Neue Hofburg, Vienna. At its first plenary meeting, on that date, the Conference, *inter alia*, established a single Committee of the Whole, to which it referred item 11 (*a*) of the agenda adopted by the Conference (A.CONF.39/8), namely "Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966". The present document contains the report of the Committee of the Whole to the Conference on its consideration of that item at the first session of the Conference.

B. Expression of thanks

3. At the outset of its report, the Committee of the Whole wishes to place on record its deep appreciation to the Federal Government and to the people of the Republic of Austria for making possible the holding of the Conference in Vienna, and for their generous hospitality and great contribution to the successful completion of the work of the Committee.

4. The Committee of the Whole also wishes to express its gratitude to the International Law Commission for its outstanding contribution to the progressive development and codification of the law of treaties.

5. Finally, the Committee of the Whole must express its most sincere thanks to the Drafting Committee of the Conference, and to the Expert Consultant, Sir Humphrey Waldock, for their unfailing and invaluable assistance in assuring the success of the work of the Committee of the Whole.

C. Election of officers and of the Drafting Committee: Secretariat of the Conference

6. On 27 March 1968, the Conference, at its second plenary meeting, elected by acclamation the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. At its third plenary meeting, on the same day, the Conference agreed to the recommendation of its General Committee that, in addition to the Chairman of the Drafting Committee and the Rapporteur of the Committee of the Whole, the Drafting Committee should be composed of representatives of Argentina, China, Congo (Brazzaville), France, Ghana, Japan, Kenya, the Netherlands, Poland, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Vice-Chairman and Rapporteur of the Committee of the Whole had been elected by acclamation earlier on the same day at the first meeting of the Committee of the Whole. The officers elected were as follows:

Chairman of the Committee of the Whole: Mr. Taslim Olowale Elias (Nigeria);

Vice-Chairman of the Committee of the Whole: Mr. Josef Smejkal (Czechoslovakia);

Rapporteur of the Committee of the Whole: Mr. Eduardo Jiménez de Aréchaga (Uruguay);

Chairman of the Drafting Committee: Mr. Mustafa Kamil Yasseen (Iraq).

7. At the first session of the Conference, the Secretariat was composed as follows: Representative of the Secretary-General of the United Nations, Mr. C. A. Stavropoulos; Executive Secretary of the Conference, Mr. A. Movchan; Secretary of the Committee of the Whole, Mr. G. W. Wattles; Assistant Secretaries of the Committee of the Whole, Mr. J. F. Scott and Mr. V. Prusa; Secretary of the Drafting Committee, Mr. N. Teslenko; Deputy Secretary of the Drafting Committee, Mr. S. Torres-Bernárdez.

D. Basic proposal and background documentation

(i) BASIC PROPOSAL

8. In accordance with rule 29 of the rules of procedure (A/CONF.39/10), adopted by the Conference at its first plenary meeting on 26 March 1968, the Committee of the Whole had before it as the basic proposal the draft articles on the law of treaties adopted by the International Law Commission at its eighteenth session. [1]

(ii) BACKGROUND DOCUMENTATION

9. The Committee of the Whole, in addition to the relevant records of the International Law Commission and of the General Assembly also had available to it the following background documentation:

(a) *A selected bibliography on the law of treaties* (A/CONF.39/4);

(b) *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* (A/CONF.39/5, vols. I and II);

[1] See section B above.

(c) *Comments and amendments to the final draft articles on the law of treaties submitted in 1968 in advance of the Conference in accordance with General Assembly resolution 2287 (XXII)* (A/CONF.39/6 and Add.1 and 2);

(d) *Written statements submitted by specialized agencies and intergovernmental bodies invited to send observers to the Conference* (A/CONF.39/7 and Add.1 and 2 and Add.1/Corr.1).

E. Meetings, organization of work and reports of the Drafting Committee

(i) Meetings

10. The Committee of the Whole held 83 meetings, between 27 March and 24 May 1968. The Drafting Committee held 45 meetings, between 1 April and 23 May 1968.

(ii) Organization of work

11. In organizing its work, the Committee of the Whole used its best endeavours to follow the guide-lines set forth in the memorandum by the Secretary-General on "Methods of Work and Procedures of the First Session of the Conference" (A/CONF.39/3). which had been approved by the Conference, on the recommendation of the General Committee, at its third plenary meeting, on 27 March 1968. Weekly reports on the progress achieved were issued by the Secretariat (A/CONF.39/3/Add.1 to 8).

12. The Committee of the Whole proceeded mainly by way of article-by-article discussion of the draft articles before it and the amendments submitted to them. After initial consideration of an article and amendments by the Committee, and subject to such decisions as might have been taken on these amendments, the article was referred to the Drafting Committee. In certain instances, the Committee voted upon the principle contained in amendments, the Drafting Committee being requested, in case of adoption, to recommend the precise formulation of the principle.

13. Subsequent to its initial consideration of each article, the Committee of the Whole considered the report of the Drafting Committee on that article and proceeded to take a decision on the text recommended. In many instances, where there appeared to be very substantial or overwhelming support for the text, this decision was taken without formal vote, on the understanding that the summary records would reflect statements and reservations expressed on certain articles by a number of representatives during the consideration by the Committee of the Whole of the reports of the Drafting Committee. In other instances a formal vote was taken.

14. In the course of the first session, the Committee of the Whole discussed all the articles contained in the basic proposal, together with a number of proposed new articles. However, as indicated under the article concerned in chapter II of this report, the Committee reserved decisions on certain articles until the second session of the Conference. The articles concerned are as follows: 2, 5*bis* (proposed new article), 8, 12, 17, 26, 36, 37, 55, 62*bis* (proposed new article), 66 and 76. The Committee also adopted a number of resolutions submitted in connexion with the articles before it. A further resolution, submitted by Nigeria at the 83rd meeting of the Committee of the Whole and adopted without objection at that meeting, dealt with arrangements for the second session of the Conference (A/CONF.39/C.1/L.378). The texts of all these resolutions will be found in chapter III of this report.

(iii) Reports of the Drafting Committee

15. The reports of the Drafting Committee took the form of the texts adopted. These reports did not elaborate upon particular points considered, or the reasons why certain amendments which had been referred to the Drafting Committee as drafting points had, or had not, been accepted. Each article recommended by the Drafting Committee was, however, introduced in the Committee of the Whole by the Chairman of the Drafting Committee, who described the main considerations which had resulted in the recommendations concerned. These statements by the Chairman of the Drafting Committee are to be found in the summary records of the Committee of the Whole.

16. The Drafting Committee took certain decisions regarding the text as a whole, to which attention should be drawn.

(*a*) In connexion with its consideration of article 1, the Drafting Committee decided that the word "Convention" should replace references to "articles", where appropriate, throughout the text. This decision was accepted without objection, by the Committee of the Whole.

(*b*) The Drafting Committee also decided, as explained by its Chairman at the 28th meeting of the Committee of the Whole, on 18 April 1968, to defer consideration of the titles of the parts, sections and articles of the draft convention, because their wording would depend upon the actual contents of the articles themselves. Except in the case of article 1, therefore, the texts of articles adopted by the Committee of the Whole, as set out in chapter II below, are not preceded by titles.

(*c*) As further explained by the Chairman of the Drafting Committee at the 28th meeting of the Committee of the Whole, the Drafting Committee decided that subparagraphs of an article which did not form a grammatically complete sentence should, for grammatical reasons, commence with a small letter. This decision is reflected in the texts of the articles adopted, and set out below in chapters II and III of the present report.

(*d*) At the 59th meeting of the Committee of the Whole, on 8 May 1968, the Chairman of the Drafting Committee explained the procedure followed by the Drafting Committee in preparing the texts of the articles in the different official languages. He stated that those members of the Drafting Committee whose mother tongue was Chinese, Russian or Spanish carefully studied the text of the International Law Commission's draft prepared in their language and submitted from time to time to the Drafting Committee corrections to the syntax or terminology. The Drafting Committee then referred such corrections to the Conference's language services so that the latter could ensure that they did not affect the versions in the other languages. When this had been ascertained,

the corrections were incorporated in the text of the language to which they related. The text, so corrected, was to be found in the reports submitted by the Drafting Committee to the Committee of the Whole.

F. Organization of the report of the Committee of the Whole; summary records, and statements for the report

(i) Organization of the report

17. In addition to the introduction, the present report contains two other chapters, the last of which sets out the text of the articles of the draft convention prepared by the Committee of the Whole and of the draft resolutions adopted. An annex contains a check-list of documentation submitted during the first session of the Conference to the Committee of the Whole.

18. Chapter II is entitled "Consideration by the Committee of the Whole of the draft articles on the law of treaties." This chapter describes the proceedings of the Committee, article by article. Except in a few cases, where amendments sought to combine certain articles and the articles were also discussed together, each article is treated separately. As far as possible, the form of the basic proposal before the Committee, namely the draft articles on the law of treaties adopted by the International Law Commission at its eighteenth session, has been followed. The titles of parts, sections and articles have been retained in chapter II below, except so far as the final text adopted is concerned, in view of the decision of the Drafting Committee on this point recorded in paragraph 16 (*b*) above. The original numbering of the articles has also been retained, new articles being designated *9bis*, *10bis*, etc., except in the case of new article 76, which follows the last of the articles recommended by the International Law Commission.

19. In most cases, the articles in chapter II are dealt with in accordance with the following plan:

(*a*) First, the text of the International Law Commission's draft article, or the text of a proposed new article, is set out.

(*b*) Next come the texts of amendments, if any, with a brief indication of the manner in which they were disposed of.

(*c*) The proceedings of the Committee of the Whole are then described. The numbers of the meetings at which an article was discussed are first given. Under the sub-heading "Initial consideration", amendments which were withdrawn are listed, the results of the voting on amendments or important procedural points are given, and the amendments referred to the Drafting Committee are also indicated. Under the sub-heading "Consideration of the report of the Drafting Committee", the number of the meeting at which the Chairman of the Drafting Committee introduced the text proposed by his Committee is given, together with the decision taken by the Committee of the Whole, including the vote, if any. Finally, the text adopted by the Committee of the Whole is set out under a separate sub-heading. Departures from this pattern occur only where an article was deleted or the final decision was deferred until the second session of the Conference.

(ii) Summary records

20. Chapter II of this report is designed to be read in conjunction with the summary records of the Committee of the Whole (A/CONF.39/C.1/SR.1 to SR.83). In particular, for the reasons indicated in paragraph 15 above, attention is drawn to the statements made by the Chairman of the Drafting Committee when introducing texts proposed by that Committee.

(iii) Statements for the report

21. It has not been possible to include in chapter II of this report any summary of the discussion, or to state which representatives spoke on a particular article, except where formal proposals were made and decided upon. A number of representatives, however, requested in the course of debate that there should be a reference in this report to particular statements which they made. These statements are here indicated by a reference to the summary records in which they will be found.

(a) *18th meeting.* Statement by the representative of *Ecuador*, made in connexion with the Committee's consideration of draft article 11, recording his delegation's views on the meaning which should be given to the word "consent" in the draft articles.

(b) *27th meeting.* Statement by the representative of *Ecuador*, made in connexion with the Committee's consideration of draft article 22, recording his delegation's views on the distinction between the entry into force and the validity of treaties.

(c) *31st meeting.* Statement by the representative of *Switzerland*, made in connexion with the Committee's consideration of draft article 26, recording the views of his delegation that Switzerland, as a non-member of the United Nations, was not bound by Article 103 of the Charter of the United Nations, and that Article 103 could not be invoked against it if Switzerland became a party to the future convention on the law of treaties. This statement further concerned the interpretation which Switzerland considered was to be given to the reference to Article 103 in paragraph 1 of draft article 26, as being by way of a reservation regarding that Article which could not have the effect of extending its area of application.

(d) *35th meeting.* Statement by the representative of the *Union of Soviet Socialist Republics*, made in connexion with the Committee's consideration of draft article 32, recalling that the International Law Commission, when drafting article 32 on the rights of third States, considered that this article did not in any way affect the rights of States enjoying most-favoured-nation treatment, and expressing the view that, similarly, the article would be adopted by the Committee of the Whole on the same understanding.

first session of the Conference

CHAPTER II

CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON THE LAW OF TREATIES

PART I. INTRODUCTION

ARTICLE 1

A. International Law Commission text

22. The International Law Commission text provided as follows:

Article 1.—The scope of the present articles

The present articles relate to treaties concluded between States.

B. Amendments

23. Amendments were submitted to article 1 by Congo (Brazzaville) (A/CONF.39/C.1/L.32), Hungary (A/CONF.39/C.1/L.18), Republic of Viet-Nam (A/CONF.39/C.1/L.27), Sweden (A/CONF.39/C.1/L.10) and United States of America (A/CONF.39/C.1/L.15).

24. These amendments were to the following effect:

(a) *Sweden* (A/CONF.39/C.1/L.10):

Delete the word "concluded".

[Referred to the Drafting Committee, see para. 28 below]

(b) *United States of America* (A/CONF.39/C.1/L.15):

Amend article 1 to read:

The present articles *apply* to treaties concluded between *two or more* States *or other subjects of international law*.

[Withdrawn, see para. 26 below]

(c) *Hungary* (A/CONF.39/C.1/L.18):

"Delete article 1."

[Referred to the Drafting Committee, see para. 28 below]

(d) *Republic of Viet-Nam* (A/CONF.39/C.1/L.27):

Amend article 1 to read as follows:

The present articles apply to treaties concluded between States and also to treaties concluded between States and other subjects of international law.

[Withdrawn, see para. 26 below]

(e) *Congo (Brazzaville)* (A/CONF.39/C.1/L.32):

Amend article 1 to read as follows:

The present Convention establishes the rules relating to treaties.

[Referred to the Drafting Committee, see para. 28 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

25. The Committee of the Whole initially discussed article 1, and the amendments thereto, at its 2nd and 3rd meetings, on 28 March 1968. At its 11th meeting, on 3 April 1968, the Committee considered two reports by the Drafting Committee submitted in connexion with article 1.

(ii) INITIAL CONSIDERATION

26. At the 3rd meeting of the Committee of the Whole, the amendments by the Republic of Viet-Nam (A/CONF.39/C.1/L.27) and the United States of America (A/CONF.39/C.1/L.15) were withdrawn.

27. At the same meeting, Sweden orally proposed that the Drafting Committee be requested to prepare the text of a resolution for adoption by the Conference recommending that the General Assembly of the United Nations ask the International Law Commission to study the question of treaties concluded between States and international organizations or between two or more international organizations.

28. The above motion was adopted unanimously. The Committee of the Whole also decided, without objection, to refer article 1 to the Drafting Committee, together with the amendments by Sweden (A/CONF.39/C.1/L.10), Hungary (A/CONF.39/C.1/L.18) and Congo (Brazzaville) (A/CONF.39/C.1/L.32).

(iii) CONSIDERATION OF THE REPORTS OF THE DRAFTING COMMITTEE

29. At the 11th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 1 adopted by the Drafting Committee (A/CONF.39/C.1/1; for text, see para. 31 below). The Committee of the Whole adopted this text by 63 votes to none, with 1 abstention.

30. At the same meeting, the Chairman of the Drafting Committee introduced a further report containing the text of a draft resolution adopted by the Drafting Committee (A/CONF.39/C.1/2; for text, see para. 32 below). The Committee of the Whole adopted this text unanimously.

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

(a) *Text of article 1*

31. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 1:

Article 1

The scope f the present Convention

The present Convention applies to treaties concluded between States.

(b) *Draft resolution*

32. The Committee of the Whole also recommends to the Conference for adoption the following draft resolution:

The United Nations Conference on the Law of Treaties

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.

ARTICLE 2

A. International Law Commission text

33. The International Law Commission text provided as follows:

Article 2.—Use of terms

1. For the purposes of the present articles:

(*a*) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(*b*) "Ratification", "Acceptance", "Approval", and "Accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

(*c*) "Full powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.

(*d*) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(*e*) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty.

(*f*) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.

(*g*) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force.

(*h*) "Third State" means a State not a party to the treaty.

(*i*) "International organization" means an intergovernmental organization.

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

B. Amendments

34. Amendments were submitted to article 2 by Austria and Spain (A/CONF.39/C.1/L.1 and Add.1),[2] Ceylon (A/CONF.39/C.1/L.17), Chile (A/CONF.39/C.1/L.22), China (A/CONF.39/C.1/L.13), Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania (A/CONF.39/C.1/L.19/Rev.1),[3] Ecuador (A/CONF.39/C.1/L.25), France (A/CONF.39/C.1/L.24), Hungary (A/CONF.39/C.1/L.23), India (A/CONF.39/C.1/L.40), Malaysia and Mexico (A/CONF.39/C.1/L.33 and Add.1),[4] Republic of Viet-Nam (A/CONF.39/C.1/L.29), Spain (A/CONF.39/C.1/L.28), Sweden (A/CONF.39/C.1/L.11) and United States of America (A/CONF.39/C.1/L.16).

35. These amendments, arranged under sub-headings relating to paragraph 1, its sub-paragraphs, proposed new sub-paragraphs, and paragraph 2, were to the following effect:[5]

Paragraph 1

(i) *Sub-paragraph* (a)

[Use of term "Treaty"]

(a) *United States of America* (A/CONF.39/C.1/L.16):

Amend paragraph 1(*a*) . . . to read:

"Treaty" means an international agreement concluded between *two or more* States *or other subjects of international law* 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.

[Withdrawn, see para. 37 below]

(b) *Chile* (A/CONF.39/C.1/L.22):

Replace sub-paragraph (*a*) by the following text:

"Treaty" means a written agreement between States, governed by international law, which produces legal effects.

[Referred to the Drafting Committee, see para. 38 below]

(c) *Ecuador* (A/CONF.39/C.1/L.25):

Between the words "concluded" and "between States" insert the words "*in good faith*".

Between the words "international law" and "whether" insert the following phrase: "*which deals with a licit object, is freely consented to, and is based on justice and equity*".

[Referred to the Drafting Committee, see para. 38 below]

(d) *Spain* (A/CONF.39/C.1/L.28):

1. Delete the word "international", before the word "agreement".

2. In the French and Spanish texts place the words "*en forme écrite*" ("*por escrito*") between the word "*conclu*" ("*celebrado*") and the words "*entre Etats*" ("*entre Estados*").

[Referred to the Drafting Committee, see para. 38 below]

(e) *Malaysia and Mexico* (A/CONF.39/C.1/L.33 and Add.1):

Amend the definition of a treaty in sub-paragraph (*a*) to read as follows:

"Treaty" means an international agreement concluded between States in written form, *which establishes a relationship between the*

[2] Original sponsor Austria, co-sponsor Spain (Add.1).

[3] Original sponsors Hungary, Poland and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.19), co-sponsors Congo (Democratic Republic of), Czechoslovakia, Romania, United Arab Republic and United Republic of Tanzania (Rev.1).

[4] Original sponsor Mexico, co-sponsor Malaysia (Add.1).

[5] Those parts of the amendments which relate solely to the consequential renumbering of sub-paragraphs are omitted.

parties governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

[Referred to the Drafting Committee, see para. 38 below]

(ii) *New sub-paragraphs between sub-paragraphs* (a) *and* (b)

[Use of term "State"]

(a) *China* (A/CONF.39/C.1/L.13):

Between sub-paragraphs (*a*) and (*b*), insert a new sub-paragraph reading: "State" means a sovereign State.

[Referred to the Drafting Committee, see para. 38 below]

(b) *Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania* (A/CONF.39/C.1/L.19/Rev.1): [6]

. . . Insert between present sub-paragraphs (*a*) and (*b*) the following new sub-paragraph:

"General multilateral treaty" means a multilateral treaty which deals with matters of general interest for the international community of States.

[Referred to the Drafting Committee, see para. 38 below and subsequently deferred until second session of the Conference, see para. 39 below]

(iii) *Sub-paragraph* (b)

[Use of terms "Ratification", "Acceptance", "Approval", and "Accession"]

United States of America (A/CONF.39/C.1/L.16):

Amend paragraph 1(*b*) . . . to read:

"Ratification" *or* "Accession" means *an* international act whereby a State establishes on the international plane its consent to be bound by a treaty.

[Referred to the Drafting Committee, see para. 38 below]

(iv) *New sub-paragraph between sub-paragraphs* (b) *and* (c)

[Use of term "Adoption of the text of a treaty"]

France (A/CONF.39/C.1/L.24):

Add the following sub-paragraph (*c*):

"Adoption of the text of a treaty" means all the acts establishing the definitive wording of the text with respect to which the negotiating States will have to express their consent.

[Referred to the Drafting Committee, see para. 38 below]

(v) *Sub-paragraph* (c)

[Use of term "Full powers"]

Austria and Spain (A/CONF.39/C.1/L.1 and Add.1):

Replace . . . the words "a document" by the words "an instrument".

[Referred to the Drafting Committee, see para. 38 below]

(vi) *Sub-paragraph* (d)

[Use of term "Reservation"]

(a) *Sweden* (A/CONF.39/C.1/L.11):

Add the word "limit" after "exclude".

[Referred to the Drafting Committee, see para. 38 below]

(b) *China* (A/CONF.39/C.1/L.13):

. . . Add the word "multilateral" before the word "treaty", where it first appears in the sub-paragraph.

[Referred to the Drafting Committee, see para. 38 below]

(c) *United States of America* (A/CONF.39/C.1/L.16):

Amend paragraph 1(*d*) to read:

"Reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, *or* acceding to a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

[Referred to the Drafting Committee, see para. 38 below]

(*d*) *Chile* (A/CONF.39/C.1/L.22):

Add the word "multilateral" before the word "treaty" where it first appears in the sub-paragraph.

[Referred to the Drafting Committee, see para. 38 below]

(e) *Hungary* (A/CONF.39/C.1/L.23):

Amend the sub-paragraph to read:

"Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a *multilateral* treaty, whereby it purports to exclude, to vary *or to interpret* the legal effect of certain provisions of the treaty in their application to that State.

[Referred to the Drafting Committee, see para. 38 below]

(*f*) *Republic of Viet-Nam* (A/CONF.39/C.1/L.29):

Amend sub-paragraph (*d*) to read as follows:

"Reservation" means a unilateral instrument, however phrased or named, made by a State, when signing, ratifying or acceding to a treaty, whereby it purports to exclude, to restrict or to vary the legal effect of certain provisions of the treaty in their application to that State.

[Referred to the Drafting Committee, see para. 38 below]

(vii) *New sub-paragraph between sub-paragraphs* (d) and (e)

[Use of term "Restricted international treaty"]

France (A/CONF.39/C.1/L.24):

Add the following new sub-paragraph . . .:

"Restricted multilateral treaty" means a treaty which is intended to be binding only on the States referred to in the treaty and whose entry into force in its entirety with respect to all the negotiating States is an essential condition of the consent of each of them to be bound by it.

[Referred to the Drafting Committee, see para. 38 below and subsequently deferred until second session of the Conference, see para. 39 below]

(viii) *Sub-paragraphs* (e) *and* (f)

[Use of terms "Contracting State" and "Negotiating State"]

(a) *France* (A/CONF.39/C.1/L.24):

In sub-paragraph (*e*) delete the words "drawing up and".

[Referred to the Drafting Committee, see para. 38 below]

(b) *India* (A/CONF.39/C.1/L.40):

Delete sub-paragraphs (*e*) and (*f*).

[6] In its original form (A/CONF.39/C.1/L.19) this amendment read: "Add the following definition: ' "General multilateral treaty" means a treaty which creates general norms of international law or deals with other matters of interest to all States'."

[Referred to the Drafting Committee, see para. 38 below]

(ix) *Sub-paragraphs* (g) *and* (h)
[Use of terms "Party" and "Third State"]

No amendments were submitted to these sub-paragraphs.

(x) *Sub-paragraph* (i)
[Use of term "International organization"]

China (A/CONF.39/C.1/L.13)
Amend sub-paragraph (i) to read:
International organizations include intergovernmental organizations but not non-governmental organizations.
[Referred to the Drafting Committee, see para. 38 below]

Paragraph 2

Ceylon (A/CONF.39/C.1/L.17):
At the end of paragraph 2 *add:* "or in the practice of international organizations or in any treaty".
[Referred to the Drafting Committee, see para. 38 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

36. The Committee of the Whole initially discussed article 2, and the amendments thereto, at its 4th, 5th and 6th meetings, on 29 March and 1 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 2 until the second session of the Conference.

(ii) Consideration

37. At the 4th meeting of the Committee of the Whole, the amendment by United States of America (A/CONF. 39/C.1/L.16) to paragraph 1(*a*) was withdrawn.

38. At its 6th meeting, the Committee of the Whole decided to refer article 2 to the Drafting Committee, together with the amendments by Austria and Spain (A/CONF.39/C.1/L.1 and Add.1); Ceylon (A/CONF.39/C.1/L.17); Chile (A/CONF.39/C.1/L.22); China (A/CONF.39/C.1/L.13); Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania (A/CONF.39/C.1/L.19/Rev.1); Ecuador (A/CONF.39/C.1/L.25); France (A/CONF.39/C.1/L.24); Hungary (A/CONF.39/C.1/L.23); India (A/CONF.39/C.1/L.40); Malaysia and Mexico (A/CONF.39/C.1/L.33 and Add.1); Republic of Viet-Nam (A/CONF.39/C.1/L.29); Spain (A/CONF.39/C.1/L.28); Sweden (A/CONF.39/C.1/L.11) and United States of America (paragraph 1, sub-paragraphs (*b*) and (*d*) (A/CONF.39/C.1/L.16). The Committee of the Whole requested the Drafting Committee to examine the article and the amendments thereto, as soon as it deemed it appropriate to do so, and, after consideration of the remaining articles of the draft, to report to the Committee of the Whole.

39. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or "restricted multilateral treaties". Amendments to article 2 to add definitions of a "general multilateral treaty" and of a "restricted multilateral treaty" had been submitted by *Congo (Democratic Republic of)*, *Czechoslovakia*, *Hungary*, *Poland*, *Romania*, *Ukrainian Soviet Socialist Republic*, *United Arab Republic* and *United Republic of Tanzania* (A/CONF.39/C.1/L.19/Rev.1) and *France* (A/CONF.39/C.1/L.24) respectively, in the form of proposed new sub-paragraphs between sub-paragraphs (*a*) and (*b*) and between sub-paragraphs (*e*) and (*f*).

(iii) Decision

40. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 2 until the second session of the Conference (see document A/CONF.39/15, paras. 17-26).

ARTICLE 3

A. International Law Commission text

41. The International Law Commission text provided as follows:

Article 3.—International agreements not within the scope of the present articles

The fact that the present articles do not relate:

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

(*b*) To international agreements not in written form

shall not affect the legal force of such agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.

B. Amendments

42. Amendments were submitted to article 3 by China (A/CONF.39/C.1/L.14), Ethiopia (A/CONF.39/C.1/L.57 and Corr.1), Gabon (A/CONF.39/C.1/L.41), Iran (A/CONF.39/C.1/L.63), Mexico (A/CONF.39/C.1/L.65), Spain (A/CONF.39/C.1/L.34), Switzerland (A/CONF.39/C.1/L.26) and United States of America (A/CONF.39/C.1/L.20).

43. These amendments were to the following effect:

(a) *China* (A/CONF.39/C.1/L.14):
Delete article 3.
[Not pressed to a vote, see para. 45 below]

(b) *United States of America* (A/CONF.39/C.1/L.20):
Amend article 3 to read:
"Nothing in the present articles shall affect the legal force of international agreements not in written form or the application to them of any of the rules of international law".
[Withdrawn, see para. 45 below]

(c) *Switzerland* (A/CONF.39/C.1/L.26):
. . . delete the words "to which they would be subject independently of these articles".
[Referred to the Drafting Committee, see para. 46 below]

(d) *Spain* (A/CONF.39/C.1/L.34):

Delete the words "to which they would be subject" and substitute the words "to which they might be subject".

[Referred to the Drafting Committee, see para. 46 below]

(e) *Gabon* (A/CONF.39/C.1/L.41):

Amend article 3 to read as follows:

The present articles shall not affect either the legal force of international agreements not in written form or of agreements concluded between States and other subjects of international law or between such other subjects of international law, or the application to such agreements of the rules set forth in the present Convention.

[Referred to the Drafting Committee, see para. 46 below]

(f) *Ethiopia* (A/CONF.39/C.1/L.57 and Corr.1):

Replace article 3 by the following:

(*a*) The use of terms in articles 2(*a*) shall not affect the legal force of oral agreements and the application to them so far as possible of the rules of the present Convention.

(*b*) The scope of the present articles shall not affect the legal force of agreements between States and other subjects of international law or between such other subjects of international law and the application to them so far as possible of the rules of the present Convention.

[Referred to the Drafting Committee, see para. 46 below]

(g) *Iran* (A/CONF.39/C.1/L.63):

Delete sub-paragraph (*b*).

[Not pressed to a vote, see para. 45 below]

(h) *Mexico* (A/CONF.39/C.1/L.65):

Delete the concluding words "independently of these articles" and substitute the words: "in accordance with international law".

[Referred to the Drafting Committee, see para. 46 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

44. The Committee of the Whole initially discussed article 3, and the amendments thereto, at its 6th and 7th meetings, on 1 April 1968. At its 28th meeting, on 18 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

45. At the 6th meeting of the Committee of the Whole, *China* announced that it would not press for a vote on its amendment (A/CONF.39/C.1/L.14). The amendment by *United States of America* (A/CONF.39/C.1/L.20) was withdrawn. At the 7th meeting of the Committee, it was announced that the amendment by *Iran* (A/CONF.39/C.1/L.63) would not be pressed to a vote.

46. Also at its 7th meeting, the Committee of the Whole decided, without objection, to refer article 3 to the Drafting Committee, together with the amendments by *Ethiopia* (A/CONF.39/C.1/L.57 and Corr.1), *Gabon* (A/CONF.39/C.1/L.41), *Mexico* (A/CONF.39/C.1/L.65), *Spain* (A/CONF.39/C.1/L.34) and *Switzerland* (A/CONF.39/C.1/L.26).

(iii) Consideration of the report of the Drafting Committee

47. At the 28th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 3 adopted by the Drafting Committee (A/CONF.39/C.1/3; for text, see para. 48 below).[7] The Committee adopted this text without formal vote.[8]

(iv) Text adopted by the Committee of the Whole

48. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 3:

Article 3

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(*a*) the legal force of such agreements;

(*b*) the application to them of any of the rules set forth in the present Convention to which they would be subject, in accordance with international law, independently of the Convention;

(*c*) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

ARTICLE 4

A. International Law Commission text

49. The International Law Commission text provided as follows:

Article 4.—Treaties which are constituent instruments of international organizations or which are adopted within international organizations

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

B. Amendments

50. Amendments were submitted to article 4 by Ceylon (A/CONF.39/C.1/L.53), Congo (Brazzaville) (A/CONF.39/C.1/L.76), France (A/CONF.39/C.1/L.55), Gabon (A/CONF.39/C.1/L.42), Jamaica and Trinidad and Tobago (A/CONF.39/C.1/L.75), Peru (A/CONF.39/C.1/L.58), Philippines and Sweden (A/CONF.39/C.1/L.52 and Add.1),[9] Spain (A/CONF.39/C.1/L.35/Rev.1,) Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.12), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.39), United States of America (A/CONF.39/C.1/L.21) and Zambia (A/CONF.39/C.1/L.73).

51. These amendments were to the following effect:

(a) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.12):

[7] This report stated that the Drafting Committee had decided to defer consideration of the titles of the parts, sections and articles.

[8] See para. 13 above.

[9] Original sponsor Sweden, co-sponsor Philippines (Add.1).

. . . replace the words "shall be subject to any relevant rules" by the words "shall take into account the relevant rules".

[Rejected, see para. 54(*c*) below]

(b) *United States of America* (A/CONF.39/C.1/L.21):

Delete article 4. Substitute instead exceptions in favour of the rules of international organizations in articles 6, 8, 9, 13, 16, 17, 37 and 72.

[Rejected, see para. 54(*a*) below]

(c) *Spain* (A/CONF.39/C.1/L.35/Rev.1):[10]

Replace the title and text of article 4 by the following:

Treaties which are constituent instruments of international organizations or are adopted within an organ of or under the auspices of or are deposited with an international organization

1. Articles 5 to 15, 23, 39 to 50 and 58 to 61 of the present articles shall apply to treaties which are constituent instruments of international organizations. The other articles shall apply subject to the provisions of the treaty itself and to any other applicable rules of the organization.

2. The present articles shall apply to treaties adopted within an organ of an international organization or under its auspices, or which are deposited with an international organization. Nevertheless, such application shall be subject to any relevant rules of the said organization:

(*a*) in the case of treaties adopted within an organ of an international organization or under its auspices, in respect of articles 5 to 22 and 71 to 75 of the present articles, and

(*b*) in the case of treaties deposited with an international organization in respect of articles 71 to 75 of the present articles.

[Withdrawn, see para. 53 below]

(d) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.39):

. . . after the words "relevant rules" *add* the words "and established practices".

[Referred to the Drafting Committee, see para. 55 below]

(e) *Gabon* (A/CONF.39/C.1/L.42):

Amend article 4 to read as follows:

Treaties constituting international organizations or adopted within an international organization

The application of the present articles to treaties constituting an international organization or adopted within an international organization shall be subject to any relevant rules of that organization.

[Referred to the Drafting Committee, see para. 55 below]

(f) *Philippines* and *Sweden* (A/CONF.39/C.1/L.52 and Add.1):

Delete the article.

[Rejected, see para. 54(*a*) below]

(g) *Ceylon* (A/CONF.39/C.1/L.53):

Amend the title and text of article 4 to read as follows:

Treaties which are constituent instruments of international organizations

The application of the present articles to a treaty which is the constituent instrument of an international organization shall be subject to the provisions of such treaty and to any relevant rules or decisions of the organization.

[Rejected, see para. 54(*b*) below]

(h) *France* (A/CONF.39/C.1/L.55):

Replace the text of article 4 by the following wording:

The application of the present articles to a treaty which is the constituent instrument of an international organization or to an agreement concluded in virtue of such a treaty shall be subject to any relevant rules resulting from the treaty.

[Referred to the Drafting Committee, see para. 55 below]

(i) *Peru* (A/CONF.39/C.1/L.58):

Amend article 4 to read as follows:

The present articles shall apply to treaties which are constituent instruments of an international organization or are adopted within the competence of an international organization, without prejudice to any relevant special provisions laid down in such constituent instruments or adopted by virtue of them.

[Referred to the Drafting Committee, see para. 55 below]

(j) *Zambia* (A/CONF.39/C.1/L.73):

Add the following phrase at the end of article 4:

except that where the relevant rules of the organization conflict with the rules set out in this Convention, the rules of the Convention shall prevail over those of the organization.

[Withdrawn, see para. 53 below]

(k) *Jamaica* and *Trinidad and Tobago* (A/CONF.39/C.1/L.75):

Amend the article to read:

The application of the present articles to treaties which are constituent instruments of international organizations shall be subject to any relevant rules of the organizations.

[Withdrawn, see para. 53 below]

(l) *Congo (Brazzaville)* (A/CONF.39/C.1/L.76):

Delete article 4.

[Rejected, see para. 54(*a*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

52. The Committee of the Whole initially discussed article 4, and the amendments thereto, at its 8th, 9th and 10th meetings, on 2 and 3 April 1968. At its 28th meeting, on 18 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

53. At the 8th meeting of the Committee of the Whole, the amendment by *Zambia* (A/CONF.39/C.1/L.73) was withdrawn. At the 10th meeting, the amendments by *Jamaica* and *Trinidad and Tobago* (A/CONF.39/C.1/L.75)

[10] In its original form (A/CONF.39/C.1/L.35) this amendment read:

Replace the title and text of article 4 by the following wording:

"*Treaties which are constituent instruments of international organizations or are concluded within an organ of, or under the auspices of, or are deposited with an international organization.*

"1. Articles 5 to 23 of the present articles shall apply to treaties which are constituent instruments of international organizations. The application of the other articles to such treaties shall be subject to the provisions of the treaty itself and to any other applicable rules of the organization.

"2. The present articles shall apply to treaties concluded within an organ of an international organization or under its auspices, or which are deposited with an international organization, save that such application shall be subject to any relevant rules of the said organization:

"(*a*) in the case of treaties concluded within an organ of an international organization or under its auspices, in respect of articles 4 to 22 and 71 to 75 of the present articles; and

"(*b*) in the case of treaties deposited with an international organization, in respect of articles 71 to 75 of the present articles."

and *Spain* (A/CONF.39/C.1/L.35/Rev.1) were also withdrawn.

54. At the 10th meeting of the Committee of the Whole, votes were taken on certain of the subsisting amendments, as follows:

(*a*) The amendments by *Congo (Brazzaville)* (A/CONF.39/C.1/L.76), *Philippines* and *Sweden* (A/CONF.39/C.1/L.52 and Add.1) and *United States of America* (A/CONF.39/C.1/L.21) were to the same effect in that they proposed that article 4 be deleted. They were put to a single roll-call vote, with the following results:

In favour: Australia, Congo (Brazzaville), Federal Republic of Germany, Japan, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Sweden, United States of America.

Against: Afghanistan, Algeria, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Ceylon, Chile, Colombia, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mexico, Monaco, Mongolia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Spain, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Abstentions: China, Switzerland.

These amendments were therefore rejected by 84 votes to 10, with 2 abstentions.

(*b*) The amendment by *Ceylon* (A/CONF.39/C.1/L.53) was rejected by 70 votes to 5, with 5 abstentions.

(*c*) The amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.12) was rejected by 42 votes to 26, with 19 abstentions.

55. Also at the 10th meeting, the Committee of the Whole decided, without objection, to refer article 4 to the Drafting Committee, together with the amendments by *France* (A/CONF.39/C.1/L.55). *Gabon* (A/CONF.39/C.1/L.42), *Peru* (A/CONF.39/C.1/L.58) and *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.39).

(iii) Consideration of the report of the Drafting Committee

56. At the 28th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 4 adopted by the Drafting Committee (A/CONF.39/C.1/3; for text, see para. 57 below). The Committee of the Whole adopted this text by 84 votes to none, with 7 abstentions.

(iv) Text adopted by the Committee of the Whole

57. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 4:

Article 4

The present Convention applies to any treaty which is the constituent instrument of an international organization or to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1: CONCLUSION OF TREATIES

ARTICLE 5

A. International Law Commission text

58. The International Law Commission text provided as follows:

Article 5.—Capacity of States to conclude treaties

1. Every State possesses capacity to conclude treaties.

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

B. Amendments

59. Amendments were submitted to article 5 by Australia (A/CONF.39/C.1/L.62), Austria (A/CONF.39/C.1/L.2), Congo (Brazzaville) (A/CONF.39/C.1/L.80), Finland (A/CONF.39/C.1/L.54/Rev.1 and Corr.1), Malaysia and Mexico (A/CONF.39/C.1/L.66 and Add.1),[11] Nepal (A/CONF.39/C.1/L.77/Rev.1), New Zealand (A/CONF.39/C.1/L.59) and Republic of Viet-Nam (A/CONF.39/C.1/L.82). The Byelorussian Soviet Socialist Republic submitted a sub-amendment (A/CONF.39/C.1/L.92) to the amendment by Austria (A/CONF.39/C.1/L.2).

60. These amendments and the sub-amendment, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2, were to the following effect:

(i) *Article as a whole*

(a) *Malaysia* and *Mexico* (A/CONF.39/C.1/L.66 and Add.1):

Delete article 5.

[Rejected, see para. 62(*a*) and (*b*) below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.82):

Delete article 5.

[Rejected, see para. 62(*a*) and (*b*) below]

(ii) *Paragraph 1*

(a) *Finland* (A/CONF.39/C.1/L.54/Rev.1 and Corr.1):[12]

For paragraph 1, substitute the following text:

[11] Original sponsor Mexico, co-sponsor Malaysia (Add.1).

[12] In its original form (A/CONF.39/C.1/L.54), this amendment read: "*Delete article 5*".

Every State *which is a subject of international law* possesses capacity to conclude treaties.

[Referred to the Drafting Committee, see para. 63 below]

(b) *Nepal* (A/CONF.39/C.1/L.77/Rev.1):[13]

Amend paragraph 1 to read:

Every State including a State member of a Federal Union, having treaty-making power, possesses capacity to conclude treaties.

[Referred to the Drafting Committee, see para. 63 below]

(c) *Congo (Brazzaville)* (A/CONF.39/C.1/L.80):

Replace text of [paragraph 1] by the following:

Every State which is a subject of international law possesses capacity to conclude treaties.

[Referred to the Drafting Committee, see para. 63 below]

(iii) *Paragraph 2*

(a) *Austria* (A/CONF.39/C.1/L.2):

Renumber paragraph 2 as paragraph 2(*a*). Add a new paragraph 2(*b*): For the purpose of concluding a treaty, the extent of such capacity has to be confirmed by an authority of the federal union competent under article 6.

[Rejected, see para. 62 (*d*) below]

(b) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.92): *sub-amendment to Austrian amendment* (A/CONF.39/C.1/L.2):

Add the following words to paragraph 2(*b*) of the Austrian amendment . . .

"if it is provided for in the constitutional law of a federation, or of States, members of a federation".

[Rejected, see para. 62(*c*) below]

(c) *Finland* (A/CONF.39/C.1/L.54/Rev.1 and Corr.1:

For paragraph 2 substitute the following text:

States members of a union of States may possess a capacity to conclude treaties if such capacity is admitted by the constitution or *the other constituent instruments of the union*, and within the limits laid down *in the said instruments*.

[Referred to the Drafting Committee, see para. 63 below]

(d) *New Zealand* (A/CONF.39/C.1/L.59):

Replace the opening words "States members" by the words "Political subdivisions".

[Referred to the Drafting Committee, see para. 63 below]

(e) *Australia* (A/CONF.39/C.1/L.62):

Delete the paragraph.

[Rejected, see para. 62(*b*) below]

(f) *Nepal* (A/CONF.39/C.1/L.77/Rev.1):

Delete paragraph 2.

[Rejected, see para. 62(*b*) below]

(g) *Congo (Brazzaville)* (A/CONF.39/C.1/L.80):

Replace text of [paragraph 2] by the following:

2. States members of a federation may possess this capacity only in so far as the federal constitution so provides.

[Referred to the Drafting Committee, see para. 63 below]

[13] In its original form, this amendment (A/CONF.39/C.1/L.77) did not relate to paragraph 1, since it read "Delete paragraph 2." In its revised form, the proposal to delete paragraph 2 was retained, its substance being incorporated in paragraph 1.

C. Proceedings of the Committee of the Whole

(i) Meetings

61. The Committee of the Whole initially discussed article 5, and the amendments thereto, at its 11th and 12th meetings, on 3 and 4 April 1968. At its 28th meeting, on 18 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

62. At its 12th meeting, the Committee of the Whole decided first to vote separately on amendments to delete paragraph 1 and then on amendments to delete paragraph 2 of article 5. Thereafter certain of the remaining amendments before the Committee were put to the vote. The voting was as follows:

(*a*) The amendments to delete paragraph 1 of article 5 were rejected by 70 votes to 19, with 7 abstentions.

(*b*) A roll-call vote was taken on amendments to delete paragraph 2 of article 5, with the following results:

In favour: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Ceylon, China, Cyprus, Dominican Republic, Ethiopia, Federal Republic of Germany, Greece, Guatemala, India, Ireland, Israel, Italy, Japan, Malaysia, Mexico, Nepal, Netherlands, New Zealand, Norway, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Singapore, South Africa, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia.

Against: Afghanistan, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Dahomey, Finland, France, Gabon, Guinea, Honduras, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Liberia, Madagascar, Mali, Mongolia, Nigeria, Pakistan, Poland, Romania, Saudi Arabia, Senegal, Somalia, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Abstentions: Chile, Czechoslovakia, Denmark, Ecuador, Ghana, Holy See, Jamaica, Lebanon, Sierra Leone, Spain.

These amendments were thus rejected by 45 votes to 38, with 10 abstentions. By the two foregoing votes the amendments by *Australia* (A/CONF.39/C.1/L.62), *Malaysia* and *Mexico* (A/CONF.39/C.1/L.66 and Add.1), *Nepal* (part 2) (A/CONF.39/C.1/L.77/Rev.1), and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.82) were disposed of.

(*c*) The sub-amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.92) to the amendment by *Austria* to article 5 (A/CONF.39/C.1/L.2) was rejected by 42 votes to 17, with 28 abstentions.

(*d*) The amendment by *Austria* (A/CONF.39/C.1/L.2) was rejected by 35 votes to 29, with 21 abstentions.

63. The Committee of the Whole then decided, withou, objection, to refer article 5 to the Drafting Committeet together with the remaining amendments before it,

namely those by *Congo (Brazzaville)* (A/CONF.39/C.1/L.80), *Finland* (A/CONF.39/C.1/L.54/Rev.1 and Corr.1), *Nepal* (A/CONF.39/C.1/L.77/Rev.1, part 1 only) and *New Zealand* (A/CONF.39/C.1/L.59).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

64. At the 28th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 5 adopted by the Drafting Committee (A/CONF.39/C.1/3; for text, see para. 66 below).

65. At the same meeting, requests were made for separate roll-call votes on paragraph 1 and on paragraph 2 of the text recommended by the Drafting Committee, and on the article as a whole. A motion was also made that the Committee should vote first upon paragraph 1 of article 5. The results of the voting were as follows:

(*a*) The motion to vote first on paragraph 1 was rejected by 43 votes to 35, with 10 abstentions.

(*b*) PARAGRAPH 2:

In favour: Afghanistan, Algeria, Argentina, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, France, Gabon, Guatemala, Guinea, Holy See, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Mali, Monaco, Mongolia, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Senegal, South Africa, Switzerland, Syria, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.

Against: Australia, Belgium, Brazil, Canada, Ceylon, Chile, China, Denmark, Dominican Republic, Ethiopia, Federal Republic of Germany, Greece, India, Ireland, Israel, Italy, Jamaica, Japan, Malaysia, Mauritius, Mexico, Netherlands, New Zealand, Norway, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Sierra Leone, Singapore, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia.

Abstentions: Bolivia, Congo (Democratic Republic of), Finland, Ghana, Pakistan, Thailand, Trinidad and Tobago, United Republic of Tanzania.

Paragraph 2 of article 5 was therefore adopted by 46 votes to 39, with 8 abstentions.

(*c*) PARAGRAPH 1:

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Holy See, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mauritius, Mexico, Monaco, Mongolia, Morocco, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Republic of Viet-Nam.

Abstentions: Belgium, Canada, Italy, Netherlands, Portugal, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, United States of America.

Paragraph 1 of article 5 was therefore adopted by 85 votes to 1, with 8 abstentions.

(*d*) ARTICLE 5 AS A WHOLE:

In favour: Afghanistan, Algeria, Argentina, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, China, Congo (Brazzaville), Costa Rica, Cuba, Czechoslovakia, Ecuador, Ethiopia, Finland, France, Gabon, Guatemala, Guinea, Holy See, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Mali, Monaco, Mongolia, Morocco, Nigeria, Pakistan, Poland, Romania, Saudi Arabia, Senegal, South Africa, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Against: Australia, Belgium, Canada, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, New Zealand, Norway, Philippines, Republic of Korea, Republic of Viet-Nam, San Marino, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstentions: Brazil, Ceylon, Chile, Congo (Democratic Republic of), Denmark, Dominican Republic, Ghana, India, Ireland, Israel, Jamaica, Malaysia, Mauritius, Mexico, Peru, Sierra Leone, Singapore, Spain, Sweden, Trinidad and Tobago, Venezuela, Zambia.

Article 5 was therefore adopted by 54 votes to 17, with 22 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

66. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 5:

Article 5

1. Every State possesses capacity to conclude treaties.

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

ARTICLE 5bis

A. Proposed new article

67. Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia (A/CONF.39/

C.1/L.74 and Add.1 and 2)[14] submitted an amendment which was to the following effect:

Insert the following new article between articles 5 and 6:

"*The right of participation in treaties*

"All States have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality."

[Deferred until the second session of the Conference, see para. 69 below]

B. Proceedings of the Committee of the Whole

(i) Meetings and consideration

68. At its 13th meeting, on 4 April 1968, the Committee of the Whole decided, without objection, to postpone the discussion of proposed new article *5bis*. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties", including article *5bis*, which related to universal participation in general multilateral treaties.

(ii) Decision

69. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of proposed new article *5bis* until the second session of the Conference (see document A/CONF.39/15, paras. 27-32).

ARTICLE 6

A. International Law Commission text

70. The International Law Commission text provided as follows:

Article 6.—Full powers to represent the State in the conclusion of treaties

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:

(*a*) He produces appropriate full powers; or

(*b*) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

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

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

[14] Original sponsors Ceylon, Hungary, India, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia, co-sponsors Algeria (Add.1) and Mali (Add.2).

B. Amendments

71. Amendments were submitted to article 6 by the Federal Republic of Germany (A/CONF.39/C.1/L.50), Hungary and Poland (A/CONF.39/C.1/L.78 and Add.1),[15] Iran and Mali (A/CONF.39/C.1/L.64 and Add.1),[16] Italy (A/CONF.39/C.1/L.83), Spain (A/CONF.39/C.1/L.36), Sweden and Venezuela (A/CONF.39/C.1/L.68/Rev.1)[17] and United States of America (A/CONF.39/C.1/L.90).

72. These amendments, arranged under sub-headings relating to the article as a whole, to paragraph 1 and paragraph 2 of the article and a proposed new paragraph 3, were to the following effect:

(i) *Article as a whole*

(a) *Spain* (A/CONF.39/C.1/L.36):

For the existing text of article 6 substitute the following:

1. The representative of a State for the purpose of adopting or authenticating the text of a treaty, or for the purpose of expressing the consent of a State to be bound by a treaty, is considered as accredited by the production of full powers.

2. Production of full powers is not considered necessary when the following act in virtue of their functions:

(*a*) Heads of State, Heads of Government or Ministers for Foreign Affairs for all acts relating to the conclusion of a treaty;

(*b*) heads of diplomatic missions for the adoption of the text of a treaty between the accrediting State and the State to which they are accredited;

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

3. Failure to produce full powers does not affect the validity of the treaty when it is established, or it appears from the circumstances, that such production was not considered necessary by the States concerned.

[Referred to the Drafting Committee, see para. 76 below]

(b) *Federal Republic of Germany* (A/CONF.39/C.1/L.50):

Amend article 6 to read:

The following persons are considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty:

(*a*) Heads of States;

(*b*) Any other person

(i) who is authorized under the internal law of his State to perform the acts mentioned above without the authorization of the Head of State;

(ii) who produces appropriate full powers from the Head of State;

(iii) who produces appropriate full powers from any of the persons mentioned under (i).

[Withdrawn, see para. 74 below]

[15] Original sponsor Hungary, co-sponsor Poland (Add.1).

[16] Original sponsor Iran, co-sponsor Mali (Add.1).

[17] Original sponsor Venezuela (A/CONF.39/C.1/L.68), co-sponsor Sweden (Rev.1).

(ii) *Paragraph 1*

(a) *Iran* and *Mali* (A/CONF.39/C.1/L.64 and Add.1):

Amend paragraph 1 to read as follows:

Except as provided in paragraph 2, *and subject to the provisions of the internal law of the States concerned*, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if: .

[Withdrawn, see para. 74 below]

(b) *Sweden* and *Venezuela* (A/CONF.39/C.1/L.68/Rev.1): [18]

(i) Delete the introductory words: "Except as provided in paragraph 2".

(ii) Delete the word "only" before "if".

(iii) Delete the letter "(*a*)" at the beginning of sub-paragraph (*a*).

(iv) Delete sub-paragraph (*b*).

[Rejected, see para. 75 below]

(c) *Hungary* and *Poland* (A/CONF.39/C.1/L.78 and Add.1):

. . . Insert the word "negotiating" between the words "for the purpose of" and "adopting".

[Referred to the Drafting Committee, see para. 76 below]

(d) *United States of America* (A/CONF.39/C.1/L.90):

Replace the reference to "paragraph 2" by a reference to "paragraphs 2 and 3".

Change sub-paragraph (*b*) of paragraph 1 to read as follows:

It has been the practice of the States concerned or it otherwise appears from the circumstances that their intention was to dispense with full powers.

[Referred to the Drafting Committee, see para. 76 below]

(iii) *Paragraph 2*

(a) *Hungary* and *Poland* (A/CONF.39/C.1/L.78 and Add.1):

Insert the words "negotiating or" after the words "for the purpose of" in paragraph 2(*b*).

In paragraph 2(*c*) replace the words "to an organ of an international organization, for the purpose of the adoption of" by the words "to an international organization or to any of its organs for the purpose of negotiating or adopting".

[Referred to the Drafting Committee, see para. 76 below]

(b) *Italy* (A/CONF.39/C.1/L.83):

Add the following words at the end of sub-paragraph (*b*):

and for the purpose of concluding an agreement between those States in conformity with diplomatic practice, in particular, in the form of an exchange of notes;

[Referred to the Drafting Committee, see para. 76 below]

(c) *United States of America* (A/CONF.39/C.1/L.90):

In sub-paragraph (*c*) of paragraph 2 replace the words "to an organ of an international organization" by the words "to an international organization or one of its organs".

[Referred to the Drafting Committee, see para. 76 below]

(iv) *New paragraph 3*

United States of America (A/CONF.39/C.1/L.90):

Add a new paragraph 3 reading as follows:

Nothing in the present article shall prevent States from agreeing to require full powers for the purpose of performing any international act relating to the conclusion of a treaty.

[Referred to the Drafting Committee, see para. 76 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

73. The Committee of the Whole initially discussed article 6, and the amendments thereto, at its 13th meeting, on 4 April 1968. At its 34th meeting, on 23 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

74. At the 13th meeting of the Committee of the Whole, the amendments by *Federal Republic of Germany* (A/CONF.39/C.1/L.50) and *Iran* and *Mali* (A/CONF.39/C.1/L.64 and Add.1) were withdrawn.

75. At the same meeting, the amendment by *Sweden* and *Venezuela* (A/CONF.39/C.1/L.68/Rev.1) was put to the vote and was rejected by 51 votes to 13, with 23 abstentions.

76. Also at its 13th meeting the Committee of the Whole decided, without objection, to refer article 6 to the Drafting Committee, together with the amendments by *Hungary* and *Poland* (A/CONF.39/C.1/L.78 and Add.1), *Italy* (A/CONF.39/C.1/L.83), *Spain* (A/CONF.39/C.1/L.36) and *United States of America* (A/CONF.39/C.1/L.90).

(iii) Consideration of the report of the Drafting Committee

77. At the 34th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 6 adopted by the Drafting Committee (A/CONF.39/C.1/4; for text, see para. 79 below).

78. At the same meeting, separate votes were requested on sub-paragraph (*b*) of paragraph 1, and on sub-paragraph (*c*) of paragraph 2 of the text recommended by the Drafting Committee. The results of the voting were as follows:

(*a*) The text of sub-paragraph (*b*) of paragraph 1 was adopted by 83 votes to 3, with 5 abstentions.

(*b*) The text of sub-paragraph (*c*) of paragraph 2 was adopted by 84 votes to 1, with 3 abstentions.

[18] In its original form this amendment, sponsored by Venezuela (A/CONF.39/C.1/L.68), called only for the deletion of sub-paragraph (*b*).

(*c*) The remainder of the text of the article was adopted by 88 votes to none, with 2 abstentions.

(*d*) The text of the article as a whole was adopted by 88 votes to none, with 4 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

79. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 6.

Article 6

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States concerned or from other circumstances that their intention was to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

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

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

ARTICLE 7

A. International Law Commission text

80. The International Law Commission text provided as follows:

Article 7.—Subsequent confirmation of an act performed without authority

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

B. Amendments

81. Amendments were submitted to article 7 by Japan (A/CONF.39/C.1/L.98), Malaysia (A/CONF.39/C.1/L.99), Singapore (A/CONF.39/C.1/L.96), Spain (A/CONF.39/ C.1/L.37), United States of America (A/CONF.39/C.1/L.56) and Venezuela (A/CONF.39/C.1/L.69).

82. These amendments were to the following effect:

(*a*) *Spain* (A/CONF.39/C.1/L.37):

Replace the present text of article 7 by the following:

For the purposes of article 6, a defect or vice in the powers of a person acting as representative of a State shall be remedied by subsequent confirmation given by the competent authority of that State.

[Referred to the Drafting Committee, see para. 86 below]

(b) *United States of America* (A/CONF.39/C.1/L.56):

Amend article 7 to read:

"An act *expressing the consent of a State to be bound by* a treaty performed by a person who cannot be considered under article 6 as representing his State for that purpose is without legal effect, *subject to the provisions of article 42*".

[First part rejected, see para. 85(*a*) below; second part not pressed to a vote, see para. 84 below]

(c) *Venezuela* (A/CONF.39/C.1/L.69):

Between the words "afterwards" and "confirmed". . . insert the adverb "*expressly*".

[Rejected, see para. 85(*b*) below]

(d) *Singapore* (A/CONF.39/C.1/L.96):

The text of article 7 should become paragraph 3 of article 6 and should be amended to read as follows:

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

[Referred to the Drafting Committee, see para. 86 below]

(e) *Japan* (A/CONF.39/C.1/L.98):

Transfer the article to Section 2 of Part V.

[Referred to the Drafting Committee, see para. 86 below]

(f) *Malaysia* (A/CONF.39/C.1/L.99):

1. Substitute the word "subsequently" for the word "afterwards".

2. Insert the expression "expressly or by necessary implication" between the words "confirmed" and "by the competent authority".

[Rejected, see para. 85(*c*) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

83. The Committee of the Whole initially discussed article 7, and the amendments thereto, at its 14th meeting on 5 April 1968. At its 34th meeting, on 23 April 1968, the Committee considered the report of the Drafting Committee on the article.

(ii) INITIAL CONSIDERATION

84. At the 14th meeting of the Committee, the *United States of America* announced that it would not press for a vote on that part of its amendment (A/CONF.39/C.1/L.56) which proposed to add at the end of the article the words "subject to the provisions of article 42".

85. The Committee then proceeded to vote on certain of the amendments before it, as follows:

(*a*) The remaining part of the amendment by the *United States of America* (A/CONF.39/C.1/L.56) was rejected by 54 votes to 18, with 16 abstentions.

(*b*) The amendment by *Venezuela* (A/CONF.39/C.1/L.69) was rejected by 51 votes to 22, with 13 abstentions.

(*c*) The amendment by *Malaysia* (A/CONF.39/C.1/L.99) was rejected by 38 votes to 16, with 34 abstentions.

86. Also at its 14th meeting, the Committee of the Whole agreed, without objection, to refer article 7 to the Drafting Committee, together with the amendments by *Japan* (A/CONF.39/C.1/L.98), *Singapore* (A/CONF.39/C.1/L.96) and *Spain* (A/CONF.39/C.1/L.37).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

87. At the 34th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 7 adopted by the Drafting Committee (A/CONF.39/C.1/4; for text, see para. 88 below). The Committee adopted this text by 87 votes to 2, with 1 abstention.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

88. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 7:

Article 7

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

ARTICLE 8

A. International Law Commission text

89. The International Law Commission text provided as follows:

Article 8.—Adoption of the text

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

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

B. Amendments

90. Amendments were submitted to article 8 by *Ceylon* (A/CONF.39/C.1/L.43), France (A/CONF.39/C.1/L.30), Peru (A/CONF.39/C.1/L.101 and Corr.1), the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.51/Rev.1), and the United Republic of Tanzania (A/CONF.39/C.1/L.103). A sub-amendment was submitted by Czechoslovakia (A/CONF.39/C.1/L.102) to the amendment by France (A/CONF.39/C.1/L.30).

91. These amendments and the sub-amendment, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article, and a proposed new sub-paragraph, were to the following effect:

(i) *Paragraph 1*

Peru (A/CONF.39/C.1/L.101 and Corr.1):

Replace the existing text of article 8 [paragraph 1] by the following:

1. The adoption of the text of a treaty takes place by unanimous consent when the number of States participating in its drawing up is limited or restricted, unless the said States shall decide to apply a different rule.

[Referred to the Drafting Committee, see para. 93 below]

(ii) *Paragraph 2*

(a) *France* (A/CONF.39/C.1/L.30):

Amend the beginning of paragraph 2 to read as follows:

The adoption of the text of a multilateral treaty other than a restricted multilateral treaty at an international conference...

[Referred to the Drafting Committee, see para. 93 below, and subsequently deferred until the second session of the Conference, see para. 94 below]

(b) Sub-amendment by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30):

Amend the beginning of paragraph 2 to read as follows:

The adoption of the text of a *general multilateral treaty* or a multilateral treaty other than a restricted multilateral treaty at an international conference...

[Referred to the Drafting Committee, see para. 93 below and subsequently deferred until the second session of the Conference, see para. 94 below]

(c) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1):[19]

Amend the first part of paragraph 2 to read as follows:

The adoption of the text of a general or other multilateral treaty, with the exception of limited multilateral treaties, at an international conference takes place by the vote of two-thirds of the States...

[Referred to the Drafting Committee, see para. 93 below and subsequently deferred until the second session of the Conference, see para. 94 below]

(d) *Peru* (A/CONF.39/C.1/L.101 and Corr.1):

Replace the existing text of article 8 [paragraph 2] by the following:

"2. The adoption of the text of a treaty at a general international conference at which the number of States participating is substantial takes place by the vote of two-thirds of the States participating in the conference, unless by the same majority the said States shall decide to apply a different rule".

[Referred to the Drafting Committee, see para. 93 below]

(e) *United Republic of Tanzania* (A/CONF.39/C.1/L.103):

For the [words in] paragraph 2 reading:

unless by the same majority they shall decide to apply a different rule.

substitute:

unless it is decided during the conference to apply a different rule.

[Referred to the Drafting Committee, see para. 93 below]

---

[19] In its original form (A/CONF.39/C.1/L.51) this amendment read: "Amend the first part of paragraph 2 to read as follows: 'The adoption of the text of a general multilateral treaty at an international conference takes place by the vote of two-thirds of the States...'."

(iii) *New paragraph 3*

Ceylon (A/CONF.39/C.1/L.43):

Add the following new paragraph:

"3. The adoption of the text of a treaty by an international organization takes place by action of a competent organ of such organization according to its rules".

[Referred to the Drafting Committee, see para. 93 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

92. The Committee of the Whole initially discussed article 8 and the amendments thereto, at its 15th meeting, on 5 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 8 until the second session of the Conference.

(ii) CONSIDERATION

93. At the 15th meeting of the Committee of the Whole, it was decided, without objection, to refer article 8 to the Drafting Committee, together with all the amendments and the sub-amendment, namely the amendments by *Ceylon* (A/CONF.39/C.1/L.43), *France* (A/CONF.39/C.1/L.30), *Peru* (A/CONF.39/C.1/L.101 and Corr.1), *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1) and *United Republic of Tanzania* (A/CONF.39/C.1/L.103), and the sub-amendment by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30).

94. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties." Amendments to paragraph 2 of article 8 to add references to restricted and to general multilateral treaties had been submitted by *France* (A/CONF.39/C.1/L.30), and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1) respectively. A sub-amendment to add a reference to general multilateral treaties had also been submitted by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30).

(iii) DECISION

95. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 8 until the second session of the Conference (see document A/CONF.39/15, paras. 33-42).

ARTICLE 9

A. International Law Commission text

96. The International Law Commission text provided as follows:

Article 9.—Authentication of the text

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

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

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

B. Amendments

97. No amendments were submitted to article 9.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

98. The Committee of the Whole initially discussed article 9 at its 15th meeting, on 5 April 1968. At its 59th meeting, on 8 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

99. At its 15th meeting, the Committee of the Whole adopted article 9 without formal vote[20] and referred it to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

100. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 9 adopted by the Drafting Committee (A/CONF.39/C.1/5; for text, see para. 101 below). The Committee of the Whole adopted this text without formal vote.[21]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

101. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 9:

Article 9

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

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

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

ARTICLE 9bis and ARTICLE 12bis

102. An amendment was submitted to the Committee of the Whole, proposing the insertion of a new article 9*bis* to serve as an introductory article to subsequent provisions in the International Law Commission's text concerning the various forms by which a State might express its consent to be bound by a treaty. A further amendment, containing a proposed new article 12*bis*, was to the same effect as part of the proposed article 9*bis*. At its 18th meeting, on 9 April 1968, the Committee of the Whole eventually decided to discuss these two proposed new articles together. They are therefore considered together under a single heading.

[20] See para. 13 above.

[21] *Ibid.*

A. Proposed new articles

103. The amendments referred to above were submitted by Poland and the United States of America (A/CONF.39/C.1/L.88 and Add.1)[22] and Belgium (A/CONF.39/C.1/L.111).

104. These amendments were to the following effect:

(a) *Article 9*bis

Poland and *United States of America* (A/CONF.39/C.1/L.88 and Add.1):

Insert the following new article between articles 9 and 10:

Consent to be bound by a treaty

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

[Adopted, see para. 106 below, subject to the decision recorded in that paragraph]

(b) *Article 12*bis

Belgium (A/CONF.39/C.1/L.111):

Add a new article 12*bis* to read as follows:

*Article 12*bis

Other methods of expressing consent to be bound by a treaty

In addition to the cases dealt with in articles 10, 11 and 12, the consent of a State to be bound by a treaty may be expressed by any other method agreed upon between the contracting States.

[Adopted, see para. 106 below, subject to the decision recorded in that paragraph]

B. Proceedings of the Committee of the Whole

(i) Meetings

105. The Committee of the Whole initially discussed the proposed new article 9*bis* at its 15th and 18th meetings, on 5 and 9 April 1968. The proposed new article 12*bis* was discussed in conjunction with article 9*bis* at the 18th meeting of the Committee. At its 59th meeting, on 8 May 1968, the Committee considered the report of the Drafting Committee containing a single text for these proposed new articles.

(ii) Initial consideration

106. At its 18th meeting, the Committee of the Whole approved in principle the amendments by *Poland* and *United States of America* (A/CONF.39/C.1/L.88 and Add.1) and *Belgium* (A/CONF.39/C.1/L.111), and decided to insert in the text an article or articles incorporating the substance of proposed articles 9*bis* and 12*bis*. The Committee also decided, without objection, to refer these two amendments to the Drafting Committee for formulation, and for placing in the text.

[22] Original sponsor Poland, co-sponsor United States of America (Add.1).

(iii) Consideration of the report of the Drafting Committee

107. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 9*bis* adopted by the Drafting Committee (A/CONF.39/C.1/5; for text, see para. 108 below), and incorporating the substance of the proposed new articles 9*bis* and 12*bis*. The Committee of the Whole adopted this text without formal vote.[23]

(iv) Text adopted by the Committee of the Whole

108. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 9*bis*:

Article 9bis

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

QUESTION OF A RESIDUARY RULE IN FAVOUR OF SIGNATURE OR OF RATIFICATION (INCLUDING ARTICLE 11bis)

109. At its 16th meeting, on 8 April 1968, the Committee of the Whole noted that certain amendments to article 10, article 11 and a proposed new article 11*bis* raised the issue whether, in the absence of indication of the intention of the States concerned, consent to be bound by a treaty is expressed by signature or by ratification. The Committee decided that the question of inserting in the text a residuary rule in favour of signature or of ratification should be discussed separately from its consideration of articles 10 and 11. In view of this decision of the Committee, the question is dealt with under a separate heading.

A. International Law Commission text

110. The International Law Commission text of articles 10 and 11 provided as follows:

Article 10.—Consent to be bound by a treaty expressed by signature

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

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

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

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

2. For the purposes of paragraph 1:

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

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

Article 11.—Consent to be bound by a treaty expressed by ratification, acceptance or approval

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

[23] See para. 13 above.

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

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

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

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

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

B. Amendments

111. Amendments which related to the question of a residuary rule were submitted by Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela (A/CONF.39/C.1/L.105); Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2);[24] Switzerland (A/CONF.39/C.1/L.87) and Venezuela (A/CONF.39/C.1/L.71).

112. These amendments, arranged in the order of the articles to which they relate, were to the following effect:

(i) *Article 10*

Czechoslovakia, Sweden and *Poland* (A/CONF.39/.1/L.38 and Add.1 and 2):

Replace paragraph 1 by the following wording:

The consent of a State to be bound by a treaty is expressed by the signature of its representative, except in the cases referred to in articles 11 and 12.

[Withdrawn, see para. 114 below]

(ii) *Article 11*

(a) *Venezuela* (A/CONF.39/C.1/L.71):

Replace the present text [of paragraph 1] by the following:

The consent of a State to be bound by a treaty is expressed by ratification, unless the treaty provides otherwise".

Delete paragraph 2 if it is decided to delete paragraph 1(*b*) of article 2.

[Withdrawn, see para. 114 below]

(b) *Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay* and *Venezuela* (A/CONF.39/C.1/L.105):

Replace paragraph 1 by the following text:

The consent of a State to be bound by a treaty is expressed by ratification except in the cases provided for in articles 10 and 12.

[Rejected, see para. 115 below]

(iii) *New article 11*bis

Switzerland (A/CONF.39/C.1/L.87):

Add a new article 11*bis* reading as follows:

When the method of expressing consent to be bound cannot be established in accordance with the preceding articles, consent shall be expressed by ratification.

[Rejected, see para. 115 below]

[24] Original sponsor Czechoslovakia, co-sponsors Sweden (Add.1) and Poland (Add.2).

C. Proceedings of the Committee of the Whole

(i) Meetings

113. The question of the insertion in the text of a residuary rule in favour of signature or of ratification as expressing consent to be bound by a treaty, and the amendments relevant thereto, were discussed by the Committee of the Whole at its 16th, 17th and 18th meetings, on 8 and 9 April 1968.

(ii) Consideration

114. At the 16th meeting of the Committee of the Whole, the amendment by *Venezuela* (A/CONF.39/C.1/L.71) was withdrawn. At the 18th meeting, the amendment by *Czechoslovakia, Sweden* and *Poland* (A/CONF.39/C.1/L.38 and Add.1 and 2) was also withdrawn.

115. At the 18th meeting of the Committee of the Whole, a vote was taken by roll-call on the principle whether a residuary rule in favour of ratification should be included in the text, with the following results:

In favour: Bolivia, Chile, Colombia, Dominican Republic, Ethiopia, Gabon, Greece, Guatemala, Guinea, Iran, Iraq, Kuwait, Liechtenstein, Mexico, Peru, Republic of Korea, South Africa, Spain, Switzerland, Syria, Turkey, United Arab Republic, Uruguay, Venezuela, Zambia.

Against: Australia, Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Ceylon, Congo (Democratic Republic of), Cyprus, Czechoslovakia, Dahomey, Denmark, Federal Republic of Germany, Finland, France, Ghana, Holy See, Hungary, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kenya, Lebanon, Liberia, Madagascar, Mali, Monaco, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sweden, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstentions: Afghanistan, Algeria, Argentina, Brazil, China, Congo (Brazzaville), Cuba, Ecuador, India, Indonesia, Israel, Malaysia, Morocco, Philippines, United Republic of Tanzania, Yugoslavia.

The amendments by *Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay* and *Venezuela* (A/CONF.39/C.1/L.105) and *Switzerland* (A/CONF.39/C.1/L.87) were therefore rejected by 53 votes to 25, with 16 abstentions.

(iii) Decision

116. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended to the Conference any residuary rule on whether, in the absence of indication of the intention of the States concerned, consent to be bound by a treaty is expressed by signature or by ratification.

ARTICLE 10

(CONSENT TO BE BOUND BY A TREATY EXPRESSED BY SIGNATURE)

A. International Law Commission text

117. The International Law Commission text of article 10 appears in paragraph 110 above, under the heading "Question of a residuary rule in favour of signature or of ratification".

B. Amendments

118. In addition to the amendment by Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2)[25] relating to a residuary rule, the text of which appears in paragraph 112(*i*) above, other amendments were submitted to article 10 by Belgium (A/CONF.39/C.1/L.100), Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru and Venezuela (A/CONF.39/C.1/L.107), Italy (A/CONF.39/C.1/L.81), Spain (A/CONF.39/C.1/L.108) and Venezuela (A/CONF.39/C.1/L.70).

119. These other amendments, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2, were to the following effect:

(i) *Article as a whole*

Spain (A/CONF.39/C.1/L.108):

For the existing article 10 substitute the following:

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

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

(*b*) It is clear from the circumstances that the negotiating States were agreed that signature should have that effect;

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

2. For the purposes of the previous paragraph:

(*a*) The initialling of a treaty constitutes a signature of the treaty when it is clear from the circumstances that the negotiating States considered initialling as equivalent to signature;

(*b*) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty, unless such confirmation states that consent to be bound by the treaty is understood to be as from the notification of confirmation.

[Referred to the Drafting Committee, see para. 124 below]

(ii) *Paragraph 1*

(a) *Venezuela* (A/CONF.39/C.1/L.70):

Delete sub-paragraphs (*b*) and (*c*).

[Withdrawn, see para. 121 below]

(b) *Italy* (A/CONF.39/C.1/L.81):

Amend sub-paragraph (*c*) to read as follows:

The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was *formally manifested* during the negotiations.

[Referred to the Drafting Committee, see para. 124 below]

(c) *Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru* and *Venezuela* (A/CONF.39/C.1/L.107):

Replace paragraph 1, sub-paragraphs (*b*) and (*c*), by the following:

(*b*) In conformity with the internal law of that State the treaty is an administrative or an executive agreement.

[Rejected, see para. 122 below]

(iii) *Paragraph 2*

Belgium (A/CONF.39/C.1/L.100):

In sub-paragraph (*a*) of paragraph 2, insert the word "expressly" before the word "so".

[Referred to the Drafting Committee, see para. 124 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

120. The aspects of article 10 other than those dealt with under the question of a residuary rule considered in paragraphs 109 to 116 above, and the amendments to the article, were initially discussed by the Committee of the Whole at its 17th meeting, on 8 April 1968. At its 59th meeting, on 8 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

121. At the 17th meeting of the Committee of the Whole, the amendment by *Venezuela* (A/CONF.39/C.1/L.70) was withdrawn.

122. At the same meeting, the amendment by *Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru* and *Venezuela* (A/CONF.39/C.1/L.107) was put to the vote and was rejected by 60 votes to 10, with 16 abstentions.

123. Also at the 17th meeting, *Austria* requested a separate vote on the words "or was expressed during the negotiation". This was put to the vote in the form of a motion to delete those words. The motion was rejected by 37 votes to 10, with 30 abstentions.

124. The Committee of the Whole then decided, without objection, to refer article 10 to the Drafting Committee, together with the amendments by *Belgium* (A/CONF.39/C.1/L.100), *Italy* (A/CONF.39/C.1/L.81) and *Spain* (A/CONF.39/C.1/L.108).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

125. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 10 adopted by the Drafting Committee (A/CONF.39/C.1/5; for text, see para. 126 below). The Committee of the Whole adopted this text without formal vote.[26]

[25] Original sponsor Czechoslovakia, co-sponsors Sweden (Add.1) and Poland (Add.2). The proceedings of the Committee in relation to this amendment are described under the heading "Question of a residuary rule in favour of signature or of ratification" in paragraphs 109 to 116 above.

[26] See para. 13 above.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

126. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 10:

Article 10

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

(*a*) the treaty provides that signature shall have that effect;

(*b*) it is otherwise established that the negotiating States were agreed that signature should have that effect;

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

2. For the purposes of paragraph 1:

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

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

ARTICLE 10bis

A. Proposed new article

127. Poland submitted an amendment (A/CONF.39/C.1/L.89) which was to the following effect:

Insert the following new article between articles 10 and 11:

"*Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty*

"The consent of States to be bound by a treaty embodied in two or more related instruments is expressed by the exchange of such instruments, unless the States in question otherwise agreed."

[Adopted, see para. 129 below, subject to the decision recorded in that paragraph]

B. Proceedings of the Committee of the Whole

(i) MEETINGS

128. The Committee of the Whole initially discussed the proposed new article 10*bis* at its 17th and 18th meetings, on 8 and 9 April 1968. At its 59th meeting, on 8 May 1968, it considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

129. At its 18th meeting, the Committee of the Whole voted on the principle contained in the amendment by *Poland* (A/CONF.39/C.1/L.89) to add a new article 10*bis*. This principle was adopted by 42 votes to 10, with 27 abstentions. The Committee also decided, without objection, to refer the wording of the principle to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

130. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 10*bis* adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 131 below). This text was adopted by 69 votes to 1, with 18 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

131. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 10*bis*:

Article 10bis

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect;

(*b*) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

ARTICLE 11

(CONSENT TO BE BOUND BY A TREATY EXPRESSED BY RATIFICATION, ACCEPTANCE OR APPROVAL)

A. International Law Commission text

132. The International Law Commission text of article 11 appears in paragraph 110 above, under the heading "Question of a residuary rule in favour of signature or of ratification".

B. Amendments

133. In addition to the amendments by Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela (A/CONF.39/C.1/L.105) and Venezuela (A/CONF.39/C.1/L.71), relating to a residuary rule, the texts of which appear in paragraph 112 (ii) above,[27] other amendments were submitted to article 11 by Finland (A/CONF.39/C.1/L.60) and Spain (A/CONF.39/C.1/L.109).

134. These amendments were to the following effect:

(a) *Finland* (A/CONF.39/C.1/L.60):

Paragraph [1] should be amended as follows:

Sub-paragraph (*c*) would be placed immediately after sub-paragraph (*a*), replacing the present sub-paragraph (*b*), while the present sub-paragraphs (*d*) and (*b*) would be amalgamated, in that sequence, into a new sub-paragraph (*c*) by using the conjunction "or".

[Referred to the Drafting Committee, see para. 136 below]

(b) *Spain* (A/CONF.39/C.1/L.109):

For the existing article 11, substitute the following:

The consent of a State to be bound by a treaty is expressed by ratification, acceptance or approval when:

(*a*) the treaty expressly so provides;

(*b*) it is clear from the circumstances that the negotiating States intended that ratification, acceptance or approval should be required; or

(*c*) the intention of the State to sign the treaty subject to ratification, acceptance or approval appears from the full powers of its representative or was expressed during the negotiation.

[27] The proceedings of the Committee in relation to these amendments are also described under the heading "Question of a residuary rule in favour of signature or of ratification" in paragraphs 109 to 116 above.

[Referred to the Drafting Committee, see para. 136 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

135. The aspects of article 11 other then those dealt with under the question of a residuary rule considered in paragraphs 109 to 116 above, and the amendments to the article, were initially discussed by the Committee of the Whole at its 18th meeting, on 9 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

136. At its 18th meeting, the Committee of the Whole decided, without objection, to refer article 11 to the Drafting Committee, together with the amendments by *Finland* (A/CONF.39/C.1/L.60) and *Spain* (A/CONF.39/C.1/L.109).

(iii) Consideration of the report of the Drafting Committee

137. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 11 adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 138 below). The Committee of the Whole adopted this text without formal vote. [28]

(iv) Text adopted by the Committee of the Whole

138. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 11:

Article 11

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

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

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

(*c*) the representative of the State has signed the treaty subject to ratification; or

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

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

ARTICLE 11bis

139. An amendment by Switzerland (A/CONF.39/C.1/L.87) proposing the addition of a new article 11*bis* is considered under the heading "Question of a residuary rule in favour of signature or of ratification" in paragraphs 109 to 116 above.

[28] See para. 13 above.

ARTICLE 12

A. International Law Commission text

140. The International Law Commission text provided as follows:

Article 12.—Consent to be bound by a treaty expressed by accession

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

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

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

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

B. Amendments

141. An amendment was submitted to article 12 by Czechoslovakia (A/CONF.39/C.1/L.104).

142. This amendment was to the following effect:

Consider the present wording of article 12 as paragraph 1 and add a paragraph 2 which would read as follows: "2. The consent to be bound by a general multilateral treaty may be expressed by accession by any State. Any State also has the right to become, by accession, a party to a multilateral treaty which affects its legitimate interest."

[Deferred until the second session of the Conference, see para. 146 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

143. The Committee of the Whole initially discussed article 12 at its 18th meeting, on 9 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 12 until the second session of the Conference.

(ii) Consideration

144. At its 18th meeting, the Committee of the Whole agreed, without objection, to defer consideration of the amendment by *Czechoslovakia* (A/CONF.39/C.1/L.104) to article 12 until such time as the Committee took up consideration of the proposed new article 5*bis*.

145. Subject to the foregoing decision, the Committee of the Whole decided, at the same meeting, to refer article 12 to the Drafting Committee. [29]

[29] On this basis, the Drafting Committee submitted a report (A/CONF.39/C.1/6) to the Committee of the Whole containing the following text of article 12:

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

"(*a*) the treaty provides that such consent may be expressed by that State by means of accession;

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

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

This text was not formally introduced in the Committee of the Whole by the Chairman of the Drafting Committee, pending a final decision by the Committee of the Whole on the amendment by Czechoslovakia (A/CONF.39/C.1/L.104).

146. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *Czechoslovakia* (A/CONF. 39/C.1/L.104) to article 12 related to universal participation in general multilateral treaties.

(iii) DECISION

147. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 12 until the second session of the Conference (see document A/CONF.39/15, paras. 43-49).

ARTICLE 12bis

(OTHER METHODS OF EXPRESSING CONSENT TO BE BOUND BY A TREATY)

148. An amendment by Belgium (A/CONF.39/C.1/L.111) proposing the addition of a new article 12*bis* is considered together with article 9*bis* in paragraphs 102 to 108 above.

ARTICLE 13

A. International Law Commission text

149. The International Law Commission text provided as follows:

Article 13.—Exchange or deposit of instruments of ratification, acceptance, approval or accession

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

(*a*) their exchange between the contracting States;

(*b*) their deposit with the depositary; or

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

B. Amendments

150. Amendments were submitted to article 13 by Canada (A/CONF.39/C.1/L.110) and Poland (A/CONF. 39/C.1/L.93/Rev.1).

151. These amendments were to the following effect:

(a) *Poland* (A/CONF.39/C.1/L.93/Rev.1):[30]

Replace the present wording of article 13 by the following text:

Establishment of the consent to be bound by a treaty

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

(*a*) signing of the treaty; or

(*b*) exchange of the instruments of ratification, acceptance or approval between the contracting States; or

(*c*) deposit of the instruments mentioned under sub-paragraph (*b*), or of the instrument of accession with the depositary; or

(*d*) notification of ratification, acceptance, approval or accession made to the contracting States or to the depositary; or

(*e*) exchange of instruments constituting a treaty.

[Referred to the Drafting Committee, see para. 153 below]

(b) *Canada* (A/CONF.39/C.1/L.110):

In the opening phrase of the article, insert the words "or instrument" between the words "treaty" and "otherwise".

[Referred to the Drafting Committee, see para. 153 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

152. The Committee of the Whole initially discussed article 13, and the amendments thereto, at its 18th meeting, on 9 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

153. At its 18th meeting, the Committee of the Whole decided, without objection, to refer article 13 to the Drafting Committee, together with the amendments by *Canada* (A/CONF.39/C.1/L.110) and *Poland* (A/CONF. 39/C.1/L.93/Rev.1).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

154. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 13 adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 155 below). The Committee of the Whole adopted this text without formal vote.[31]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

155. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 13:

Article 13

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

(*a*) their exchange between the contracting States;

(*b*) their deposit with the depositary; or

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

ARTICLE 14

A. International Law Commission text

156. The International Law Commission text provided as follows:

[30] In the original version of this amendment (A/CONF.39/C.1/L.93) the words "Unless the treaty otherwise provides" appeared in the introductory phrase in place of the words "Unless it is otherwise agreed", and sub-paragraph (*d*) read as follows: "(*d*) notification of ratification, acceptance, approval or accession made to the contracting States or to the depositary, if so agreed; or".

[31] See para. 13 above.

Article 14.—Consent relating to a part of a treaty and choice of differing provisions

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

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

B. Amendments

157. No amendments were submitted to article 14.

C. Proceedings of the Committee of the Whole

(i) Meetings

158. The Committee of the Whole initially discussed article 14 at its 18th meeting, on 9 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

159. At its 18th meeting, the Committee of the Whole approved article 14 in principle and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

160. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 14 adopted by the Drafting Committee (A/CONF.39/C.1/7; for text, see para. 161 below). The Committee of the Whole adopted this text without formal vote.[32]

(iv) Text adopted by the Committee of the Whole

161. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 14:

Article 14

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

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

ARTICLE 15

A. International Law Commission text

162. The International Law Commission text provided as follows:

Article 15.—Obligation of a State not to frustrate the object of a treaty prior to its entry into force

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

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

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

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

B. Amendments

163. Amendments were submitted to article 15 by Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1),[33] Australia (A/CONF.39/C.1/L.129), Belgium, Federal Republic of Germany, Finland, Guinea and Japan (A/CONF.39/C.1/L.61 and Add.1 to 4),[34] Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.114), Congo (Brazzaville) (A/CONF.39/C.1/L.145), Greece and Venezuela (A/CONF.39/C.1/L.72 and Add.1),[35] Malaysia (A/CONF.39/C.1/L.122), Republic of Viet-Nam (A/CONF.39/C.1/L.124), Switzerland (A/CONF.39/C.1/L.112), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.135), United Republic of Tanzania (A/CONF.39/C.1/L.130) and United States of America (A/CONF.39/C.1/L.134).

164. These amendments, arranged under sub-headings relating to the article as a whole, the title, the opening sentence, sub-paragraph (*a*), sub-paragraph (*b*) and sub-paragraph (*c*) of the article, were as follows:

(i) *Article as a whole*

United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.135):

Delete the article.

[Rejected, see para. 167(*a*) below]

(ii) *Title*

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114):

Amend the title . . . to read as follows:

Obligation of a State to refrain from acts rendering impossible the future performance of a treaty which has not entered into force.

[Referred to the Drafting Committee, see para. 169 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.124):

In the title after the word "frustrate", add the words "distort or restrict".

[Referred to the Drafting Committee, see para. 169 below]

(iii) *Opening sentence*

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114):

Amend the opening sentence to read as follows:

A State is obliged to refrain from acts which might render impossible the future performance of a treaty which is to be concluded when:

[32] *Ibid.*

[33] Original sponsors Argentina and Uruguay, co-sponsor Ecuador (Add.1).

[34] Original sponsor Finland, co-sponsors Guinea (Add.1), Federal Republic of Germany (Add.2), Belgium (Add.3), and Japan (Add.4).

[35] Original sponsor Venezuela, co-sponsor Greece (Add.1).

[Referred to the Drafting Committee, see para. 169 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.124):

Amend the beginning of article 15 to read as follows:

A State is obliged to refrain from acts tending to frustrate, *distort or restrict* the object of a proposed treaty when:

[Referred to the Drafting Committee, see para. 169 below]

(c) *Australia* (A/CONF.39/C.1/L.129):

Replace the words "tending to frustrate" . . . by the words "which would frustrate".

[Referred to the Drafting Committee, see para. 169 below]

(d) *United States of America* (A/CONF.39/C.1/L.134):

. . . Delete the words "tending to" and replace them with the word "which".

[Referred to the Drafting Committee, see para. 169 below]

(iv) *Sub-paragraph* (a)

(a) *Belgium, Federal Republic of Germany, Finland, Guinea and Japan* (A/CONF.39/C.1/L.61 and Add.1 to 4):

Delete sub-paragraph (*a*).

[Adopted, see para. 167(*b*) below]

(b) *Greece and Venezuela* (A/CONF.39/C.1/L.72 and Add.1):

Delete sub-paragraph (*a*)

[Adopted, see para. 167(*b*) below]

(c) *Switzerland* (A/CONF.39/C.1/L.112):

In sub-paragraph (*a*), after the words "the conclusion of a treaty", insert the words "and the principle of good faith so requires".

[Not voted upon, see para. 168 below]

(d) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114):

Amend . . . sub-paragraph (*a*) . . . to read as follows:

(*a*) It is carrying on negotiations for the conclusion of the treaty;

[Withdrawn, see para. 166 below]

(e) *Malaysia* (A/CONF.39/C.1/L.122):

Delete paragraph (*a*).

[Adopted, see para. 167(*b*) below]

(f) *Australia* (A/CONF.39/C.1/L.129):

Delete sub-paragraph (*a*).

[Adopted, see para. 167(*b*) below]

(g) *United Republic of Tanzania* (A/CONF.39/C.1/L.130):

Delete the semi-colon after "progress" and add the following words "unless such negotiations are unduly protected".

[Not voted upon, see para. 168 below]

(h) *Congo (Brazzaville)* (A/CONF.39/C.1/L.145):

Replace . . . sub-paragraph (*a*) by the following text:

Negotiations for the conclusion of the treaty are in progress;

[Not voted upon, see para. 168 below]

(v) *Sub-paragraph* (b)

Malaysia (A/CONF.39/C.1/L.122):

Replace the words "made its intention clear" by the words "expressed its intention in the clearest terms".

[Referred to the Drafting Committee, see para. 169 below]

(vi) *Sub-paragraph* (c)

Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1):

. . . Replace the words "is not unduly delayed" by the words "is not delayed for more than twelve months".

[Referred to the Drafting Committee, see para. 169 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

165. The Committee of the Whole initially discussed article 15, and the amendments thereto, at its 19th and 20th meetings, on 9 and 10 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

166. At the 20th meeting of the Committee of the Whole, that part of the amendment of the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114) which related to sub-paragraph (*a*) of article 15 was withdrawn.

167. At the same meeting, the Committee of the Whole voted upon certain of the other amendments before it:

(*a*) The amendment by *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.135) to delete the entire article was put to a roll-call vote, with the following results:

In favour: Australia, Brazil, Canada, China, Indonesia, Japan, New Zealand, Norway, Philippines, Republic of Korea, Republic of Viet-Nam, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

Against: Algeria, Argentina, Austria, Belgium, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, Gabon, Ghana, Guatemala, Guinea, Holy See, Hungary, India, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Poland, Portugal, Romania. San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic. United Republic of Tanzania, United States of America, Yugoslavia, Zambia.

Abstentions: Afghanistan, Chile, Federal Republic of Germany, France, Greece, Iran.

This amendment was therefore rejected by 74 votes to 14, with 6 abstentions.

(*b*) Those amendments, or parts of amendments, which called for the deletion of sub-paragraph (*a*) of article 15 were then put to a roll-call vote, with the following results:

In favour: Afghanistan, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Chile, China, Colombia, Czechoslovakia, Federal Republic of Germany, Finland, France, Ghana, Greece, Guinea, India, Indonesia, Iran, Ireland, Jamaica, Japan, Kenya, Liberia, Malaysia, Mauritius, Monaco, Mongolia, New Zealand, Norway, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Sierra Leone, Singapore, Somalia, Sweden, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Against: Algeria, Bolivia, Ceylon, Congo (Democratic Republic of), Cuba, Dahomey, Ecuador, Ethiopia, Gabon, Guatemala, Holy See, Hungary, Iraq, Italy, Ivory Coast, Kuwait, Liechtenstein, Madagascar, Mali, Mexico, Netherlands, Nigeria, Pakistan, Peru, Poland, San Marino, Saudi Arabia, Senegal, South Africa, Spain, Switzerland, Yugoslavia, Zambia.

Abstentions: Argentina, Central African Republic, Congo (Brazzaville), Cyprus, Denmark, Israel, Morocco, Romania, Thailand, Tunisia, United Republic of Tanzania.

Those amendments, or parts of amendments, by *Australia* (A/CONF.39/C.1/L.129), *Belgium*, *Federal Republic of Germany*, *Finland*, *Guinea* and *Japan* (A/CONF.39/C.1/L.61 and Add.1 to 4), *Greece* and *Venezuela* (A/CONF.39/C.1/L.72 and Add.1) and *Malaysia* (A/CONF.39/C.1/L.122) which called for the deletion of sub-paragraph (*a*) were therefore adopted by 50 votes to 33, with 11 abstentions.

168. In view of the decision of the Committee of the Whole to delete sub-paragraph (*a*) of article 15, it was not necessary to put to the vote those amendments by *Congo (Brazzaville)* (A/CONF.39/C.1/L.145), *Switzerland* (A/CONF.39/C.1/L.112) and *United Republic of Tanzania* (A/CONF.39/C.1/L.130) which sought to add to or revise sub-paragraph (*a*) of the article.

169. Also at its 20th meeting, the Committee of the Whole agreed, without objection, to refer article 15, as amended, to the Drafting Committee, together with those amendments, or parts of amendments still remaining, namely: *Argentina*, *Ecuador* and *Uruguay* (amendment to sub-paragraph (*c*)) (A/CONF.39/C.1/L.131 and Add.1), *Australia* (amendment to the opening sentence) (A/CONF.39/C.1/L.129), *Byelorussian Soviet Socialist Republic* (amendment to title and opening sentence) (A/CONF.39/C.1/L.114), *Malaysia* (amendment to sub-paragraph (*b*)) (A/CONF.39/C.1/L.122), *Republic of Viet-Nam* (amendment to title and to opening sentence) (A/CONF.39/C.1/L.124), and *United States of America* (amendment to opening sentence) (A/CONF.39/C.1/L.134).

(iii) Consideration of the report of the Drafting Committee

170. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 15 adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 171 below). The Committee of the Whole adopted this text without formal vote. [36]

(iv) Text adopted by the Committee of the Whole

171. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 15:

Article 15

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

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

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

SECTION 2: RESERVATIONS TO MULTILATERAL TREATIES

ARTICLES 16 AND 17

172. At its 21st meeting, on 10 April 1968, the Committee of the Whole decided, without objection, to discuss articles 16 and 17 together. In view of this decision of the Committee, and as certain of the amendments submitted sought to combine the articles, they are considered together under a single heading.

A. International Law Commission text

173. The International Law Commission text provided as follows:

Article 16.—Formulation of reservations

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

(*a*) The reservation is prohibited by the treaty;

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

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

Article 17.—Acceptance of and objection to reservations

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

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

---

[36] See para. 13 above.

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

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

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

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

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

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

B. Amendments

SINGLE ARTICLE TO REPLACE ARTICLES 16 AND 17

174. Amendments were submitted by France (A/CONF.39/C.1/L.169 and Corr.1) and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.115) to replace articles 16 and 17 by a single article.

175. These amendments were to the following effect:

(a) *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115):

Replace articles 16 and 17 by a new article 16 reading as follows:

Article 16

Formulation of and objection to reservations

1. A State may make reservations when signing, ratifying, accepting, approving or acceding to a treaty unless the reservation is incompatible with the object and purposes of the treaty.

2. An objection by any of the contracting States to a reservation shall not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is clearly expressed by the objecting State.

3. A reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of six 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.

4. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

[Referred to the Drafting Committee, see para. 183 below, subject to decisions recorded in para. 182(*a*), (*b*) and (*j*) below]

(b) *France* (A/CONF.39/C.1/L.169 and Corr.1):

Replace articles 16 and 17 by a single article reading as follows:

Formulation and acceptance of reservations

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

(*a*) The reservation is prohibited by the treaty;

(*b*) The reservation is incompatible with the object and purpose of the treaty.

2. A reservation expressly authorized by the treaty cannot be the subject of an objection by other contracting States unless the treaty so provides.

3. A reservation to a bilateral treaty or to a restricted multilateral treaty must be accepted by all the contracting States.

4. In cases not falling under paragraphs 2 and 3, a reservation may be the subject of an objection by any other contracting State which has not accepted it. Nevertheless, a reservation is considered to have been accepted by a State if it shall have raised no objection to it by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

[Referred to the Drafting Committee, see para. 183 below]

OTHER AMENDMENTS TO ARTICLE 16

176. Other amendments were submitted to article 16 by Ceylon (A/CONF.39/C.1/L.139), China (A/CONF.39/C.1/L.161), Colombia and United States of America (A/CONF.39/C.1/L.126 and Add.1),[37] Federal Republic of Germany (A/CONF.39/C.1/L.128), Japan, Philippines and Republic of Korea (A/CONF.39/C.1/L.133/Rev.1),[38] Malaysia (A/CONF.39/C.1/L.163), Peru (A/CONF.39/C.1/L.132), Poland (A/CONF.39/C.1/L.136), Republic of Viet-Nam (A/CONF.39/C.1/L.125) and Spain (A/CONF.39/C.1/L.147).

177. These other amendments, arranged under sub-headings relating to the article as a whole, the introductory sentence, sub-paragraph (*a*), sub-paragraph (*b*) sub-paragraph (*c*) and a proposed new sub-paragraph were to the following effect:

(i) *Article 16 as a whole*

(a) *Japan, Philippines and Republic of Korea* (A/CONF.39/C.1/L.133/Rev.1):[39]

Replace the present text of article 16 by the following:

1. A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation which is not incompatible with the object and purpose of the treaty unless:

(*a*) The reservation is prohibited by the treaty;

(*b*) The treaty authorizes specified reservations which do not include the reservation in question.

2. A contracting State may raise an objection to a reservation on the ground that it is incompatible with the object and purpose of the treaty within twelve months after it is communicated to the contracting States. If objections have been raised on that ground by a majority of the contracting States as of the time of expiry of the twelve month period, the signature, ratification, acceptance, approval or accession accompanied by such a reservation shall be without legal effect.

[First part referred to the Drafting Committee, see para. 183 below, second part rejected, see para. 182(*c*) below]

[37] Original sponsor United States of America, co-sponsor Colombia (Add.1).

[38] Original sponsor Japan (A/CONF.39/C.1/L.133), co-sponsor Philippines (Add.1) and Republic of Korea (Add.2).

[39] In its original form (A/CONF.39/C.1/L.133), the time-limit mentioned in paragraph 2 of this amendment was three months instead of twelve months.

(b) *Ceylon* (A/CONF.39/C.1/L.139):

Substitute the following as article 16:

Article 16

(Reservations)

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation to the extent that the treaty so provides.

[Withdrawn, see para. 181 below]

(c) *Spain* (A/CONF.39/C.1/L.147):

Replace the existing text of article 16 by the following:

1. Any State may, when signing or expressing its consent to be bound by a treaty, formulate a reservation unless:

(*a*) The reservation has been prohibited by the treaty itself;

(*b*) The treaty is the constituent instrument of an international organization.

2. In cases where the treaty contains no provisions regarding reservations, the reservation shall be deemed to be prohibited if it is incompatible with the nature, object or purpose of the treaty.

[Sub-para. (*b*) withdrawn, see para. 181 below, remainder referred to the Drafting Committee, see para. 183 below, subject to decision recorded in para. 182(*b*) below]

(ii) *Introductory sentence of article 16*

China (A/CONF.39/C.1/L.161):

. . . Substitute the words "make reservations" for the words "formulate a reservation".

[Referred to the Drafting Committee, see para. 183 below]

(iii) *Sub-paragraph* (a) *of article 16*

Apart from the complete reformulations of article 16 in the amendments by *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115), which omitted sub-paragraph (*a*), and by *Spain* (A/CONF.39/C.1/L.147), which contained a redraft, no other amendments were submitted to sub-paragraph (*a*).

(iv) *Sub-paragraph* (b) *of article 16*

(a) *Colombia and United States of America* (A/CONF.39/C.1/L.126 and Add.1):

Delete sub-paragraph (*b*).

[Rejected, see para. 182(*b*) below]

(b) *Federal Republic of Germany* (A/CONF.39/C.1/L.128):

Delete sub-paragraph (*b*) and renumber sub-paragraph (*c*) accordingly.

[Rejected, see para. 182(*b*) below]

(c) *Poland* (A/CONF.39/C.1/L.136):

. . . Insert the word "only" between the words "authorizes" and "specified".

[Referred to the Drafting Committee, see para. 183 below]

(d) *Malaysia* (A/CONF.39/C.1/L.163):

Replace paragraph (*b*) by the following:

The specified reservation authorized by the treaty precludes the intended reservation;

[Referred to the Drafting Committee, see para. 183 below]

(v) *Sub-paragraph* (c) *of article 16*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.125):

In sub-paragraph (*c*), delete the words "in cases where the treaty contains no provisions regarding reservations".

[Rejected, see para. 182(*d*) below]

(b) *Colombia and United States of America* (A/CONF.39/C.1/L.126 and Add.1):

In sub-paragraph (*c*) delete "object and" . . . and substitute "*character or*".

[Referred to the Drafting Committee, see para. 183 below]

(c) *Malaysia* (A/CONF.39/C.1/L.163):

Replace paragraph (*c*) by the following:

The reservation is incompatible with the object and purpose of the treaty which contains no provisions regarding reservations.

[Referred to the Drafting Committee, see para. 183 below]

(vi) *Proposed new sub-paragraph of article 16*

Peru (A/CONF.39/C.1/L.132):

Add the following text as sub-paragraph (*d*):

The reservation renders the treaty inoperative by making its application subject, in a general and indeterminate manner, to national law.

[Rejected, see para. 182(*e*) below]

OTHER AMENDMENTS TO ARTICLE 17

178. In addition to the amendments mentioned in paragraph 174 above, other amendments were submitted to article 17 by Australia (A/CONF.39/C.1/L.166), Austria (A/CONF.39/C.1/L.3), Ceylon (A/CONF.39/C.1/L.140), China (A/CONF.39/C.1/L.162), Czechoslovakia (A/CONF.39/C.1/L.84 and L.85), France (A/CONF.39/C.1/L.31 and Add.1, replaced by A/CONF.39/C.1/L.113), France and Tunisia (A/CONF.39/C.1/L.113), Spain (A/CONF.39/C.1/L.148), Switzerland (A/CONF.39/C.1/L.97), Syria (A/CONF.39/C.1/L.94), Thailand (A/CONF.39/C.1/L.150) and United States of America (A/CONF.39/C.1/L.127).

179. These other amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2, paragraph 3, paragraph 4, paragraph 5 and a proposed new paragraph, were to the following effect:

(i) *Article 17 as a whole*

(a) *Ceylon* (A/CONF.39/C.1/L.140):

Substitute the following for article 17:

1. A reservation to a treaty which is a constituent instrument of an international organization requires the acceptance of the competent organ of that organization.

2. In cases not falling under the preceding paragraph, and except as the treaty otherwise provides, the following principles shall apply to acceptance of, and objections to, reservations:

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

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

(c) For the purposes of this article, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation, or by the date on which it expressed its consent to be bound by the treaty whichever is later.

[Withdrawn, see para. 181 below]

(b) *Spain* (A/CONF.39/C.1/L.148):

Replace the existing text of article 17 by the following:

1. A reservation authorized by the treaty does not require, in order to be effective, any acceptance by the other contracting States unless the treaty itself so prescribes.

2. A reservation to the constituent treaty of an existing international organization requires the acceptance of the competent organ of the said organization, unless the constituent treaty otherwise provides.

3. In cases where a reservation is neither expressly prohibited nor expressly permitted:

(*a*) Any other contracting State may accept the reservation in relation to the reserving State; or

(*b*) Any other contracting State may object to the reservation in relation to the reserving State.

4. A reservation is considered to have been accepted by a contracting State if it shall have raised no objection thereto by the end of a period of twelve months after it was notified of the formulation of such reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

[Referred to the Drafting Committee, see para. 183 below, subject to decision in para. 182(*g*) below]

(ii) *Paragraph 1 of article 17*

(a) *Czechoslovakia* (A/CONF.39/C.1/L.84):

Amend paragraph 1 to read:

1. A reservation expressly or impliedly authorized by a general multilateral treaty or other multilateral treaty, with the exception of cases provided for in paragraphs 2 and 3, does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

[Referred to the Drafting Committee, see para. 183 below, subsequently deferred until the second session of the Conference, see para. 187 below]

(b) *Switzerland* (A/CONF.39/C.1/L.97):

In paragraph 1, delete the words "or impliedly".

[Adopted, see para 182(*f*) below]

(c) *France and Tunisia* (A/CONF.39/C.1/L.113):

Delete the words "or impliedly".

[Adopted, see para. 182(*f*) below]

(d) *Thailand* (A/CONF.39/C.1/L.150):

Delete the words "or impliedly".

[Adopted, see para. 182(*f*) below]

(iii) *Paragraph 2 of article 17*

(a) *France and Tunisia* (A/CONF.39/C.1/L.113):

Replace paragraph 2 by the following text:

A reservation to a bilateral treaty or to a restricted multilateral treaty requires acceptance by all the contracting States.

[Referred to the Drafting Committee, see para. 183 below, subsequently deferred until the second session of the Conference, see para. 187 below. As stated in A/CONF.39/C.1/L.31/Add.1, this joint amendment replaced an identical amendment by France to paragraph 2 of article 17 in document A/CONF.39/C.1/L.31]

(b) *United States of America* (A/CONF.39/C.1/L.127):

In paragraph 2, replace . . . the words "and the object and" by the words "or the character or".

[Referred to the Drafting Committee, see para. 183 below]

(iv) *Paragraph 3 of article 17*

(a) *Austria* (A/CONF.39/C.1/L.3):

Add the following sentence:

When the reservation is formulated while the treaty is not yet in force, the expression of the consent of the State which has formulated the reservation takes effect only when such competent organ is properly constituted and has accepted the reservation.

[Referred to the Drafting Committee, see para. 183 below]

(b) *Switzerland* (A/CONF.39/C.1/L.97):

Delete paragraph 3.

[Rejected, see para. 182(*h*) below]

(c) *France and Tunisia* (A/CONF.39/C.1/L.113):

Delete paragraph 3.

[Rejected, see para. 182(*h*) below. As stated in A/CONF.39/C.1/L.31/Add.1, this joint amendment replaced an identical amendment by France to paragraph 3 in document A/CONF.39/C.1/L.31]

(d) *United States of America* (A/CONF.39/C.1/L.127):

In paragraph 3, add at the end:

but such acceptance shall not preclude any contracting State from objecting to the reservation.

[Adopted, see para. 182(*i*) below, subsequently deleted from a provisional text of article 17, see para. 186 below]

(e) *China* (A/CONF.39/C.1/L.162):

Add the following sentence at the end of the paragraph:

When the reservation is made before the entry into force of the treaty, the reservation shall be subject to subsequent acceptance by the competent organ after such competent organ has been properly instituted.

[Referred to the Drafting Committee, see para. 183 below]

(v) *Paragraph 4 of article 17*

(a) *Czechoslovakia* (A/CONF.39/C.1/L.85):

Amend sub-paragraph (*b*) to read as follows:

An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States if the objecting State explicitly expressed such intention.

[Rejected, see para. 182(*j*) below]

(b) *Syria* (A/CONF.39/C.1/L.94):

Amend sub-paragraph (*b*) to read as follows:

An objection by another contracting State to a reservation precludes the application of the provisions to which the reservation relates as between the reserving State and the objecting State, unless the objecting State expressed its intention to terminate the treaty in its entirety as between itself and the reserving State;

[Rejected, see para. 182(*j*) below]

(c) *Switzerland* (A/CONF.39/C.1/L.97):

Amend the beginning of paragraph 4 to read as follows:

In cases not falling under the preceding paragraphs of this article *and unless the reservation is prohibited by virtue of article 16, sub-paragraphs* (a) *and* (b):

[Referred to the Drafting Committee, see para. 183 below]

(d) *United States of America* (A/CONF.39/C.1/L.127):

In paragraph 4, after the words "In cases not falling under the preceding paragraphs of this article" insert "*and unless the reservation is prohibited by virtue of article 16:*"

In sub-paragraph 4(*a*), add at the end, "*for those States;*".

[Referred to the Drafting Committee, see para. 183 below]

(e) *Thailand* (A/CONF.39/C.1/L.150):

Replace the words "In cases not falling under" by the words "Subject to".

[Referred to the Drafting Committee, see para. 183 below]

(f) *Australia* (A/CONF.39/C.1/L.166):

Replace paragraph 4 by the following:

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

(*a*) A reservation shall be communicated to all the States entitled to become parties to the treaty;

(*b*) Any negotiating State or other State which has become a contracting State may object to the reservation within six months after it was notified of the reservation;

(*c*) An act expressing the State's consent to be bound by a treaty and containing a reservation shall be effective if at the expiry of the six-month period two-thirds of the States referred to in sub-paragraph (*b*)

(i) accept the reservation, or

(ii) in objecting to the reservation expressly agree that the treaty should nevertheless enter into force for the reserving State.

[Withdrawn, see para. 181 below]

(vi) *Paragraph 5 of article 17*

(a) *United States of America* (A/CONF.39/C.1/L.127):

Insert . . . after the word "State" the words "*unless the treaty otherwise provides*".

[Referred to the Drafting Committee, see para. 183 below]

(b) *Thailand* (A/CONF.39/C.1/L.150):

Delete the figure "5" and the . . . words "For the purposes of paragraphs 2 and 4".

The remainder of paragraph 5 should become sub-paragraph (*d*) of paragraph 4.

[Referred to the Drafting Committee, see para. 183 below]

(c) *Australia* (A/CONF.39/C.1/L.166):

Amend the introductory words of paragraph 5 by replacing the word "purposes" by "purpose" and by omitting "and 4".

[Withdrawn, see para. 181 below]

(vii) *Proposed new paragraph for article 17*

Australia (A/CONF.39/C.1/L.166):

Insert a new paragraph 6 as follows:

"For the purpose of paragraph 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of the period of six months after it was notified of the reservation".

[Withdrawn, see para. 181 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

180. The Committee of the Whole initially discussed articles 16 and 17, and the amendments thereto, at its 21st to 25th meetings inclusive, between 10 and 16 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on article 16. At its 72nd meeting, on 15 May 1968, the Committee considered a provisional report of the Drafting Committee on article 17. At the 80th meeting of the Committee of the Whole on 21 May 1968, it was decided to defer final consideration of article 17 until the second session of the Conference.

(ii) Initial consideration

181. At the 24th meeting of the Committee of the Whole, the amendments by *Ceylon* to articles 16 and 17 (A/CONF.39/C.1/L.139 and A/CONF.39/C.1/L.140) were withdrawn. At the 25th meeting, sub-paragraph 1(*b*) of the amendment by *Spain* (A/CONF.39/C.1/L.147) to article 16 and the amendment by *Australia* (A/CONF.39/C.1/L.166) to article 17 were also withdrawn.

182. At its 25th meeting, the Committee of the Whole voted upon certain of the amendments to articles 16 and 17, or the principles contained in those amendments, in the order of the paragraphs or sub-paragraphs of the articles to which they related. The results were as follows:

Article 16

(a) *Sub-paragraph* (a). The deletion of sub-paragraph (*a*) was rejected by 70 votes to 10, with 3 abstentions. This sub-paragraph had been omitted in the amendment by the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115).

(b) *Sub-paragraph* (b). The deletion of sub-paragraph (*b*) was rejected by 53 votes to 23, with 12 abstentions. The amendments by *Colombia* and the *United States of America* (A/CONF.39/C.1/L.126 and Add.1) and by the *Federal Republic of Germany* (A/CONF.39/C.1/L.128) had proposed this deletion. The sub-paragraph had also been omitted in the amendments by *Spain* (A/CONF.39/C.1/L.147) and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115).

(c) *Sub-paragraph* (c). Paragraph 2 of the amendment by *Japan*, the *Philippines* and the *Republic of Korea* (A/CONF.39/C.1/L.133/Rev.1) was rejected by 48 votes to 14, with 25 abstentions.

(d) *Sub-paragraph* (c). The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.125) was rejected by 54 votes to 7, with 16 abstentions.

(e) *Proposed new sub-paragraph.* The amendment by *Peru* (A/CONF.39/C.1/L.132) was rejected by 44 votes to 16, with 26 abstentions.

Article 17

(f) *Paragraph 1.* The amendments by *France* and *Tunisia* (A/CONF.39/C.1/L.113), *Switzerland* (A/CONF.39/C.1/L.97), and *Thailand* (A/CONF.39/C.1/L.150) to delete the words "or impliedly" were adopted by 55 votes to 18, with 12 abstentions.

(g) *Paragraph 2.* The deletion of paragraph 2 was rejected by 79 votes to 2, with 5 abstentions. This paragraph had been omitted in the amendment by *Spain* (A/CONF.39/C.1/L.148).

(h) *Paragraph 3.* The amendments by *France* and *Tunisia* (A/CONF.39/C.1/L.113) and *Switzerland* (A/CONF.39/C.1/L.97) to delete paragraph 3 were rejected by 50 votes to 26, with 11 abstentions.

(i) *Paragraph 3.* The amendment by the *United States of America* (A/CONF.39/C.1/L.127) to add the words "but such acceptance shall not preclude any contracting State from objecting to the reservation" was adopted by 33 votes to 22, with 29 abstentions.

(j) *Paragraph 4.* The principle, contained in the amendments by *Czechoslovakia* (A/CONF.39/C.1/L.85), *Syria* (A/CONF.39/C.1/L.94), and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115), that a treaty enters into force between a reserving State and an objecting State unless the objecting State expressly declares to the contrary, was rejected by 48 votes to 28, with 8 abstentions.

183. Subject to the foregoing decisions, the Committee of the Whole decided, without objection, at its 25th meeting, to refer article 16, and article 17 as amended, to the Drafting Committee, with all remaining amendments. The amendments so referred to the Drafting Committee were as follows:

(a) *Single new article: France* (A/CONF.39/C.1/L.169 and Corr.1) and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115) (subject to the decisions recorded in paragraph 182(*a*), (*b*) and (*j*) above).

(b) *Article 16: China* (A/CONF.39/C.1/L.161), *Colombia* and the *United States of America* (A/CONF.39/C.1/L.161 and Add.1) (amendment to sub-paragraph (*c*) only), *Japan, Philippines* and the *Republic of Korea* (A/CONF.39/C.1/L.133/Rev.1) first paragraph only), *Malaysia* (A/CONF.39/C.1/L.163), *Poland* (A/CONF.39/C.1/L.136) and Spain (A/CONF.39/C.1/L.147) (subject to the decisions recorded in paragraphs 181 and 182(*b*) above).

(c) *Article 17: Austria* (A/CONF.39/C.1/L.3), *China* (A/CONF.39/C.1/L.162), *Czechoslovakia* (A/CONF.39/C.1/L.84), *France* and *Tunisia* (A/CONF.39/C.1/L.113) (amendment to paragraph 2 only), *Spain* (A/CONF.39/C.1/L.148) (subject to the decisions recorded in paragraph 182(*g*) above), *Switzerland* (A/CONF.39/C.1/L.97) (amendment to paragraph 4 only), *Thailand* (A/CONF.39/C.1/L.150) (amendments to paragraphs 4 and 5), and the *United States of America* (A/CONF.39/C.1/L.127) (amendments to paragraphs 2, 4 and 5).

The Committee of the Whole further referred to the Drafting Committee the question whether articles 16 and 17 should be combined into a single article.

(iii) Consideration of the reports of the Drafting Committee

184. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 16 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 188 below). The Committee of the Whole adopted this text without formal vote. [40]

185. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced the text of article 17 provisionally adopted by the Drafting Committee (A/CONF.39/C.1/L.344). This provisional text provided as follows:

Article 17

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

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, the reservation requires the acceptance of the competent organ of that organization but such acceptance shall not preclude any contracting State from objecting to the reservation.

4. In cases not falling under the preceding paragraphs of this article and unless the treaty otherwise provides:

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

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

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

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

186. At the same meeting, the Committee of the Whole decided, without objection, to adopt the suggestion that the words "but such acceptance shall not preclude any contracting State from objecting to the reservation", in paragraph 3 of the provisional text of article 17, be deleted. These words had been added by the Drafting Committee to the provisional text in view of the earlier decision of the Committee of the Whole to adopt the amendment by the United States of America (A/CONF.39/C.1/L.127) to paragraph 3 of article 17. This deletion from the provisional text of article 17 was agreed to on

[40] See para. 13 above.

the understanding that the question of objections to reservations to constituent instruments of international organizations formed part of a topic already before the International Law Commission, and that meanwhile the question would continue to be regulated by general international law.

187. At the 80th meeting of the Committee of the Whole, it was decided without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". An amendment to add a reference to general multilateral treaties had been submitted to paragraph 1 of article 17 by *Czechoslovakia* (A/CONF.39/C.1/L.84) and an amendment to add a reference to restricted multilateral treaties to paragraph 2 of article 17 had been submitted by *France* and *Tunisia* (A/CONF.39/C.1/L.113).

(iv) Text adopted by the Committee of the Whole and decision

188. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 16:

Article 16

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

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty authorizes only specified reservations which do not include the reservation in question; or

(*c*) in cases other than those covered by paragraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

189. Also on the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 17 until the second session of the Conference (see document A/CONF.39/15, paras. 50-57).

ARTICLE 18

A. International Law Commission text

190. The International Law Commission text provided as follows:

Article 18.—Procedure regarding reservations

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

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

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

B. Amendments

191. Amendments were submitted to article 18 by Canada (A/CONF.39/C.1/L.158), Ceylon (A/CONF.39/C.1/L.151), Hungary (A/CONF.39/C.1/L.138), Spain (A/CONF.39/C.1/L.149) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.116).

192. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2 and paragraph 3, were as follows:

(i) *Article as a whole*

Spain (A/CONF.39/C.1/L.149):

Replace the existing text of article 18 by the following:

1. A reservation, an acceptance of a reservation, and an objection to a reservation must be formulated in writing and duly communicated by the reserving, accepting or objecting State to the other States which are parties, or are entitled to become parties, to the treaty.

2. When the treaty is, or is required to be, deposited, the depositary must make the communication in the form prescribed for that purpose.

3. A communication to the effect that a reservation has been formulated must contain express notice that, in accordance with the provisions of article 17, paragraph 4, the said reservation will be considered to have been accepted if no formal objection has been raised to it by the end of a period of twelve months.

4. If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation. An objection made to the reservation prior to its confirmation does not itself require confirmation.

[Referred to the Drafting Committee, see para. 194 below]

(ii) *Paragraph 1*

(a) *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.116):

Delete the words "an express acceptance of a reservation".

[Referred to the Drafting Committee, see para. 194 below]

(b) *Canada* (A/CONF.39/C.1/L.158):

Substitute the words "negotiating States and contracting States" for the words "other States entitled to become parties to the treaty".

[Referred to the Drafting Committee, see para. 194 below]

(iii) *Paragraph 2*

Hungary (A/CONF.39/C.1/L.138):

At the end of paragraph 2 add the following sentence:

If the reservation is not confirmed on the date of ratification, it shall be considered invalid.

[Referred to the Drafting Committee, see para. 194 below]

(iv) *Paragraph 3*

(a) *Hungary* (A/CONF.39/C.1/L.138):

Amend paragraph 3 to read:

An express acceptance of or an objection to a reservation does not require confirmation even if the reservation itself does.

[Referred to the Drafting Committee, see para. 194 below]

(b) *Ceylon* (A/CONF.39/C.1/L.151):

Amend paragraph 3 . . . to read as follows:

An objection to *or an acceptance of* the reservation made previously to its confirmation does not itself require confirmation.

[Referred to the Drafting Committee, see para. 194 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

193. The Committee of the Whole initially discussed article 18, and the amendments thereto, at its 23rd meeting, on 11 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

194. At its 23rd meeting, the Committee of the Whole agreed, without objection and subject to such decisions as it might subsequently take on articles 16 and 17, to refer article 18 to the Drafting Committee, together with the amendments thereto, namely the amendments by *Canada* (A/CONF.39/C.1/L.158), *Ceylon* (A/CONF.39/C.1/L.151), *Hungary* (A/CONF.39/C.1/L.138), *Spain* (A/CONF.39/C.1/L.149) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.116).

(iii) Consideration of the report of the Drafting Committee

195. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 18 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 196 below). The Committee of the Whole adopted this text without formal vote. [41]

(iv) Text adopted by the Committee of the Whole

196. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 18:

Article 18

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

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

3. An express acceptance of, or an objection to, the reservation made previously to confirmation of the reservation does not itself require confirmation.

[41] *Ibid.*

ARTICLE 19

A. International Law Commission text

197. The International Law Commission text provided as follows:

Article 19.—Legal effects of reservations

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

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

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

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

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

B. Amendments

198. Amendments were submitted to article 19 by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.157 and Add.1), [42] Canada (A/CONF.39/C.1/L.159), Ceylon (A/CONF.39/C.1/L.152), China (A/CONF.39/C.1/L.172), Czechoslovakia (A/CONF.39/C.1/L.86), France (A/CONF.39/C.1/L.170), Hungary (A/CONF.39C/.1/L.177), Syria (A/CONF.39/C.1/L.95) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.117).

199. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2 and paragraph 3 of the article, and a proposed new paragraph, were to the following effect:

(i) *Article as a whole*

France (A/CONF.39/C.1/L.170): [43]

Replace the wording of article 19 by the following:

1. In the case referred to in article 16, paragraph 2, an act expressing a State's consent to be bound by a treaty and containing a reservation is effective with regard to all the other parties to the treaty, and, in other cases, with regard to any other contracting State which has accepted the reservation, without prejudice to the provisions of article 16, paragraph 3.

2. A reservation established with regard to another party in accordance with the preceding paragraph:

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

(*b*) modifies those provisions to the same extent for the other party in its relations with the reserving State.

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

4. An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the reserving and objecting States unless a contrary intention is expressed by the latter; in such case, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

[42] Original sponsors Bulgaria and Romania, co-sponsor Sweden (Add.1).

[43] This amendment related to the amendment by France to article 16 in document A/CONF.39/C.1/L.169.

[Referred to the Drafting Committee, see para. 202 below]

(ii) *Paragraph 1*

(a) *Bulgaria, Romania* and *Sweden* (A/CONF.39/C.1/L.157 and Add.1):

Replace paragraph 1 by the following text:

A reservation established with regard to any other party, in accordance with articles 16, 17 and 18, modifies the provisions of the treaty, to the extent of the reservation, in relations between the reserving State and that other party.

[Referred to the Drafting Committee, see para. 202 below]

(b) *Canada* (A/CONF.39/C.1/L.159):

At the end of the opening sentence delete the words "and 18" and add the words "and notified to that party".

[Referred to the Drafting Committee, see para. 202 below]

(c) *China* (A/CONF.39/C.1/L.172):

In the opening sentence delete the words "with regard to another party".

In sub-paragraph (*b*), replace the words "for such other party" by the words "for the accepting State".

[Referred to the Drafting Committee, see para. 202 below]

(d) *Hungary* (A/CONF.39/C.1/L.177):

In sub-paragraphs (*a*) and (*b*) insert the words "or interprets" after the word "modifies".

[Referred to the Drafting Committee, see para. 202 below]

(iii) *Paragraph 2*

Hungary (A/CONF.39/C.1/L.177):

Insert the words "or interpret" after the words "does not modify".

[Referred to the Drafting Committee, see para. 202 below]

(iv) *Paragraph 3*

(a) *Czechoslovakia* (A/CONF.39/C.1/L.86):

Amend paragraph 3 to read:

Unless a State objecting to a reservation explicitly expressed the intention not to consider the treaty in force between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

[Withdrawn, see para. 201 below]

(b) *Syria* (A/CONF.39/C.1/L.95):

Amend paragraph 3 to read as follows:

When a State has objected to a reservation, the provisions to which the reservation relates do not apply as between that State and the reserving State to the extent of the reservation, unless the objecting State expresses its intention to terminate the treaty as between itself and the reserving State.

[Withdrawn, see para. 201 below]

(c) *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.117):

Amend paragraph 3 to read as follows:

If a State objects to a reservation, the treaty shall be in force in the relations between that State and the reserving State, with the exception of the provision to which the reservation has been made, unless the objecting State clearly declares otherwise.

[Withdrawn, see para. 201 below]

(v) *New paragraph*

Ceylon (A/CONF.39/C.1/L.152):

Add the following new paragraph as paragraph 4 of article 19:

The consent of a State to be bound by a treaty expressed subject to a reservation made in accordance with article 16 shall be counted among the number of such consents required for entry into force of the treaty, unless the treaty otherwise provides.

[Referred to the Drafting Committee, see para. 202 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

200. The Committee of the Whole initially discussed article 19, and the amendments thereto, at its 25th meeting, on 16 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

201. At the 25th meeting of the Committee of the Whole, the amendments by *Czechoslovakia* (A/CONF.39/C.1/L.86), *Syria* (A/CONF.39/C.1/L.95) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.117) were withdrawn, as they were consequential upon amendments by the same States to articles 16 and 17 which the Committee had rejected.

202. At the same meeting, the Committee of the Whole decided, without objection, to refer article 19 to the Drafting Committee, together with the remaining amendments by *Bulgaria, Romania* and *Sweden* (A/CONF.39/C.1/L.157 and Add.1), *Canada* (A/CONF.39/C.1/L.159), *Ceylon* (A/CONF.39/C.1/L.152), *China* (A/CONF.39/C.1/L.172), *France* (A/CONF.39/C.1/L.170) and *Hungary* (A/CONF.39/C.1/L.177).

(iii) Consideration of the report of the Drafting Committee

203. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 19 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 204 below). The Committee of the Whole adopted this text without formal vote. [44]

(iv) Text adopted by the Committee of the Whole

204. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 19:

Article 19

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

[44] See para. 13 above.

(*a*) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(*b*) modifies those provisions to the same extent for such other party in its relations with the reserving State.

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

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

ARTICLE 20

A. International Law Commission text

205. The International Law Commission text provided as follows:

Article 20.—Withdrawal of reservations

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

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

B. Amendments

206. Amendments to article 20 were submitted by Austria and Finland (A/CONF.39/C.1/L.4 and Add.1),[45] Hungary (A/CONF.39/C.1/L.178), Switzerland (A/CONF.39/C.1/L.119) and United States of America (A/CONF.39/C.1/L.171). The Union of Soviet Socialist Republics submitted a sub-amendment (A/CONF.39/C.1/L.167) to the amendment by Austria and Finland (A/CONF.39/C.1/L.4 and Add.1).

207. These amendments and the sub-amendment, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article and a proposed new paragraph, were to the following effect:

(i) *Paragraph 1*

(a) *Austria* and *Finland* (A/CONF.39/C.1/L.4 and Add.1):

In paragraph 1 insert . . . between the words "withdrawn" and "at any time" the words "in writing".

[Referred to the Drafting Committee, see para. 209 below]

(b) *United States of America* (A/CONF.39/C.1/L.171):

In . . . paragraph 1, replace the words "a State which has accepted the reservation" by the words "other States".

[Referred to the Drafting Committee, see para. 209 below]

(c) *Hungary* (A/CONF.39/C.1/L.178):

In paragraph 1 insert the words "in writing" after the words "a reservation may be withdrawn at any time".

[Referred to the Drafting Committee, see para. 209 below]

(ii) *Paragraph 2*

(a) *Switzerland* (A/CONF.39/C.1/L.119):

In paragraph 2, delete the words "or it is otherwise agreed".

[Referred to the Drafting Committee, see para. 209 below]

(b) *United States of America* (A/CONF.39/C.1/L.171):

In . . . paragraph 2, insert the word "written" before the word "notice".

[Referred to the Drafting Committee, see para. 209 below]

(iii) *Proposed new paragraph*

(a) *Austria* and *Finland* (A/CONF.39/C.1/L.4 and Add.1):

Add the following new paragraph:

3. If the withdrawal of a reservation to which objection had been raised removes the cause which precluded the entry into force of the treaty as between the objecting and reserving States, the treaty comes into force as between the two States when the withdrawal becomes operative under the preceding paragraph.

[Referred to the Drafting Committee, see para. 209 below]

(b) *Union of Soviet Socialist Republics:* sub-amendment (A/CONF.39/C.1/L.167) to the amendment by *Austria* and *Finland* (A/CONF.39/C.1/L.4 and Add.1):

In the text of the Austrian amendment, replace the words "the cause which precluded the entry into force of the treaty as between the objecting and reserving States" by the words "the reason why the objecting State declared that it did not consider itself bound by the treaty to the reserving State".

[Referred to the Drafting Committee, see para. 209 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

208. The Committee of the Whole initially discussed article 20, and the amendments thereto, at its 25th meeting, on 16 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

209. At its 25th meeting, the Committee of the Whole decided, without objection, to refer article 20 to the Drafting Committee, together with the amendments submitted to it, namely those by *Austria* and *Finland* (A/CONF.39/C.1/L.4 and Add.1), *Hungary* (A/CONF.39/C.1/L.178), *Switzerland* (A/CONF.39/C.1/L.119) and *United States of America* (A/CONF.39/C.1/L.171), and the sub-amendment by the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.167) to the amendment by *Austria* and *Finland* (A/CONF.39/C.1/L.4 and Add.1).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

210. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee intro-

[45] Original sponsor Austria, co-sponsor Finland (Add.1).

duced a report containing the text of article 20 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 211 below). The Committee of the Whole adopted this text without formal vote.[46]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

211. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 20:

Article 20

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

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

SECTION 3: ENTRY INTO FORCE OF TREATIES

ARTICLE 21

A. International Law Commission text

212. The International Law Commission text provided as follows:

Article 21.—Entry into force

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

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

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

B. Amendments

213. Amendments were submitted to article 21 by Canada (A/CONF.39/C.1/L.123), Chile (A/CONF.39/C.1/L.190), Congo (Brazzaville) (A/CONF.39/C.1/L.188), Republic of Viet-Nam (A/CONF.39/C.1/L.175) and United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.186).

214. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2 and paragraph 3 of the article and a proposed new paragraph, were to the following effect:

(i) *Paragraph 1*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.175):

Replace the words "negotiating States", in paragraph 1, by the words "States parties to the treaty" . . .

[Referred to the Drafting Committee, see para. 217 below]

(b) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.186):

At the beginning of paragraph 1, insert the phrase: "Except as provided in paragraph 4".

[Adopted, see para. 216(*c*) below, subject to the decision recorded in paragraph 217]

(c) *Congo (Brazzaville)* (A/CONF.39/C.1/L.188):

Delete paragraph 1 of article 21 or, failing that, amend it to read as follows:

Every treaty should, unless the parties agree otherwise, prescribe the manner and especially the date of its entry into force.

[First part rejected, see para. 216(*a*) below, second part referred to the Drafting Committee, see para. 217 below]

(ii) *Paragraph 2*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.175):

Replace the words "negotiating States" . . . in paragraph 2 by the words "States entitled to become parties to the treaty".

[Referred to the Drafting Committee, see para. 217 below]

(b) *Chile* (A/CONF.39/C.1/L.190):

In paragraph 2, replace the word "all" by the words "two-thirds of".

[Rejected, see para. 216(*b*) below]

(iii) *Paragraph 3*

Canada (A/CONF.39/C.1/L.123):

In . . . para. 3, substitute the words "becomes effective" for the words "was established".

[Referred to the Drafting Committee, see para. 217 below]

(iv) *Proposed new paragraph*

United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.186):

Add a new paragraph 4 in the following terms:

The provisions of a treaty regulating the processes of ratification, accession, acceptance or approval, the manner or date of its entry into force and other related procedural matters have legal effect prior to entry into force of the treaty.

[Adopted, see para. 216(*c*) below, subject to the decision recorded in paragraph 217]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

215. The Committee of the Whole initially discussed article 21, and the amendments thereto, at its 26th meeting, on 17 April 1968. At its 72nd meeting on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

216. At the 26th meeting of the Committee of the Whole, the Committee voted upon certain of the amendments before it, with the following results:

(*a*) That part of the amendment by *Congo (Brazzaville)* (A/CONF.39/C.1/L.188) which proposed the deletion of paragraph 1 was rejected by 75 votes to 1, with 12 abstentions.

[46] See para. 13 above.

(*b*) The amendment by *Chile* (A/CONF.39/C.1/L.190) to paragraph 2 was rejected by 64 votes to 9, with 15 abstentions.

(*c*) The principle contained in the amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.186) to add a new paragraph and consequentially to amend paragraph 1 was adopted without formal vote.

217. At the same meeting, the Committee of the Whole decided, without objection, to refer article 21 to the Drafting Committee, together with the remaining amendments by *Canada* (A/CONF.39/C.1/L.123), *Congo (Brazzaville)* (A/CONF.39/C.1/L.188) (second part), and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.175). The Committee of the Whole further requested the Drafting Committee to formulate the principle contained in the amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.186).

(iii) Consideration of the report of the Drafting Committee

218. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 21 adopted by the Drafting Committee (A/CONF.39/C.1/8). [47]

219. At the same meeting, *Australia* submitted an oral amendment to add the words "the time of" between the words "apply from" and "the adoption of its text" in paragraph 4 of the text recommended by the Drafting Committee. The Committee of the Whole adopted this oral amendment without formal vote.

220. Also at its 72nd meeting, the Committee of the Whole adopted the text of article 21 recommended by the Drafting Committee, as amended, without formal vote. [48]

(iv) Text adopted by the Committee of the Whole

221. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 21:

Article 21

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

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

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

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty shall apply from the time of the adoption of its text.

[47] The text of this article appearing in paragraph 221 below is that recommended by the Drafting Committee, with the addition, in paragraph 4, of the words "the time of" before the words "the adoption of its text".

[48] See para. 13 above.

ARTICLE 22

A. International Law Commission text

222. The International Law Commission text provided as follows:

Article 22.—Entry into force provisionally

1. A treaty may enter into force provisionally if:

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

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

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

B. Amendments

223. Amendments were submitted to article 22 by Belgium (A/CONF.39/C.1/L.194), Bulgaria and Romania (A/CONF.39/C.1/L.195), Czechoslovakia and Yugoslavia (A/CONF.39/C.1/L.185 and Add.1), [49] Greece (A/CONF.39/C.1/L.192), Hungary and Poland (A/CONF.39/C.1/L.198), India (A/CONF.39/C.1/L.193), Philippines (A/CONF.39/C.1/L.165), Republic of Korea, Republic of Viet-Nam and United States of America (A/CONF.39/C.1/L.154 and Add.1), [50] and Republic of Viet-Nam (A/CONF.39/C.1/L.176).

224. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2 of the article, and proposed new paragraphs, were to the following effect:

(i) *Article as a whole*

(a) *Republic of Korea, Republic of Viet-Nam* and *United States of America* (A/CONF.39/C.1/L.154 and Add.1):

Delete the article.

[Not pressed to a vote, see para. 226 below]

(b) *Greece* (A/CONF.39/C.1/L.192):

Replace article 22 by the following:

A treaty may enter into force provisionally, in whole or in part, if the treaty itself prescribes that it shall enter into force provisionally, in whole or in part, pending ratification, acceptance, approval or accession by the contracting States, or the negotiating States have in some other manner so agreed.

[Referred to the Drafting Committee, see para. 228 below]

(ii) *Paragraph 1*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.176):

If article 22 is not deleted (see A/CONF.39/C.1/L.154 and Add.1), replace the words "negotiating States" in paragraph 1(*b*) by the words "States parties to the treaty".

[Referred to the Drafting Committee, see para. 228 below]

[49] Original sponsor Yugoslavia, co-sponsor Czechoslovakia (Add.1).

[50] Original sponsor United States of America, co-sponsors Republic of Korea and Republic of Viet-Nam (Add.1).

(b) *Czechoslovakia* and *Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1):

Amend paragraph 1 to read as follows:

A treaty or a part of a treaty may be applied provisionally if:
(*a*) The treaty itself prescribes that it shall be applied provisionally pending ratification, acceptance, approval or accession by the contracting States; or
(*b*) The negotiating States have in some other manner so agreed.
[Adopted, see para. 227(*b*) below]

(c) *India* (A/CONF.39/C.1/L.193):

Amend paragraph 1(*a*) to read as follows:

(*a*) The treaty itself prescribes that it shall enter into force provisionally pending ratification, acceptance, approval, accession, *or other modes of expressing consent*, by the *States concerned*.

[Referred to the Drafting Committee, see para. 228 below]

(d) *Bulgaria* and *Romania* (A/CONF.39/C.1/L.195):

Replace paragraph 1 by the following text:

1. A treaty may enter into force provisionally pending ratification, acceptance, approval or accession by the contracting States, if those States have so agreed either in the treaty itself or in some other manner.

[Referred to the Drafting Committee, see para. 228 below]

(iii) *Paragraph 2*

(a) *Philippines* (A/CONF.39/C.1/L.165):

Delete paragraph 2.
[Rejected, see para. 227(*a*) below]

(b) *Czechoslovakia* and *Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1):

Delete paragraph 2.
[Rejected, see para. 227(*a*) below]

(iv) *Proposed new paragraphs*

(a) *Belgium* (A/CONF.39/C.1/L.194):

Add a paragraph 3 reading as follows:

Unless otherwise provided or agreed, a State may terminate the provisional entry into force with respect to itself, by manifesting its intention not to become a party to the treaty.

[Adopted, see para. 227(*c*) below, subject to the decision recorded in that paragraph]

(b) *Hungary* and *Poland* (A/CONF.39/C.1/L.198):

Add a new paragraph reading as follows:

3. The provisional application of a treaty is terminated:
(*a*) when the treaty enters into force; or
(*b*) when the States between which the treaty provisionally applied agree to such a termination; or
(*c*) upon notification by one of such States of its intention not to become a party to the treaty with respect to that State.

[Adopted, see para. 227(*c*) below, subject to the decision recorded in that paragraph]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

225. The Committee of the Whole initially discussed article 22, and the amendments thereto, at its 26th and 27th meetings, on 17 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

226. At the 27th meeting of the Committee of the Whole, it was announced that the amendment by *Republic of Korea*, *Republic of Viet-Nam* and *United States of America* (A/CONF.39/C.1/L.154 and Add.1) would not be pressed to a vote.

227. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it, with the following results:

(*a*) The deletion of paragraph 2, as proposed in the second part of the amendment by *Czechoslovakia* and *Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1) and in the amendment by the *Philippines* (A/CONF.39/C.1/L.165), was rejected by 63 votes to 11, with 12 abstentions.

(*b*) The first part of the amendment by *Czechoslovakia* and *Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1) was adopted by 72 votes to 3, with 11 abstentions.

(*c*) The principle of including a new paragraph 3 on the termination of the provisional entry into force or provisional application of a treaty, as proposed in the amendments by *Belgium* (A/CONF.39/C.1/L.194) and *Hungary* and *Poland* (A/CONF.39/C.1/L.198), was adopted by 69 votes to 1, with 20 abstentions.

228. Also at its 27th meeting, the Committee of the Whole decided to refer article 22, as amended, to the Drafting Committee, together with the remaining amendments by *Bulgaria* and *Romania* (A/CONF.39/C.1/L.195), *Greece* (A/CONF.39/C.1/L.192), *India* (A/CONF.39/C.1/L.193) and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.176). The Committee of the Whole further requested the Drafting Committee to formulate the principle contained in the amendments by *Belgium* (A/CONF.39/C.1/L.194) and *Hungary* and *Poland* (A/CONF.39/C.1/L.198).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

229. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 22 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 230 below). The Committee of the Whole adopted this text without formal vote. [51]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

230. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 22:

Article 22

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
(*a*) the treaty itself so provides; or
(*b*) the negotiating States have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a

[51] See para. 13 above.

part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III.—OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1: OBSERVANCE OF TREATIES

ARTICLES 23 AND 23bis

A. International Law Commission text

231. The International Law Commission text of article 23 provided as follows:

Article 23.—Pacta sunt servanda

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

B. Amendments

232. Amendments were submitted to article 23 by Bolivia, Czechoslovakia, Ecuador, Spain, and United Republic of Tanzania (A/CONF.39/C.1/L.118), Congo (Brazzaville) (A/CONF.39/C.1/L.189), Cuba (A/CONF. 39/C.1/L.173), Pakistan (A/CONF.39/C.1/L.181) and Thailand (A/CONF.39/C.1/L.196).

233. These amendments were to the following effect:

(a) *Bolivia, Czechoslovakia, Ecuador, Spain* and *United Republic of Tanzania* (A/CONF.39/C.1/L.118):

Replace the expression "Every treaty in force" by the expression "Every valid treaty".

[Referred to the Drafting Committee, see para. 236 below]

(b) *Cuba* (A/CONF.39/C.1/L.173):

Between the words "in force" and the words "is binding", insert the following words: "in conformity with the provisions of the present Convention".

[Referred to the Drafting Committee, see para. 236 below]

(c) *Pakistan* (A/CONF.39/C.1/L.181):

Amend the article to read as follows:

Every treaty in force is binding upon the parties to it and must be performed by them in good faith, *and no party may invoke the provisions of its constitution or its laws as an excuse for its failure to perform this duty.*

[Adopted, see para. 235 below, subject to the decision recorded in that paragraph]

(d) *Congo (Brazzaville)* (A/CONF.39/C.1/L.189):

Redraft article 23 to read as follows:

1. Treaties which have been regularly concluded and have entered into force are binding upon the parties and must be performed in good faith.

2. Good faith is presumed.

[Referred to the Drafting Committee, see para. 236 below]

(e) *Thailand* (A/CONF.39/C.1/L.196):

. . . Delete the words "to it".

[Referred to the Drafting Committee, sce para. 236 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

234. The Committee of the Whole initially discussed article 23, and the amendments thereto, at its 28th and 29th meetings, on 18 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article and on article 23*bis* (see para. 237 below).

(ii) Initial consideration

235. At its 29th meeting, the Committee of the Whole voted upon the principle contained in the amendment by *Pakistan* (A/CONF.39/C.1/L.181), without prejudice to its placing in the text. The principle was adopted by 55 votes to none, with 30 abstentions.

236. At the same meeting, the Committee of the Whole decided, without objection, to refer article 23 to the Drafting Committee, together with the amendments submitted thereto, namely the amendments by *Bolivia, Czechoslovakia, Ecuador, Spain* and *United Republic of Tanzania* (A/CONF.39/C.1/L.118), *Congo (Brazzaville)* (A/CONF.39/C.1/L.189), *Cuba* (A/CONF.39/C.1/L.173) and *Thailand* (A/CONF.39/C.1/L.196). In so doing, the Committee took note that the sponsors of the first three of these amendments had indicated their acceptance in principle of the existing text of article 23. The Committee of the Whole further requested the Drafting Committee to formulate the principle contained in the amendment by Pakistan (A/CONF.39/C.1/L.181) and to consider the question of its placing in the text.

(iii) Consideration of the report of the Drafting Committee

237. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 23 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 239 below). This report also set out the text of an article 23*bis* (see para. 240 below), adopted by the Drafting Committee in order to incorporate in the text of the draft convention the amendment by Pakistan (A/CONF.39/C.1/L.181) to article 23 which had been adopted in principle by the Committee of the Whole.

238. At the same meeting, the Committee of the Whole adopted the text of article 23 recommended by the Drafting Committee, without formal vote.[52] It also adopted the text of article 23*bis* without formal vote.[53]

(iv) Texts adopted by the Committee of the Whole

239. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 23:

[52] *Ibid.*

[53] *Ibid.*

Article 23

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

240. It likewise recommends for adoption the following text of article 23*bis*:

Article 23bis

No party may invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 43.

SECTION 2: APPLICATION OF TREATIES

ARTICLE 24

A. International Law Commission text

241. The International Law Commission text provided as follows:

Article 24.—Non-retroactivity of treaties

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

B. Amendments

242. Amendments were submitted to article 24 by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1),[54] Cuba (A/CONF.39/C.1/L.146), Finland (A/CONF.39/C.1/L.91), Japan (A/CONF.39/C.1/L.191), Republic of Viet-Nam (A/CONF.39/C.1/L.179) and United States of America (A/CONF.39/C.1/L.155).

243. These amendments were to the following effect:

(a) *Austria* and *Greece* (A/CONF.39/C.1/L.5 and Add.1):

Replace the words "Unless a different intention appears from the treaty or is otherwise established" . . . by the words "Unless the treaty so provides".

[Rejected, see para. 245(*a*) below]

(b) *Finland* (A/CONF.39/C.1/L.91):

Add the words "Subject to the provisions of article 15 and" before the first words of article 24.

[Referred to the Drafting Committee, see para. 246 below]

(c) *Cuba* (A/CONF.39/C.1/L.146):

Replace the words "any act or fact which took place" by the words "any act or fact which was completed".

[Referred to the Drafting Committee, see para. 246 below]

(d) *United States of America* (A/CONF.39/C.1/L.155):

Delete the words "or any situation which ceased to exist".

[Rejected, see para. 245(*b*) below]

(e) *Republic of Viet-Nam* (A/CONF.39/C.1/L.179):

Replace the words "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind" by the words "Unless the treaty expressly so provides, it does not bind".

[Not voted upon, see para. 245 below]

(f) *Japan* (A/CONF.39/C.1/L.191):

. . . Replace the words "Unless a different intention appears from the treaty or is otherwise established" by the words "Unless the treaty otherwise provides or a contrary intention is established".

[Referred to the Drafting Committee, see para. 246 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

244. The Committee of the Whole initially discussed article 24, and the amendments thereto, at its 30th meeting, on 19 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

245. At its 30th meeting, the Committee of the Whole voted upon certain amendments before it, with the following results:

(*a*) The amendment by *Austria* and *Greece* (A/CONF.39/C.1/L.5 and Add.1) was rejected by 46 votes to 24, with 18 abstentions.

(*b*) The amendment by the *United States of America* (A/CONF.39/C.1/L.155) was rejected by 47 votes to 23, with 17 abstentions.

In view of the rejection of the amendment by *Austria* and *Greece* (A/CONF.39/C.1/L.5 and Add.1), it was not necessary to put to the vote the amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.179), which was to a similar effect.

246. Also at its 30th meeting, the Committee of the Whole decided, without objection, to refer article 24 to the Drafting Committee, together with the remaining amendments by *Cuba* (A/CONF.39/C.1/L.146), *Finland* (A/CONF.39/C.1/L.91) and *Japan* (A/CONF.39/C.1/L.191).

(iii) Consideration of the report of the Drafting Committee

247. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 24 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 248 below). The Committee of the Whole adopted this text without formal vote.[55]

(iv) Text adopted by the Committee of the Whole

248. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 24:

[54] Original sponsor Austria, co-sponsor Greece (Add.1).

[55] See para. 13 above.

Article 24

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

ARTICLE 25

A. International Law Commission text

249. The International Law Commission text provided as follows:

Article 25.—Application of treaties to territory

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

B. Amendments

250. Amendments were submitted to article 25 by the Republic of Viet-Nam (A/CONF.39/C.1/L.180) and the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.164).

251. These amendments were to the following effect:

(a) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.164):

Amend the provisions of article 25 to read as follows:

Territorial scope of the treaty

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

[Referred to the Drafting Committee, see para. 254 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.180):

Word article 25 as follows:

Unless the treaty contains express provisions in this respect, it applies to the entire territory of each party.

[Withdrawn, see para. 253 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

252. The Committee of the Whole initially discussed article 25, and the amendments thereto, at its 30th and 31st meetings, on 19 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

253. At the 30th meeting of the Committee of the Whole, the amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.180) was withdrawn.

254. At its 31st meeting, the Committee of the Whole decided, without objection, to refer article 25 to the Drafting Committee, together with the amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.164).

(iii) Consideration of the report of the Drafting Committee

255. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 25 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 256 below). The Committee of the Whole adopted this text without formal vote. [56]

(iv) Text adopted by the Committee of the Whole

256. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 25:

Article 25

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

ARTICLE 26

A. International Law Commission text

257. The International Law Commission text provided as follows:

Article 26.—Application of successive treaties relating to the same subject-matter

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

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

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

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

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

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

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

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

B. Amendments

258. Amendments were submitted to article 26 by Cambodia (A/CONF.39/C.1/L.208), France (A/CONF.39/C.1/L.44), Japan (A/CONF.39/C.1/L.207), Romania

[56] *Ibid.*

and Sweden (A/CONF.39/C.1/L.204) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.202).

259. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2, paragraph 3, paragraph 4 and paragraph 5 of the article, were to the following effect:

(i) *Paragraph 1*

No amendments.

(ii) *Paragraph 2*

Japan (A/CONF.39/C.1/L.207):

Delete the words "or that it is not to be considered as inconsistent with," together with the comma preceding them.

[Referred to the Drafting Committee, see para. 261 below]

(iii) *Paragraph 3*

No amendments.

(iv) *Paragraph 4*

(a) *France* (A/CONF.39/C.1/L.44):

At the end of paragraph 4(*a*) . . . add the following sentence:

however, when the earlier treaty is a restricted multilateral treaty and the later treaty is concluded between certain of the parties only, the provisions of the earlier treaty shall prevail;

[Referred to the Drafting Committee, see para. 261, below, and subsequently deferred until the second session of the Conference, see para. 262 below]

(b) *Romania* and *Sweden* (A/CONF.39/C.1/L.204):

Replace sub-paragraphs (*b*) and (*c*) of paragraph 4 by the following text:

(*b*) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

[Referred to the Drafting Committee, see para. 261 below]

(c) *Cambodia* (A/CONF.39/C.1/L.208):

At the end of paragraph 4, *add* a new sub-paragraph (*d*) reading as follows:

In case of conflict between the two treaties referred to in sub-paragraphs (*b*) and (*c*) above, the provisions of the earlier treaty prevail over those of the later treaty.

[Referred to the Drafting Committee, see para. 261 below]

(v) *Paragraph 5*

Union of Soviet Socialist Republics (A/CONF.39/C.1/L.202):

At the beginning of paragraph 5, insert a reference to article 23; the opening words of the paragraph would then read:

Paragraph 4 is without prejudice to articles 23 and 37,.

[Referred to t e Drafting Committee, see para. 261 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

260. The Committee of the Whole initially discussed article 26, and the amendments thereto, at its 31st meeting, on 19 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 26 until the second session of the Conference.

(ii) CONSIDERATION

261. At its 31st meeting, the Committee of the Whole decided, without objection, to refer article 26 to the Drafting Committee, together with all the amendments thereto, namely the amendments by *Cambodia* (A/CONF.39/C.1/L.208), *France* (A/CONF.39/C.1/L.44), *Japan* (A/CONF.39/C.1/L.207), *Romania* and *Sweden* (A/CONF.39/C.1/L.204) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.202).

262. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *France* (A/CONF.39/C.1/L.44) proposed to add a reference to restricted multilateral treaties in article 26.

(iii) DECISION

263. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 26 until the second session of the Conference (see document A/CONF.39/15, paras. 58-66).

SECTION 3: INTERPRETATION OF TREATIES

ARTICLES 27 AND 28

264. At its 31st meeting, on 19 April 1968, the Committee of the Whole decided, without objection, to discuss articles 27 and 28 together. In view of this decision of the Committee, and as certain of the amendments submitted sought to combine the articles, they are considered together under a single heading.

A. International Law Commission text

265. The International Law Commission text provided as follows:

Article 27.—General rule of interpretation

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

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

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

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

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

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

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

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

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

Article 28.—Supplementary means of interpretation

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

(*a*) leaves the meaning ambiguous or obscure; or

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

B. Amendments

266. Amendments combining articles 27 and 28 into a single article were submitted by Republic of Viet-Nam (A/CONF.39/C.1/L.199) and United States of America (A/CONF.39/C.1/L.156).

267. Other amendments to article 27 were submitted by Australia (A/CONF.39/C.1/L.210), Ceylon (A/CONF.39/C.1/L.212), Federal Republic of Germany (A/CONF.39/C.1/L.214), Greece (A/CONF.39/C.1/L.213), Romania (A/CONF.39/C.1/L.203), Pakistan (A/CONF.39/C.1/L.182), Philippines (A/CONF.39/C.1/L.174), Spain (A/CONF.39/C.1/L.216) and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.201).

268. In addition to the amendments mentioned in paragraph 266 above combining articles 27 and 28, further amendments were submitted to article 28 by Spain (A/CONF.39/C.1/L.217) and United Republic of Tanzania (A/CONF.39/C.1/L.215).

269. Those amendments, arranged under sub-headings relating to a combined single article, article 27 as a whole, paragraph 1, paragraph 2 and paragraph 3 of that article, and article 28, were as follows:

(i) *Combined single article*

(a) *United States of America* (A/CONF.39/C.1/L.156):

Amend article 27 to read as follows:

A treaty shall be interpreted in good faith *in order to determine the meaning to be given to its terms in the light of all relevant factors, including in particular*:

(*a*) *the context of the treaty*;

(*b*) *its objects and purposes*;

(*c*) any agreement between the parties *regarding the interpretation* of the treaty;

(*d*) any instrument made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty;

(*e*) any subsequent practice in the application of the treaty which establishes the *common* understanding *of the meaning of the terms as between the parties generally*;

(*f*) *the preparatory work of the treaty*;

(*g*) *the circumstances of its conclusion*;

(*h*) any relevant rules of international law applicable in the relations between the parties;

(*i*) *the* special meaning *to* be given to a term if the parties intended *such term to have a special meaning.*

Delete article 28.

[Rejected, see para. 271(*a*) below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.199):

Combine articles 27 and 28 into a single article by inserting in article 27, paragraph 3, a new sub-paragraph (*a*) reading as follows:

The preparatory work of the treaty and the circumstances of its conclusion;.

Article 28, whose provisions will have been incorporated in the new article 27, will be deleted; article 29 *et seq.* should then be renumbered accordingly.

In addition the title of article 27 should be placed in the plural, so as to read "General rules of interpretation".

[Rejected, see para. 271(*b*) below]

(ii) *Article 27 as a whole*

Philippines (A/CONF.39/C.1/L.174):

Replace the present text of article 27 by the following:

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

2. A special meaning shall be given to the treaty if the parties so intended.

3. Together with the context, the following shall be taken into account in interpreting a treaty:

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

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

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

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

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

[Referred to the Drafting Committee, see para. 272 below]

(iii) *Paragraph 1 of article 27*

(a) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.201):

At the end of . . . paragraph [1], add the words "expressing the agreed intentions of the parties;".

[Referred to the Drafting Committee, see para. 272 below]

(b) *Spain* (A/CONF.39/C.1/L.216):

In paragraph 1 after the words "meaning to be given" add the words "between the parties".

[Referred to the Drafting Committee, see para. 272 below]

(iv) *Paragraph 2 of article 27*

(a) *Romania* (A/CONF.39/C.1/L.203):

In sub-paragraph (*a*) of paragraph 2, between the words "any" and "agreement" insert the word "relevant".

In sub-paragraph (*b*) of paragraph 2, between the words "any" and "instrument" insert the word "relevant".

[Referred to the Drafting Committee, see para. 272 below]

(b) *Ceylon* (A/CONF.39/C.1/L.212):

Add the following new sub-paragraph:

(*c*) In the case of a treaty adopted within an international organization, any other instrument adopted by the organization and intended to constitute part of the context for the interpretation of the treaty.

[Rejected, see para. 271(*c*) below]

(c) *Greece* (A/CONF.39/C.1/L.213):

Replace the words "including its preamble and annexes" . . . by the following: "including the title of the treaty, the titles of parts, chapters, sections and articles of it, the preamble and the annexes".

[Referred to the Drafting Committee, see para. 272 below]

(v) *Paragraph 3 of article 27*

(a) *Pakistan* (A/CONF.39/C.1/L.182):

Amend paragraph 3(*a*) to read as follows:

3. There shall be taken into account, together with the context:
(*a*) any subsequent agreement between the parties regarding the interpretation or *implementation* of the treaty.

[Referred to the Drafting Committee, see para. 272 below]

(b) *Australia* (A/CONF.39/C.1/L.210):

Amend sub-paragraph (*a*) by deleting the word "subsequent".

Amend sub-paragraph (*b*) by inserting the word "common" before the word "understanding".

[Referred to the Drafting Committee, see para. 272 below]

(c) *Federal Republic of Germany* (A/CONF.39/C.1/L.214):

Add a new sub-paragraph (*d*) to paragraph 3, reading as follows:

any relevant international obligation of one or more of the parties.

[Referred to the Drafting Committee, see para. 272 below]

(vi) *Article 28*

(a) *United Republic of Tanzania* (A/CONF.39/C.1/L.215):

Amend article 28 to read:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.

[Rejected, see para. 271 (*d*) below]

(b) *Spain* (A/CONF.39/C.1/L.217):

Add the words "and the subsequent acts of the parties" after the words "circumstances of its conclusion".

Replace "confirm" by "supplement".

[Referred to the Drafting Committee, see para. 272 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

270. The Committee of the Whole initially discussed articles 27 and 28, and the amendments thereto, at its 31st, 32nd and 33rd meetings, on 19 and 22 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on these articles.

(ii) Initial consideration

271. At its 33rd meeting, the Committee of the Whole voted on certain of the amendments before it. The results of the voting were as follows:

(*a*) The amendment by the *United States of America* (A/CONF.39/C.1/L.156) to articles 27 and 28 was rejected by 66 votes to 8, with 10 abstentions.

(*b*) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.199) to articles 27 and 28 was rejected by 70 votes to 3, with 9 abstentions.

(*c*) The amendment by *Ceylon* (A/CONF.39/C.1/L.212) to paragraph 2 of article 27 was rejected by 29 votes to 9, with 49 abstentions.

(*d*) The amendment by *United Republic of Tanzania* (A/CONF.39/C.1/L.215) to article 28 was rejected by 54 votes to 8, with 25 abstentions.

272. Also at its 33rd meeting, the Committee of the Whole decided, without objection, to refer article 27 to the Drafting Committee, together with the remaining amendments thereto, namely the amendments submitted by *Australia* (A/CONF.39/C.1/L.210), *Federal Republic of Germany* (A/CONF.39/C.1/L.214), *Greece* (A/CONF.39/C.1/L.213), *Romania* (A/CONF.39/C.1/L.203), *Pakistan* (A/CONF.39/C.1/L.182), *Philippines* (A/CONF.39/C.1/L.174), *Spain* (A/CONF.39/C.1/L.216) and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.201). The Committee likewise referred article 28 to the Drafting Committee, together with the remaining amendment by *Spain* (A/CONF.39/C.1/L.217).

(iii) Consideration of the report of the Drafting Committee

273. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the texts of articles 27 and 28 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see paras. 274 and 275 below). The Committee of the Whole adopted the text of article 27 without formal vote.[57] It likewise adopted the text of article 28 without formal vote.[58]

(iv) Texts adopted by the Committee of the Whole

274. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 27:

---

[57] See para. 13 above.

[58] *Ibid.*

Article 27

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

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

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

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

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

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

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

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

275. It likewise recommends for adoption the following text of article 28:

Article 28

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

(*a*) leaves the meaning ambiguous or obscure; or

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

ARTICLE 29

A. International Law Commission text

276. The International Law Commission text provided as follows:

Article 29.—Interpretation of treaties in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

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

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

B. Amendments

277. Amendments were submitted to article 29 by the Republic of Viet-Nam (A/CONF.39/C.1/L.209) and the United States of America (A/CONF.39/C.1/L.197). A sub-amendment was submitted by Australia (A/CONF.39/C.1/L.219) to the amendment by United States of America (A/CONF.39/C.1/L.197).

278. These amendments, and the sub-amendment, arranged under sub-headings relating to paragraph 1, paragraph 2 and paragraph 3 of the article, and a proposed new paragraph, were to the following effect:

(i) *Paragraph 1*

United States of America (A/CONF.39/C.1/L.197):

At the end of paragraph 1, replace the word "text" between "a particular" and "shall prevail" by the words "language version".

[Referred to the Drafting Committee, see para. 280 below]

(ii) *Paragraph 2*

No amendments.

(iii) *Paragraph 3*

(a) *United States of America* (A/CONF.39/C.1/L.197):

Replace paragraph 3 by the following:

The terms of the treaty are presumed to have the same meaning in each authentic language version.

[Referred to the Drafting Committee, see para. 280 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.209):

. . . replace the words "the application of articles 27 and 28" by the words "the application of article 27"; and . . . replace the words "a meaning which as far as possible reconciles the texts" by the words "the meaning which comes closest to the object and purpose of the treaty".

[Referred to the Drafting Committee, see para. 280 below]

(iv) *Proposed new paragraph*

(a) *United States of America* (A/CONF.39/C.1/L.197):

Add a new paragraph 4 to read as follows:

Except in the case mentioned in paragraph 1, when a comparison of the several language versions discloses a difference in meaning which the application of article 27 does not remove, a meaning shall be adopted which is most consonant with the object and purpose of the treaty.

[Referred to the Drafting Committee, see para. 280 below]

(b) *Australia* (A/CONF.39/C.1/L.219): sub-amendment to the amendment by the *United States of America* (A/CONF.39/C.1/L.197):

Amend the new paragraph 4 proposed in document A/CONF.39/C.1/L.197 by:

(i) inserting the words "article 28" after the words "article 27";
(ii) omitting the word "most";
(iii) adding the following words to the end of the paragraph: "and which best reconciles the versions".

[Referred to the Drafting Committee, see para. 280 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

279. The Committee of the Whole initially discussed article 29, and the amendments thereto, at its 34th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968,

the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

280. At its 34th meeting, the Committee of the Whole agreed, without objection, to refer article 29 to the Drafting Committee, together with the amendments thereto by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.209) and the *United States of America* (A/CONF.39/C.1/L.197) and the sub-amendment by *Australia* (A/CONF.39/C.1/L.219) to the latter amendment.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

281. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 29 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 282 below). The Committee of the Whole adopted this text without formal vote. [59]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

282. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 29:

Article 29

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

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

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except in the case mentioned in paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4: TREATIES AND THIRD STATES

ARTICLE 30

A. International Law Commission text

283. The International Law Commission text provided as follows:

Article 30.—General rule regarding third States

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

B. Amendments

284. Amendments were submitted to article 30 by Venezuela (A/CONF.39/C.1/L.205/Rev.1) and the United Republic of Tanzania (A/CONF.39/C.1/L.221).

285. These amendments were to the following effect:

(a) *Venezuela* (A/CONF.39/C.1/L.205/Rev.1): [60]

Combine articles 30, 31, 32 and 33 in a single article reading as follows:

1. Treaties do not create obligations and rights for third States except with their express consent and under the conditions they establish.

2. The modification or revocation of the rights and obligations referred to in the foregoing paragraph shall require the express consent of the parties and of the third State, unless the treaty otherwise provides or it clearly otherwise appears from its nature and provisions.

[Withdrawn, see para. 287 below]

(b) *United Republic of Tanzania* (A/CONF.39/C.1/L.221):

Replace the whole article by the following:

Except as provided in articles 31, 32 and 34, a treaty does not create either obligations or rights for a third State.

[Referred to the Drafting Committee, see para. 288 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

286. The Committee of the Whole initially discussed article 30, and the amendments thereto, at its 35th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

287. At the 35th meeting of the Committee of the Whole, the amendment by *Venezuela* (A/CONF.39/C.1/L.205/Rev.1) was withdrawn.

288. At the same meeting, the Committee of the Whole decided, without objection, to refer article 30 to the Drafting Committee, together with the amendment by the *United Republic of Tanzania* (A/CONF.39/C.1/L.221).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

289. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 30 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see para. 290 below). The Committee of the Whole adopted this text without formal vote. [61]

[59] *Ibid.*

[60] In its original form (A/CONF.39/C.1/L.205) this amendment provided:

Combine articles 30, 31, 32 and 33 in a single article to read as follows:

"1. A treaty creates obligations or rights for a third State solely with its express consent and under the conditions established in the treaty.

"2. The modification or revocation of the rights and obligations referred to in the preceding paragraph shall require the express consent of the parties and of the third State, unless the treaty otherwise provides or this clearly appears from its nature and conditions."

[61] See para. 13 above.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

290. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 30:

Article 30

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

ARTICLES 31 AND 32

291. At its 35th meeting, on 23 April 1968, the Committee of the Whole decided, without objection, to discuss articles 31 and 32 together. In view of this decision of the Committee, and as one of the amendments submitted related to both the articles, they are considered together under a single heading.

A. International Law Commission text

292. The International Law Commission text provided as follows:

Article 31.—Treaties providing for obligations for third States

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

Article 32.—Treaties providing for rights for third States

1. A right arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to accord that right either to the State in question, or to a group of States to which it belongs, or to all States, and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated.

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

B. Amendments

293. In addition to the amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1),[62] considered under article 30 above, an amendment to both articles 31 and 32 was submitted by Mongolia (A/CONF.39/C.1/L.168). Other amendments to article 32 were submitted by Finland (A/CONF.39/C.1/L.141), Japan (A/CONF.39/C.1/L.218) and Netherlands (A/CONF.39/C.1/L.224).

294. These amendments, arranged under sub-headings relating to articles 31 and 32 jointly and to article 32, were to the following effect:

(i) *Articles 31 and 32*

Mongolia (A/CONF.39/C.1/L.168):

Transpose articles 31 and 32 so that the article concerning rights for third States comes first.

[Referred to the Drafting Committee, see para. 298 below]

(ii) *Article 32*

(a) *Finland* (A/CONF.39/C.1/L.141):

Delete second sentence of paragraph 1.

[Rejected, see para. 297 below]

(b) *Japan* (A/CONF.39/C.1/L.218):

Add "Unless the treaty otherwise provides," at the beginning of the last sentence [of paragraph 1.]

[Referred to the Drafting Committee, see para. 298 below]

(c) *Netherlands* (A/CONF.39/C.1/L.224):

In paragraph 1 replace "arises" ... by "may arise"; delete at the end of the paragraph the words "and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated".

[Withdrawn, see para. 296 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

295. The Committee of the Whole initially discussed articles 31 and 32, and the remaining amendments[63] thereto, at its 35th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on these articles.

(ii) INITIAL CONSIDERATION

296. At the 35th meeting of the Committee of the Whole, the amendment by the *Netherlands* (A/CONF.39/C.1/L.224) to article 32 was withdrawn.

297. At the same meeting the Committee of the Whole voted upon the amendment by *Finland* (A/CONF.39/C.1/L.141) to article 32. The amendment was rejected by 46 votes to 25, with 17 abstentions.

298. Also at its 35th meeting, the Committee of the Whole decided, without objection, to refer articles 31 and 32 to the Drafting Committee, together with the remaining amendments by *Japan* (A/CONF.39/C.1/L.218) and *Mongolia* (A/CONF.39/C.1/L.168).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

299. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the texts of articles 31 and 32 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see paras. 300 and 301 below). The Committee of the Whole adopted the text of article 31 without formal vote.[64] It likewise adopted the text of article 32 without formal vote.[65]

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

300. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 31:

[62] See para. 285(*a*) above.

[63] The amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1) was withdrawn in connexion with the Committee's discussion of article 30, see under that article, para. 287 above.

[64] See para. 13 above.

[65] *Ibid.*

Article 31

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

301. It likewise recommends for adoption the following text of article 32:

Article 32

1. A right arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to accord that right either to the State in question, or to a group of States to which it belongs, or to all States, and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

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

ARTICLE 33

A. International Law Commission text

302. The International Law Commission text provided as follows:

Article 33.—Revocation or modification of obligations or rights of third States

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

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

B. Amendments

303. In addition to the amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1) [66] considered under article 30, other amendments to article 33 were submitted by the Netherlands (A/CONF.39/C.1/L.225) and the Philippines (A/CONF.39/C.1/L.211).

304. These amendments were to the following effect:

(a) *Philippines* (A/CONF.39/C.1/L.211):

Amend article 33 by deleting the words and punctuation marks in brackets and by inserting the words that are *in italics*:

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

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

[Referred to the Drafting Committee, see para. 307 below]

(b) *Netherlands* (A/CONF.39/C.1/L.225):

In *paragraph 1* delete the words "or modified".

Amend *paragraph 2* to read:

When a right has arisen for a third State in conformity with article 32, *and provided the State has actually exercised the right and complied with the conditions for its exercise*, the right may not be revoked by the parties if it is established that the right was intended not to be revocable without the consent of the third State.

[Withdrawn, see para. 306 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

305. The Committee of the Whole initially discussed article 33, and the remaining amendments thereto, [67] at its 35th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

306. At the 35th meeting of the Committee of the Whole, the amendment by the *Netherlands* (A/CONF.39/C.1/L.225) was withdrawn.

307. At the same meeting, the Committee of the Whole decided, without objection, to refer article 33 to the Drafting Committee, together with the amendment by the *Philippines* (A/CONF.39/C.1/L.211).

(iii) Consideration of the report of the Drafting Committee

308. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 33 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see para. 309 below). The Committee of the Whole adopted this text without formal vote. [68]

(iv) Text adopted by the Committee of the Whole

309. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 33:

Article 33

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

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

ARTICLE 34

A. International Law Commission text

310. The International Law Commission text provided as follows:

[66] See para. 285(*a*) above.

[67] The amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1) was withdrawn in connexion with the Committee's discussion of article 30, see under that article, para. 287 above.

[68] See para. 13 above.

Article 34.—Rules in a treaty becoming binding through international custom

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

B. Amendments

311. Amendments were submitted to article 34 by Finland (A/CONF.39/C.1/L.142), Mexico (A/CONF.39/C.1/L.226), Syria (A/CONF.39/C.1/L.106) and Venezuela (A/CONF.39/C.1/L.223).

312. These amendments were to the following effect:

(a) *Syria* (A/CONF.39/C.1/L.106):

Add the words "recognized as such" at the end of the article.

[Adopted, see para. 314(*c*) below]

(b) *Finland* (A/CONF.39/C.1/L.142):

Delete article.

[Rejected, see para. 314(*a*) below]

(c) *Venezuela* (A/CONF.39/C.1/L.223):

Delete the article.

[Rejected, see para. 314(*a*) below]

(d) *Mexico* (A/CONF.39/C.1/L.226):

At the end of the article, add the words "or as a general principle of law."

[Adopted, see para. 314(*b*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

313. The Committee of the Whole initially discussed article 34, and the amendments thereto, at its 35th and 36th meetings, on 23 and 24 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

314. At its 36th meeting the Committee of the Whole voted on the amendments submitted to article 34. The voting was as follows:

(*a*) A roll-call vote was taken on the amendments by *Finland* (A/CONF.39/C.1/L.142) and *Venezuela* (A/CONF.39/C.1/L.223) to delete the article, with the following results:

In favour: Afghanistan, Argentina, Ceylon, Federal Republic of Germany, Finland, Norway, Peru, Republic of Korea, Spain, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

Against: Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Congo (Democratic Republic of), Cuba, Denmark, Ecuador, Ethiopia, Ghana, Guatemala, Holy See, Hungary, India, Iran, Iraq, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Liechtenstein, Madagascar, Malaysia, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Pakistan, Philippines, Poland, Portugal, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Thailand, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yugoslavia, Zambia.

Abstentions: Algeria, Bolivia, Congo (Brazzaville), Costa Rica, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, France, Gabon, Greece, Guinea, Indonesia, Ivory Coast, Liberia, Monaco, Syria, Tunisia.

These amendments were therefore rejected by 63 votes to 14, with 18 abstentions.

(*b*) The amendment by *Mexico* (A/CONF.39/C.1/L.226) was adopted by 38 votes to 28, with 28 abstentions.

(*c*) The amendment by *Syria* (A/CONF.39/C.1/L.106) was adopted by 59 votes to 15, with 17 abstentions.

315. Also at its 36th meeting, the Committee of the Whole decided, without objection, to refer article 34, as amended, to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

316. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 34 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see para. 317 below). The Committee of the Whole adopted this text without formal vote. [69]

(iv) Text adopted by the Committee of the Whole

317. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 34:

Article 34

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

PART IV.—AMENDMENT AND MODIFICATION OF TREATIES

ARTICLE 35

318. At its 36th meeting, on 24 April 1968, the Committee of the Whole decided, without objection, to discuss articles 35 and 36 together. However, as none of the amendments to those two articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. International Law Commission text

319. The International Law Commission text provided as follows:

[69] *Ibid.*

Article 35.—General rule regarding the amendment of treaties

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

B. Amendments

320. Amendments were submitted to article 35 by Ceylon (A/CONF.39/C.1/L.153) and Chile (A/CONF.39/C.1/L.235).

321. These amendments were to the following effect:

(a) *Ceylon* (A/CONF.39/C.1/L.153):

Amend the first sentence to read:

A treaty may be amended by *any procedure specified in the treaty or agreed upon by* the parties.

[Withdrawn, see para. 323 below]

(b) *Chile* (A/CONF.39/C.1/L.235:

Amend the first sentence to read as follows:

A *bilateral* treaty may be amended *only* by agreement between the parties.

[Withdrawn, see para. 323 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

322. The Committee of the Whole initially discussed article 35, together with article 36, at its 36th and 37th meetings, on 24 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on article 35.

(ii) Initial consideration

323. At the 37th meeting of the Committee of the Whole, the amendments by *Ceylon* (A/CONF.39/C.1/L.153) and *Chile* (A/CONF.39/C.1/L.235) to article 35 were withdrawn.

324. At the same meeting, the Committee of the Whole decided, without objection, to refer article 35 to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

325. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 35 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 326 below). The Committee of the Whole adopted this text without formal vote. [70]

(iv) Text adopted by the Committee of the Whole

326. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 35:

Article 35

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

[70] *Ibid.*

ARTICLE 36

327. At its 36th meeting, on 24 April 1968, the Committee of the Whole decided, without objection, to discuss articles 35 and 36 together. However, as none of the amendments to these two articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. International Law Commission text

328. The International Law Commission text provided as follows:

Article 36.—Amendment of multilateral treaties

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

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

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

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

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

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

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

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

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

B. Amendments

329. Amendments were submitted to article 36 by France (A/CONF.39/C.1/L.45) and the Netherlands (A/CONF.39/C.1/L.232).

330. These amendments were to the following effect:

(a) *France* (A/CONF.39/C.1/L.45):

Replace paragraph 1 by the following two paragraphs:

1. Restricted multilateral treaties can only be amended by agreement between all the parties.

2. Unless the treaty otherwise provides, the amendment of multilateral treaties not covered by the preceding paragraph shall be governed by the following provisions.

Renumber the other paragraphs accordingly.

[Referred to the Drafting Committee, see para. 332 below, and subsequently deferred until the second session of the Conference, see para. 333 below]

(b) *Netherlands* (A/CONF.39/C.1/L.232):

Amend the first sentence of . . . paragraph [2] to read:

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

[Referred to the Drafting Committee, see para. 332 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

331. The Committee of the Whole initially discussed article 36, together with article 35, at its 36th and 37th meetings, on 24 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 36 until the second session of the Conference.

(ii) Consideration

332. At its 37th meeting, the Committee of the Whole decided, without objection, to refer article 36 to the Drafting Committee, together with the amendments by *France* (A/CONF.39/C.1/L.45) and the *Netherlands* (A/CONF.39/C.1/L.232).

333. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *France* (A/CONF.39/C.1/L.45) proposed to add a reference to restricted multilateral treaties in article 36.

(iii) Decision

334. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 36 until the second session of the Conference (see document A/CONF.39/15, paras. 67-75).

ARTICLE 37

A. International Law Commission text

335. The International Law Commission text provided as follows:

Article 37.—Agreements to modify multilateral treaties between certain of the parties only

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

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

(*b*) The modification in question:

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

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

(iii) is not prohibited by the treaty.

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

B. Amendments

336. Amendments were submitted to article 37 by Australia (A/CONF.39/C.1/L.237), Bulgaria, Romania and Syria (A/CONF.39/C.1/L.240), Czechoslovakia (A/CONF.39/C.1/L.238) and France (A/CONF.39/C.1/L.46).

337. These amendments were to the following effect:

(a) *France* (A/CONF.39/C.1/L.46):

At the beginning of paragraph 1, before the words "Two or more" insert the words "Except in the case of a restricted multilateral treaty,".

[Referred to the Drafting Committee, see para. 339 below, and subsequently deferred until the second session of the Conference, see para. 340 below]

(b) *Australia* (A/CONF.39/C.1/L.237):

At the beginning of paragraph 1, before the words "Two or more" insert the words "Except in the case of a treaty of the type referred to in paragraph 2 of article 17,".

[Referred to the Drafting Committee, see para. 339 below, subsequently deferred until the second session of the Conference, see para. 340 below]

(c) *Czechoslovakia* (A/CONF.39/C.1/L.238):

At the end of sub-paragraph (*b*) (iii) [of paragraph 1] add the words "or by another rule of international law".

[Referred to the Drafting Committee, see para. 339 below]

(d) *Bulgaria*, *Romania* and *Syria* (A/CONF.39/C.1/L.240):

Amend article 37, paragraph 1(*b*) to read:

(*b*) The modification in question is not prohibited by the treaty, provided that the modification:

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

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

[Referred to the Drafting Committee, see para. 339 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

338. The Committee of the Whole initially discussed article 37, and the amendments thereto, at its 37th meeting, on 24 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 37 until the second session of the Conference.

(ii) Consideration

339. At its 37th meeting, the Committee of the Whole decided, without objection, to refer article 37 to the Drafting Committee, together with the amendments by *Australia* (A/CONF.39/C.1/L.237), *Bulgaria*, *Romania* and *Syria* (A/CONF.39/C.1/L.240), *Czechoslovakia* (A/CONF.39/C.1/L.238) and *France* (A/CONF.39/C.1/L.46).

340. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendments by *Australia* (A/CONF.39/C.1/L.237) and *France* (A/CONF.39/C.1/L.46) proposed to add references to restricted multilateral

treaties in article 37, by way of cross-reference or direct mention respectively.

(iii) DECISION

341. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 37 until the second session of the Conference (see document A/CONF.39/15, paras. 76-85).

ARTICLE 38

A. International Law Commission text

342. The International Law Commission text provided as follows:

Article 38.—Modification of treaties by subsequent practice

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

B. Amendments

343. Amendments were submitted to article 38 by Finland (A/CONF.39/C.1/L.143), France (A/CONF.39/C.1/L.241), Japan (A/CONF.39/C.1/L.200), Republic of Viet-Nam (A/CONF.39/C.1/L.220) and Venezuela (A/CONF.39/C.1/L.206).

344. These amendments were to the following effect:

(a) *Finland* (A/CONF.39/C.1/L.143):

Delete article.

[Adopted, see para. 346 below]

(b) *Japan* (A/CONF.39/C.1/L.200):

Delete the article.

[Adopted, see para. 346 below]

(c) *Venezuela* (A/CONF.39/C.1/L.206):

Delete the article.

[Adopted, see para. 346 below]

(d) *Republic of Viet-Nam* (A/CONF.39/C.1/L.220):

Delete article 38.

[Adopted, see para. 346 below]

(e) *France* (A/CONF.39/C.1/L.241):

At the beginning of the existing text of the article, insert the following phrase:

Provided its provisions or the conditions of its conclusion are no bar...

[Not voted upon, see para. 347 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

345. The Committee of the Whole discussed article 38, and the amendments thereto, at its 37th and 38th meetings, on 24 and 25 April 1968.

(ii) CONSIDERATION

346. At the 38th meeting of the Committee of the Whole, a roll-call vote was taken on the amendments by *Finland* (A/CONF.39/C.1/L.143), *Japan* (A/CONF.39/C.1/L.200), *Republic of Viet-Nam* (A/CONF.39/C.1/L.220) and *Venezuela* (A/CONF.39/C.1/L.206) to delete article 38. The results of the voting were as follows:

In favour: Algeria, Australia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Federal Republic of Germany, Finland, Greece, Guinea, Hungary, Israel, Japan, Kuwait, Lebanon, Liechtenstein, Mexico, Mongolia, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Saudi Arabia, South Africa, Spain, Sweden, Syria, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia.

Against: Argentina, Austria, Bolivia, Cambodia, Denmark, Ecuador, India, Indonesia, Iraq, Italy, Kenya, Mali, San Marino, Sierra Leone, Switzerland.

Abstentions: Afghanistan, Belgium, Central African Republic, Congo (Democratic Republic of), Dahomey, Ethiopia, France, Gabon, Ghana, Guatemala, Holy See, Iran, Ivory Coast, Liberia, Madagascar, Malaysia, Monaco, Morocco, Nigeria, Pakistan, Romania, Senegal Singapore, Thailand, Tunisia, Zambia.

These amendments were therefore adopted by 53 votes to 15, with 26 abstentions.

347. In the light of the decision of the Committee to delete article 38, it was not necessary to vote upon the amendment by *France* (A/CONF.39/C.1/L.241), which had sought to add an additional phrase to the article.

(iii) DECISION

348. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended to the Conference an article on the modification of treaties by subsequent practice.

PART V.—INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1: GENERAL PROVISIONS

ARTICLE 39

A. International Law Commission text

349. The International Law Commission text provided as follows:

Article 39.—Validity and continuance in force of treaties

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

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

B. Amendments

350. Amendments were submitted to article 39 by Australia (A/CONF.39/C.1/L.245), China (A/CONF.39/C.1/L.242), Peru (A/CONF.39/C.1/L.227), Republic of Viet-Nam (A/CONF.39/C.1/L.233), Singapore (A/CONF.39/C.1/L.270) and Switzerland (A/CONF.39/C.1/L.121).

351. These amendments, arranged under sub-headings relating to a proposed new paragraph, and paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) *New paragraph*

Singapore (A/CONF.39/C.1/L.270):

Add the following new paragraph at the beginning of the article:

1. Subject to paragraphs 2 and 3, a treaty concluded in accordance with Part II of the present Convention is presumed valid.
2. Paragraphs 1 and 2 of the present draft to be renumbered accordingly.

[For oral revision, see para. 355 below]

[Rejected, see para. 356(*b*) below]

(ii) *Paragraph 1*

(a) *Switzerland* (A/CONF.39/C.1/L.121):

For paragraph 1 substitute the following text:

The invalidation of a treaty may be requested only through the application of the present Convention.

[Rejected, see para. 356(*c*) below]

(b) *Peru* (A/CONF.39/C.1/L.227):

Amend the second sentence of paragraph 1 to read:

A treaty the invalidity of which has been established as a result of the application of the procedure laid down in article 62 is void.

[Rejected, see para. 356(*e*) below]

(c) *Republic of Viet-Nam* (A/CONF.39/C.1/L.233):

In the first sentence, replace the words "of the present articles" by the words "of the present Convention".

Amend the second sentence in paragraph 1 to read:

Similarly, the invalidity of a treaty may be determined only by reference to the Convention.

[First part disposed of by decision recorded in para. 16(*a*) of the Introduction to this report; second part rejected, see para. 356(*d*) below]

(d) *China* (A/CONF.39/C.1/L.242):

Add at the end of paragraph 1 the words "*ab initio*".

[Withdrawn, see para. 353 below]

(e) *Australia* (A/CONF.39/C.1/L.245):

Amend the first sentence of paragraph 1 by adding at the end the words "including article 62". Amend the second sentence by replacing the words "the present articles" by the words "these articles".

[Referred to the Drafting Committee, see para. 357 below]

(iii) *Paragraph 2*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.233):

In the first sentence, replace the words "of the present articles" by the words "of the present Convention".

[Disposed of by decision recorded in para. 16(*a*) of the Introduction to this report]

(b) *Australia* (A/CONF.39/C.1/L.245):

Amend the first sentence of paragraph 2 by adding at the end the words "including where applicable article 62".

[Referred to the Drafting Committee, see para. 357 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

352. The Committee of the Whole discussed article 39, and the amendments thereto, at its 39th and 40th meetings, on 26 April 1968, at its 76th meeting, on 17 May 1968, and at its 81st meeting, on 22 May 1968. At its 83rd meeting, on 24 May 1968, the Committee of the Whole considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

353. At the 39th meeting of the Committee of the Whole, the amendment by *China* (A/CONF.39/C.1/L.242) was withdrawn.

354. At its 40th meeting, the Committee of the Whole decided, without objection, to defer further consideration of article 39 and the amendments thereto. The Committee considered the article and amendments again at its 76th meeting and decided, without objection, to defer its decisions until after consideration of article 62 had been completed. The Committee again took up article 39, and the amendments thereto, at its 81st meeting.

355. At the 76th meeting, *France* submitted an oral amendment to transfer the second sentence of paragraph 1 of article 39 to paragraph 1 of article 65. *Singapore* orally revised its amendment (A/CONF.39/C.1/L.270) by deleting the words "Subject to paragraphs 2 and 3, a" and adding the word "Every" before the word "treaty".

356. At its 81st meeting, the Committee of the Whole voted upon certain of the remaining amendments before it. The results of the voting were as follows:

(*a*) The oral amendment by *France* to transfer the second sentence of paragraph 1 of article 39 to paragraph 1 of article 65 was adopted by 34 votes to 29, with 22 abstentions.

(*b*) The amendment by *Singapore* (A/CONF.39/C.1/L.270), as orally amended, to add a new paragraph at the beginning of the article, was rejected by 31 votes to 21, with 31 abstentions.

(*c*) The amendment by *Switzerland* (A/CONF.39/C.1/L.121) to paragraph 1 was rejected by 53 votes to 19, with 16 abstentions.

(*d*) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.233) to the second sentence of paragraph 1 was rejected by 43 votes to 3, with 33 abstentions.

(*e*) The amendment by *Peru* (A/CONF.39/C.1/L.227) to paragraph 1 was rejected by 39 votes to 14, with 29 abstentions.

357. Also at its 81st meeting, the Committee of the Whole decided, without objection, to refer article 39 to

the Drafting Committee, together with the remaining amendment, by *Australia* (A/CONF.39/C.1/L.245).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

358. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 39 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 359 below). The Committee of the Whole adopted this text without formal vote. [71]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

359. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 39:

Article 39

1. The validity of a treaty or the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

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

ARTICLE 40

A. International Law Commission text

360. The International Law Commission text provided as follows:

Article 40.—Obligations under other rules of international law

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

B. Amendments

361. Amendments were submitted to article 40 by *China* (A/CONF.39/C.1/L.243), Pakistan (A/CONF.39/C.1/L.183) and the United States of America (A/CONF.39/C.1/L.262).

362. These amendments were to the following effect:

(a) *Pakistan* (A/CONF.39/C.1/L.183):

Add the following words at the end of the article: or under the Charter of the United Nations.

[Referred to the Drafting Committee, see para. 364 below]

(b) *China* (A/CONF.39/C.1/L.243):

Replace the words "as a result of the application of the present articles or of the terms of the treaty" by the words "as a result of the application of the terms of the treaty or of the present Convention".

[Referred to the Drafting Committee, see para. 364 below]

(c) *United States of America* (A/CONF.39/C.1/L.262):

Replace the words "it is subject under any other rule of international law" by the words "it is otherwise subject under international law".

[Referred to the Drafting Committee, see para. 364 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

363. The Committee of the Whole initially discussed article 40, and the amendments thereto, at its 40th meeting, on 26 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

364. At its 40th meeting, the Committee of the Whole decided, without objection, to refer article 40 to the Drafting Committee, together with the amendments by *China* (A/CONF.39/C.1/L.243), *Pakistan* (A/CONF.39/C.1/L.183) and *United States of America* (A/CONF.39/C.1/L.262).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

365. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 40 adopted by the Drafting Committee (A/CONF.39/C1/10; for text, see para. 366 below). The Committee of the Whole adopted this text without formal vote. [72]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

366. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 40:

Article 40

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

ARTICLE 41

A. International Law Commission text

367. The International Law Commission text provided as follows:

Article 41.—Separability of treaty provisions

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

[71] See para. 13 above.

[72] *Ibid.*

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

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

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

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

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

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

B. Amendments

368. Amendments were submitted to article 41 by Argentina (A/CONF.39/C.1/L.244), Finland (A/CONF.39/C.1/L.144), Hungary (A/CONF.39/C.1/L.246), India (A/CONF.39/C.1/L.253), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.257 and Corr.1) and United States of America (A/CONF.39/C.1/L.260). Subsequently, after a decision on the amendments to article 41 had been deferred (see para. 371 below), a second amendment was submitted by the United States of America (A/CONF.39/C.1/L.350). This amendment had first been proposed (A/CONF.39/C.1/L.325) as an amendment to article 57, but was withdrawn in that connexion (see under article 57, para. 524 below), on the understanding it would be considered in conjunction with article 41.

369. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2, paragraph 3, paragraph 4, and paragraph 5 of the article, and a proposed new paragraph 6, were to the following effect:

(i) *Article as a whole*

United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.257 and Corr.1):

Replace the present text by the following:

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

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

3. Where—

(*a*) the ground relates solely to a particular article or group of articles; and

(*b*) the remainder of the treaty is capable of being applied without that article or group of articles; and

(*c*) it appears from the treaty or otherwise from the circumstances that acceptance of the article or group of articles was not an essential basis of the consent of any other party to the treaty as a whole,

the ground may be invoked only with respect to that article or group of articles.

4. In cases falling under articles 46, 47 and 57, the State entitled to invoke the fraud, corruption or material breach may do so with respect either to the whole treaty or, subject to the conditions stated in paragraph 3 of this article, to the particular article or group of articles.

5. In this article, the term "group of articles" means a number of articles or provisions which are interconnected whether they are contained in the same or a separate section, chapter, part or other subdivision of a treaty.

[Referred to the Drafting Committee, see para. 374 below, on the understanding recorded in para. 372 below]

(ii) *Paragraph 1*

Argentina (A/CONF.39/C.1/L.244):

In paragraph 1, replace the phrase "may only be exercised" by the phrase "may not be exercised except".

[Referred to the Drafting Committee, see para. 374 below]

(iii) *Paragraph 2*

(a) *Finland* (A/CONF.39/C.1/L.144):

Add to the end of *paragraph 2*: "and 59".

[Withdrawn, see para. 372 below]

(b) *Argentina* (A/CONF.39/C.1/L.244):

Amend paragraph 2 to read:

A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in *the present Convention may not be invoked except* with respect to the whole treaty, save as provided in article 57.

In the Spanish text, replace the words "*terminación*" and "*retirada*" by the words "*extinción*" and "*retiro*".

[Referred to the Drafting Committee, see para. 374 below]

(c) *Hungary* (A/CONF.39/C.1/L.246):

Insert the words: "subject to paragraph 3 of the present article" before the words "in article 57".

[Referred to the Drafting Committee, see para. 374 below]

(d) *United States of America* (A/CONF.39/C.1/L.350):

Amend paragraph 2 to read as follows:

A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles, other than article 57, may only be invoked with respect to the whole treaty except as provided in paragraphs 3, 4 and 5 of this article.

[Rejected, see para. 373(*b*) below]

(iv) *Paragraph 3*

(a) *Argentina* (A/CONF.39/C.1/L.244):

Delete paragraph 3.

[Withdrawn, see para. 372 below]

(b) *United States of America* (A/CONF.39/C.1/L.260):

Add new paragraph 3(*c*) as follows:

Continued performance of the remainder of the treaty would not be unjust.

[Adopted, see para. 373(*a*) below]

(v) *Paragraph 4*

Argentina (A/CONF.39/C.1/L.244):

Delete paragraph 4.

[Withdrawn, see para. 372 below]

(vi) *Paragraph 5*

(a) *Finland* (A/CONF.39/C.1/L.144):

Delete in *paragraph 5* reference to article 50.

[Referred to the Drafting Committee, see para. 374 below, and subsequently rejected, see para. 377 below]

(b) *Argentina* (A/CONF.39/C.1/L.244):

Delete paragraph 5.

[Withdrawn, see para. 372 below]

(c) *India* (A/CONF.39/C.1/L.253):

Amend the opening phrase of paragraph 5 to read as follows:

5. In cases falling under articles 48, 49 and *paragraph 1* of article 50, ...

[Withdrawn, see para. 372 below]

[NOTE: An amendment by *India* to article 50 (A/CONF.39/C.1/L.254) proposed that the International Law Commission's text of article 50 should form paragraph 1 of that article and that a new paragraph should be added (see under article 50, para. 462(ii)(*a*) below).]

(vii) *Proposed new paragraph*

United States of America (A/CONF.39/C.1/L.350):

Add a new paragraph 6 to read as follows:

A ground for terminating or suspending the operation of a treaty recognized in paragraphs 1 and 2(*b*) of article 57 may be invoked to terminate or suspend the operation of the treaty in whole or in part as may be appropriate considering the nature and extent of the breach and the extent to which the parties involved have performed the treaty obligations.

[Rejected, see para. 373(*c*) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

370. The Committee of the Whole initially discussed article 41, and the amendments thereto, at its 41st and 42nd meetings, on 27 and 29 April 1968. At its 42nd meeting, the Committee decided to postpone the voting upon the amendments before it. The Committee again took up article 41, and the amendments thereto, at its 66th meeting, on 13 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

371. At the 42nd meeting of the Committee of the Whole, a motion was made by the *Union of Soviet Socialist Republics* that a vote should be taken immediately on the amendments submitted to article 41. A roll-call vote was requested. The results of the voting were as follows:

In favour: Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, Iraq, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Against: Australia, Austria, Belgium, Cambodia, Canada, Ceylon, Chile, China, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Honduras, Indonesia, Iran, Israel, Italy, Jamaica, Japan, Lebanon, Liberia, Liechtenstein, Malaysia, Mexico, Monaco, Netherlands, New Zealand, Norway, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Senegal, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Zambia.

Abstentions: Argentina, Brazil, Central African Republic, Congo (Democratic Republic of), Cyprus, Dahomey, Ethiopia, Holy See, India, Ivory Coast, Kenya, Kuwait, Madagascar, Morocco, Nigeria, Pakistan, Peru, Saudi Arabia, Sierra Leone, Uruguay.

The motion to vote immediately upon the amendments to article 41 was, therefore, rejected by 51 votes to 22, with 20 abstentions. Further consideration of the article, and amendments thereto, was consequently deferred. The Committee resumed consideration of the article and amendments at its 61st meeting.

372. At the 52nd meeting of the Committee of the Whole, in connexion with the consideration of article 50, the amendment by *India* (A/CONF.39/C.1/L.253) to article 41, which was consequential upon an amendment by that State to article 50, was withdrawn (see under article 50, para. 464 below). At the 66th meeting of the Committee, in connexion with the consideration of article 41, that part of the amendment by *Argentina* (A/CONF.39/C.1/L.244) proposing the deletion of paragraphs 3, 4 and 5 of the article was withdrawn. That part of the amendment by *Finland* (A/CONF.39/C.1/L.144) proposing the addition of the words "and 59" to the end of paragraph 2 of the article was also withdrawn. Finally, in so far as the redraft in the amendment submitted by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.257 and Corr.1) contained a proposal to delete paragraph 5 of the article, that proposal to delete was withdrawn.

373. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(*a*) The amendment by the *United States of America* (A/CONF.39/C.1/L.260) to add a new sub-paragraph (*c*) to paragraph 3 was adopted by 27 votes to 14, with 45 abstentions.

(*b*) The amendment by the *United States of America* (A/CONF.39/C.1/L.350) to paragraph 2 was rejected by 22 votes to 18, with 50 abstentions.

(*c*) The amendment by the *United States of America* (A/CONF.39/C.1/L.350) to add a new paragraph 6 was rejected by 35 votes to 21, with 33 abstentions.

374. Also at its 66th meeting, the Committee of the Whole decided, without objection, to refer article 41, as amended, to the Drafting Committee, together with the remaining amendments, or parts of amendments, namely those by *Argentina* (A/CONF.39/C.1/L.244) (paragraph 1 and paragraph 2), *Finland* (A/CONF.39/

C.1/L.144) (paragraph 5), *Hungary* (A/CONF.39/C.1/L.246) and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.257 and Corr.1) (redraft of the article on the understanding recorded in paragraph 372 above).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

375. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 41 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 379 below).

376. This report stated that the Drafting Committee had taken no decision on the amendment by *Finland* (A/CONF.39/C.1/L.144) to delete the reference to article 50 in paragraph 5 of article 41. This amendment had been referred to the Drafting Committee by the Committee of the Whole (see para. 374 above). The Drafting Committee considered that this amendment raised a question of substance which it was for the Committee of the Whole to decide.

377. A roll-call vote was requested on that amendment. The results of the voting were as follows:

In favour: Australia, Austria, Belgium, Canada, China, Denmark, Finland, France, Ireland, Italy, Japan, Mexico, Monaco, Netherlands, New Zealand, Norway, Peru, Philippines, Portugal, San Marino, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Chile, Congo (Brazzaville), Cyprus, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Kenya, Kuwait, Liberia, Mali, Mongolia, Nigeria, Pakistan, Poland, Romania, Sierra Leone, Singapore, Spain, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Brazil, Costa Rica, Dominican Republic, Ethiopia, Federal Republic of Germany, Gabon, Greece, Guatemala, Israel, Lebanon, Liechtenstein, Malaysia, Nepal, Panama, Republic of Korea, Republic of Viet-Nam, Trinidad and Tobago.

This amendment was therefore rejected by 39 votes to 27, with 17 abstentions.

378. The Committee of the Whole adopted the text of article 41 recommended by the Drafting Committee by 72 votes to none, with 11 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

379. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 41:

Article 41

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

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

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

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

(*b*) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole; and

(*c*) continued performance of the remainder of the treaty would not be unjust.

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

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

ARTICLE 42

A. International Law Commission text

380. The International Law Commission text provided as follows:

Article 42.—Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 43 to 47 inclusive or articles 57 to 59 inclusive if, after becoming aware of the facts:

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

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

B. Amendments

381. Amendments were submitted to article 42 by Australia (A/CONF.39/C1./L.354), Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela (A/CONF.39/C.1/L.251 and Add.1-3),[73] Cambodia (A/CONF.39/C.1/L.273), Czechoslovakia and Finland (A/CONF.39/C.1/L.247 and Add.1),[74] Guyana (A/CONF.39/C.1/L.268), Guyana and United States of America (A/CONF.39/C.1/L.267 and Add.1),[75] Spain (A/CONF.39/C.1/L.272) and Switzerland (A/CONF.39/C.1/L.340).

[73] Original sponsors Bolivia, Colombia, Dominican Republic, Guatemala and Venezuela (A/CONF.39/C.1/L.251), co-sponsors Union of Soviet Socialist Republics (Add.1), Byelorussian Soviet Socialist Republic (Add.2), and Congo (Brazzaville) (Add.3).

[74] Original sponsor Finland, co-sponsor Czechoslovakia (Add.1).

[75] Original sponsor United States of America, co-sponsor Guyana (Add.1).

382. These amendments, arranged under sub-headings relating to the original text, and proposed new paragraphs, were to the following effect:

(i) *Original text*

(a) *Czechoslovakia* and *Finland* (A/CONF.39/C.1/L.247 and Add.1):

Delete reference to article 58.

[Adopted, see para. 386(*d*) below]

(b) *Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics* and *Venezuela* (A/CONF.39/C.1/L.251 and Add. 1-3):

1. In the opening paragraph of the article, delete the words "to 47 inclusive or articles 57 to 59".

2. Replace them by the words "to 45".

3. Delete sub-paragraph (*b*).

[Paragraphs 1 and 2 withdrawn, see para. 385 below; paragraph 3 rejected, see para. 386(*a*) below]

(c) *Guyana* (A/CONF.39/C.1/L.268):

Substitute the word "shall" for "may" in the first sentence.

[Referred to the Drafting Committee, see para. 387 below]

(d) *Spain* (A/CONF.39/C.1/L.272):

1. At the end of the opening sentence replace the words, "if, after becoming aware of the facts" by the words "if, being aware of the ground, and the ground having ceased to exist:"

2. Replace sub-paragraph (*b*) by the following text:

If its conduct clearly shows that it has renounced the right to invoke the ground for invalidating, terminating, withdrawing from or suspending the operation of the treaty.

[Paragraph 1 withdrawn, see para. 385 below; paragraph 2 rejected, see para. 386(*b*) below]

(e) *Cambodia* (A/CONF.39/C.1/L.273):

In sub-paragraph (*b*) replace the words:

It must by reason of its conduct be considered as having acquiesced

by the following words:

It shall by reason of its conduct have behaved like a State which has freely acquiesced.

[Withdrawn, see para. 385 below]

(f) *Switzerland* (A/CONF.39/C.1/L.340):

Replace the words "under articles 43 to 47 inclusive" by the words "under articles 43 to 49 inclusive".

[Rejected, see para. 386(*c*) below]

(ii) *Proposed new paragraph*

(a) *Guyana* and *United States of America* (A/CONF.39/C.1/L.267 and Add.1):

Number present article as paragraph "1" and add new paragraph "2" as follows:

2. In any case, a State which invokes a ground for invalidating a treaty under articles 43-47 shall be considered to have acquiesced in the validity of the treaty if a period of ten years has elapsed from the date it first exercised rights or obtained the performance of obligations pursuant to the treaty.

[Rejected, see para. 386(*f*) below]

(b) *Australia* (A/CONF.39/C.1/L.354):

Add a new paragraph number 2 reading as follows:

2. A State wishing to invoke a ground for invalidating a treaty under articles 43-47 shall do so without unreasonable delay and shall be considered as having acquiesced in the validity of the treaty if it is established that a period of 12 months has elapsed from the date upon which it first became aware of the ground of invalidity.

[Rejected, see para. 386(*e*) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

383. At its 42nd meeting, on 29 April 1968, the Committee of the Whole decided to defer its consideration of article 42. The Committee initially discussed this article, and the amendments thereto, at its 66th and 67th meetings, on 13 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

384. At the 42nd meeting of the Committee of the Whole, immediately after the decision to defer voting on article 41 and the amendments thereto (see para. 371 above), the motion was put to the vote that discussion on article 42 be opened forthwith, the vote on the article and the amendments thereto to be deferred to a later stage. This motion for immediate discussion was rejected by 15 votes to 7, with 60 abstentions. The Committee took up article 42, and the amendments thereto, at its 66th meeting.

385. At the 67th meeting, that part of the amendment by *Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics* and *Venezuela* (A/CONF.39/C.1/L.251 and Add.1-3) which related to the opening sentence of article 42 was withdrawn. The amendment by *Cambodia* (A/CONF.39/C.1/L.273), and that part of the amendment by *Spain* (A/CONF.39/C.1/L.272) which related to the opening sentence of the article, were also withdrawn.

386. At the same meeting, the Committee of the Whole voted upon certain of the remaining amendments before it. The results of the voting were as follows:

(*a*) A roll-call vote was requested on the remaining part of the amendment by *Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics* and *Venezuela* (A/CONF.39/C.1/L.251 and Add.1-3) to delete sub-paragraph (*b*) of the article. The results were as follows:

In favour: Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Hungary, India, * Iran, Kenya, Mexico, Mongolia, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela.

* At the 82nd meeting of the Committee of the Whole, on 23 May 1968, the representative of India stated that the vote of his delegation in favour of this amendment was the result of an error and that India had intended to vote against it.

Against: Algeria, Australia, Austria, Belgium, Brazil, Cambodia, Canada, Ceylon, Chile, China, Congo (Democratic Republic of), Denmark, Federal Republic of Germany, Finland, France, Gabon, Ghana, Guyana, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Lebanon, Liechtenstein, Madagascar, Malaysia, Mali, Monaco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, Republic of Viet-Nam, Singapore, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America.

Abstaining: Afghanistan, Argentina, Central African Republic, Cyprus, Czechoslovakia, Dahomey, Ethiopia, Greece, Guinea, Holy See, Indonesia, Iraq, Israel, Liberia, Morocco, Poland, Republic of Korea, Romania, Senegal, Sierra Leone, Syria, Thailand, Trinidad and Tobago, Tunisia, United Arab Republic, Yugoslavia, Zambia.

This amendment was therefore rejected by 47 votes to 20, with 27 abstentions.

(*b*) The amendment by *Spain* (A/CONF.39/C1./L.272) to sub-paragraph (*b*) of the article was rejected by 40 votes to 25, with 25 abstentions.

(*c*) The amendment by *Switzerland* (A/CONF.39/C.1/L.340) was rejected by 63 votes to 12, with 16 abstentions.

(*d*) The amendment by *Czechoslovakia* and *Finland* (A/CONF.39/C.1/L.247 and Add.1) was adopted by 42 votes to 13, with 36 abstentions.

(*e*) The principle contained in the amendment by *Australia* (A/CONF.39/C.1/L.354) was rejected by 44 votes to 23, with 24 abstentions.

(*f*) The principle contained in the amendment by *Guyana* and *United States of America* (A/CONF.39/C.1/L.267 and Add.1) was rejected by 42 votes to 21, with 26 abstentions.

387. Also at its 67th meeting, the Committee of the Whole decided, without objection, to refer article 42, as amended, to the Drafting Committee, together with the remaining amendment, by *Guyana* (A/CONF.39/C.1/L.268).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

388. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 42 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 391 below).

389. *Australia* submitted an oral amendment to delete the word "inclusive" appearing in the opening phrase of the text of the article recommended by the Drafting Committee. The Committee of the Whole decided, without objection, to refer this oral amendment to the Drafting Committee for consideration at the second session of the Conference, when the Drafting Committee undertook its final review of the draft convention. *

* The word "inclusive" was deleted at the second session.

390. The Committee of the Whole adopted the text of article 42, recommended by the Drafting Committee, without formal vote. [76]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

391. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 42:

Article 42

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 43 to 47 inclusive or articles 57 and 59 if, after becoming aware of the facts:

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

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

SECTION 2. INVALIDITY OF TREATIES

ARTICLE 43

A. International Law Commission text

392. The International Law Commission text provided as follows:

Article 43.—Provisions of internal law regarding competence to conclude a treaty

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

B. Amendments

393. Amendments were submitted to article 43 by Australia (A/CONF.39/C.1/L.271/Rev.1), Iran (A/CONF.39/C.1/L.280), Japan and Pakistan (A/CONF.39/C.1/L.184 and Add.1), [77] Peru and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.228 and Add.1), [78] Philippines (A/CONF.39/C.1/L.239), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.274) and Venezuela (A/CONF.39/C.1/L.252).

394. These amendments were to the following effect:

(a) *Japan* and *Pakistan* (A/CONF.39/C.1/L.184 and Add.1):

Delete the phrase "unless that violation of its internal law was manifest".

[Rejected, see para. 397(*a*) below]

(b) *Peru* and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.228 and Add.1):

At the end of the article, between the words "was" and "manifest", insert the words "of fundamental importance and".

[Adopted, see para. 397(*c*) below]

[76] See para. 13 above.

[77] Original sponsor Pakistan, co-sponsor Japan (Add.1).

[78] Original sponsor Peru, co-sponsor Ukrainian Soviet Socialist Republic (Add.1).

(c) *Philippines* (A/CONF.39/C.1/L.239):

Add a second sentence as follows:

In the latter case, the State desiring to invoke such fact must do so without delay.

[Withdrawn, see para. 396 below]

(d) *Venezuela* (A/CONF.39/C.1/L.252):

Replace the present text by the following:

A State may invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent if that violation of its internal law was manifest.

[Withdrawn, see para. 396 below]

(e) *Australia* (A/CONF.39/C.1/L.271/Rev.1): [79]

At the end of article 43, add a second sentence reading as follows:

In the latter case, the State desiring to invoke such fact must do so without delay and at the latest within (twelve) months of its occurrence.

[Rejected, see para. 397(*b*) below]

(f) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.274):

Add the following sentence at the end of the article:

A violation is manifest if it would be objectively evident to any State dealing with the matter normally and in good faith.

[Adopted, see para. 397(*d*) below]

(g) *Iran* (A/CONF.39/C.1/L.280):

Word the article as follows:

If consent to be bound by a treaty has been expressed by a person authorized by the Head of State, a State may not invoke the fact that its consent has been expressed in violation of a provision of its internal law.

[Withdrawn, see para. 396 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

395. The Committee of the Whole initially discussed article 43, and the amendments thereto, at its 43rd meeting, on 29 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

396. At the 43rd meeting of the Committee of the Whole, the amendments by *Iran* (A/CONF.39/C.1/L.280), *Philippines* (A/CONF.39/C.1/L.239) and *Venezuela* (A/CONF.39/C.1/L.252) were withdrawn.

397. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Japan* and *Pakistan* (A/CONF.39/C.1/L.184 and Add.1) was rejected by 56 votes to 25, with 7 abstentions.

(*b*) The amendment by *Australia* (A/CONF.39/C.1/L.271/Rev.1) was rejected by 44 votes to 20, with 27 abstentions.

(*c*) The amendment by *Peru* and the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.228 and Add.1) was adopted by 45 votes to 15, with 30 abstentions.

(*d*) The amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.274) was adopted by 41 votes to 13, with 39 abstentions.

398. Also at its 43rd meeting, the Committee of the Whole decided, without objection, to refer article 43, as amended, to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

399. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 43 adopted by the Drafting Committee (A/CONF.39/C.1/10); for text, see para. 400 below). The Committee of the Whole adopted this text without formal vote. [80]

(iv) Text adopted by the Committee of the Whole

400. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 43:

Article 43

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

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

ARTICLE 44

A. International Law Commission text

401. The International Law Commission text provided as follows:

Article 44.—Specific restrictions on authority to express the consent of the State

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

B. Amendments

402. Amendments were submitted to article 44 by Japan (A/CONF.39/C.1/L.269), Mexico (A/CONF.39/C.1/L.265), Spain (A/CONF.39/C.1/L.288) and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.287).

403. These amendments were to the following effect:

(a) *Mexico* (A/CONF.39/C.1/L.265):

[79] In its original form (A/CONF.39/C.1/L.271), this amendment was submitted as a sub-amendment to the amendment by the Philippines (A/CONF.39/C.1/L.239), and proposed to add to that amendment the words "and at latest within (twelve) months of its occurrence". After the withdrawal of the amendment by the Philippines, Australia reintroduced it and incorporated its own sub-amendment into the text.

[80] See para. 13 above.

Amend the last part of the article to read as follows:

... unless the restriction was brought to the knowledge of the other negotiating States *or of the depositary* prior to his expressing such consent.

[Adopted, as orally amended, see paras. 405 and 406(*a*) below]

(b) *Japan* (A/CONF.39/C.1/L.269):

Replace the words "brought to the knowledge of" by the words "expressly notified to".

[Adopted in principle: see para. 406(*b*) below]

(c) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.287):

It is proposed that, without change in the substance of the article, it should be redrafted for greater clarity as follows:

If the authority of a representative to express the consent of his State to be bound by a particular treaty *is restricted by instructions from his Government*, his omission to observe that restriction may not be invoked as invalidating a consent expressed by him unless the restriction was brought to the knowledge of the other negotiating States prior to his expressing such consent.

[Rejected, see para. 406(*c*) below]

(d) *Spain* (A/CONF.39/C.1/L.288):

Replace the text of the draft article by the following:

The omission by a representative expressing the consent of his State to be bound by a treaty to observe a specific restriction imposed by his State on the authority granted to him for that purpose may not be invoked as invalidating the consent unless the restriction was notified to the other negotiating States prior to his expressing such consent.

[Reference to "notified" adopted, see para. 406(*b*) below; remainder referred to the Drafting Committee, see para. 407 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

404. The Committee of the Whole initially discussed article 44, and the amendments thereto, at its 44th meeting, on 30 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

405. At the 44th meeting of the Committee of the Whole, *Mexico* accepted an oral sub-amendment, by *Israel*, to add the words "of the treaty" after the words "or of the depositary" in its amendment (A/CONF.39/C.1/L.265).

406. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it, including the proposal in the amendments by *Japan* (A/CONF.39/C.1/L.269) and *Spain* (A/CONF.39/C.1/L.288) that a restriction on the authority of a representative to express the consent of his State to be bound by a particular treaty should be "expressly notified" or "notified" to other negotiating States. The results of the voting were as follows:

(*a*) The amendment by *Mexico* (A/CONF.39/C.1/L.265), as orally amended, was adopted by 53 votes to 3, with 35 abstentions.

(*b*) The proposal regarding "express notification" or "notification" of a restriction on the authority of a representative, included in the amendments by *Japan* (A/CONF.39/C.1/L.269) and *Spain* (A/CONF.39/C.1/L.288), was in principle adopted, by 30 votes to 23, with 35 abstentions.

(*c*) The amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.287) was rejected by 46 votes to 16, with 30 abstentions.

407. Also at its 44th meeting, the Committee of the Whole decided, without objection, to refer article 44, as amended, to the Drafting Committee, together with that part of the amendment by *Spain* (A/CONF.39/C.1/L.288) not already voted upon. The Drafting Committee was requested to incorporate into the text, in a suitable manner, the amendment by *Japan* (A/CONF.39/C.1/L.269) and that part of the amendment by *Spain* (A/CONF.39/C.1/L.288) adopted in principle.

(iii) Consideration of the report of the Drafting Committee

408. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 44 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 409 below). The Committee of the Whole adopted this text without formal vote. [81]

(iv) Text adopted by the Committee of the Whole

409. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 44:

Article 44

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

ARTICLE 45

A. International Law Commission text

410. The International Law Commission text provided as follows:

Article 45.—Error

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

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

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

---

[81] *Ibid.*

B. Amendments

411. Amendments were submitted to article 45 by Australia (A/CONF.30/C.1/L.281) and the United States of America (A/CONF.39/C.1/L.275).

412. These amendments were to the following effect:

(a) *United States of America* (A/CONF.39/C.1/L.275):

Amend article 45 to read as follows (deletions are in brackets and additions are italicised):

1. A State may invoke an error [in a treaty] as invalidating its consent to be bound by [the] *a* treaty if:

(*a*) The error relates to a fact or situation which was assumed by that State to exist at the time [when] the treaty was concluded and formed an essential basis of its consent to be bound by the treaty [.]; *and*

(*b*) *The assumed fact or situation was of material importance to its consent to be bound or the performance of the treaty.*

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

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

[Deletion of words "in a treaty", in paragraph 1 of the amendment, withdrawn, see para. 414 below; remainder rejected, see paras. 415(*a*), (*b*) and (*c*) below]

(b) *Australia* (A/CONF.39/C.1/L.281):

(i) Add a new paragraph immediately after existing paragraph 1 as follows:

2. The State in question must initiate the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the error.

(ii) Renumber existing paragraphs 2 and 3 as 3 and 4 respectively.

[Rejected, see para. 415(*d*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

413. The Committee of the Whole initially discussed article 45, and the amendments thereto, at its 44th and 45th meetings, on 30 April 1968. At its 78th meeting, on 20 May 1968, it considered the report of the Drafting Committee on this article.

(ii) Initial consideration

414. At the 45th meeting of the Committee of the Whole, that part of the amendment by the *United States of America* (A/CONF.39/C.1/L.275) to paragraph 1 of article 45 which called for the deletion of the words "in a treaty" was withdrawn.

415. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) A separate vote was requested upon the words "or the performance of the treaty" in paragraph 1(*b*) of the amendment by the *United States of America* (A/CONF.39/C.1/L.275). These words were rejected by 45 votes to 12, with 30 abstentions.

(*b*) The remainder of the amendment by the *United States of America* (A/CONF.39/C.1/L.275) to paragraph 1 was rejected by 38 votes to 20, with 31 abstentions.

(*c*) The amendment by the *United States of America* (A/CONF.39/C.1/L.275) to paragraph 2 was rejected by 45 votes to 25, with 20 abstentions.

(*d*) The amendment by *Australia* (A/CONF.39/C.1/L.281) to add a new paragraph 2 was rejected by 40 votes to 23, with 27 abstentions.

(*e*) A separate vote was requested on the words "or if the circumstances were such as to put that State on notice of a possible error" in paragraph 2 of the International Law Commission's text. This was put to the vote in the form of an amendment to delete the words concerned. This amendment was rejected by 69 votes to 8, with 7 abstentions.

416. Also at its 45th meeting, the Committee of the Whole decided, without objection, to refer article 45 to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

417. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 45 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 418 below). The Committee of the Whole adopted this text without formal vote. [82]

(iv) Text adopted by the Committee of the Whole

418. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 45:

Article 45

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

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

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

ARTICLE 46

419. At its 45th meeting, on 30 April 1968, the Committee of the Whole decided, without objection, to discuss articles 46 and 47 together. However, as none of the amendments to those two articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. International Law Commission text

420. The International Law Commission text provided as follows:

[82] *Ibid.*

Article 46.—Fraud

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

B. Amendments

421. Amendments were submitted to article 46 by Australia (A/CONF.39/C.1/L.282), Chile and Malaysia (A/CONF.39/C.1/L.263 and Add.1), [83] Congo (Brazzaville) and Venezuela (A/CONF.39/C.1/L.259 and Add.1),[84] the Republic of Viet-Nam (A/CONF.39/C.1/L.234/Rev.1) and the United States of America (A/CONF.39/C.1/L.276).

422. These amendments were to the following effect:

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.234/Rev.1) [85]

Word the article as follows:

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

[Rejected, see para. 425(*e*) below]

(b) *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.259 and Add.1):

Replace the present text of the article by the following:

A treaty is void if its conclusion has been procured by the deliberately fraudulent conduct of a negotiating State.

[Rejected, see para. 425(*b*) below]

(c) *Chile* and *Malaysia* (A/CONF.39/C.1/L.263 and Add.1):

Delete the article.

[Rejected, see para. 425(*a*) below]

(d) *United States of America* (A/CONF.39/C.1/L.276):

Amend article 46 to read as follows (deletions are bracketed and additions are italicised):

A State which has [been induced to] conclude a treaty *in reasonable reliance upon* [by] the fraudulent conduct of another negotiating State *concerning a fact or situation of material importance to its consent to be bound or to the performance of the treaty* may invoke the fraud as invalidating its consent to be bound by the treaty.

[Words "or to the performance of the treaty" withdrawn, see para. 424 below; remainder rejected, see para. 425(*c*) below]

(e) *Australia* (A/CONF.39/C.1/L.282):

Add the following words at the end of the article:

provided that it initiates the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the fraud.

[Rejected, see para. 425(*d*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

423. The Committee of the Whole initially discussed article 46, together with article 47, and the amendments thereto, at its 45th, 46th and 47th meetings, on 30 April and 2 May 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

424. At the 47th meeting of the Committee of the Whole, the words "or to the performance of the treaty" in the amendment by the *United States of America* (A/CONF.39/C.1/L.276) were withdrawn.

425. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Chile* and *Malaysia* (A/CONF.39/C.1/L.263 and Add.1) was rejected by 74 votes to 8, with 8 abstentions.

(*b*) The amendment by *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.259 and Add.1) was rejected by 51 votes to 22, with 16 abstentions.

(*c*) The remaining part of the amendment by the *United States of America* (A/CONF.39/C.1/L.276) was rejected by 46 votes to 18, with 27 abstentions.

(*d*) The amendment by *Australia* (A/CONF.39/C.1/L.282) was rejected by 43 votes to 18, with 32 abstentions.

(*e*) The amendment by the *Republic of Viet-Nam* (A/CONF.C.1/L.234/Rev.1) was rejected by 52 votes to 1, with 32 abstentions.

426. Also at its 47th meeting, the Committee of the Whole decided, without objection, to refer article 46 to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

427. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 46 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 428 below). The Committee of the Whole adopted this text without formal vote. [86]

(iv) Text adopted by the Committee of the Whole

428. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 46:

Article 46

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

ARTICLE 47

429. At its 45th meeting, on 30 April 1968, the Committee of the Whole decided, without objection, to discuss articles 46 and 47 together. However, as none of the amendments to these two articles sought to combine them into a single text, the articles are dealt with separately in this report.

[83] Original sponsor Chile, co-sponsor Malaysia (Add.1).

[84] Original sponsor Venezuela, co-sponsor Congo (Brazzaville) (Add.1).

[85] In the original form of this amendment (A/CONF.39/C.1/L.234) the words "which has become a party to the treaty" appeared after the words "negotiating State."

[86] See para. 13 above.

A. International Law Commission text

430. The International Law Commission text provided as follows:

Article 47.—Corruption of a representative of the State

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

B. Amendments

431. Amendments were submitted to article 47 by Australia (A/CONF.39/C.1/L.283), Chile, Japan and Mexico (A/CONF.39/C.1/L.264 and Add.1), [87] Congo (Brazzaville) and Venezuela (A/CONF.39/C.1/L.261 and Add.1) [88] and Peru (A/CONF.39/C.1/L.229).

432. These amendments were to the following effect:

(a) *Peru* (A/CONF.39/C.1/L.229):

Add the following as paragraph 2 of the article:

2. This ground for invalidation may not be invoked if the treaty has been subsequently ratified by the State concerned.

[Rejected, see para. 434(*c*) below]

(b) *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.261 and Add.1):

Replace the present text of the article by the following:

A treaty is void if its conclusion has been procured through the corruption of the representative of a negotiating State effected directly or indirectly by another negotiating State.

[Rejected, see para. 434(*b*) below]

(c) *Chile*, *Japan* and *Mexico* (A/CONF.39/C.1/L.264): and Add.1):

Delete the article.

[Rejected, see para. 434(*a*) below]

(d) *Australia* (A/CONF.39/C.1/L.283):

Add the following words at the end of the article:

provided that it initiates the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the corruption.

[Rejected, see para. 434(*d*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

433. The Committee of the Whole initially discussed article 47, together with article 46, and the amendments thereto, at its 45th, 46th and 47th meetings, on 30 April and 2 May 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

434. At its 47th meeting, the Committee of the Whole voted upon the amendments before it. The voting was as follows:

(*a*) A roll-call vote was taken on the amendment by *Chile*, *Japan* and *Mexico* (A/CONF.39/C.1/L.264 and Add.1), with the following results:

In favour: Argentina, Australia, Austria, Belgium, Canada, Chile, Denmark, Federal Republic of Germany, France, Guyana, Italy, Japan, Lebanon, Liberia, Liechtenstein, Mexico, Monaco, New Zealand, Norway, Peru, Portugal, Republic of Korea, San Marino, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Afghanistan, Algeria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Ecuador, Ethiopia, Ghana, Guatemala, Guinea, Holy See, Hungary, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jamaica, Kenya, Kuwait, Madagascar, Mali, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Philippines, Poland, Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spain, Syria, Thailand, Trinidad and Tobago, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Finland, Gabon, Honduras, Turkey.

The amendment by *Chile*, *Japan* and *Mexico* (A/CONF.39/C.1/L.264 and Add.1) was therefore rejected by 61 votes to 28, with 4 abstentions.

(*b*) The amendment by *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.261 and Add.1) was rejected by 54 votes to 23, with 16 abstentions.

(*c*) The amendment by *Peru* (A/CONF.39/C.1/L.229) was rejected by 54 votes to 10, with 27 abstentions.

(*d*) The amendment by *Australia* (A/CONF.39/C.1/L.283) was rejected by 41 votes to 20, with 31 abstentions.

435. Also at its 47th meeting, the Committee of the Whole decided, without objection, to refer article 47 to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

436. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 47 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 437 below). The Committee of the Whole adopted this text without formal vote. [89]

(iv) Text adopted by the Committee of the Whole

437. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 47:

Article 47

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

[87] Original sponsors Chile and Mexico, co-sponsor Japan (Add.1).

[88] Original sponsor Venezuela, co-sponsor Congo (Brazzaville) (Add.1).

[89] See para. 13 above.

ARTICLE 48

A. International Law Commission text

438. The International Law Commission text provided as follows:

Article 48.—Coercion of a representative of the State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him personally shall be without any legal effect.

B. Amendments

439. Amendments were submitted to article 48 by Australia (A/CONF.39/C.1/L.284), France (A/CONF.39/C.1/L.300) and United States of America (A/CONF.39/C.1/L.277).

440. These amendments were to the following effect:

(a) *United States of America* (A/CONF.39/C.1/L.277):

1. Amend the title of the article to read as follows: Coercion of a Representative of a State.

2. Amend the article to read as follows (deletions are bracketed and additions are italicised):

If the expression of a State's consent to be bound by a treaty [which] has been procured by the coercion of its representative through acts or threats directed against him personally [shall be without any legal effect] *by another negotiating State, the consenting State may invoke such coercion as a ground for invalidating its consent to be bound by the treaty.*

[Paragraph 1 referred to the Drafting Committee, see para. 444 below, paragraph 2 rejected, see para. 443(*b*) below]

(b) *Australia* (A/CONF.39/C.1/L.284):

Redraft the article as follows:

If the expression of a State's consent to be bound by a treaty has been procured by the coercion of its representative through acts or threats directed against him personally, the State may invoke such coercion as invalidating its consent to be bound by the treaty provided that it initiates the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the coercion.

[Words "and at the latest within (twelve) months" withdrawn, see para. 442 below; remainder, with the oral amendments referred to in para. 442 below, rejected, see para. 443(*a*) below]

(c) *France* (A/CONF.39/C.1/L.300):

Replace the text of the article by the following wording:

If the expression of a State's consent to be bound by a treaty has been procured by the coercion of its representative through acts or threats directed against him personally, the State may invoke such coercion as invalidating its consent to be bound by the treaty.

[Rejected, see para. 443(*c*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

441. The Committee of the Whole initially discussed article 48, and the amendments thereto, at its 47th and 48th meetings, on 2 May 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

442. At the 47th meeting of the Committee of the Whole, the words "and at the latest within (twelve) months" in the amendment by *Australia* (A/CONF.39/C.1/L.284) were withdrawn. The amendment was further orally revised by its sponsor by inserting the word "unreasonable" between the words "without" and "delay".

443. At its 48th meeting, the Committee of the Whole voted upon certain of the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Australia* (A/CONF.39/C.1/L.284), as orally revised, was rejected by 56 votes to 17, with 13 abstentions.

(*b*) Paragraph 2 of the amendment by the *United States of America* (A/CONF.39/C.1/L.277) was rejected by 44 votes to 26, with 18 abstentions.

(*c*) The amendment by *France* (A/CONF.39/C.1/L.300) was rejected by 42 votes to 33, with 10 abstentions.

444. Also at its 48th meeting, the Committee of the Whole decided, without objection, to refer article 48 to the Drafting Committee, together with paragraph 1 of the amendment by United States of America (A/CONF.39/C.1/L.277).

(iii) Consideration of the report of the Drafting Committee

445. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 48 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 446 below). The Committee of the Whole adopted this text without formal vote. [90]

(iv) Text adopted by the Committee of the Whole

446. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 48:

Article 48

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him personally shall be without any legal effect.

ARTICLE 49

A. International Law Commission text

447. The International Law Commission text provided as follows:

Article 49.—Coercion of a State by the threat or use of force

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

B. Amendments and draft declaration

(i) Amendments

448. Amendments were submitted to article 49 by Afghanistan, Algeria, Bolivia, Congo (Brazzaville),

[90] *Ibid.*

Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (A/CONF.39/C.1/L.67/Rev.1/Corr.1),[91] Australia (A/CONF.39/C.1/L.296), Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.289 and Add.1),[92] China (A/CONF.39/C.1/L.301), Japan and Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1)[93] and Peru (A/CONF.39/C.1/L.230).

449. These amendments were to the following effect:

(a) *Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia* and *Zambia* (A/CONF.39/C.1/L.67/Rev.1/Corr.1):

Amend article 49 to read as follows:

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

[Not pressed to a vote, see para. 454 below]

(b) *Peru* (A/CONF.39/C.1/L.230):

Amend the article to read as follows:

A treaty is void *if it is established that* its conclusion *was procured* by the threat or use of force in violation of the *relevant norms* of the Charter of the United Nations.

[Rejected, see para. 455(*e*) below]

(c) *Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain* and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.289 and Add.1):

Amend article 49 to read:

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

[Adopted, see para. 455(*d*) below]

(d) *Australia* (A/CONF.39/C.1/L.296):

Replace the word "void" by the word "invalid".

[Withdrawn, see para. 454 below]

(e) *Japan* and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.298 and Add.1):

Add the following at the end of the article, replacing the full stop by a comma:

provided that such threat or use of force had been duly reported to a competent organ of the United Nations and that it had failed to take necessary actions in order to remove or prevent such threat or use of force.

[Rejected, see para. 455(*c*) below]

(f) *China* (A/CONF.39/C.1/L.301):

1. Add the words "*ab initio*" after the word "void".
2. Add a new paragraph reading:

When a State is aware that it is under coercion, it should suspend the negotiation for the conclusion of the treaty and take the first opportunity to bring the case to the attention of the Security Council or the General Assembly of the United Nations, or any other competent organ of an international organization with a view to an early settlement of the case.

[Rejected, see paras. 455(*a*) and (*b*) below]

(ii) Draft Declaration

450. After the foregoing amendments had been discussed by the Committee of the Whole, a *Draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in Concluding a Treaty* was submitted by the *Netherlands* (A/CONF.39/C.1/L.323). The text of this draft declaration, which was adopted without change (see para. 453 below), is contained in paragraph 459 below.

C. Proceedings of the Committee of the Whole

(i) Meetings

451. The Committee of the Whole initially discussed article 49, and the amendments thereto, at its 48th to 51st meetings inclusive, on 2 and 3 May 1968, and at its 57th meeting, on 7 May 1968. The draft declaration was introduced at the last of these meetings. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on article 49.

(ii) Initial consideration

452. At the 51st meeting of the Committee of the Whole, the *Netherlands* orally proposed that the decision on article 49, and the amendments thereto, should be deferred on the understanding that informal consultations would take place with a view to formulating a draft declaration to be voted upon at the same time as the article. This proposal was adopted without objection.

453. The draft declaration by the *Netherlands* (A/CONF.39/C.1/L.323) was introduced at the 57th meeting of the Committee of the Whole, and was adopted without formal vote.[94]

454. At the same meeting, it was announced that the amendment by *Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia* and *Zambia* (A/CONF.39/C.1/L.67/Rev.1/Corr.1) would not be pressed to a vote. The amendment by *Australia* (A/CONF.39/C.1/L.296) was withdrawn.

455. Also at its 57th meeting, the Committee of the Whole voted upon the remaining amendments before it. The voting was as follows:

(*a*) The first part of the amendment by *China* (A/CONF.39/C.1/L.301) to add the words "*ab initio*" after

[91] Original sponsor Afghanistan (A/CONF.39/C.1/L.67), co-sponsors Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (Rev.1/Corr.1).

[92] Original sponsors Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico and Ukrainian Soviet Socialist Republic, co-sponsor Spain (Add.1).

[93] Original sponsor Japan, co-sponsor Republic of Viet-Nam (Add.1).

[94] See para. 13 above.

the word "void" was rejected by 36 votes to 8, with 28 abstentions.

(*b*) The second part of the amendment by *China* (A/CONF.39/C.1/L.301) to add a new paragraph was rejected by 44 votes to 2, with 29 abstentions.

(*c*) The amendment by *Japan* and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.298 and Add.1) was rejected by 55 votes to 2, with 27 abstentions.

(d) A roll-call vote was requested upon the amendment by *Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain* and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.289 and Add.1), with the following results:

In favour: Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Finland, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iraq, Israel, Kenya, Kuwait, Malaysia, Mali, Mexico, Mongolia, Morocco, Nigeria, Poland, Romania, Sierra Leone, Singapore, South Africa, Spain, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Australia, Chile, China, Japan, New Zealand, Peru, Portugal, Republic of Korea, Republic of Viet-Nam, United Kingdom of Great Britain and Northern Ireland.

Abstentions: Argentina, Austria, Belgium, Brazil, Canada, Central African Republic, Dahomey, Denmark, Federal Republic of Germany, France, Gabon, Holy See, Iran, Italy, Ivory Coast, Jamaica, Lebanon, Liberia, Liechtenstein, Monaco, Netherlands, Norway, Pakistan, Philippines, San Marino, Saudi Arabia, Senegal, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, United States of America.

This amendment was therefore adopted by 49 votes to 10, with 33 abstentions.

(e) The amendment by *Peru* (A/CONF.39/C.1/L.230) was rejected by 36 votes to 11, with 40 abstentions.

456. Finally, at its 57th meeting, the Committee of the Whole decided, without objection, to refer article 49, as amended, to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

457. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 49 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 458 below). The Committee of the Whole adopted this text without formal vote. [95]

[95] *Ibid.*

(iv) Texts adopted by the Committee of the Whole

(a) *Text of article 49*

458. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 49:

Article 49

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

(b) *Draft resolution*

459. The Committee of the Whole also recommends to the Conference for adoption the following draft declaration:

Draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in Concluding a Treaty

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of sovereign equality of States,

Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,

Mindful of the fact that in the past instances have occurred where States have been forced to conclude treaties under pressures in various forms exercised by other States,

Deprecating the same,

Expressing its concern at the exercise of such pressure and anxious to ensure that no such pressures in any form are exercised by any State whatever in the matter of conclusion of treaties,

1. Solemnly condemns the threat or use of pressure in any form, military, political, or economic, by any State, in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of sovereign equality of States and freedom of consent;

2. Decides that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties.

ARTICLE 50

A. International Law Commission text

460. The International Law Commission text provided as follows:

Article 50.—Treaties conflicting with a peremptory norm of general international law (jus cogens)

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

B. Amendments

461. Amendments were submitted to article 50 by Finland (A/CONF.39/C.1/L.293), Finland, Greece and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2), [96] India (A/CONF.39/C.1/L.254), Mexico (A/CONF.39/C.1/L.266), Romania and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.258/Corr.1) and United States of America (A/CONF.39/C.1/L.302). The United Kingdom

[96] Original sponsor Greece, co-sponsors Finland (Add.1) and Spain (Add.2).

of Great Britain and Northern Ireland submitted a sub-amendment (A/CONF.39/C.1/L.312) to the amendment by the United States of America (A/CONF.39/C.1/L.302).

462. These amendments and the sub-amendment, arranged under sub-headings relating to the original text, and proposed new sub-paragraphs, were to the following effect:

(i) *Original text*

(a) *Romania* and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.258/Corr.1):

Insert the words "*that is with a norm*" and amend the text to read as follows:

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

[Referred to the Drafting Committee, see para. 466 below]

(b) *United States of America* (A/CONF.39/C.1/L.302):

Replace the text of the present article by the following:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory rule of general international law which is recognized in common by the national and regional legal systems of the world and from which no derogation is permitted.

[Words "at the time of its conclusion" adopted, see para. 465(*d*) below; replacement of "peremptory norm" by "peremptory rule" referred to the Drafting Committee, see para. 466 below; words "which is recognized in common by the national and regional legal systems of the world" rejected, see para. 465(*e*) below]

(c) *Finland, Greece* and *Spain* (A/CONF.39/C.1/L.306 and Add.1 and 2):

Between the words "general international law" and "from which no derogation", insert the words "recognized by the international community as a norm".

[Referred to the Drafting Committee, see para. 466 below]

(ii) *Proposed new paragraphs*

(a) *India* (A/CONF.39/C.1/L.254):

Make the present text of article 50 as paragraph 1 and add the following as paragraph 2:

If a new peremptory norm of general international law is established, any existing treaty which is in conflict with that norm becomes void.

[Withdrawn, see para. 464 below]

(b) *Mexico* (A/CONF.39/C.1/L.266):

Add a second paragraph reading as follows:

The present article shall not have retroactive effect.

[Withdrawn, see para. 464 below]

(c) *Finland* (A/CONF.39/C.1/L.293):

Add a *new paragraph 2* which would read:

Under the conditions specified in article 41 if only certain clauses of the treaty are in conflict with the peremptory norm of general international law, these clauses only shall be void.

[Withdrawn, see para. 464 below]

(d) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.312), sub-amendment to the amendment by the *United States of America* (A/CONF.39/C.1/L.302):

Add an additional paragraph as follows:

Except so far as such peremptory rules are set forth in this Part of the present Convention, they shall be defined from time to time in protocols to the Convention.

[Withdrawn, see para. 464 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

463. The Committee of the Whole initially discussed article 50, and the amendments thereto, at its 52nd to 57th meetings inclusive, between 4 and 7 May 1968. At its 80th meeting, on 21 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

464. At the 52nd meeting of the Committee of the Whole, the amendment by *India* (A/CONF.39/C.1/L.254) was withdrawn. At the 56th meeting, the amendments by *Mexico* (A/CONF.39/C.1/L.266) and *Finland* (A/CONF.39/C.1/L.293) were also withdrawn. The sub-amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.312) to the amendment by *United States of America* (A/CONF.39/C.1/L.302) was withdrawn at the 57th meeting of the Committee.

465. At the 57th meeting of the Committee of the Whole, a motion was made by the *United States of America* to the effect that the Committee should defer voting on article 50 and all amendments thereto, and that the article and the three remaining amendments should be referred to the Drafting Committee. The Committee then proceeded to vote upon certain procedural motions and, as a result, upon part of the amendment by the *United States of America* (A/CONF.39/C.1/L.302). The voting was as follows:

(*a*) A motion by *Italy* to suspend the meeting for thirty minutes was rejected by 49 votes to 24, with 16 abstentions.

(*b*) A motion by *Czechoslovakia* for division of voting on the motion by the *United States of America* was objected to by *United Kingdom of Great Britain and Northern Ireland.* The motion for division was adopted by 45 votes to 28, with 15 abstentions.

(*c*) A roll-call vote was requested on the first part of the motion by the *United States of America* for deferring the voting on article 50 and all amendments thereto. The results were as follows:

In favour: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Costa Rica, Denmark, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Holy See, Honduras, Israel, Italy, Japan, Lebanon, Liberia, Liechtenstein, Malaysia, Mexico, Monaco, Netherlands, New Zealand, Nigeria, Norway, Peru, Portugal, Republic of Korea, Republic of Viet-Nam, Senegal, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Congo

(Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Ecuador, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Mali, Mongolia, Morocco, Pakistan, Philippines, Poland, Romania, Sierra Leone, Spain, Syria, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Central African Republic, Iran, Saudi Arabia, Singapore, Thailand, Tunisia, Uruguay.

The first part of the motion by the *United States of America* was therefore rejected, 42 votes being cast in favour and 42 against, with 7 abstentions.

(*d*) That part of the amendment by the *United States of America* (A/CONF.39/C.1/L.302) which proposed the inclusion of the words "at the time of its conclusion" was adopted by 43 votes to 27, with 12 abstentions.

(*e*) That part of the amendment by the *United States of America* (A/CONF.39/C.1/L.302) which proposed the inclusion of the words "which is recognized in common by the national and regional systems of the world" was rejected by 57 votes to 24, with 7 abstentions.

(*f*) A motion by *Uruguay* to refer article 50, as amended, to the Drafting Committee, together with the remaining amendments, was adopted by 66 votes to 2, with 8 abstentions.

466. On the basis of the foregoing, it was decided, at the 57th meeting of the Committee of the Whole, to refer article 50, as amended, to the Drafting Committee, together with the remaining amendments by *Finland, Greece* and *Spain* (A/CONF.39/C.1/L.306 and Add.1 and 2), *Romania* and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.258/Corr.1) and *United States of America* (replacement of word "norm" by "rule") (A/CONF.39/C.1/L.302). The Chairman said it was understood that the article, as amended, and the amendments just mentioned, had been referred to the Drafting Committee for consideration of the drafting, without modification of the substance, and that the principle of *jus cogens* embodied in the article had been adopted.

(iii) Consideration of the report of the Drafting Committee

467. At the 80th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 50 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 470 below).

468. A separate vote was requested on the words "as a whole" appearing in the text recommended by the Drafting Committee. These words were adopted by 57 votes to 3, with 27 abstentions.

469. A roll-call vote was requested on the text of the article as a whole. The results of the voting were as follows:

In favour: Algeria, Argentina, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, China, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, Ecuador, Ethiopia, Finland, Ghana, Greece, Guatemala, Guinea, Guyana, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Liechtenstein, Madagascar, Malaysia, Mali, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Sierra Leone, Singapore, Spain, Sweden, Syria, Thailand, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Monaco, Switzerland, Turkey.

Abstentions: Australia, Austria, Belgium, Canada, Chile, Denmark, Federal Republic of Germany, France, Gabon, Ireland, Italy, Japan, Liberia, New Zealand, Norway, Senegal, South Africa, United Kingdom of Great Britain and Northern Ireland.

The text of the article was therefore adopted by 72 votes to 3, with 18 abstentions.

(iv) Text adopted by the Committee of the Whole

470. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 50:

Article 50

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

ARTICLE 51

A. International Law Commission text

471. The International Law Commission text provided as follows:

Article 51.—Termination of or withdrawal from a treaty by consent of the parties

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

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

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

B. Amendments

472. Amendments were submitted to article 51 by Greece (A/CONF.39/C.1/L.314 and Rev.1), the Netherlands (A/CONF.39/C.1/L.313), Peru (A/CONF.39/C.1/L.231) and the Republic of Viet-Nam (A/CONF.39/C.1/L.222/Rev.1).

473. These amendments were to the following effect:

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.222/Rev.1):[97]

Amend the title and text of article 51 to read as follows:

Termination of a treaty or withdrawal of the parties

1. A treaty may be terminated when it provides for that possibility or, at any time, by consent of all the parties.

2. A party may withdraw from a treaty under the same conditions.

[Referred to the Drafting Committee, see para. 475 below]

(b) *Peru* (A/CONF.39/C.1/L.231):

Amend sub-paragraph (*a*) of article 51 to read as follows:

In the manner and under the conditions laid down in the treaty itself;

[Referred to the Drafting Committee, see para. 475 below]

(c) *Netherlands* (A/CONF.39/C.1/L.313):

Amend paragraph (*b*) to read:

at any time by consent of all the *contracting States*.

[Referred to the Drafting Committee, see para. 475 below]

(d) *Greece* (A/CONF.39/C.1/L.314 and Rev.1):[98]

1. Word article 51 as follows:

Subject to the provisions of article 53, a treaty terminates or a party may terminate or withdraw from a treaty:

(*a*) in conformity with the provisions of the treaty; or

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

2. Amend the title of the article to read:

Termination of or withdrawal from a treaty by a party in virtue of the provisions of the treaty or by consent of the parties.

[Referred to the Drafting Committee, see para. 475 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

474. The Committee of the Whole initially discussed article 51, and the amendments thereto, at its 58th meeting, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

475. At its 58th meeting, the Committee of the Whole decided, without objection, to refer article 51 to the Drafting Committee, together with the amendments submitted by *Greece* (A/CONF.39/C.1/L.314 and Rev.1), the *Netherlands* (A/CONF.39/C.1/L.313), *Peru* (A/CONF.39/C.1/L.231) and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.222/Rev.1).

(iii) Consideration of the report of the Drafting Committee

476. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 51 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 477 below). The Committee of the Whole adopted this text without formal vote.[99]

(iv) Text adopted by the Committee of the Whole

477. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 51:

Article 51

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

(*a*) in conformity with the provisions of the treaty allowing such termination or withdrawal; or

(*b*) at any time by consent of all the parties after consultation with the other contracting States.

ARTICLE 52

A. International Law Commission text

478. The International Law Commission text provided as follows:

Article 52.—Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

B. Amendments

479. An amendment was submitted to article 52 by the United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.310).

480. This amendment was to the following effect:

Delete the words "specified in the treaty as".

[Referred to the Drafting Committee, see para. 482 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

481. The Committee of the Whole initially discussed article 52, and the amendment thereto, at its 58th meeting, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

482. At its 58th meeting, the Committee of the Whole decided, without objection, to refer article 52 to the Drafting Committee, together with the amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.310).

---

[97] In the original form of this amendment (A/CONF.39/C.1/L.222), paragraph 1 provided: "A treaty may be terminated when it so provides or, at any time, by consent of all the parties."

[98] In the original form of this amendment (A/CONF.39/C.1/L.314) the word "all" in paragraph 1(*b*) was omitted.

[99] See para. 13 above.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

483. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 52 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 484 below). The Committee of the Whole adopted this text without formal vote.[100]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

484. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 52:

Article 52

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

ARTICLE 53

A. International Law Commission text

485. The International Law Commission text provided as follows:

Article 53.—Denunciation of a treaty containing no provision regarding termination

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

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

B. Amendments

486. Amendments were submitted to article 53 by Colombia, Spain and Venezuela (A/CONF.39/C.1/L.307 and Add.1 and 2),[101] Cuba (A/CONF.39/C.1/L.160), Greece (A/CONF.39/C.1/L.315), Peru (A/CONF.39/C.1/L.303) and United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.311).

487. These amendments, all of which related to paragraph 1 of the article, were to the following effect:

(a) *Cuba* (A/CONF.39/C.1/L.160):

Redraft to read as follows:

A treaty which contains no provision regarding termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless the nature of the treaty, the circumstances of its conclusion or a statement by the parties admit the possibility of denunciation or withdrawal.

[Rejected, see para. 490(*b*) below]

(b) *Peru* (A/CONF.39/C.1/L.303):

After the word "unless" delete the words "it is established" and substitute the words "the nature of the treaty so permits and it is established beyond doubt".

[Rejected, see para. 490(*d*) below]

(c) *Colombia, Spain* and *Venezuela* (A/CONF.39/C.1/L.307 and Add.1 and 2):

For paragraph 1 of the article substitute the following:

When a treaty contains no provision regarding termination, denunciation or withdrawal, any party may denounce it or withdraw from it unless the intention of the parties to exclude the possibility of denunciation or withdrawal appears from the nature of the treaty and the circumstances of its conclusion.

[Rejected, see para. 490(*a*) below]

(d) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.311):

Insert at the end of paragraph 1 the words:

or unless the character of the treaty is such that a right of denunciation or withdrawal may be implied.

[Adopted, see para. 490(*c*) below]

(e) *Greece* (A/CONF.39/C.1/L.315):

Between the words "it is established" and the words "that the parties intended", insert the words "*in the light of all the circumstances of the case*".

[Withdrawn, see para. 489 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

488. The Committee of the Whole initially discussed article 53, and the amendments thereto, at its 58th and 59th meetings, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

489. At the 59th meeting of the Committee of the Whole, the amendment by *Greece* (A/CONF.39/C.1/L.315) was withdrawn.

490. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Colombia, Spain* and *Venezuela* (A/CONF.39/C.1/L.307 and Add.1 and 2) was rejected by 55 votes to 10, with 21 abstentions.

(*b*) The amendment by *Cuba* (A/CONF.39/C.1/L.160) was rejected, 34 votes being cast in favour and 34 against, with 24 abstentions.

(*c*) The amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.311) was adopted by 26 votes to 25, with 37 abstentions.

(*d*) The amendment by *Peru* (A/CONF.39/C.1/L.303) was rejected by 41 votes to 5, with 43 abstentions.

491. Also at its 59th meeting, the Committee of the Whole decided, without objection, to refer article 53, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

492. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 53 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 495 below).

---

[100] *Ibid.*

[101] Original sponsor Spain, co-sponsors Venezuela (Add.1) and Colombia (Add. 2).

493. A separate vote was requested on sub-paragraph (*b*) of paragraph 1 of the text recommended by the Drafting Committee. The text of this sub-paragraph was adopted by 56 votes to 10, with 13 abstentions.

494. Article 53 as a whole, as recommended by the Drafting Committee, was adopted by 73 votes to 2, with 4 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

495. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 53:

Article 53

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) a right of denunciation or withdrawal may be implied from the nature of the treaty.

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

ARTICLE 54

A. International Law Commission text

496. The International Law Commission text provided as follows:

Article 54.—Suspension of the operation of a treaty by consent of the parties

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

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

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

B. Amendments

497. Amendments were submitted to article 54 by Greece (A/CONF.39/C.1/L.316) and Peru (A/CONF.39/C.1/L.304).

498. These amendments were to the following effect:

(a) *Peru* (A/CONF.39/C.1/L.304):

Amend sub-paragraph (*a*) to read as follows:

In the manner and subject to the conditions laid down in the treaty itself;

[Referred to the Drafting Committee, see para. 500 below]

(b) *Greece* (A/CONF.39/C.1/L.316):

In the first sentence of the article, between the words "of a treaty" and the words "in regard", insert the words "*or of certain of its provisions*".

[Referred to the Drafting Committee, see para. 500 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

499. The Committee of the Whole initially discussed article 54, and the amendments thereto, at its 59th meeting, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

500. At its 59th meeting, the Committee of the Whole decided, without objection, to refer article 54 to the Drafting Committee, together with the amendments by *Greece* (A/CONF.39/C.1/L.316) and *Peru* (A/CONF.39/C.1/L.304).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

501. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 54 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 502 below). The Committee of the Whole adopted this text without formal vote. [102]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

502. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 54:

Article 54

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

(*a*) in conformity with the provisions of the treaty allowing such suspension;

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

ARTICLE 55

A. International Law Commission text

503. The International Law Commission text provided as follows:

Article 55.—Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only

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

(*a*) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; and

(*b*) Is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

B. Amendments

504. Amendments were submitted to article 55 by Australia (A/CONF.39/C.1/L.324), Austria, Finland and Poland (A/CONF.39/C.1/L.6 and Add.1 and 2), [103] Austria, Canada, Finland, Poland, Romania and Yugoslavia (A/CONF.39/C.1/L.321 and Add.1), [104] Canada

[102] See para. 13 above.

[103] Original sponsor Austria, co-sponsors Finland (Add.1) and Poland (Add.2).

[104] Original sponsors Austria, Canada, Finland, Poland and Romania, co-sponsor Yugoslavia (Add.1).

(A/CONF.39/C.1/L.286), France (A/CONF.39/C.1/L.47), Greece (A/CONF.39/C.1/L.317) and Peru (A/CONF.39/C.1/L.305).

505. These amendments, arranged under sub-headings relating to the article as a whole, the introductory sentence, and a proposed new paragraph 2, were to the following effect:

(i) *Article as a whole*

(a) *Canada* (A/CONF.39/C.1/L.286):

Revise article 55 to read as follows:

Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension:

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

(*b*) is not incompatible with the effective execution of the object and purpose of the treaty as a whole; and

(*c*) is not prohibited by the treaty.

[Withdrawn, see para. 507 below]

(b) *Austria, Canada, Finland, Poland, Romania* and *Yugoslavia* (A/CONF.39/C.1/L.321 and Add.1):

Revise article 55 to read as follows:

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension is not prohibited by the treaty and:

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

(*b*) is not incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. The parties in question shall notify the other parties of those provisions of the treaty whose operation they intend to suspend.

[Adopted, see para. 508(*b*) below]

(ii) *Introductory sentence*

(a) *France* (A/CONF.39/C.1/L.47):

At the beginning of article 55, before the words "when a multilateral treaty", insert the words "Except in the case of a restricted multilateral treaty,".

[Referred to the Drafting Committee, see para. 509 below]

(b) *Peru* (A/CONF.39/C.1/L.305):

In the opening paragraph between the words "may" and "conclude", insert the words "after notifying the other parties".

[Referred to the Drafting Committee, see para. 509 below]

(c) *Greece* (A/CONF.39/C.1/L.317):

In the introductory paragraph, between the words "operation of" and the words "provisions of the treaty", insert the words "*some or all of the*".

[Rejected, see para. 508(*a*) below]

(d) *Australia* (A/CONF.39/C.1/L.324):

At the beginning of the article, before the words "When a multilateral treaty" insert the words "Except in the case of a treaty of the type referred to in paragraph 2 of article 17".

[Referred to the Drafting Committee, see para. 509 below]

(iii) *New paragraph 2*

Austria, Finland and *Poland* (A/CONF.39/C.1/L.6 and Add.1 and 2):

1. Add the following new paragraph 2:

The parties in question shall notify the other parties of those provisions of the treaty whose operation they intend to suspend.

[Withdrawn, see para. 507 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

506. The Committee of the Whole initially discussed article 55, and the amendments thereto, at its 60th meeting, on 9 May 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 55 until the second session of the Conference.

(ii) Consideration

507. Prior to the initial discussion of article 55, the amendments by *Austria, Finland* and *Poland* (A/CONF.39/C.1/L.6 and Add.1 and 2) and *Canada* (A/CONF.39/C.1/L.286) were withdrawn and replaced by the amendment by *Austria, Canada, Finland, Poland, Romania* and *Yugoslavia* (A/CONF.39/C.1/L.321 and Add.1).

508. At its 60th meeting, the Committee of the Whole voted on certain of the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Greece* (A/CONF.39/C.1/L.317) was rejected by 25 votes to 13, with 49 abstentions.

(*b*) The principle contained in the amendment by *Austria, Canada, Finland, Poland, Romania* and *Yugoslavia* (A/CONF.39/C.1/L.321 and Add.1) was adopted by 82 votes to none, with 6 abstentions.

509. At the same meeting, the Committee of the Whole decided, without objection, to refer article 55, as amended in principle, to the Drafting Committee, together with the amendments by *Australia* (A/CONF.39/C.1/L.324), *France* (A/CONF.39/C.1/L.47) and *Peru* (A/CONF.39/C.1/L.305).

510. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendments by *Australia* (A/CONF.39/C.1/L.324) and *France* (A/CONF.39/C.1/L.47) proposed to add references to restricted multilateral treaties in article 55, by way of cross-reference or direct mention respectively.

(iii) Decision

511. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 55 until the second session of the Conference (see document A/CONF.39/15, paras. 86-94).

ARTICLE 56

A. International Law Commission text

512. The International Law Commission text provided as follows:

Article 56.—Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and:

(*a*) It appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or

(*b*) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the treaty or is otherwise established that such was the intention of the parties when concluding the later treaty.

B. Amendments

513. Amendments were submitted to article 56 by Austria (A/CONF.39/C.1/L.7), Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.292), Canada (A/CONF.39/C.1/L.285), China (A/CONF.39/C.1/L.327) and Romania (A/CONF.39/C.1/L.308 (to French text only)).

514. These amendments, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) *Paragraph 1*

(a) *Austria* (A/CONF.39/C.1/L.7):

In sub-paragraph (*b*) replace the words "are not capable" by the words "are in none of their provisions capable".

[Referred to the Drafting Committee, see para. 517 below]

(b) *Canada* (A/CONF.39/C.1/L.285):

A. In the opening phrase add the words "in whole or in part" after the word "terminated".

B. Replace sub-paragraph (*b*) by the following:

The provisions of the later treaty are so far incompatible with those of the earlier one that not all of the provisions of the two treaties are capable of being applied at the same time.

[Part A referred to the Drafting Committee, see para. 517 below; part B withdrawn, see para. 516 below]

(c) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.292):

Amend sub-paragraph (*a*) to read as follows:

It is established *by the treaty or by some other instrument relating thereto* that the parties intended that the matter should thenceforth be governed by the later treaty; or.

[Referred to the Drafting Committee, see para. 517 below]

(d) *Romania* (A/CONF.39/C.1/L.308 (French only)):

In the French text, replace the word "*ce*" in sub-paragraph (*b*) by the word "*tel*", and the word "*précédent*" by the word "*antérieur*".

[Referred to the Drafting Committee, see para. 517 below]

(e) *China* (A/CONF.39/C.1/L.327):

1. In the opening part of the paragraph, replace the words "a further treaty relating to the same subject-matter" by the words "another treaty relating to the same matter".

2. In sub-paragraph (*a*), replace the words "the treaty" by the words "such other treaty".

3. In sub-paragraph (*b*), delete the word "far".

[Referred to the Drafting Committee, see para. 517 below]

(ii) *Paragraph 2*

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.292):

Amend the paragraph to read as follows:

The earlier treaty shall be considered as only suspended in operation if it is established *by the treaty or by some other instrument relating thereto* that such was the intention of the parties when concluding the later treaty.

[Referred to the Drafting Committee, see para. 517 below]

(b) *Romania* (A/CONF.39/C.1/L.308 (French only)):

In the French text of paragraph 2, replace the word "*précédent*" by the word "*antérieur*".

[Referred to the Drafting Committee, see para. 517 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

515. The Committee of the Whole initially discussed article 56, and the amendments thereto, at its 60th meeting, on 9 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

516. At the 60th meeting of the Committee of the Whole, part B of the amendment by *Canada* (A/CONF.39/C.1/L.285), relating to paragraph 1(*b*) of article 56, was withdrawn.

517. At the same meeting, the Committee of the Whole decided, without objection, to refer article 56 to the Drafting Committee, together with the remaining amendments by *Austria* (A/CONF.39/C.1/L.7), *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.292), *Canada* (part A only) (A/CONF.39/C.1/L.285), *China* (A/CONF.39/C.1/L.327) and *Romania* (A/CONF.39/C.1/L.308 (French text only)).

(iii) Consideration of the report of the Drafting Committee

518. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 56 adopted by the Drafting Committee (A/CONF.39/C.1/11; for

text, see para. 519 below). The Committee of the Whole adopted this text without formal vote.[105]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

519. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 56:

Article 56

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(*a*) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty, or

(*b*) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

ARTICLE 57

A. International Law Commission text

520. The International Law Commission text provided as follows:

Article 57.—Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) The other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:
(i) in the relations between themselves and the defaulting State, or
(ii) as between all the parties;

(*b*) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(*c*) Any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(*a*) A repudiation of the treaty not sanctioned by the present articles; or

(*b*) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

B. Amendments

521. Amendments were submitted to article 57 by Finland (A/CONF.39/C.1/L.309), Spain (A/CONF.39/C.1/L.326), the United States of America (A/CONF.39/C.1/L.325) and Venezuela (A/CONF.39/C.1/L.318).

522. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2, and paragraph 3 of the article, there being no amendment to paragraph 4, were to the following effect:

(i) *Paragraph 1*

(a) *Venezuela* (A/CONF.39/C.1/L.318):

For the present text substitute the following:

A material breach of a bilateral treaty by one of the parties entitles the other to terminate the treaty or to suspend its operation in whole or in part in accordance with the provisions of the present Convention.

[Rejected, see para. 525(*a*) below]

(b) *United States of America* (A/CONF.39/C.1/L.325):

Add the following words at the end of paragraph 1:

as may be appropriate considering the nature and extent of the breach and the extent to which the treaty obligations have been performed.

[Withdrawn, see para. 524 below, on the understanding recorded in that paragraph]

(ii) *Paragraph 2*

(a) *Venezuela* (A/CONF.39/C.1/L.318):

For the present text substitute the following:

A material breach of a multilateral treaty by one of the parties entitles the other parties, proceeding in accordance with the present Convention, to suspend the operation of the treaty or to terminate it

(*a*) in the relations between themselves and the defaulting State or as between all the parties, as the case may be;

(*b*) a party specially affected by the breach, in the relations between itself and the defaulting State;

(*c*) any other party with respect to itself if the treaty is of such a character that a breach of its provisions by one party substantially changes the general position or the position of every party with respect to the further performance of the obligations created by the treaty.

[Rejected, see para. 525(*b*) below]

(b) *United States of America* (A/CONF.39/C.1/L.325):

Add the following words at the end of sub-paragraph (*b*):

as may be appropriate considering the nature and extent of the breach and the extent to which the treaty obligations have been performed by itself and the defaulting State.

[Withdrawn, see para. 524 below, on the understanding recorded in that paragraph]

(iii) *Paragraph 3*

(a) *Finland* (A/CONF.39/C.1/L.309):

At the end of *sub-paragraph* (b) add the words "*or a violation which in itself is of a serious character*".

[Rejected, see para. 525(*d*) below]

(b) *Venezuela* (A/CONF.39/C.1/L.318):

For the present text substitute the following:

A material breach of a treaty, for the purposes of the present article, consists in:

(*a*) The unjustified repudiation of the treaty;

(*b*) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

[Rejected, see para. 525(*c*) below]

(c) *Spain* (A/CONF.39/C.1/L.326):

Amend sub-paragraph (*b*) to read:

[105] See para. 13 above.

The non-performance of the essential obligations laid down in the treaty and add a new sub-paragraph (c) reading:

(c) *The abuse of the rights or faculties granted by the treaty.*

[Rejected, see para. 525(*e*) and (*f*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

523. The Committee of the Whole initially discussed article 57, and the amendments thereto, at its 60th and 61st meetings, on 9 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

524. At the 61st meeting of the Committee of the Whole, the amendment by the *United States of America* (A/CONF.39/C.1/L.325) was withdrawn, on the understanding it would be considered in connexion with article 41. An oral amendment was submitted by *Switzerland* to add a new paragraph 5 to article 57, providing that:

The foregoing rules do not apply to humanitarian conventions concluded with or between States not bound by multilateral conventions for the protection of the human person which prohibit reprisals against individuals. Agreements of this kind must be observed in all circumstances.

This amendment was not pressed to a vote.

525. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Venezuela* (A/CONF.39/C.1/L.318) to paragraph 1 was rejected by 52 votes to 4, with 34 abstentions.

(*b*) The amendment by *Venezuela* (A/CONF.39/C.1/L.318) to paragraph 2 was rejected by 51 votes to 3, with 38 abstentions.

(*c*) The amendment by *Venezuela* (A/CONF.39/C.1/L.318) to paragraph 3 was rejected by 48 votes to 5, with 35 abstentions.

(*d*) The amendment by *Finland* (A/CONF.39/C.1/L.309) to paragraph 3 was rejected by 33 votes to 14, with 41 abstentions.

(*e*) The amendment by *Spain* (A/CONF.39/C.1/L.326) to sub-paragraph (*b*) of paragraph 3 was rejected by 56 votes to 10, with 27 abstentions.

(*f*) The amendment by *Spain* (A/CONF.39/C.1/L.326) to add a new sub-paragraph (*c*) to paragraph 3 was rejected by 63 votes to 6, with 20 abstentions.

526. Also at its 61st meeting, the Committee of the Whole decided, without objection, to refer article 57 to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

527. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 57 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 528 below). The Committee of the Whole adopted this text without formal vote.[106]

(iv) Text adopted by the Committee of the Whole

528. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 57:

Article 57

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(*b*) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(*c*) any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(*a*) a repudiation of the treaty not sanctioned by the present Convention; or

(*b*) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

ARTICLE 58

A. International Law Commission text

529. The International Law Commission text provided as follows:

Article 58.—Supervening impossibility of performance

A party may invoke an impossibility of performing a treaty as a ground for terminating it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

B. Amendments

530. Amendments were submitted to article 58 by Ecuador (A/CONF.39/C.1/L.332/Rev.1), Mexico (A/CONF.39/C.1/L.330) and the Netherlands (A/CONF.39/C.1/L.331).

531. These amendments were to the following effect:

(a) *Mexico* (A/CONF.39/C.1/L.330):

Amend article 58 to read as follows:

A party may invoke *force majeure* as a ground for terminating a treaty when the result of the *force majeure* is to render permanently impossible the fulfilment of its obligations under the treaty. If the

[106] *Ibid.*

impossibility is temporary, the *force majeure* may be invoked only as a ground for suspending the operation of the treaty.

[Withdrawn, see para. 533 below]

(b) *Netherlands* (A/CONF.39/C.1/L.331):

1. Replace in the [first sentence] the words "for terminating it if" by the words: "for terminating *or withdrawing from the treaty if*".

2. Add a new paragraph 2:

An impossibility of performance may not be invoked by a party if it is the result of a breach by that party either of the treaty or of a different international obligation owed to the other parties to the treaty.

[First part referred to the Drafting Committee, see para. 535 below; second part adopted, see para. 534 below]

(c) *Ecuador* (A/CONF.39/C.1/L.332/Rev.1):[107]

Add the word "non-existence" between the words "results from the" and the words "permanent disappearance or destruction".

[Withdrawn, see para. 533 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

532. The Committee of the Whole initially discussed article 58, and the amendments thereto, at its 62nd meeting, on 9 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

533. At the 62nd meeting of the Committee of the Whole, the amendments by *Ecuador* (A/CONF.39/C.1/L.332/Rev.1) and *Mexico* (A/CONF.39/C.1/L.330) were withdrawn.

534. At the same meeting, the Committee of the Whole voted upon the second part of the amendment by the *Netherlands* (A/CONF.39/C.1/L.331) to add a new paragraph 2. This part of the amendment was adopted by 30 votes to 10, with 40 abstentions.

535. Also at its 62nd meeting, the Committee of the Whole decided, without objection, to refer article 58, as amended, to the Drafting Committee, together with the first part of the amendment by the *Netherlands* (A/CONF.39/C.1/L.331).

(iii) Consideration of the report of the Drafting Committee

536. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 58 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 537 below). The Committee of the Whole adopted this text without formal vote.[108]

(iv) Text adopted by the Committee of the Whole

537. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 58:

Article 58

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

ARTICLE 59

A. International Law Commission text

538. The International Law Commission text provided as follows:

Article 59.—Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from a treaty unless:

(*a*) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) The effect of the change is radically to transform the scope of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked:

(*a*) As a ground for terminating or withdrawing from a treaty establishing a boundary;

(*b*) If the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

B. Amendments

539. Amendments were submitted to article 59 by Canada (A/CONF.39/C.1/L.320), Finland (A/CONF.39/C.1/L.333), Japan (A/CONF.39/C.1/L.336), the Republic of Viet-Nam (A/CONF.39/C.1/L.299), the United States of America (A/CONF.39/C.1/L.335) and Venezuela (A/CONF.39/C.1/L.319).

540. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) *Article as a whole*

Venezuela (A/CONF.39/C.1/L.319):

Replace the present text of the article by the following:

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which had not been foreseen by the parties, may be invoked as a ground for terminating or withdrawing from a treaty if:

(*a*) the existence of those circumstances constitutes an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) the consequence of the change is to transform in an essential respect the character of the permanent obligations assumed under the treaty.

[107] In its original form (A/CONF.39/C.1/L.332), this amendment also proposed to replace the words "an object" by the word "something".

[108] See para. 13 above.

2. A fundamental change of circumstances may not be invoked:
(*a*) as a ground for terminating or withdrawing from a treaty establishing a boundary;
(*b*) if the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.
[Withdrawn, see para. 542 below]

(ii) *Paragraph 1*

(a) *Canada* (A/CONF.39/C.1/L.320):

Amend the opening section of paragraph 1 to read:
... may be invoked as a ground for *suspending*, terminating or withdrawing from the treaty unless:
[Adopted, see para. 543(*a*) below]

(b) *Finland* (A/CONF.39/C.1/L.333):

Amend the introductory sentence of paragraph 1 to read as follows:

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for *terminating, withdrawing from or suspending the operation of a treaty in whole or in part* unless:.
[Words "in whole or in part" withdrawn, see para. 542 below; remainder adopted, see para. 543(*a*) below]

(c) *Japan* (A/CONF.39/C.1/L.336):

Add at the end [of sub-para. (*b*) of para. 1] the words "to a serious disadvantage of the party invoking it".
[Rejected, see para. 543(*b*) below]

(iii) *Paragraph 2*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.299):

Amend paragraph 2 to read as follows:
2. A fundamental change of circumstances may not be invoked:
(*a*) as a ground *either* for terminating a treaty establishing a boundary or *confirming a negotiated political settlement or* for withdrawing from such a treaty;
(*b*) if *that change was deliberately provoked by the party invoking it, or is the result of a breach by that party* either of the treaty or of a different international obligation owed to the other parties to the treaty.
[Rejected, see para. 543(*c*) and (*d*) below]

(b) *United States of America* (A/CONF.39/C.1/L.335):

Amend sub-paragraph (*a*) of paragraph 2 to read as follows:
As a ground for terminating or withdrawing from a treaty drawing a boundary or otherwise establishing territorial status.
["Drawing a boundary" referred to the Drafting Committee, see para. 544 below; remainder rejected, see para. 543(*e*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

541. The Committee of the Whole initially discussed article 59, and the amendments thereto, at its 63rd, 64th and 65th meetings, on 10 and 11 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

542. At the 65th meeting of the Committee of the Whole, that part of the amendment by *Finland* (A/CONF.39/C.1/L.333) which proposed to add the words "in whole or in part" was withdrawn. The amendment by *Venezuela* (A/CONF.39/C.1/L.319) was also withdrawn.

543. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Canada* (A/CONF.39/C.1/L.320) and the remaining part of the amendment by *Finland* (A/CONF.39/C.1/L.333), to add a reference to suspension of the operation of a treaty, were in principle adopted by 31 votes to 26, with 28 abstentions.

(*b*) The amendment by *Japan* (A/CONF.39/C.1/L.336) was rejected by 41 votes to 6, with 35 abstentions.

(*c*) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.299) to sub-paragraph (*a*) of paragraph 2 was rejected by 64 votes to 1, with 13 abstentions.

(*d*) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.299) to sub-paragraph (*b*) of paragraph 2 was rejected by 50 votes to 2, with 24 abstentions.

(*e*) That part of the amendment by the *United States of America* (A/CONF.39/C.1/L.335) to add the words "or otherwise establishing territorial status" to sub-paragraph (*a*) of paragraph 2 was rejected by 43 votes to 14, with 28 abstentions.

544. Also at its 65th meeting, the Committee of the Whole agreed, without objection, to refer article 59, as amended in principle, to the Drafting Committee together with the first part of the amendment by the *United States of America* (A/CONF.39/C.1/L.335).

(iii) Consideration of the report of the Drafting Committee

545. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 59 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 546 below). The Committee of the Whole adopted this text without formal vote.[109]

(iv) Text adopted by the Committee of the Whole

546. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 59:

Article 59

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(*a*) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

[109] *Ibid.*

2. A fundamental change of circumstances may not be invoked:

(a) as a ground for terminating or withdrawing from a treaty establishing a boundary;

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke that ground for suspending the operation of the treaty.

ARTICLES 60 AND 69bis

A. International Law Commission text

547. The International Law Commission text of article 60 provided as follows:

Article 60.—Severance of diplomatic relations

The severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations established between them by the treaty.

B. Amendments

548. Amendments were submitted to article 60 by *Chile* (A/CONF.39/C.1/L.341), Hungary (A/CONF.39/C.1/L.334), Italy and Switzerland (A/CONF.39/C.1/L.322) and Japan (A/CONF.39/C.1/L.337).

549. These amendments were to the following effect:

(a) *Italy* and *Switzerland* (A/CONF.39/C.1/L.322):

At the end of the article, add the following words: unless those legal relations necessarily postulate the existence of normal diplomatic relations.

[Adopted, see para. 552(*b*) below]

(b) *Hungary* (A/CONF.39/C.1/L.334):

Insert the words "and consular" between the words "diplomatic" and "relations" in the title and text of the article.

[Adopted, see para. 552(*a*) below]

(c) *Japan* (A/CONF.39/C.1/L.337):

Place the article at the end of Section 3 of Part V.

[Referred to the Drafting Committee, see para. 553 below]

(d) *Chile* (A/CONF.39/C.1/L.341):

Add the following as a new paragraph:

2. The severance of diplomatic relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not affect the situation in regard to diplomatic relations.

[Adopted, see para. 552(*c*) and (*d*) below, as orally amended, see para. 551 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

550. The Committee of the Whole initially discussed article 60, and the amendments thereto, at its 65th meeting, on 11 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article and on article 69*bis* (see para. 554 below).

(ii) Initial consideration

551. At the 65th meeting of the Committee of the Whole, an oral sub-amendment by *Israel* to add the words "or absence" after the word "severance" in the first sentence of the amendment by *Chile* (A/CONF.39/C.1/L.341) was accepted by the sponsor.

552. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Hungary* (A/CONF.39/C.1/L.334) was adopted by 79 votes to none, with 11 abstentions.

(*b*) The amendment by *Italy* and *Switzerland* (A/CONF.39/C.1/L.322) was adopted in principle by 62 votes to none, with 25 abstentions.

(*c*) The first sentence of the amendment by *Chile* (A/CONF.39/C.1/L.341), as orally sub-amended, was adopted in principle by 56 votes to 2, with 30 abstentions.

(*d*) The second sentence of the amendment by *Chile* (A/CONF.39/C.1/L.341) was adopted in principle by 43 votes to none, with 44 abstentions.

553. Also at its 65th meeting, the Committee of the Whole decided, without objection, to refer article 60, as amended in principle, to the Drafting Committee, together with the remaining amendment by *Japan* (A/CONF.39/C.1/L.337).

(iii) Consideration of the report of the Drafting Committee

554. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 60 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 557 below).

This report also set out the text of an article 69*bis* (for text, see para. 558 below), which had been adopted by the Drafting Committee in order to incorporate into the text of the draft convention the amendment by *Chile* (A/CONF.39/C.1/L.341) to article 60, which had been adopted in principle by the Committee of the Whole. The Chairman of the Drafting Committee introduced article 69*bis* together with article 60.

555. The Committee of the Whole adopted the text of article 60, recommended by the Drafting Committee, without formal vote. [110]

556. The Committee of the Whole also adopted the text of article 69*bis*, recommended by the Drafting Committee, by 40 votes to 13, with 34 abstentions.

(iv) Texts adopted by the Committee of the Whole

557. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 60:

[110] *Ibid.*

Article 60

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

558. It likewise recommends to the Conference for adoption the following text of article 69*bis*:

Article 69bis

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

ARTICLE 61

A. International Law Commission text

559. The International Law Commission text provided as follows:

Article 61.—Emergence of a new peremptory norm of general international law

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty which is in conflict with that norm becomes void and terminates.

B. Amendments

560. Amendments were submitted to article 61 by Finland (A/CONF.39/C.1/L.294) and India (A/CONF.39/C.1/L.255).

561. These amendments were to the following effect:

(a) *India* (A/CONF.39/C.1/L.255):

Delete the article.

[Withdrawn, see para. 563 below]

[NOTE: An amendment by India to article 50 (A/CONF.39/C.1/L.254) proposed to add to the text of article 50 a new para. 2 which contained the substance of article 61; see para. 462(ii)(*a*) above].

(b) *Finland* (A/CONF.39/C.1/L.294):

Amend article to read as follows:

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty *or, under the conditions specified in article 41, those of its provisions which are* in conflict with that norm, *become* void and *terminate.*

[Referred to the Drafting Committee, see para. 564 below, subsequently withdrawn, see para. 566 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

562. The Committee of the Whole initially discussed article 61, and the amendment thereto,[111] at its 66th meeting, on 13 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

[111] The amendment by India (A/CONF.39/C.1/L.255) was withdrawn before the article was discussed, see para. 464 above.

(ii) INITIAL CONSIDERATION

563. At the 52nd meeting of the Committee of the Whole, in connexion with the consideration of article 50, the amendment by *India* (A/CONF.39/C.1/L.255) to article 61, which was consequential upon an amendment by that State to article 50, was withdrawn (see para. 464 above).

564. At its 66th meeting, the Committee decided, without objection, to refer article 61 to the Drafting Committee, together with the amendment by *Finland* (A/CONF.39/C.1/L.294).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

565. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 61 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 567 below). This report stated that the Drafting Committee had taken no decision on the amendment by *Finland* (A/CONF.39/C.1/L.294) to article 61 because it considered that it raised a question of substance which it was for the Committee of the Whole to settle.

566. Also at the 83rd meeting, the amendment by *Finland* (A/CONF.39/C.1/L.294) was withdrawn. The Committee of the Whole then adopted the text of article 61, recommended by the Drafting Committee, without formal vote.[112]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

567. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 61:

Article 61

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

ARTICLE 62

A. International Law Commission text

568. The International Law Commission text provided as follows:

Article 62.—Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which claims that a treaty is invalid or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under the provisions of the present articles must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party

[112] See para. 13 above.

making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

B. Amendments and draft resolutions

I. Amendments

569. Amendments were submitted to article 62 by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352/Rev.1/Corr.1),[113] Central African Republic and Gabon (A/CONF.39/C.1/L.345), Colombia, Finland, Lebanon, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.346), Cuba (A/CONF.39/C.1/L.353), France (A/CONF.39/C.1/L.342), Japan (A/CONF.39/C.1/L.338), Japan (A/CONF.39/C.1/L.339), Switzerland (A/CONF.39/C.1/L.347), the United States of America (A/CONF.39/C.1/L.355) and Uruguay (A/CONF.39/C.1/L.343).

570. In addition, an amendment was submitted by Switzerland (A/CONF.39/C.1/L.348) proposing that paragraph 4 of article 62 of the International Law Commission text, with certain consequential amendments, be inserted as a new article 62*bis*; the text of this amendment is given under that article (see para. 583(*a*) below). At the conclusion of the debate on article 62, the sponsors of certain other amendments to that article stated that their amendments were being withdrawn as amendments to article 62, for resubmission as a proposed new article 62*bis*, to be considered at the second session of the Conference (see para. 577 below).

571. These amendments, in the form in which they were submitted as amendments to article 62 and arranged under sub-headings relating to complete reformulations of article 62, other provisions for arbitration, conciliation or judicial settlement, and the remaining amendments to specified paragraphs of article 62, were to the following effect:

(i) *Complete reformulations of article 62*

(a) *Uruguay* (A/CONF.39/C.1/L.343):

Amend the present text of the article to read as follows:

1. *A party which alleges a material breach of a treaty as a ground for terminating the treaty or suspending its operation, pursuant to article 57, may unilaterally suspend the execution of the treaty, in whole or in part.*

2. A party which claims that a treaty is invalid, *under articles 43, 44, 45, 46, 47, 48, 49 or 50*, or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty *under articles 53, 56, 59 or 61*, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

3. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

4. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Articles *33, 35 and 36* of the Charter of the United Nations. *The same obligation will arise in case any party raises an objection as to the existence of any of the grounds provided for in articles 51, 54, 55, 57 or 58 for the suspension or termination of a treaty.*

5. *The rights referred to in the preceding paragraphs may not be invoked or validly exercised by a party which has not accepted in advance, for the purposes of the dispute arising under paragraph 4 above, the obligations of pacific settlement provided in the Charter of the United Nations, or by a party which refuses to accept the resolution of the competent organ of the United Nations recommending, among the procedures enumerated in Article 33 (1) of the Charter of the United Nations, the most appropriate method for the peaceful settlement of the dispute which has arisen.*

6. *States parties to the present Convention engage themselves to act, individually and within the international organizations in which they are members, in such a way as to facilitate and encourage the settlement of disputes arising under the present Convention, by peaceful means and in accordance with the provisions of the Charter of the United Nations.*

7. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

[Withdrawn as an amendment to article 62, for possible resubmission and consideration at the second session of the Conference in connexion with article 62*bis*, see para. 577 below]

(b) *Switzerland* (A/CONF.39/C.1/L.347):

Word the title and the article as follows:

Procedure to be followed for claiming the invalidity of, terminating, withdrawing from, or suspending the operation of a treaty

1. A party which intends to claim the invalidity, terminate, withdraw from or suspend the operation of a treaty, under the provisions of the present articles, shall notify the other parties of its intention. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

2. If, after the expiry of a period which shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may, in the manner provided in article 63:

(*a*) if it intends to claim the invalidity of a treaty, notify the other parties of the date on which the treaty will terminate so far as it is concerned;

(*b*) if it intends to terminate, withdraw from or suspend the operation of the treaty, take the measure proposed.

3. If an objection is raised by any other party, the parties to the dispute may agree within a period of three months after the objection, to adopt a procedure for the settlement of the dispute.

4. If the parties fail to reach agreement within the period laid down in paragraph 3 above, the party which has made the notification may, not more than six months after the objection referred to in paragraph 3, bring the dispute before the International Court of Justice by simple application, or before a committee of arbitration in conformity with the provisions of paragraph 5.

5. Unless the parties otherwise agree, the arbitration procedure shall be as follows:

[113] Original sponsors Central African Republic, Colombia, Finland, Gabon, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352), co-sponsors Dahomey and Ivory Coast (Add.1) and Denmark (Rev.1/Corr.1).

(*a*) The Committee of Arbitration shall be composed of five members. Each of the parties shall appoint one member. The other three arbitrators shall be appointed by agreement of the parties from nationals of third States. They shall be of different nationalities, shall not have their usual place of residence in the territory of the parties and shall not be in the service of the parties.

(*b*) The chairman of the Committee of Arbitration shall be appointed by the parties from among the arbitrators appointed by agreement of the parties.

(*c*) If within a period of three months, the parties have been unable to reach agreement on the appointment of the arbitrators to be appointed jointly, the President of the International Court of Justice shall make the appointment. If within a period of three months one of the parties has not appointed the arbitrator he is responsible for appointing, the President of the International Court of Justice shall make the appointment.

(*d*) If the President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, he shall be replaced by the most senior member of the Court whose nationality is not the same as that of any of the parties.

(*e*) Unless the parties otherwise agree, the Committee of Arbitration shall decide its own procedure. Failing that, the provisions of chapter III of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 shall apply.

(*f*) The Committee of Arbitration shall decide all questions, submitted to it by simple majority vote, and its decisions shall be binding on the parties.

6. Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by the court of jurisdiction, the treaty shall remain in operation between the parties to the dispute.

7. If the party which has made the notification does not within the prescribed period of six months have recourse to one of the tribunals referred to in paragraph 4, it shall be deemed to have renounced its claim of invalidity or the measure proposed.

[Resubmitted for consideration in connexion with article 62*bis* at the second session of the Conference, see paras. 577 and 583(*c*) below and document A/CONF.39/15, para. 98(*d*)]

(ii) *Other provisions for arbitration, conciliation or judicial settlement*

(a) *Japan* (A/CONF.39/C.1/L.339):

Replace paragraph 3 by the following:

3. If objection has been raised by any other party, the parties concerned shall seek the settlement of the dispute arising out of the claim in the following manner:

(*a*) In a case where the dispute relates to a claim under article 50 or article 61, the dispute shall be referred to the International Court of Justice for decision at the request of either of the parties to the dispute;

(*b*) In all other cases, the parties to the dispute shall first of all seek a solution of the dispute through the means indicated in Article 33 of the Charter of the United Nations. If no solution has been reached within twelve months, the dispute shall be referred to arbitration by a tribunal provided for in the annex to the present Convention, unless the parties to the dispute agree to refer the dispute to the International Court of Justice.

3*bis*. Pending the settlement of the dispute in accordance with paragraph 3, the treaty shall continue in force, provided that the performance of the treaty may be suspended:

(i) by agreement of the parties, or

(ii) by a decision of the body to which the dispute has been referred in accordance with paragraph 3.

Add at the end of the text of the convention:

Annex

Arbitral Tribunal under article 62

1. The tribunal shall be constituted by five members. Each party to the dispute shall nominate two members, one of whom may possess the nationality of the party concerned, within thirty days of the notification by one party to the other party of its intention to refer the dispute to arbitration. The fifth member, who may not possess the nationality of either party to the dispute, shall be appointed by the Secretary-General of the United Nations, within thirty days of the nomination of the four members by both parties.

2. The member appointed by the Secretary-General of the United Nations shall act as president of the tribunal.

3. The tribunal shall decide its own procedures.

4. The decision of the tribunal shall be given by a simple majority and the president shall have the casting vote if the necessity arises.

5. The decision of the tribunal shall be final and binding upon the parties to the dispute.

[Withdrawn as amendment to article 62, for possible resubmission and consideration at the second session of the Conference in connexion with article 62*bis*, see para. 577 below and document A/CONF.39/15, para. 98(*a*)]

(b) *Central African Republic* and *Gabon* (A/CONF.39/C.1/L.345):

Replace paragraph 3 of the article by the following:

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations *upon the conditions laid down in the annex to the present Convention.*

Add at the end of the text of the convention:

Annex

1. Except as otherwise provided in a treaty or in the constituent instrument of a regional organization, and within the framework of Article 33 of the Charter of the United Nations, disputes arising from the application or interpretation of the provisions of Part V of the present Convention shall be brought before a conciliation commission, and, if the conciliation fails, before an arbitral tribunal.

2. A permanent list of experts representing the principal legal systems of the world on an equitable geographical basis shall be drawn up.

Such experts shall be appointed, on the proposal of States, by the Secretary-General of the United Nations for a period of three years, and shall be eligible for reappointment.

3. In the event of a dispute, each party shall appoint:

(*a*) a commissioner of its own nationality, chosen either from the list referred to in paragraph 2 or from outside that list;

(*b*) a commissioner not of its nationality, chosen from that list.

The commission thus constituted shall appoint a chairman chosen from the list.

The commissioners chosen by the parties shall be appointed within a period of sixty days after the opening of the conciliation procedure by the party requesting it.

The appointment of the chairman by the commissioners shall be made within sixty days after their own appointment.

If the appointment of the commissioners or of the chairman has not been made within the above-mentioned period, it shall be made by the Secretary-General of the United Nations.

4. In the event of failure of the conciliation procedure, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal for settlement.

The arbitral tribunal for each dispute shall consist of three arbitrators, one appointed by each party, and a chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months after the date when it is established that the conciliation procedure has failed.

The chairman also shall be appointed within a period of six months after the date of the appointment of the arbitrators by the parties.

If the chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

5. A permanent secretariat, the cost of whose activities shall be borne by the United Nations, shall be responsible for receiving complaints and preparing the documentation concerning disputes submitted to conciliation or arbitration.

[Withdrawn, see para. 574 below]

(c) *Colombia, Finland, Lebanon, Netherlands, Peru, Sweden* and *Tunisia* (A/CONF.39/C.1/L.346):

Insert as a new paragraph 3*bis* the following text:

If the parties have been unable to agree upon any means of reaching a solution within three months following the raising of the objection, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement, either party may request the Secretary-General of the United Nations to set in motion the procedures indicated in the annex to the present Convention.

Add at the end of the text of the convention:

Annex

(1) A Conciliation Commission shall be established consisting of twenty-five highly-qualified jurists representing the various legal systems of the world and selected having due regard to the importance of as wide a geographical distribution as possible. Members of the Commission shall be appointed by the Secretary-General, on the nomination of States, for five years and may be reappointed.

(2) Where a dispute is referred to the Secretary-General for settlement, and unless the parties agree that the full Commission shall consider the dispute, a sub-commission shall be appointed within 60 days consisting of one member appointed by each party to the dispute from among the members of the Commission who do not possess its nationality, one member appointed by each party who possesses its nationality (from outside the membership of the Commission where necessary) and a chairman (not possessing the nationality of either party) appointed by the other members of the sub-commission from among the members of the Commission. If any appointment is not made within the period of 60 days the appointment shall be made by the Secretary-General of the United Nations.

(3) The Commission and any sub-commission so constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly solution of the question. The Commission shall establish its own procedure. Decisions of the Commission and of the sub-commission shall be taken by majority vote. The Secretary-General shall provide to the Commission or the sub-commission such assistance and facilities as it may require. The expenses of the Commission and of the sub-commission shall be borne by the United Nations.

(4) The Commission or the sub-commission, as the case may be, shall be obliged to report within twelve months of its constitution. Reports shall be transmitted to the Secretary-General and the parties. If the Commission or the sub-commission has succeeded in effecting a friendly solution, the report shall be confined to a brief statement of the facts and the solution reached. If the Commission or sub-commission has not succeeded in effecting a friendly solution, its report shall deal fully with the factual and legal elements of the dispute.

(5) If no solution has been reached by the Commission or a sub-commission any question relating to the interpretation or application of any of the articles contained in Part V of the present Convention may be submitted, by agreement between the parties, to arbitration or to the International Court of Justice. Failing such agreement within a period of three months these questions shall be submitted, at the request of either party, to an arbitral tribunal for decision. The arbitral tribunal shall consist of one member appointed by each party to the dispute and a chairman appointed by common agreement between the parties. If any of these appointments has not been made within a period of six months from the request for arbitration, it shall be made by the Secretary-General of the United Nations.

(6) The Secretary-General shall provide the arbitration tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Withdrawn, see para. 574 below]

(d) *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden* and *Tunisia* (A/CONF.39/C.1/L.352/Rev.1/Corr.1):[114]

Insert a new paragraph 3*bis* reading as follows:

If the parties have been unable to agree upon any means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement, either party may request the Secretary-General of the United Nations to set in motion the procedures specified in the annex to the present Convention.

Add at the end of the text of the convention:

Annex

(1) A permanent list of conciliators consisting of qualified jurists shall be drawn up by the Secretary-General of the United Nations. To this end every State Member of the United Nations and every party to the present Convention shall be invited to nominate two conciliators for a period of five years, which may be renewed.

(2) In the event of a dispute, each party shall appoint:

(*a*) one conciliator of its own nationality chosen either from the list referred to in paragraph 1 above or from outside that list;

(*b*) one conciliator not of its own nationality chosen from the list.

The Commission thus constituted shall appoint a chairman chosen from the list.

The conciliators chosen by the parties shall be appointed within a period of three months after the opening of the conciliation procedure by the party requesting it.

The conciliators shall appoint their chairman within two months after their own appointment.

If the appointment of the conciliators or of the chairman has not been made within the above-mentioned periods, it shall be made by the Secretary-General of the United Nations.

[114] In the original version of this amendment (A/CONF.39/C.1/L.352), the words "or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement" were omitted in para. 3*bis*. In the first sentence of para. (1) of the annex the words "representing the various legal systems of the world" were inserted after the word "jurists". In the third sentence of para. (2) of the annex the words "sixty days" appeared in place of the words "three months", and, in the fourth sentence, "sixty days" in place of "two months". Finally, para. 6 did not appear in the original version.

(3) The Commission thus constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly settlement of the dispute. The Commission shall establish its own procedure. Decisions and recommendations of the Commission shall be taken by a majority vote. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(4) The Commission shall be required to report within twelve months of its constitution. Its reports shall be transmitted to the Secretary-General and to the parties.

(5) In the event of failure of the conciliation procedure and if the parties have not agreed on a means of judicial settlement within three months from the date when it is established that the conciliation procedure has failed, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal.

The arbitral tribunal shall consist of two arbitrators, one appointed by each party, and a chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months from the date when it is established that the conciliation procedure has failed.

The chairman shall also be appointed within a period of six months from the date of the appointment of the arbitrators by the parties.

If the chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

(6) The arbitral tribunal shall establish its own procedure. The decisions of the arbitral tribunal shall be taken by a majority vote. The award shall be binding and definitive.

(7) The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Resubmitted for consideration in connexion with article 62*bis* at the second session of the Conference, see paras. 577 and 583(*b*) below and document A/CONF.39/15, para. 98(*b*)]

(e) *United States of America* (A/CONF.39/C.1/L.355):

(1) Insert as a new paragraph 3*bis* the following text:

If the parties have been unable to agree upon any means of reaching a solution within three months following the raising of the objection, or if they have agreed upon any means of settlement (other than adjudication or arbitration) which has not led to a solution within 12 months after such agreement, either party may refer the dispute to the Commission on Treaty Disputes for settlement in accordance with the procedures indicated in the annex to the present Convention.

(2) Renumber paragraphs 4 and 5 of the International Law Commission text as paragraphs 6 and 7 and insert new paragraphs 4 and 5 to read as follows:

4. Except as provided in paragraph 5, when an objection has been raised, the party claiming the invalidity of a treaty or alleging a ground for termination, suspension or withdrawal from a treaty may not carry out the measure proposed in its notification until the matter is resolved unless: (*a*) the parties agree that such measure may be taken; or, (*b*) any international tribunal to which the parties have submitted the dispute or, if they have not submitted the dispute to such a tribunal, the Commission on Treaty Disputes established in the annex to the present Convention, shall have issued an order laying down provisional measures to be taken to preserve the respective rights of either party.

5. A party alleging material breach of a treaty may, upon the expiry of the applicable period provided in paragraph 2 of this article, suspend operation wholly if the effect of the alleged breach would be to frustrate the object and purpose of the treaty; otherwise, operation may be suspended of those provisions which were allegedly breached or the performance of which is directly related to or dependent upon performance of the provision allegedly breached. In the event of a dispute as to the materiality of the breach or the appropriateness of the suspension an objecting party may apply to any competent international tribunal to which the parties have submitted the dispute or, if they have not submitted the dispute to such a tribunal, to the Commission on Treaty Disputes for the issuance of an interlocutory order requiring modification of action taken under this paragraph.

(3) Add at the end of the text of the convention:

Annex

Article 1

(1) A Commission on Treaty Disputes shall be established consisting of twenty-five highly qualified jurists representing the principal legal systems of the world. The Commission shall reflect a wide geographical distribution.

(2) Members of the Commission shall be elected by the General Assembly from a list of candidates nominated by the States parties to this Convention. They shall serve for nine years and may be re-elected.

(3) Subject to the approval of the General Assembly, the Commission shall be constituted as an organ of the United Nations and authorized to request advisory opinions from the International Court of Justice under the conditions set forth in article 4 below.

Article 2

(1) When a dispute is referred to the Commission on Treaty Disputes, and unless the parties agree that the full Commission shall consider the dispute, a sub-commission shall be appointed within 60 days consisting of one member appointed by each party to the dispute from among the members of the Commission who do not possess its nationality, one member appointed by each party who possesses its nationality (from outside the membership of the Commission where necessary) and a chairman (not possessing the nationality of either party) appointed by the other members of the sub-commission from among the members of the Commission. If any appointment is not made within the period of 60 days, the appointment shall be made by the Secretary-General of the United Nations or in the case of the chairman, by the Commission as a whole.

(2) An application for provisional measures or for review of the action taken in respect of an alleged breach shall be considered by a sub-commission if one has been selected; otherwise the application shall be considered by the Commission as a whole.

Article 3

(1) The Commission or any sub-commission constituted under article 2 shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly solution of the question. The Commission or a sub-commission shall have the power to order provisional measures to preserve the rights of the parties.

(2) Decisions of the Commission and of the sub-commission shall be taken by majority vote. Subject to the foregoing, the Commission shall establish its own procedures.

(3) The Secretary-General shall provide to the Commission or the sub-commission such assistance and facilities as it may require.

Article 4

If the proposals made to the parties by the Commission or sub-commission are not accepted within three months of being made and there remain unresolved legal questions, or at any time with the consent of the parties, the Commission or sub-commission may request an advisory opinion from the International Court of Justice. If the parties agree, the Commission shall request the Court to form a chamber under Article 26 of its Statute to deal with the questions.

Article 5

(1) The Commission or the sub-commission, as the case may be, shall be obliged to report within twelve months after the dispute has been referred to it unless at the end of that time there is outstanding a request for an advisory opinion. In such case, the Commission or sub-commission may delay its report until three months after receipt of the opinion.

(2) The report shall be transmitted to the Secretary-General and the parties. If the Commission or the sub-commission has succeeded in effecting a friendly solution, the report shall be confined to a brief statement of the facts and the solution reached. If the Commission or the sub-commission has not succeeded in effecting a friendly solution, its report shall deal fully with the factual and legal elements of the disputes.

Article 6

(1) If no solution has been effected by the Commission or sub-commission, the parties may agree to submit any question relating to the interpretation or application of any of the articles contained in Part V of the present Convention to the International Court of Justice.

(2) If within two months after issuance of the Commission or sub-commission report, no agreement for submission to the International Court of Justice has been reached, any such question shall be submitted, at the request of either party, to an arbitral tribunal for decision.

(3) The arbitral tribunal shall consist of one member appointed by each party to the dispute and a chairman appointed by common agreement between the parties. If any of these appointments has not been made within a period of three months from the request for arbitration, it shall be made from the list of members of the Permanent Court of Arbitration by the President of the International Court of Justice.

(4) The Secretary-General shall provide to the arbitration tribunal such assistance and facilities as it may require.

Article 7

If the parties agree the arbitral tribunal may be (*a*) the sub-commission of the Commission on Treaty Disputes which has been seized of the dispute, or (*b*) another sub-commission constituted in the same manner as provided in article 2, or (*c*) the full Commission.

[Withdrawn as amendment to article 62, for possible resubmission and consideration at the second session of the Conference in connexion with article *62bis*, see para. 577 below]

(iii) *Remaining amendments to specified paragraphs of article 62*

(1) *Paragraph 1*

(a) *Japan* (A/CONF.39/C.1/L.338):

Insert "void or" between the words "a treaty is" and "invalid" in the first sentence.

[Not pressed to a vote, see para. 578 below]

(b) *France* (A/CONF.39/C.1/L.342):

Replace the first sentence by the following:

A party which, *under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation*, must notify the other parties of its claim.

[Adopted, see para. 578 below]

(2) *Paragraph 2*

(a) *Japan* (A/CONF.39/C.1/L.338):

Delete the words "except in cases of special urgency".

[Withdrawn, see para. 576 below]

(b) *United States of America* (A/CONF.39/C.1/L.355):

Amend paragraph 2 to read as follows:

2. (*a*) If after the expiry of a period which, except in cases of special urgency shall not be less than three months after receipt of the notification, *the party making the notification has not received an objection from any other party and, in the case of a multilateral treaty, has ascertained that no other party has communicated any objection to the depositary*, it may carry out in the manner provided in article 63 the measure which it has proposed.

(*b*) *In cases of special urgency the time period shall, in every case, be sufficient to allow the other parties to make an objection.*

[Not pressed to a vote, see para. 576 below]

(3) *New paragraph 6*

Cuba (A/CONF.39/C.1/L.353):

Add the following paragraph:

6. The foregoing provisions shall not apply to a treaty which is legally void *ab initio* in accordance with articles 48, 49 and 50.

[Withdrawn, see para. 576 below]

II. Draft resolutions

572. In the course of the discussion of article 62, and the amendments thereto, draft resolutions were introduced by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.362) and by Ceylon and Czechoslovakia (A/CONF.39/C.1/L.361).

These draft resolutions were to the following effect:

(a) *Ceylon* and *Czechoslovakia* (A/CONF.39/C.1/L.361):

The Committee of the Whole recommends to the Conference the adoption of the following resolution:

The United Nations Conference on the Law of Treaties,

Mindful that in the process of codification and progressive development of the law of treaties the procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty, as well as participation of all States in certain treaty relations require further detailed study,

Being aware that through lack of time, the Conference was unable to give at its first session full consideration to all the relevant aspects of those two problems,

Calls upon States represented at the Conference, in particular those which made concrete suggestions regarding the solution of the two problems mentioned above, to devote their utmost efforts to preparing their solution at the second session of the Conference, in particular by undertaking, in the period between the two sessions of the Conference, such consultations and other preparatory measures as they may deem necessary, with a view to making the convention on the law of treaties acceptable to as large a number of States as possible.

[Withdrawn, see para. 576 below]

(b) *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden* and *Tunisia* (A/CONF.39/C.1/L.362):

The Committee of the Whole,

Having examined article 62 of the draft convention on the law of treaties,

Considering that the article does not provide for procedures in cases in which the parties do not succeed in agreeing on the means of settlement of differences relating to the invalidation, termination or suspension of treaties under Part V of the convention,

Considering it necessary to add to article 62 provisions for effective and impartial procedures for the settlement of such differences at the request of either party,

Aware of the complexities of the various amendments submitted to that effect and the need for a careful study of them by Governments,

Desiring to facilitate such study and further consultations on the matter between Governments with a view to reaching a solution that may have broad support,

Decides to defer all votes on article 62 and the amendments submitted thereto.

[Withdrawn, see para. 576 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

573. The Committee of the Whole initially discussed article 62, and the amendments thereto, at its 68th to 74th meetings inclusive, between 14 and 16 May 1968, and at its 80th meeting, on 21 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

574. The amendments by *Cambodia*, *Finland*, *Lebanon*, *Netherlands*, *Peru*, *Sweden* and *Tunisia* (A/CONF.39/C.1/L.346) and by *Gabon* and the *Central African Republic* (A/CONF.39/C.1/L.345) were withdrawn before the Committee of the Whole commenced its consideration of article 62, in favour of the joint amendment by the *Central African Republic*, *Colombia*, *Dahomey*, *Denmark*, *Finland*, *Gabon*, *Ivory Coast*, *Lebanon*, *Madagascar*, *Netherlands*, *Peru*, *Sweden* and *Tunisia* (A/CONF.39/C.1/L.352/Rev.1/Corr.1).

575. At the 74th meeting of the Committee of the Whole, *Kenya* moved the adjournment of the debate on article 62, and the amendments and draft resolutions relating thereto, until 21 May 1968. This motion was adopted without objection. Consideration of the article, amendments and draft resolutions was resumed by the Committee on that date, at its 80th meeting.

576. At the 80th meeting, the draft resolutions submitted by the *Central African Republic*, *Colombia*, *Dahomey*, *Denmark*, *Finland*, *Gabon*, *Ivory Coast*, *Lebanon*, *Madagascar*, *Netherlands*, *Peru*, *Sweden* and *Tunisia* (A/CONF.39/C.1/L.362) and by *Ceylon* and *Czechoslovakia* (A/CONF.39/C.1/L.361) were withdrawn. At the same meeting, the amendment by *Japan* (A/CONF.39/C.1/L.388) to paragraph 2 of article 62 was withdrawn. The amendment by *Cuba* (A/CONF.39/C.1/L.353) proposing to add a new paragraph 6 to article 62 was also withdrawn. That part of the amendment by the *United States of America* which related to paragraph 2 of article 62 was not pressed to a vote.

577. Likewise at the 80th meeting, the *Netherlands*, on behalf of the sponsors of the amendment by the *Central African Republic*, *Colombia*, *Dahomey*, *Denmark*, *Finland*, *Gabon*, *Ivory Coast*, *Lebanon*, *Madagascar*, *Netherlands*, *Peru*, *Sweden* and *Tunisia* (A/CONF.39/C.1/L.362/Rev.1/Corr.1), withdrew that amendment as an amendment to article 62 and resubmitted it, with certain consequential changes, as a proposed new article 62*bis* (A/CONF.39/C.1/L.352/Rev.2), to be considered at the second session of the Conference (see para. 583(*b*) below). The amendments by *Japan* (A/CONF.39/C.1/L.339), the *United States of America* (A/CONF.39/C.1/L.355) and *Uruguay* (A/CONF.39/C.1/L.343), were also withdrawn, on the understanding that the sponsors reserved the right to resubmit those amendments to the second session of the Conference for consideration together with proposed new article 62*bis*. Consideration of the amendments by *Switzerland* (A/CONF.39/C.1/L.347) to article 62, and of its proposed new article 62*bis* (A/CONF.39/C.1/L.348, see para. 583(*a*) below) was deferred until the second session of the Conference. The amendment by *Switzerland* (A/CONF.39/C.1/L.347) was subsequently resubmitted, with consequential amendments, as a proposed article 62*bis* (see para. 583(*c*) below) at the first session.

578. At the same meeting, the Committee of the Whole voted upon the amendment by *France* (A/CONF.39/C.1/L.342) to paragraph 1 of article 62. This amendment was adopted by 39 votes to 31, with 20 abstentions. By virtue of the foregoing vote, the amendment by *Japan* (A/CONF.39/C.1/L.338) to paragraph 1 of article 62 was disposed of.

579. Finally, at its 80th meeting, the Committee of the Whole agreed, without objection, to the statement by the Chairman that article 62 was adopted and referred to the Drafting Committee, as amended.

(iii) Consideration of the report of the Drafting Committee

580. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 62 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 581 below). The Committee of the Whole adopted this text without formal vote.[115]

(iv) Text adopted by the Committee of the Whole

581. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 62:

Article 62

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the

[115] See para. 13 above.

notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

ARTICLE 62bis

A. Proposed new article

582. An amendment was submitted by Switzerland (A/CONF.39/C.1/L.348) proposing that paragraph 4 of article 62 of the International Law Commission text, with certain consequential amendments, be inserted as a new article 62*bis*. Certain amendments, submitted originally to article 62, were subsequently resubmitted as amendments proposing to add a new article 62*bis* (see para. 577 above).[116] These amendments were by Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352/Rev.2) and Switzerland (A/CONF.39/C.1/L.377).

583. The above amendments were to the following effect:

(a) *Switzerland* (A/CONF.39/C.1/L.348):

Insert the following new article between articles 62 and 63:

Other procedures provided for by agreement between the parties

Nothing in the preceding article shall affect the rights or obligations of the parties under any provision in force between them concerning the settlement of disputes.

[Deferred for consideration at the second session of the Conference, see para. 584 below and document A/CONF.39/15, para. 115]

(b) *Central African Republic*, *Colombia*, *Dahomey*, *Denmark*, *Finland*, *Gabon*, *Ivory Coast*, *Lebanon*, *Madagascar*, *Netherlands*, *Peru*, *Sweden* and *Tunisia* (A/CONF.39/C.1/L.352/Rev.2):

Insert a new article 62*bis* reading as follows:

If the parties have been unable to agree, as provided in article 62, upon any means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement, either party may request the Secretary-General of the United Nations to set in motion the procedures specified in the annex to the present Convention.

Add at the end of the text of the convention:

Annex

(1) A permanent list of conciliators consisting of qualified jurists shall be drawn up by the Secretary-General of the United Nations. To this end every State Member of the United Nations and every party to the present Convention shall be invited to nominate two conciliators for a period of five years, which may be renewed.

(2) In the event of a dispute, each party shall appoint:

(*a*) one conciliator of its own nationality chosen either from the list referred to in paragraph 1 above or from outside that list;

(*b*) one conciliator not of its own nationality chosen from the list.

The Commission thus constituted shall appoint a chairman chosen from the list.

The conciliators chosen by the parties shall be appointed within a period of three months after the opening of the conciliation procedure by the party requesting it.

The conciliators shall appoint their chairman within two months after their own appointment.

If the appointment of the conciliators or of the chairman has not been made within the above-mentioned periods, it shall be made by the Secretary-General of the United Nations.

(3) The Commission thus constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly settlement of the dispute. The Commission shall establish its own procedure. Decisions and recommendations of the Commission shall be taken by a majority vote. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(4) The Commission shall be required to report within twelve months of its constitution. Its reports shall be transmitted to the Secretary-General and to the parties.

(5) In the event of failure of the conciliation procedure and if the parties have not agreed on a means of judicial settlement within three months from the date when it is established that the conciliation procedure has failed, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal.

The arbitral tribunal shall consist of two arbitrators, one appointed by each party, and a chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months from the date when it is established that the conciliation procedure has failed.

The chairman shall also be appointed within a period of six months from the date of the appointment of the arbitrators by the parties.

If the chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

(6) The arbitral tribunal shall establish its own procedure. The decisions of the arbitral tribunal shall be taken by a majority vote. The award shall be binding and definitive.

(7) The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Deferred for consideration at the second session of the Conference, see para. 584 below and document A/CONF.39/15, para. 98(*b*)]

(c) *Switzerland* (A/CONF.39/C.1/L.377):

Insert a new article 62*bis* reading as follows:

1. If the parties have been unable to reach any agreement on the settlement procedure within a period of three months after the

[116] In addition, the sponsors of the following amendments to article 62 reserved the right (see para. 577 above) to resubmit their amendments to the second session of the Conference for consideration under article 62*bis*: Japan (A/CONF.39/C.1/L.339; for text, see para. 571(ii)(*a*) above); United States of America (A/CONF.39/C.1/L.355; for text, see para. 571(ii)(*e*) above); Uruguay (A/CONF.39/C.1/L.343; for text, see para. 571(i)(*a*) above).

objection referred to in article 62, paragraph 3, the party which has made the notification may, not more than six months after the objection, bring the dispute before the International Court of Justice by simple application, or before a commission of arbitration in conformity with the provisions of paragraph 2.

2. Unless the parties otherwise agree, the arbitration procedure shall be as follows:

(*a*) The commission of arbitration shall be composed of five members. Each of the parties shall appoint one member. The other three arbitrators shall be appointed jointly by the parties from nationals of third States. They shall be of different nationalities, shall not have their usual place of residence in the territory of the parties and shall not be in the service of the parties.

(*b*) The president of the commission of arbitration shall be appointed by the parties from among the arbitrators appointed jointly.

(*c*) If, within a period of three months, the parties have been unable to reach agreement on the appointment of the arbitrators to be appointed jointly, the President of the International Court of Justice shall make the appointment. If within a period of three months one of the parties has not appointed the arbitrator it is responsible for appointing, the President of the International Court of Justice shall make the appointment.

(*d*) If the President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, he shall be replaced by the most senior member of the Court whose nationality is not the same as that of any of the parties.

(*e*) Unless the parties otherwise agree, the commission of arbitration shall decide its own procedure. Failing that, the provisions of chapter III of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 shall apply.

(*f*) The commission of arbitration shall decide all questions submitted to it by simple majority vote, and its decisions shall be binding on the parties.

3. Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by the court of jurisdiction, the treaty shall remain in operation between the parties to the dispute.

4. If the party which has made the notification does not within the prescribed period of six months have recourse to one of the tribunals referred to in paragraph 1, it shall be deemed to have renounced its claim of invalidity or to the measure proposed.

[Deferred for consideration at the second session of the Conference, see para. 584 below and document A/CONF.39/15, para. 98(*d*)]

B. Proceedings of the Committee of the Whole

MEETINGS, CONSIDERATION AND DECISION

584. At the 80th meeting of the Committee of the Whole, on 21 May 1968, it was decided, without objection, to defer until the second session of the Conference consideration of all amendments proposing the addition of a new article 62*bis*.

ARTICLE 63

A. International Law Commission text

585. The International Law Commission text provided as follows:

Article 63.—Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

B. Amendments

586. An amendment to article 63 was submitted by Switzerland (A/CONF.39/C.1/L.349 and Corr.1).

587. This amendment was to the following effect:

Amend the title and the text of paragraph 1 of article 63 to read as follows:

Instruments of execution

1. Any act executing one of the measures referred to in article 62, paragraphs 1 and 2, shall be carried out through an instrument communicated to the other parties.

[Rejected, see para. 590 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

588. The Committee of the Whole initially discussed article 63, and the amendment thereto, at its 74th meeting, on 16 May 1968, and at its 81st meeting, on 22 May 1968. At its 83rd meeting, on 24 May 1968, it considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

589. At its 74th meeting, the Committee of the Whole decided, without objection, to refer article 63 to the Drafting Committee, on the understanding that a decision on the amendment by *Switzerland* (A/CONF.39/C.1/L.349 and Corr.1) would be taken by the Committee of the Whole after its consideration of article 62 was completed.

590. At its 81st meeting, the Committee of the Whole voted upon the amendment by *Switzerland* (A/CONF.39/C.1/L.349 and Corr.1). The amendment was rejected by 43 votes to 11, with 33 abstentions.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

591. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 63 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 592 below). The Committee of the Whole adopted this text without formal vote.[117]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

592. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 63:

[117] See para. 13 above.

Article 63

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

ARTICLE 64

A. International Law Commission text

593. The International Law Commission text provided as follows:

Article 64.—Revocation of notifications and instruments provided for in articles 62 and 63

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

B. Amendments

594. No amendments were submitted to article 64.

C. Proceedings of the Committee of the Whole

(i) Meetings

595. The Committee of the Whole initially discussed article 64 at its 74th meeting, on 16 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

596. At its 74th meeting, the Committee of the Whole decided, without objection, to adopt article 64 and to refer it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

597. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 64 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 598 below). The Committee of the Whole adopted this text without formal vote. [118]

(iv) Text adopted by the Committee of the Whole

598. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 64:

Article 64

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

[118] *Ibid.*

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

ARTICLE 65

A. International Law Commission text

599. The International Law Commission text provided as follows:

Article 65.—Consequences of the invalidity of a treaty

1. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) Acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

B. Amendments

600. Amendments were submitted to article 65 by Australia (A/CONF.39/C.1/L.297), Bulgaria and Poland (A/CONF.39/C.1/L.278), France (A/CONF.39/C.1/L.48 and L.363), Switzerland (A/CONF.39/C.1/L.358) and the United States of America (A/CONF.39/C.1/L.360).

601. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2, paragraph 3 and paragraph 4 of the article, were to the following effect:

(i) *Paragraph 1*

(a) *Australia* (A/CONF.39/C.1/L.297):

Amend [paragraph 1] by replacing the words "a void treaty" by the words "a treaty established as invalid under the present Convention".

[Referred to the Drafting Committee, see para. 605 below]

(b) *Switzerland* (A/CONF.39/C.1/L.358):

Replace paragraph 1 by the following:

The provisions of an invalidated treaty have no legal force.

[Referred to the Drafting Committee, see para. 605 below]

(c) *United States of America* (A/CONF.39/C.1/L.360):

Article 65 [paragraph 1] is revised to read as follows:

The provisions of a treaty determined to be void in accordance with the present Convention have no legal force.

[Referred to the Drafting Committee, see para. 605 below]

(d) *France* (A/CONF.39/C.1/L.363):

Replace paragraph 1 by the following text:

The provisions of a treaty the invalidity of which has been established in accordance with article 62 have no legal force.

[Referred to the Drafting Committee, see para. 605 below]

(ii) *Paragraph 2*

United States of America (A/CONF.39/C.1/L.360):

Article 65 [paragraph 2] is revised to read as follows:

Acts performed in good faith in reliance upon such provisions of a treaty before nullity was established are not rendered unlawful by reason only of the nullity.

[Rejected, see para. 604(*a*) below]

(iii) *Paragraph 3*

(a) *Bulgaria* and *Poland* (A/CONF.39/C.1/L.278):

Redraft paragraph 3 by replacing the words "is imputable" by the words "has been the cause of the invalidity or nullity of the treaty".

[Referred to the Drafting Committee, see para. 605 below]

(b) *Switzerland* (A/CONF.39/C.1/L.358):

Delete paragraph 3.

[Rejected, see para. 604(*b*) below]

(c) *United States of America* (A/CONF.39/C.1/L.360):

[NOTE: This amendment omitted paragraph 3 of the International Law Commission text, paragraph 4 of that text being renumbered as paragraph 3. The amendment therefore proposed the deletion of paragraph 3 of the original text]

[Rejected, see para. 604(*b*) below]

(iv) *Paragraph 4*

France (A/CONF.39/C.1/L.48):

After the words "multilateral treaty", insert the words "other than a restricted multilateral treaty".

[Withdrawn, see para. 603 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

602. The Committee of the Whole initially discussed article 65, and the amendments thereto, at its 74th meeting, on 16 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

603. At the 74th meeting of the Committee of the Whole, the amendment by *France* (A/CONF.39/C.1/L.48) to paragraph 4 of article 65 was withdrawn.

604. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it. The results of the voting were as follows:

(*a*) The amendment by the *United States of America* (A/CONF.39/C.1/L.360) to paragraph 2 was rejected by 39 votes to 28, with 20 abstentions.

(*b*) The amendments by *Switzerland* (A/CONF.39/C.1/L.358) and *United States of America* (A/CONF.39/C.1/L.360) proposing the deletion of paragraph 3 were rejected by 46 votes to 24, with 17 abstentions.

605. Also at its 74th meeting, the Committee of the Whole decided, without objection, to refer article 65 to the Drafting Committee, together with the remaining amendments by *Australia* (A/CONF.39/C.1/L.297), *Bulgaria* and *Poland* (A/CONF.39/C.1/L.278), *France* (A/CONF.39/C.1/L.363), *Switzerland* (A/CONF.39/C.1/L.358) (para. 1 only) and *United States of America* (A/CONF.39/C.1/L.360) (para. 1 only).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

606. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 65 adopted by the Drafting Committee (A/CONF.39/C.1/13). Paragraph 1 of this text read as follows:

1. A treaty the invalidity of which is established under articles 43 to 50 and 61, and in accordance with the procedures laid down in article 62, is void. The provisions of a void treaty have no legal force.

607. *Ghana* proposed an oral amendment to substitute the following text for the first sentence of paragraph 1 of article 65: "A treaty the invalidity of which is established under the present Convention is void."

Canada proposed that separate votes be taken on the words "under articles 43 to 50 and 61" and on the words "and in accordance with the procedures laid down in article 62" which appeared in the text of paragraph 1 of article 65 recommended by the Drafting Committee, but which were omitted in the oral amendment by Ghana.

Sweden proposed an oral amendment to replace the words "under articles 43 to 50 and 61", in the text of paragraph 1 recommended by the Drafting Committee by the words "under the present Convention".

608. The oral amendment by *Ghana* was adopted by 48 votes to 31, with 8 abstentions. As a result of this vote, the proposal by *Canada* for separate votes and the oral amendment by *Sweden* were disposed of.

609. The Committee of the Whole adopted the text of article 65 recommended by the Drafting Committee, as amended, by 63 votes to 2, with 20 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

610. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 65:

Article 65

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or act of corruption is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

ARTICLE 66

A. International Law Commission text

611. The International Law Commission text provided as follows:

Article 66.—Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

B. Amendments

612. An amendment was submitted to article 66 by France (A/CONF.39/C.1/L.49).

613. This amendment was to the following effect:

In paragraph 2, after the words "multilateral treaty", insert the words "other than a restricted multilateral treaty".

[Referred to the Drafting Committee, see para. 615 below; subsequently deferred until the second session of the Conference, see para. 616 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

614. The Committee initially discussed article 66, and the amendment thereto, at its 75th meeting, on 17 May 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 66 until the second session of the Conference.

(ii) Consideration

615. At its 75th meeting, the Committee of the Whole decided, without objection, to refer article 66 to the Drafting Committee, together with the amendment by *France* (A/CONF.39/C.1/L.49).

616. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *France* (A/CONF.39/C.1/L.49) proposed to add a reference to "restricted multilateral treaty" in article 66.

(iii) Decision

617. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 66 until the second session of the Conference (see document A/CONF.39/15, paras. 121-128).

ARTICLE 67

A. International Law Commission text

618. The International Law Commission text provided as follows:

Article 67.—Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law

1. In the case of a treaty void under article 50 the parties shall:

(*a*) Eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) Bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

B. Amendments

619. Amendments were submitted to article 67 by Finland (A/CONF.39/C.1/L.295), India (A/CONF.39/C.1/L.256) and Mexico (A/CONF.39/C.1/L.356).

620. These amendments were to the following effect:

(a) *India* (A/CONF.39/C.1/L.256):

Amend introductory sentence of paragraph 1 to read as follows:

In the case of a treaty void under *paragraph 1 of* article 50 the parties shall: ...

Amend introductory sentence of paragraph 2 to read as follows:

In the case of a treaty which becomes void under *paragraph 2 of* article 50, the *consequential* termination of the treaty: ...

[Withdrawn, see para. 622 below]

[Note: An amendment by India to article 50 (A/CONF.39/C.1/L.254) proposed to add to the text of article 50 a new paragraph 2 which contained the substance of article 61; see para. 462(ii)(*a*) above]

(b) *Finland* (A/CONF.39/C.1/L.295):

1. *Add* the words "*or its provisions*" to the *title* of the article between the words "treaty" and"conflicting".

2. *Amend* the *text* of the article as follows:

Paragraph 1. introductory phrase: In the case of a treaty *or certain of its provisions* void under article 50 the parties shall:

Paragraph 2. In the case of a treaty *or certain of its clauses which* become void and *terminate* under article 61, the termination of the treaty:

(*a*) releases the parties from any obligation further to perform the treaty *or under the conditions of article 50 (2), those of its provisions which are in conflict with a peremptory norm of general international law.*

(*b*) [no alterations].

[Not put to the vote, see para. 624 below]

(c) *Mexico* (A/CONF.39/C.1/L.356):

Amend paragraph 1, sub-paragraph (*b*), to read as follows:

Bring their mutual relations *and their further conduct* into conformity with the peremptory norm of general international law.

[Withdrawn, see para. 622 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

621. The Committee of the Whole discussed article 67, and the amendments thereto, at its 75th and 82nd meetings, on 17 and 23 May 1968.

(ii) Consideration

622. At the 52nd meeting of the Committee of the Whole, in connexion with the consideration of article 50, the amendment by *India* (A/CONF.39/C.1/L.256) to article 67, which was consequential upon an amendment by that State to article 50, was withdrawn (see para. 464 above). At the 82nd meeting, the amendment by *Mexico* (A/CONF.39/C.1/L.356) was withdrawn.

623. At its 75th meeting, the Committee of the Whole adopted article 67 in principle, without objection, but deferred its decision upon the amendments thereto, pending a final decision on the text of article 41 to be recommended by the Drafting Committee. The Committee again considered article 67, and the amendments thereto, at its 82nd meeting.

624. At its 82nd meeting, the Committee of the Whole adopted the text of article 67 recommended by the International Law Commission without formal vote.[119] The amendment by *Finland* (A/CONF.39/C.1/L.275) was not put to the vote, having been disposed of by virtue of the vote upon an amendment by *Finland* (A/CONF.39/C.1/L.144) to article 41. The Committee of the Whole had rejected this amendment at its 82nd meeting (see para. 369(vi) and 377 above).

(iii) Text adopted by the Committee of the Whole

625. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 67:

Article 67

1. In the case of a treaty void under article 50 the parties shall:

(*a*) eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

[119] *Ibid.*

ARTICLE 68

A. International Law Commission text

626. The International Law Commission text provided as follows:

Article 68.—Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:

(*a*) Relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(*b*) Does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible.

B. Amendments

627. An amendment was submitted to article 68 by *Mexico* (A/CONF.39/C.1/L.357).

628. This amendment was to the following effect:

Amend paragraph 2 to read as follows:

During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible or *to frustrate the object of the treaty.*

[Orally amended, see para. 630 below; referred to the Drafting Committee, see para. 631 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

629. The Committee of the Whole initially discussed article 68, and the amendment thereto, at its 75th meeting, on 17 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

630. At the 75th meeting of the Committee of the Whole, *Australia* submitted an oral sub-amendment to the amendment by *Mexico* (A/CONF.39/C.1/L.357) to replace the word "frustrate" by the word "defeat", and to add the words "and purpose" after the word "object". This oral sub-amendment was accepted by the sponsor.

631. Also at its 75th meeting, the Committee of the Whole decided, without objection, to refer article 68 to the Drafting Committee, together with the amendment by *Mexico* (A/CONF.39/C.1/L.357) as orally amended.

(iii) Consideration of the report of the Drafting Committee

632. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 68 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 633 below). The Committee of the Whole adopted this text without formal vote.[120]

[120] *Ibid.*

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

633. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 68:

Article 68

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(*a*) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(*b*) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI. MISCELLANEOUS PROVISIONS

ARTICLE 69

A. International Law Commission text

634. The International Law Commission text provided as follows:

Article 69.—Cases of State succession and State responsibility

The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State.

B. Amendments

635. Amendments were submitted to article 69 by Hungary and Poland (A/CONF.39/C.1/L.279), Japan (A/CONF.39/C.1/L.365) and Switzerland (A/CONF.39/C.1/L.359).

636. These amendments were to the following effect:

(a) *Hungary* and *Poland* (A/CONF.39/C.1/L.279):

Redraft article 69 by adding at the end of it the words "or from the outbreak of hostilities between States".

[Adopted, see para. 638(*c*) below]

(b) *Switzerland* (A/CONF.39/C.1/L.359):

Reword the article as follows:

The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty *from hostilities*, from a succession of States or from the international responsibility of a State.

[Adopted, see para. 638(*c*) below]

(c) *Japan* (A/CONF.39/C.1/L.365):

Reformulate the contents of the article as a paragraph in the preamble to the present Convention along the following lines:

Confirming that the provisions of the present Convention, embodying the general rules of international law applicable in the field of the law of treaties, are without prejudice to any question that may arise in regard to a treaty from a matter which relates to any other field of international law;

[Rejected, see para. 638(*a*) and (*b*) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

637. The Committee of the Whole initially discussed article 69, and the amendments thereto, at its 76th meeting, on 17 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

638. At its 76th meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) The proposal in the amendment by *Japan* (A/CONF.39/C.1/L.365), to replace article 69 by a paragraph in the preamble, was rejected by 64 votes to 4, with 20 abstentions.

(*b*) The formulation of the article contained in the amendment by *Japan* (A/CONF.39/C.1/L.365) was rejected by 45 votes to 22, with 20 abstentions.

(*c*) The principle contained in the amendments by *Hungary* and *Poland* (A/CONF.39/C.1/L.279) and *Switzerland* (A/CONF.39/C.1/L.359) was adopted by 72 votes to 5, with 14 abstentions.

639. At the same meeting, the Committee of the Whole decided, without objection, to refer article 69, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

640. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 69 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 641 below). The Committee of the Whole adopted this text without formal vote.[121]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

641. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 69:

Article 69

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

ARTICLE 69bis

642. An amendment by Chile (A/CONF.39/C.1/L.341) to article 60 was adopted by the Committee of the Whole, which also accepted the recommendation of the Drafting Committee that this amendment should be incorporated into the text of the draft convention. The amendment is considered under article 60 in paragraphs 547 to 558 above.

[121] *Ibid.*

ARTICLE 70

A. International Law Commission text

643. The International Law Commission text provided as follows:

Article 70.—Case of an aggressor State

The present articles are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

B. Amendments

644. Amendments were submitted to article 70 by Japan (A/CONF.39/C.1/L.366) and Thailand (A/CONF.39/C.1/L.367).

645. These amendments were to the following effect:

(a) *Japan* (A/CONF.39/C.1/L.366):

Amend the article to read as follows:

The present Convention is without prejudice to any obligation in relation to a treaty which may arise for a State in consequence of a binding decision taken by the Security Council of the United Nations.

[Rejected, see para. 648(*a*) below]

(b) *Thailand* (A/CONF.39/C.1/L.367):

1. Replace the words "for an aggressor State in" by "as a".

2. Delete at the end of the sentence the words "with reference to that State's aggression".

[Rejected, see para. 648(*b*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

646. The Committee of the Whole initially discussed article 70, and the amendments thereto, at its 76th meeting, on 17 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

647. At the 76th meeting of the Committee of the Whole, *Liberia* submitted an oral amendment to article 70 to add the words "or any other State" after the words "aggressor State" and the words "or any other activities contrary to the provisions of the Charter of the United Nations" at the end of the article.

648. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Japan* (A/CONF.39/C.1/L.366) was rejected by 58 votes to 7, with 27 abstentions.

(*b*) The amendment by *Thailand* (A/CONF.39/C.1/L.367) was rejected by 54 votes to 4, with 30 abstentions.

649. Also at its 76th meeting, the Committee of the Whole decided, without objection, to refer article 70 to the Drafting Committee, together with the oral amendment by *Liberia*.

(iii) Consideration of the report of the Drafting Committee

650. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 70 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 651 below). The Committee of the Whole adopted this text without formal vote.[122]

(iv) Text adopted by the Committee of the Whole

651. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 70:

Article 70

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

ARTICLES 71 AND 72

652. At its 77th meeting, on 20 May 1968, the Committee of the Whole decided, without objection, to discuss articles 71 and 72 together. In view of this decision of the Committee, and as certain of the amendments related to both the articles, they are considered together under a single heading.

A. International Law Commission text

653. The International Law Commission text provided as follows:

Article 71.—Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Article 72.—Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:

(*a*) Keeping the custody of the original text of the treaty, if entrusted to it;

(*b*) Preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the States entitled to become parties to the treaty;

(*c*) Receiving any signatures to the treaty and any instruments and notifications relating to it;

(*d*) Examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question;

(*e*) Informing the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;

---

[122] *Ibid.*

(*f*) Informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty has been received or deposited;

(*g*) Performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the other States entitled to become parties to the treaty or, where appropriate, of the competent organ of the organization concerned.

B. Amendments

654. Amendments relating to the text of both article 71 and article 72 were submitted by China (A/CONF.39/C.1/L.328) and Malaysia (A/CONF.39/C.1/L.290/Rev.1 and L.291).

655. Other amendments were submitted to article 71 by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.236 and Add.1),[123] Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia (A/CONF.39/C.1/L.351), Finland (A/CONF.39/C.1/L.248) and Mexico (A/CONF.39/C.1/L.372).

656. In addition to the amendments mentioned in paragraph 654 above, amendments were submitted to article 62 by the Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.364), Finland (A/CONF.39/C.1/L.249), Mexico (A/CONF.39/C.1/L.373), Mongolia (A/CONF.39/C.1/L.368) and the United States of America (A/CONF.39/C.1/L.369).

657. The foregoing amendments, arranged under subheadings relating to articles 71 and 72, paragraph 1 and paragraph 2 of article 71 and paragraph 1, new paragraph between paragraphs 1 and 2, and paragraph 2 of article 72, were to the following effect:

(i) *Articles 71 and 72*

(a) *China* (A/CONF.39/C.1/L.328):

1. In the first [phrase] of paragraph 1 of article 71, add the word "multilateral" before the word "treaty".
2. In paragraph 2 of article 71, add the word "multilateral" before the word "treaty".
3. Transfer paragraph 2 of article 71 to article 72 as paragraph 1 of the latter article.

[Rejected, see para. 660(*b*) and (*e*) below]

(b) *Malaysia* (A/CONF.39/C.1/L.290/Rev.1):[124]

In paragraph 2 of article 71:

1. Delete the words "The functions of a depositary of a treaty are international in character and".
2. Substitute the word "the" for "their" . . .
3. Add the words "of its functions" after the word "performance".

[Withdrawn, see para. 659 below]

(c) *Malaysia* (A/CONF.39/C.1/L.291):

In paragraph 1 of article 72: Insert the words "of a treaty are international in character and" between the word "depositary" and the word "unless".

[Withdrawn, see para. 659 below]

(ii) *Paragraph 1 of article 71*

(a) *Bulgaria, Romania* and *Sweden* (A/CONF.39/C.1/L.236 and Add.1):

Substitute the following text [for paragraph 1]:

The negotiating States shall designate in the treaty or in some other manner a State or States or an international organization to perform the functions of depositary.

[Adopted, see para. 660(*a*) below]

(b) *Finland* (A/CONF.39/C.1/L.248):

Amend paragraph 1 to read as follows:

The depositary of a treaty, which may be *one or more States* or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

[Adopted, see para. 660(*a*) below]

(c) *Mexico* (A/CONF.39/C.1/L.372):

Word [paragraph 1] as follows:

The depositary of a treaty, which may be a State or an international organization or the chief administrative officer of the organization, shall be designated by the negotiating States in the treaty or in some other manner.

[Adopted, see para. 660(*c*) below]

(iii) *Paragraph 2 of article 71*

Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and *Mongolia* (A/CONF.39/C.1/L.351):

Amend article 71, paragraph 2, to read as follows:

The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance, *irrespective of the state and character of the relations between the depositary State and the State transmitting the notifications and communications referred to in article 73.*

[Rejected, see para. 660(*d*) below]

(iv) *Paragraph 1 of article 72*

(1) *Introductory phrase*

United States of America (A/CONF.39/C.1/L.369):

Amend the introduction to read as follows:

1. The functions of a depositary, unless the treaty otherwise provides *or unless the contracting States otherwise agree,* comprise in particular:

[Adopted, see para. 660(*f*) below]

(2) *New sub-paragraph before sub-paragraph* (a)

United States of America (A/CONF.39/C.1/L.369):

Insert before the present sub-paragraph (*a*) a new sub-paragraph reading as follows:

(*a*) Preparing the original text for signature in the languages specified;

[Adopted, see para. 660(*g*) below, subsequently withdrawn, see para. 664 below]

(3) *Sub-paragraph* (a)

(a) *Finland* (A/CONF.39/C.1/L.249):

[123] Original sponsors Bulgaria and Sweden, co-sponsor Romania (Add.1).

[124] In its original form (A/CONF.39/C.1/L.290) this amendment formulated paragraph 2 of article 71 as follows: "2. The depositary is under an obligation to act impartially in the performance of his duties".

Amend sub-paragraph (*a*) to read as follows:

Keeping the custody of the original *and, if any, of the amended* text of the treaty, if entrusted to it;

[Adopted, see para. 660(*o*) below]

(b) *United States of America* (A/CONF.39/C.1/L.369):

Amend the present sub-paragraph (*a*) to read as follows:

Keeping the custody of the original text of the treaty *and of full powers, instruments of ratification, accession, acceptance or approval and notifications communicated to it*;

[Adopted, see para. 660(*h*) below]

(c) *Mexico* (A/CONF.39/C.1/L.373):

Amend [sub-paragraph (*a*)] to read as follows:

Keeping the custody of the original text of the treaty *and of any amendments thereto*, if entrusted to it;

[Adopted, see para. 660(*o*) below]

(4) *Sub-paragraph* (d)

Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.364):

Amend sub-paragraph (*d*) to read as follows:

Examining whether the documents relating to the treaty are correctly drawn up and, if need be, bringing the matter to the attention of the State in question;

[Adopted, see para. 660(*i*) below]

(5) *Sub-paragraph* (e)

Finland (A/CONF.39/C.1/L.249):

Amend sub-paragraph . . . (*e*) to read as follows:

Informing *the parties to the treaty and* the States entitled to become parties to *it* of acts, communications and notifications relating to the treaty.

[Adopted, see para. 660(*j*) below]

(6) *New sub-paragraph between sub-paragraphs* (*f*) and (*g*)

United States of America (A/CONF.39/C.1/L.369):

Add a new sub-paragraph between the present sub-paragraphs (*f*) and (*g*) reading as follows:

Registering the treaty with the Secretariat of the United Nations;.

[Adopted, see para. 660(*k*) below]

(v) *New paragraph between paragraphs 1 and 2 of article 72*

Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.364):

Insert the following new paragraph [between paragraphs 1 and 2]:

2. If the treaty does not enter into force as between certain of the parties thereto, this shall not affect the obligation of the depositary to perform its functions in relation to all States parties to the treaty.

[Adopted, see para. 660(*l*) below]

(vi) *Paragraph 2 of article 72*

(a) *Mongolia* (A/CONF.39/C.1/L.368):

At the end of article 72, paragraph 2, add the following sentence:

The appearance of a difference shall not affect the impartial performance by the depositary of its functions as specified in paragraph 1 of this article.

[Adopted, see para. 660(*m*) below]

(b) *United States of America* (A/CONF.39/C.1/L.369):

Amend paragraph 2 to read as follows:

In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the other *signatory and contracting* States or, where appropriate, of the competent organ of the organization concerned.

[Adopted, see para. 660(*n*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

658. The Committee of the Whole initially discussed articles 71 and 72, and the amendments thereto, at its 77th and 78th meetings, on 20 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on these articles. At its 83rd meeting, on 24 May 1968, the Committee considered a further report of the Drafting Committee on article 71.

(ii) Initial consideration

659. At the 78th meeting of the Committee of the Whole, the amendment by *Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali* and *Mongolia* (A/CONF.39/C.1/L.351) to article 71 was orally amended, by its sponsors, by substituting the words "between the latter" for the words "between the depositary State". At the same meeting, the amendments by *Malaysia* (A/CONF.39/C.1/L.290/Rev.1 and A/CONF.39/C.1/L.291) to articles 71 and 72 were withdrawn.

660. Also at the 78th meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

Article 71

(*a*) The principle contained in the amendments by *Bulgaria, Romania* and *Sweden* (A/CONF.39/C.1/L.236 and Add.1) and *Finland* (A/CONF.39/C.1/L.248) to paragraph 1 of article 71 was adopted by 77 votes to none, with 5 abstentions.

(*b*) That part of the amendment by *China* (A/CONF.39/C.1/L.328) which proposed to add the word "multilateral" before the word "treaty" in the opening phrase of paragraph 1 and in paragraph 2 of article 71 was rejected by 39 votes to 9, with 19 abstentions.

(*c*) The amendment by *Mexico* (A/CONF.39/C.1/L.372) to paragraph 1 of article 71 was adopted by 40 votes to 10, with 32 abstentions.

(*d*) The amendment by *Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali* and *Mongolia* (A/CONF.39/C.1/L.351), as orally amended, to paragraph 2 of article 71 was rejected by 25 votes to 23, with 28 abstentions.

(*e*) That part of the amendment by *China* (A/CONF.39/C.1/L.328) which proposed to transfer paragraph 2 of article 71 to article 72 was rejected by 35 votes to 8, with 27 abstentions.

Article 72

(*f*) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to the introductory phrase of

paragraph 1 of article 72 was adopted by 46 votes to 12, with 28 abstentions.

(*g*) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to add a new sub-paragraph before sub-paragraph (*a*) of paragraph 1 of article 72 was adopted by 45 votes to 4, with 32 abstentions.

(*h*) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to sub-paragraph (*a*) of paragraph 1 of article 72 was adopted by 71 votes to none, with 13 abstentions.

(*i*) The amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.364) to sub-paragraph (*d*) of paragraph 1 of article 72 was adopted by 32 votes to 24, with 27 abstentions.

(*j*) The amendment by *Finland* (A/CONF.39/C.1/L.249) to sub-paragraph (*e*) of paragraph 1 of article 72 was adopted by 64 votes to 2, with 18 abstentions.

(*k*) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to add a new sub-paragraph between sub-paragraphs (*f*) and (*g*) of paragraph 1 of article 72 was adopted by 59 votes to none, with 22 abstentions.

(*l*) The amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.364) to add a new paragraph between paragraphs 1 and 2 of article 72 was adopted by 35 votes to 16, with 33 abstentions.

(*m*) The amendment by *Mongolia* (A/CONF.39/C.1/L.368) to paragraph 2 of article 72 was adopted by 29 votes to 28, with 29 abstentions.

(*n*) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to paragraph 2 of article 72 was adopted by 55 votes to 1, with 29 abstentions.

(*o*) The principle contained in the amendments by *Finland* (A/CONF.39/C.1/L.249) and *Mexico* (A/CONF.39/C.1/L.373) to sub-paragraph (*a*) of paragraph 1 of article 72 was adopted without objection.

661. Finally, at its 78th meeting, the Committee of the Whole decided, without objection, to refer articles 71 and 72, as amended, to the Drafting Committee.

(iii) Consideration of the reports of the Drafting Committee

662. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of articles 71 and 72 adopted by the Drafting Committee (A/CONF.39/C.1/12 and Corr.1).

663. The Committee of the Whole decided, without objection, to refer the text of article 71 [125] to the Drafting Committee for further consideration, in the light of comments made upon it during the 82nd meeting of the Committee of the Whole.

664. The text of article 72 recommended by the Drafting Committee (A/CONF.39/C.1/12 and Corr.1) incorporated the text of an amendment by the *United States of America* (A/CONF.39/C.1/L.369) to add a new sub-paragraph before sub-paragraph (*a*) of the International Law Commission's text of paragraph 1 of article 72. This amendment had been adopted by the Committee of the Whole (see para. 660(*g*) above). In the form recommended by the Drafting Committee (A/CONF.39/C.1/12 and Corr.1), this sub-paragraph read as follows:

"(*a*) preparing the original text for signature in the languages specified."

In the light of comments made during the 82nd meeting, the *United States of America* stated it would not insist upon the maintenance of its amendment in the text. The Committee of the Whole agreed, without objection, to delete this sub-paragraph. The Committee of the Whole then adopted the text recommended by the Drafting Committee, as amended, without formal vote. [126]

665. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing a revised text of article 71 adopted by the Drafting Committee (A/CONF.39/C.1/14; for text, see para. 666 below). The Committee of the Whole adopted this text without formal vote. [127]

(iv) Texts adopted by the Committee of the Whole

666. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 71:

Article 71

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

667. It likewise recommends to the Conference for adoption the following text of article 72:

Article 72

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(*a*) keeping the custody of the original text of the treaty and of any full powers delivered to it;

(*b*) preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(*c*) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

[125] This text (A/CONF.39/C.1/L.12 and Corr.1) read as follows:

"1. The depositary of a treaty, which may be one or more States or an international organization or the chief administrative officer of such an organization, is designated by the negotiating States in the treaty or in some other manner.

"2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force as between certain parties or that a difference has appeared between a State and a depositary shall not affect this obligation of the depositary."

[126] See para. 13 above.

[127] *Ibid.*

(*d*) examining whether the signature, or any instrument, communication or notification relating to the treaty is in due and proper form, and if need be, bringing the matter to the attention of the State in question;
(*e*) informing the parties and the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;
(*f*) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;
(*g*) registering the treaty with the Secretariat of the United nations;
(*h*) performing the functions specified in the other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the organization concerned.

ARTICLE 73

A. International Law Commission text

668. The International Law Commission text provided as follows:

Article 73.—Notifications and communications

Except as the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the present articles shall:

(*a*) If there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) Be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) If transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1(*e*).

B. Amendments

669. No amendments were submitted to article 73.

C. Proceedings of the Committee of the Whole

(i) Meetings

670. The Committee of the Whole initially discussed article 73 at its 78th meeting, on 20 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

671. At its 78th meeting, the Committee of the Whole decided, without objection, to adopt article 73 and to refer it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

672. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 73 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 673 below). The Committee of the Whole adopted this text without formal vote.[128]

(iv) Text adopted by the Committee of the Whole

673. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 73:

Article 73

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(*a*) if there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) if transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1 (*e*).

ARTICLE 74

A. International Law Commission text

674. The International Law Commission text provided as follows:

Article 74.—Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected:

(*a*) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) By executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(*a*) Shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(*b*) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the contracting States;

(*c*) If an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the contracting States agree should be corrected.

4. (*a*) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide.

(*b*) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the contracting States.

[128] *Ibid.*

B. Amendments

675. Amendments were submitted to article 74 by *Austria* (A/CONF.39/C.1/L.8/Rev.1 and L.9), *Congo (Brazzaville)* (A/CONF.39/C.1/L.375) and the *United States of America* (A/CONF.39/C.1/L.374).

676. These amendments, arranged under sub-headings relating to the article as a whole and to paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) *Article as a whole*

United States of America (A/CONF.39/C.1/L.374):

Replace the words "contracting States" in the introductory clause in paragraph 1, and in paragraphs 2, 3, 4 and 5 by the words "signatory and contracting States".

[Adopted, see para. 678(*b*) below]

(ii) *Paragraph 1*

Introductory phrase

Congo (Brazzaville) (A/CONF.39/C.1/L.375):

Amend the first part of paragraph 1 to read as follows:

Where, after the authentication of the text of a treaty, the contracting States find that it contains an error, they shall proceed to correct it:.

[Rejected, see para. 678(*c*) below]

(iii) *Paragraph 2*

Sub-paragraph (a)

Austria (A/CONF.39/C.1/L.8/Rev.1):[129]

Replace the words "if no objection is raised within a specified time-limit" by the words "and shall specify an appropriate time-limit within which objection may be raised";.

[Adopted, see para. 678(*d*) below]

Sub-paragraph (b)

Austria (A/CONF.39/C.1/L.9):

Replace the words "to the contracting States" by the words "to the States entitled to become parties".

[Adopted, see para. 678(*a*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

677. The Committee of the Whole initially discussed article 74, and the amendments thereto, at its 78th meeting, on 20 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

678. At its 78th meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) The amendment by *Austria* (A/CONF.39/C.1/L.9) to sub-paragraph (*b*) of paragraph 2 was adopted by 27 votes to 7, with 43 abstentions.

(*b*) The amendment by the *United States of America* (A/CONF.39/C.1/L.374) to the article as a whole was adopted by 65 votes to none, with 14 abstentions.

(*c*) The amendment by *Congo (Brazzaville)* (A/CONF.39/C.1/L.375) to the introductory phrase of paragraph 1 was rejected by 21 votes to 13, with 48 abstentions.

(*d*) The amendment by *Austria* (A/CONF.39/C.1/L.8/Rev.1) to sub-paragraph (*a*) of paragraph 2 was adopted by 39 votes to 7, with 38 abstentions.

679. Also at its 78th meeting, the Committee of the Whole decided, without objection, to refer article 74, as amended, to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

680. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 74 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 681 below). The Committee of the Whole adopted this text without formal vote.[130]

(iv) Text adopted by the Committee of the Whole

681. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 74:

Article 74

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected:

(*a*) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) by executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(*a*) shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection may be raised;

(*b*) if on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text, and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(*c*) if an objection bas been raised to the proposed correction, shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. (*a*) The corrected text replaces the defective text ab initio, unless the signatory States and the contracting States otherwise decide.

[129] In its original form (A/CONF.39/C.1/L.8) the words to be replaced by this amendment included the words "and of the proposal to correct it".

[130] See para. 13 above.

(*b*) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy to the signatory States and to the contracting States.

ARTICLE 75

A. International Law Commission text

682. The International Law Commission text provided as follows:

Article 75.—Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

B. Amendments

683. Amendments were submitted to article 75 by the Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.371), China (A/CONF.39/C.1/L.329 and Corr.1) and the United States of America and Uruguay (A/CONF.39/C.1/L.376).

684. These amendments were to the following effect:

(a) *China* (A/CONF.39/C.1/L.329 and Corr.1):

1. Amend the first sentence of the article to read:

Treaties entered into by *any party* to the *present Convention* shall as soon as possible be registered with the Secretariat of the United Nations *in accordance with Article 102, paragraph 1, of the Charter of the United Nations and such regulations adopted by the General Assembly of the United Nations as may be in force at the time of the registration.*

2. Delete the second sentence.

[Rejected, see para. 686(*c*) below]

(b) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.371):

Amend article 75 to read as follows:

Treaties shall, after their conclusion, be transmitted to the United Nations Secretariat for registration, filing and recording and publication.

[Adopted, see para. 686(*a*) below]

(c) *United States of America* and *Uruguay* (A/CONF.39/C.1/L.376):

Add a new paragraph to article 75 reading as follows:

2. The designation of a State or of an international organization as depositary for a treaty shall constitute authorization by the States parties to the treaty for that State or international organization to register the treaty with the Secretariat of the United Nations.

[Adopted, see para. 686(*b*) below]

C. Proceedings of the Committee of the Whole

(i) Meetings

685. The Committee of the Whole initially discussed article 75, and the amendments thereto, at its 79th meeting, on 21 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) Initial consideration

686. At its 79th meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(*a*) The principle in the amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.371) was adopted by 56 votes to 4, with 26 abstentions.

(*b*) The amendment by the *United States of America* and *Uruguay* (A/CONF.39/C.1/L.376) was adopted by 61 votes to none, with 25 abstentions.

(*c*) That part of the amendment by *China* (A/CONF.39/C.1/L.329 and Corr.1) which related to the first sentence of article 75 was rejected by 20 votes to 5, with 51 abstentions. As a result of this vote, the second part of the same amendment to delete the second sentence of the article was disposed of.

687. At the same meeting, the Committee of the Whole decided, without objection, to refer article 75, as amended, to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

688. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 75 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 689 below). The Committee of the Whole adopted this text without formal vote.[131]

(iv) Text adopted by the Committee of the Whole

689. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 75:

Article 75

1. Treaties shall, after their entry into force, be transmitted to the United Nations Secretariat for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the paragraph above.

ARTICLE 76

A. Proposed new article

690. Switzerland submitted an amendment (A/CONF.39/C.1/L.250) which was to the following effect:

After article 75 of the draft, add a new article 76 reading as follows:

1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

---

[131] *Ibid.*

3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

[Deferred until the second session of the Conference, see para. 691 below]

B. Proceedings of the Committee of the Whole

(i) Meetings and consideration

691. At the 80th meeting of the Committee of the Whole, on 21 May 1968, *Switzerland* proposed that consideration of its amendment (A/CONF.39/C.1/L.250) be deferred until the second session of the Conference. The Committee accepted this proposal without objection.

(ii) Decision

692. On the basis of the foregoing, the Committee of the Whole decided to defer consideration of the proposed new article 76 until the second session of the Conference (see document A/CONF.39/15, paras. 129-135).

Titles of parts and sections of the draft convention

693. As indicated in paragraph 16(*b*) of chapter I of the present report, the Drafting Committee decided early in the course of its work to defer decisions on the titles of the parts, sections and articles of the draft convention, because their wording would depend upon the actual contents of the articles themselves. Amendments to the titles of specific articles will be found in this chapter of the report, under the articles concerned.[132] In addition to these amendments, certain amendments to the titles of parts and sections of the articles were submitted, and are listed together below. The texts of the parts and sections of the articles to which these refer are also given.

[132] These amendments were as follows: *article 4*, Ceylon (A/CONF.39/C.1/L.53, see para. 51(*g*)), Gabon (A/CONF.39/C.1/L.42, see para. 51(*e*)), and Spain (A/CONF.39/C.1/L.35/Rev.1, see para. 51(*c*)); *article 5*bis, Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia (A/CONF.39/C.1/L.74 and Add.1 and 2, see para. 67); *article 9*bis, Poland and United States of America (A/CONF.39/C.1/L.88 and Add.1, see para. 104(*a*)); *article 10*bis, Poland (A/CONF.39/C.1/L.89, see para. 127); *article 12*bis, Belgium (A/CONF.39/C.1/L.111, see para. 104(*b*)); *article 13*, Poland (A/CONF.39/C.1/L.93/Rev.1, see para. 151(*a*)); *article 15*, Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.114), see para. 164(ii)(*a*)), Republic of Viet-Nam (A/CONF.39/C.1/L.124, see para. 164(ii)(*b*)); *articles 16 and 17*, Ceylon (A/CONF.39/C.1/L.139, see para. 177(i)(*b*)), France (A/CONF.39/C.1/L.169 and Corr.1, see para. 175(*b*)) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.115, see para. 175(*a*)); *article 25*, Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.164, see para. 251(*a*)); *article 27*, Republic of Viet-Nam (A/CONF.39/C.1/L.199, see para. 269(i)(*b*)); *article 48*, United States of America (A/CONF.39/C.1/L.277, see para. 440(*a*)); *article 51*, Greece (A/CONF.39/C.1/L.314/Rev.1, see para. 473(*d*)) and Republic of Viet-Nam (A/CONF.39/C.1/L.222/Rev.1, see para. 473(*a*)); *article 60*, Hungary (A/CONF.39/C.1/L.334, see para. 549(*b*)); *article 62*, Switzerland (A/CONF.39/C.1/L.347, see para. 571(i)(*b*)); *article 63*, Switzerland (A/CONF.39/C.1/L.349 and Corr.1, see para. 587); and *article 67*, Finland (A/CONF.39/C.1/L.295, see para. 620(*b*)).

A. International Law Commission text

694. The titles of parts and sections of the International Law Commission's text to which amendments were submitted were the following:

Part II.—CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1: CONCLUSION OF TREATIES

SECTION 2: RESERVATIONS TO MULTILATERAL TREATIES

Part V.—INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 2: INVALIDITY OF TREATIES

B. Amendments

695. Amendments were submitted to the foregoing titles by Congo (Brazzaville) (A/CONF.39/C.1/L.79), Hungary (A/CONF.39/C.1/L.137) and Switzerland (A/CONF.39/C.1/L.120).

696. These amendments, in the order of the parts or sections of titles to which they relate, were to the following effect:

(a) *Congo (Brazzaville)* (A/CONF.39/C.1/L.79):

Add to the title of Section 1 [of Part II] the words "and conditions of validity".

[Referred to the Drafting Committee, see para. 698 below]

(b) *Hungary* (A/CONF.39/C.1/L.137):

Delete the words "to multilateral treaties" in the title of Section 2 of Part II.

[Referred to the Drafting Committee, see para. 699 below]

(c) *Switzerland* (A/CONF.39/C.1/L.120):

In the title of Part V and of Section 2 of Part V replace the word "invalidity" by the word "invalidation".

[Not voted upon, see para. 700 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

697. The Committee of the Whole initially discussed the amendment to the title of Section 1 of Part II at its 11th meeting, on 3 April 1968. It discussed the amendment to the title of Section 2 of Part II at its 20th meeting, on 10 April 1968. The amendment to the title of Part V and Section 2 thereof was discussed at the 42nd and 75th meetings of the Committee of the Whole, on 29 April and 17 May 1968 respectively.

(ii) Consideration and decisions

698. At its 11th meeting, the Committee of the Whole decided, without objection, to refer the amendment by *Congo (Brazzaville)* (A/CONF.39/C.1/L.79) to the title of Section 1 of Part II to the Drafting Committee.

699. At its 20th meeting, the Committee of the Whole decided, without objection, to refer the amendment by *Hungary* (A/CONF.39/C.1/L.137) to the title of Section 2 of Part II to the Drafting Committee.

700. At its 42nd meeting, the Committee of the Whole decided, without objection, to defer a vote on the amendment by *Switzerland* (A/CONF.39/C.1/L.120) to the title of Part V and Section 2 thereof, until it had considered all the articles in Part V. At its 75th meeting, it again decided, without objection, to defer a vote on this amendment until it had completed its consideration of article 62. At the 81st meeting, this amendment was disposed of by virtue of the rejection of the amendment by *Switzerland* (A/CONF.39/C.1/L.121) to article 39 (see para. 356(*c*) above).

CHAPTER III

TEXT OF THE ARTICLES ON THE LAW OF TREATIES AND OF DRAFT RESOLUTIONS ADOPTED BY THE COMMITTEE OF THE WHOLE

A. Draft Convention on the Law of Treaties

[*Part I*]
[*INTRODUCTION*]

Article 1

The scope of the present Convention[133]

The present Convention applies to treaties concluded between States.

Article 2

[*Use of terms*]

Deferred to the second session of the Conference (see para. 40).

Article 3

[*International agreements not within the scope of the present articles*]

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(*a*) the legal force of such agreements;

(*b*) the application to them of any of the rules set forth in the present Convention to which they would be subject, in accordance with international law, independently of the Convention;

(*c*) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4

[*Treaties which are constituent instruments of international organizations or which are adopted within international organizations*]

The present Convention applies to any treaty which is the constituent instrument of an international organization or to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

[*Part II*]
[*CONCLUSION AND ENTRY INTO FORCE OF TREATIES*]

[SECTION 1: CONCLUSION OF TREATIES]

Article 5

[*Capacity of States to conclude treaties*]

1. Every State possesses capacity to conclude treaties.

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

[*Article 5*bis]

[Proposed new article]

Deferred to the second session of the Conference (see para. 69)

Article 6

[*Full powers to represent the State in the conclusion of treaties*]

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States concerned or from other circumstances that their intention was to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

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

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

Article 7

[*Subsequent confirmation of an act performed without authority*]

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

Article 8

[*Adoption of the text*]

Deferred to the second session of the Conference (see para. 95)

Article 9

[*Authentication of the text*]

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

[133] In the case of this article only, the title was considered by the Drafting Committee and its recommendation adopted by the Committee of the Whole. See para. 16(*b*).

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

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

*Article 9*bis
[*New article*]

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

Article 10
[*Consent to be bound by a treaty expressed by signature*]

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

(*a*) the treaty provides that signature shall have that effect:

(*b*) it is otherwise established that the negotiating States were agreed that signature should have that effect;

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

2. For the purposes of paragraph 1:

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

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

*Article 10*bis
[*New article*]

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect;

(*b*) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 11
[*Consent to be bound by a treaty expressed by ratification, acceptance or approval*]

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

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

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

(*c*) the representative of the State has signed the treaty subject to ratification; or

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

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

Article 12
[*Consent to be bound by a treaty expressed by accession*]

Deferred to the second session of the Conference (see para. 147)

Article 13
[*Exchange or deposit of instruments of ratification, acceptance, approval or accession*]

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

(*a*) their exchange between the contracting States;

(*b*) their deposit with the depositary; or

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

Article 14
[*Consent relating to a part of a treaty and choice of differing provisions*]

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

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

Article 15
[*Obligation of a State not to frustrate the object of a treaty prior to its entry into force*]

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

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

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

[SECTION 2: RESERVATIONS TO MULTILATERAL TREATIES]

Article 16
[*Formulation of reservations*]

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

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty authorizes only specified reservations which do not include the reservation in question; or

(*c*) in cases other than those covered by paragraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

Article 17
[*Acceptance of and objection to reservations*]

Deferred to the second session of the Conference (see para. 189)

Article 18
[*Procedure regarding reservations*]

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

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

3. An express acceptance of, or an objection to, the reservation made previously to confirmation of the reservation does not itself require confirmation.

Article 19
[*Legal effects of reservations*]

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

(*a*) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(*b*) modifies those provisions to the same extent for such other party in its relations with the reserving State.

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

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

Article 20
[*Withdrawal of reservations*]

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

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

[SECTION 3: ENTRY INTO FORCE OF TREATIES]

Article 21
[*Entry into force*]

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

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

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

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty shall apply from the time of the adoption of its text.

Article 22
[*Entry into force provisionally*]

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(*a*) the treaty itself so provides; or

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

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

[*Part III*]
[*OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES*]

[SECTION 1: OBSERVANCE OF TREATIES]

Article 23
[Pacta sunt servanda]

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

*Article 23*bis
[*New article*]

No party may invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 43.

[SECTION 2: APPLICATION OF TREATIES]

Article 24
[*Non-retroactivity of treaties*]

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

Article 25

[*Application of treaties to territory*]

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 26

[*Application of successive treaties relating to the same subject-matter*]

Deferred to the second session of the Conference (see para. 263)

[SECTION 3: INTERPRETATION OF TREATIES]

Article 27

[*General rule of interpretation*]

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

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

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

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

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

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

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

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

Article 28

[*Supplementary means of interpretation*]

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

(*a*) leaves the meaning ambiguous or obscure; or

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

Article 29

[*Interpretation of treaties in two or more languages*]

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

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

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except in the case mentioned in paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

[SECTION 4: TREATIES AND THIRD STATES]

Article 30

[*General rule regarding third States*]

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

Article 31

[*Treaties providing for obligations for third States*]

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

Article 32

[*Treaties providing for rights for third States*]

1. A right arises for a State from a provision of a treaty to which it is not a party if the parties intend the provision to accord that right either to the State in question, or to a group of States to which it belongs, or to all States, and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

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

Article 33

[*Revocation or modification of obligations or rights of third States*]

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

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

Article 34

[*Rules in a treaty becoming binding through international custom*]

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

[*Part IV*]

[*AMENDMENT AND MODIFICATION OF TREATIES*]

Article 35

[*General rule regarding the amendment of treaties*]

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

Article 36

[*Amendment of multilateral treaties*]

Deferred to the second session of the Conference (see para. 334)

Article 37

[*Agreements to modify multilateral treaties between certain of the parties only*]

Deferred to the second session of the Conference (see para. 341)

Article 38

[*Modification of treaties by subsequent practice*]

Deleted (see para. 348)

[*Part V*]

[*INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES*]

[SECTION 1: GENERAL PROVISIONS]

Article 39

[*Validity and continuance in force of treaties*]

1. The validity of a treaty or the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

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

Article 40

[*Obligations under other rules of international law*]

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

Article 41

[*Separability of treaty provisions*]

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

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

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

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

(*b*) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole; and

(*c*) continued performance of the remainder of the treaty would not be unjust.

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

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

Article 42

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

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 43 to 47 inclusive or articles 57 and 59 if, after becoming aware of the facts:

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

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

[SECTION 2: INVALIDITY OF TREATIES]

Article 43

[*Provisions of internal law regarding competence to conclude a treaty*]

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

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 44

[*Specific restrictions on authority to express the consent of the State*]

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

Article 45

[*Error*]

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

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

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

Article 46

[*Fraud*]

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

Article 47

[*Corruption of a representative of the State*]

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

Article 48

[*Coercion of a representative of the State*]

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him personally shall be without any legal effect.

Article 49

[*Coercion of a State by the threat or use of force*]

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

Article 50

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

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

[SECTION 3: TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES]

Article 51

[*Termination of or withdrawal from a treaty by consent of the parties*]

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

(*a*) in conformity with the provisions of the treaty allowing such termination or withdrawal; or

(*b*) at any time by consent of all the parties after consultation with the other contracting States.

Article 52

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

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 53

[*Denunciation of a treaty containing no provision regarding termination*]

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) a right of denunciation or withdrawal may be implied from the nature of the treaty.

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

Article 54

[*Suspension of the operation of a treaty by consent of the parties*]

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

(*a*) in conformity with the provisions of the treaty allowing such suspension;

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

Article 55

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

Deferred to the second session of the Conference (see para. 511)

Article 56

[*Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty*]

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(*a*) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty, or

(*b*) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 57

[*Termination or suspension of the operation of a treaty as a consequence of its breach*]

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(*b*) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(*c*) any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(*a*) a repudiation of the treaty not sanctioned by the present Convention; or

(*b*) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

Article 58

[*Supervening impossibility of performance*]

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

Article 59

[*Fundamental change of circumstances*]

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(*a*) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked:

(*a*) as a ground for terminating or withdrawing from a treaty establishing a boundary;

(*b*) if the fundamental change is the result of a breach by the party invoking it either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty, it may also invoke that ground for suspending the operation of the treaty.

Article 60

[*Severance of diplomatic relations*]

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 61

[*Emergence of a new peremptory norm of general international law*]

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

[SECTION 4: PROCEDURE]

Article 62

[*Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty*]

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be

bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

[*Article 62*bis]
[Proposed new article]

Deferred to the second session of the Conference (see para. 584)

Article 63

[*Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty*]

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 64

[*Revocation of notifications and instruments provided for in articles 62 and 63*]

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

SECTION 5: CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 65

[*Consequences of the invalidity of a treaty*]

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or act of corruption is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 66

[*Consequences of the termination of a treaty*]

Deferred to the second session of the Conference (see para. 617)

Article 67

[*Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law*]

1. In the case of a treaty void under article 50 the parties shall:

(*a*) eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 68

[*Consequences of the suspension of the operation of a treaty*]

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(*a*) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(*b*) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

[*Part VI*]
[*MISCELLANEOUS PROVISIONS*]

Article 69
[*Cases of State succession and State responsibility*]

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

*Article 69*bis
[*New article*]

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 70
[*Case of an aggressor State*]

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

[*Part VII*]
[*DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION*]

Article 71
[*Depositaries of treaties*]

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 72
[*Functions of depositaries*]

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(*a*) keeping the custody of the original text of the treaty and of any full powers delivered to it;

(*b*) preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(*c*) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(*d*) examining whether the signature, or any instrument, communication or notification relating to the treaty is in due and proper form, and if need be, bringing the matter to the attention of the State in question;

(*e*) informing the parties and the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;

(*f*) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;

(*g*) registering the treaty with the Secretariat of the United Nations;

(*h*) performing the functions specified in the other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the organization concerned.

Article 73
[*Notifications and communications*]

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(*a*) if there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) if transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1(*e*).

Article 74
[*Correction of errors in texts or in certified copies of treaties*]

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide, be corrected:

(*a*) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) by executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(*a*) shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection may be raised;

(*b*) if on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(*c*) if an objection has been raised to the proposed correction, shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. (*a*) The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

(*b*) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the signatory States and to the contracting States.

Article 75

[*Registration and publication of treaties*]

1. Treaties shall, after their entry into force, be transmitted to the United Nations Secretariat for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the paragraph above.

[*Article 76*]

[*Proposed new article*]

Deferred to the second session of the Conference (see para. 692)

B. Draft resolutions

1. *Draft resolution adopted by the Committee of the Whole in connexion with its consideration of article 1* [See para 32]

The United Nations Conference on the Law of Treaties,

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.

2. *Draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in Concluding a Treaty* [adopted by the Committee of the Whole in connexion with its consideration of article 49, see para. 459]

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of sovereign equality of States,

Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,

Mindful of the fact that in the past instances have occurred, where States have been forced to conclude treaties under pressures in various forms exercised by other States,

Deprecating the same,

Expressing its concern at the exercise of such pressure and anxious to ensure that no such pressures in any form are exercised by any State whatever in the matter of conclusion of treaties,

1. *Solemnly condemns* the threat or use of pressure in any form, military, political, or economic, by any State, in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of sovereign equality of States and freedom of consent;

2. *Decides* that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties.

3. *Draft resolution on arrangements for the second session of the Conference* [adopted by the Committee of the Whole at its last (83rd) meeting of the first session, see para.14]

The United Nations Conference on the Law of Treaties,

Having held its first session in Vienna from 26 March to 24 May 1968 in accordance with General Assembly resolutions 2166 (XXI) of 5 December 1966 and 2287 (XXII) of 6 December 1967,

Expressing gratitude to the Federal Government and people of the Republic of Austria for the generous hospitality and facilities which have been extended to the Conference at its first session,

Desirous of making arrangements for the second session of the Conference in 1969,

Recalling that the General Assembly, in its resolution 2166 (XXI), decided that the Conference should be held in Geneva or any other appropriate place for which an invitation was received before the twenty-second session of the General Assembly, and that the Government of Austria extended such an invitation for both sessions to be held in Vienna,

1. *Requests* the Secretary-General to make all necessary arrangements for the Conference to hold its second session in Vienna from 9 April to 21 May 1969, with sufficient staff and facilities for overlapping meetings of a plenary body and of the Drafting Committee;

2. *Further requests* the Secretary-General to prepare appropriate additional documentation for the second session;

3. *Invites the attention* of States participating in the second session of the Conference to the desirability of sending as far as possible the same representatives who have participated in the first session.

ANNEX

Check list of documentation submitted during the first session of the Conference to the Committee of the Whole by States participating in the Conference

[In the chronological list which follows, the reference under the heading "Para." is to the paragraph or paragraphs of this report in which the text of the document may be found.]

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.1 and Add.1	Austria and Spain	2	35(v)
A/CONF.39/C.1/L.2	Austria	5	60(iii)(*a*)
A/CONF.39/C.1/L.3	Austria	17	179(iv)(*a*)
A/CONF.39/C.1/L.4 and Add.1	Austria and Finland	20	207(i)(*a*) and 207(iii)(*a*)
A/CONF.39/C.1/L.5 and Add.1	Austria and Greece	24	243(*a*)
A/CONF.39/C.1/L.6 and Add.1 and 2	Austria, Finland and Poland	55	505(iii)
A/CONF.39/C.1/L.7	Austria	56	514(i)(*a*)
A/CONF.39/C.1/L.8/Rev.1	Austria	74	676(iii)
A/CONF.39/C.1/L.9	Austria	74	676(iii)
A/CONF.39/C.1/L.10	Sweden	1	24(*a*)
A/CONF.39/C.1/L.11	Sweden	2	35(vi)(*a*)
A/CONF.39/C.1/L.12	Ukrainian Soviet Socialist Republic	4	51(*a*)
A/CONF.39/C.1/L.13	China	2	35(ii)(*a*), 35(vi)(*b*) and 35(x)
A/CONF.39/C.1/L.14	China	3	43(*a*)
A/CONF.39/C.1/L.15	United States of America	1	24(*b*)
A/CONF.39/C.1/L.16	United States of America	2	35(i)(*a*), 35(iii) and 35(vi)(*c*)
A/CONF.39/C.1/L.17	Ceylon	2	35 (under heading "Paragraph 2")
A/CONF.39/C.1/L.18	Hungary	1	24(*c*)
A/CONF.39/C.1/L.19 Add.1-2, and Rev.1	Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania	2	35(ii)(*b*)
A/CONF.39/C.1/L.20	United States of America	3	43(*b*)
A/CONF.39/C.1/L.21	United States of America	4	51(*b*)
A/CONF.39/C.1/L.22	Chile	2	35(i)(*b*) and 35 (vi)(*d*)
A/CONF.39/C.1/L.23	Hungary	2	35(vi)(*e*)
A/CONF.39/C.1/L.24	France	2	35(iv), (vii) and 35(viii)(*a*)
A/CONF.39/C.1/L.25	Ecuador	2	35(i)(*c*)
A/CONF.39/C.1/L.26	Switzerland	3	43(*c*)
A/CONF.39/C.1/L.27	Republic of Viet-Nam	1	24(*d*)
A/CONF.39/C.1/L.28	Spain	2	35(i)(*d*)
A/CONF.39/C.1/L.29	Republic of Viet-Nam	2	35(vi)(*f*)
A/CONF.39/C.1/L.30	France	8	91(ii)(*a*)
A/CONF.39/C.1/L.31 and Add.1	France	17	179(iii)(*a*)
A/CONF.39/C.1/L.32	Congo (Brazzaville)	1	24(*e*)
A/CONF.39/C.1/L.33 and Add.1	Malaysia and Mexico	2	35(i)(*e*)
A/CONF.39/C.1/L.34	Spain	3	43(*d*)
A/CONF.39/C.1/L.35/Rev.1	Spain	4	51(*c*)
A/CONF.39/C.1/L.36	Spain	6	72(i)(*a*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.37	Spain	7	82(*a*)
A/CONF.39/C.1/L.38 and Add.1 and 2	Czechoslovakia, Sweden and Poland	10	112(i)
A/CONF.39/C.1/L.39	United Kingdom of Great Britain and Northern Ireland	4	51(*d*)
A/CONF.39/C.1/L.40	India	2	35(viii)(*b*)
A/CONF.39/C.1/L.41	Gabon	3	43(*e*)
A/CONF.39/C.1/L.42	Gabon	4	51(*e*)
A/CONF.39/C.1/L.43	Ceylon	8	91(iii)
A/CONF.39/C.1/L.44	France	26	259(iv)(*a*)
A/CONF.39/C.1/L.45	France	36	330(*a*)
A/CONF.39/C.1/L.46	France	37	337(*a*)
A/CONF.39/C 1/L.47	France	55	505(ii)(*a*)
A/CONF.39/C.1/L.48	France	65	601(iv)
A/CONF.39/C.1/L.49	France	66	613
A/CONF.39/C.1/L.50	Federal Republic of Germany	6	72(i)(*b*)
A/CONF.39/C.1/L.51 and Rev.1	Ukrainian Soviet Socialist Republic	8	91(ii)(*c*)
A/CONF.39/C.1/L.52 and Add.1	Philippines and Sweden	4	51(*f*)
A/CONF.39/C.1/L.53	Ceylon	4	51(*g*)
A/CONF.39/C.1/L.54/Rev.1 and Corr.1	Finland	5	60(ii)(*a*)and 60(iii)(*c*)
A/CONF.39/C.1/L.55	France	4	51(*h*)
A/CONF.39/C.1/L.56	United States of America	7	82(*b*)
A/CONF.39/C.1/L.57 and Corr.1	Ethiopia	3	43(*f*)
A/CONF.39/C.1/L.58	Peru	4	51(i)
A/CONF.39/C.1/L.59	New Zealand	5	60(iii)(*d*)
A/CONF.39/C.1/L.60	Finland	11	134(*a*)
A/CONF.39/C.1/L.61 and Add.1-4	Belgium, Federal Republic of Germany, Finland, Guinea and Japan	15	164(iv)(*a*)
A/CONF.39/C.1/L.62	Australia	5	60(iii)(*e*)
A/CONF.39/C.1/L.63	Iran	3	43(*g*)
A/CONF.39/C.1/L.64 and Add.1	Iran and Mali	6	72(ii)(*a*)
A/CONF.39/C.1/L.65	Mexico	3	43(*h*)
A/CONF.39/C.1/L.66 and Add.1	Malaysia and Mexico	5	60(i)(*a*)
A/CONF.39/C.1/L.67/Rev.1/ Corr.1	Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia	49	449(*a*)
A/CONF.39/C.1/L.68/Rev.1	Sweden and Venezuela	6	72(ii)(*b*)
A/CONF.39/C.1/L.69	Venezuela	7	82(*c*)
A/CONF.39/C.1/L.70	Venezuela	10	119(ii)(*a*)
A/CONF.39/C.1/L.71	Venezuela	11	112(ii)(*a*)
A/CONF.39/C.1/L.72 and Add.1	Greece and Venezuela	15	164(iv)(*b*)
A/CONF.39/C.1/L.73	Zambia	4	51(*j*)
A/CONF.39/C.1/L.74 and Add.1 and 2	Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia	5*bis*	67
A/CONF.39/C.1/L.75	Jamaica and Trinidad and Tobago	4	51(*k*)
A/CONF.39/C.1/L.76	Congo (Brazzaville)	4	51(*l*)
A/CONF.39/C.1/L.77/Rev.1	Nepal	5	60(ii)(*b*) and 60(iii)(*f*)
A/CONF.39/C.1/L.78 and Add.1	Hungary and Poland	6	72(ii)(*c*) and 72(iii)(*a*)
A/CONF.39/C.1/L.79	Congo (Brazzaville)	Title of Part II, Section 1	696(*a*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.80	Congo (Brazzaville)	5	60(ii)(*c*) and 60(iii)(*g*)
A/CONF.39/C.1/L.81	Italy	10	119(ii)(*b*)
A/CONF.39/C.1/L.82	Republic of Viet-Nam	5	60(i)(*b*)
A/CONF.39/C.1/L.83	Italy	6	72(iii)(*b*)
A/CONF.39/C.1/L.84	Czechoslovakia	17	179(ii)(*a*)
A/CONF.39/C.1/L.85	Czechoslovakia	17	179(v)(*a*)
A/CONF.39/C.1/L.86	Czechoslovakia	19	199(iv)(*a*)
A/CONF.39/C.1/L.87	Switzerland	11*bis*	112(iii)
A/CONF.39/C.1/L.88 and Add.1	Poland and United States of America	9*bis*	104(*a*)
A/CONF.39/C.1/L.89	Poland	10*bis*	127
A/CONF.39/C.1/L.90	United States of America	6	72(ii)(*d*), 72(iii)(*c*) and 72(iv)
A/CONF.39/C.1/L.91	Finland	24	243(*b*)
A/CONF.39/C.1/L.92	Byelorussian Soviet Socialist Republic	5	60(iii)(*b*)
A/CONF.39/C.1/L.93/Rev.1	Poland	13	151(*a*)
A/CONF.39/C.1/L.94	Syria	17	179(v)(*b*)
A/CONF.39/C.1/L.95	Syria	19	199(iv)(*b*)
A/CONF.39/C.1/L.96	Singapore	7	82(*d*)
A/CONF.39/C.1/L.97	Switzerland	17	179(ii)(*b*), 179(iv)(*b*) and 179(v)(*c*)
A/CONF.39/C.1/L.98	Japan	7	82(*e*)
A/CONF.39/C.1/L.99	Malaysia	7	82(*f*)
A/CONF.39/C.1/L.100	Belgium	10	119(iii)
A/CONF.39/C.1/L.101 and Corr.1	Peru	8	91(i) and 91(ii)(*d*)
A/CONF.39/C.1/L.102	Czechoslovakia	8	91(ii)(*b*)
A/CONF.39/C.1/L.103	United Republic of Tanzania	8	91(ii)(*e*)
A/CONF.39/C.1/L.104	Czechoslovakia	12	142
A/CONF.39/C.1/L.105	Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela	11	112(ii)(*b*)
A/CONF.39/C.1/L.106	Syria	34	312(*a*)
A/CONF.39/C.1/L.107	Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru and Venezuela	10	119(ii)(*c*)
A/CONF.39/C.1/L.108	Spain	10	119(i)
A/CONF.39/C.1/L.109	Spain	11	134(*b*)
A/CONF.39/C.1/L.110	Canada	13	151(*b*)
A/CONF.39/C.1/L.111	Belgium	12*bis*	104(*b*)
A/CONF.39/C.1/L.112	Switzerland	15	164(iv)(*c*)
A/CONF.39/C.1/L.113	France and Tunisia	17	179(ii)(*c*), 179(iii)(*a*) and 179(iv)(*c*)
A/CONF.39/C.1/L.114	Byelorussian Soviet Socialist Republic	15	164(ii)(*a*), 164(iii)(*a*) and 164(iv)(*d*)
A/CONF.39/C.1/L.115	Union of Soviet Socialist Republics	16 & 17	175(*a*)
A/CONF.39/C.1/L.116	Union of Soviet Socialist Republics	18	192(ii)(*a*)
A/CONF.39/C.1/L.117	Union of Soviet Socialist Republics	19	199(iv)(*c*)
A/CONF.39/C.1/L.118	Bolivia, Czechoslovakia, Ecuador, Spain and United Republic of Tanzania	23	233(*a*)
A/CONF.39/C.1/L.119	Switzerland	20	207(ii)(*a*)
A/CONF.39/C.1/L.120	Switzerland	Title of Part V and of Section 2 of Part V	696(*c*)
A/CONF.39/C.1/L.121	Switzerland	39	351(ii)(*a*)
A/CONF.39/C.1/L.122	Malaysia	15	164(iv)(*e*) and (v)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.123	Canada	21	214(iii)
A/CONF.39/C.1/L.124	Republic of Viet-Nam	15	164(ii)(*b*) and 164(iii)(*b*)
A/CONF.39/C.1/L.125	Republic of Viet-Nam	16	177(v)(*a*)
A/CONF.39/C.1/L.126 and Add.1	Colombia and United States of America	16	177(iv)(*a*) and 177(v)(*b*)
A/CONF.39/C.1/L.127	United States of America	17	179(iii)(*b*), 179(iv)(*d*), 179(v)(*d*) and 179 (vi)(*a*)
A/CONF.39/C.1/L.128	Federal Republic of Germany	16	177(iv)(*b*)
A/CONF.39/C.1/L.129	Australia	15	164(iii)(*c*) and 164(iv)(*f*)
A/CONF.39/C.1/L.130	United Republic of Tanzania	15	164(iv)(*g*)
A/CONF.39/C.1/L.131 and Add.1	Argentina, Ecuador and Uruguay	15	164(vi)
A/CONF.39/C.1/L.132	Peru	16	177(vi)
A/CONF.39/C.1/L.133/Add.1 and 2 A/CONF.39/C.1/L.133/Rev.1	Japan, Philippines and Republic of Korea	16	177(i)(*a*)
A/CONF.39/C.1/L.134	United States of America	15	164(iii)(*d*)
A/CONF.39/C.1/L.135	United Kingdom of Great Britain and Northern Ireland	15	164(i)
A/CONF.39/C.1/L.136	Poland	16	177(iv)(*c*)
A/CONF.39/C.1/L.137	Hungary	Title of Section 2 of Part II	696(*b*)
A/CONF.39/C.1/L.138	Hungary	18	192(iii) and 192(iv)(*a*)
A/CONF.39/C.1/L.139	Ceylon	16	177(i)(*b*)
A/CONF.39/C.1/L.140	Ceylon	17	179(i)(*a*)
A/CONF.39/C.1/L.141	Finland	32	294(ii)(*a*)
A/CONF.39/C.1/L.142	Finland	34	312(*b*)
A/CONF.39/C.1/L.143	Finland	38	344(*a*)
A/CONF.39/C.1/L.144	Finland	41	369(iii)(*a*) and 369(vi)
A/CONF.39/C.1/L.145	Congo (Brazzaville)	15	164(iv)(*h*)
A/CONF.39/C.1/L.146	Cuba	24	243(*c*)
A/CONF.39/C.1/L.147	Spain	16	177(i)(*c*)
A/CONF.39/C.1/L.148	Spain	17	179(i)(*b*)
A/CONF.39/C.1/L.149	Spain	18	192(i)
A/CONF.39/C.1/L.150	Thailand	17	179(ii)(*d*), 179(v)(*e*) and 179(vi)(*b*)
A/CONF.39/C.1/L.151	Ceylon	18	192(iv)(*b*)
A/CONF.39/C.1/L.152	Ceylon	19	199(v)
A/CONF.39/C.1/L.153	Ceylon	35	321(*a*)
A/CONF.39/C.1/L.154 and Add.1	Republic of Korea, Republic of Viet-Nam and United States of America	22	224(i)(*a*)
A/CONF.39/C.1/L.155	United States of America	24	243(*d*)
A/CONF.39/C.1/L.156	United States of America	27 & 28	269(i)(*a*)
A/CONF.39/C.1/L.157 and Add.1	Bulgaria, Romania and Sweden	19	199(ii)(*a*)
A/CONF.39/C.1/L.158	Canada	18	192(ii)(*b*)
A/CONF.39/C.1/L.159	Canada	19	199(ii)(*b*)
A/CONF.39/C.1/L.160	Cuba	53	487(*a*)
A/CONF.39/C.1/L.161	China	16	177(ii)
A/CONF.39/C.1/L.162	China	17	179(iv)(*e*)
A/CONF.39/C.1/L.163	Malaysia	16	177(iv)(*d*) and 177(v)(*c*)
A/CONF.39/C.1/L.164	Ukrainian Soviet Socialist Republic	25	251(*a*)
A/CONF.39/C.1/L.165	Philippines	22	224(iii)(*a*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.166	Australia	17	179(v)(*f*), 179(vi)(*c*) and 179(vii)
A/CONF.39/C.1/L.167	Union of Soviet Socialist Republics	20	207(iii)(*b*)
A/CONF.39/C.1/L.168	Mongolia	31 & 32	294(i)
A/CONF.39/C.1/L.169 and Corr.1	France	16 & 17	175(*b*)
A/CONF.39/C.1/L.170	France	19	199(i)
A/CONF.39/C.1/L.171	United States of America	20	207(i)(*b*) and 207(ii)(*b*)
A/CONF.39/C.1/L.172	China	19	199(ii)(*c*)
A/CONF.39/C.1/L.173	Cuba	23	233(*b*)
A/CONF.39/C.1/L.174	Philippines	27	269(ii)
A/CONF.39/C.1/L.175	Republic of Viet-Nam	21	214(i)(*a*) and 214(ii)(*a*)
A/CONF.39/C.1/L.176	Republic of Viet-Nam	22	224(ii)(*a*)
A/CONF.39/C.1/L.177	Hungary	19	199(ii)(*d*) and 199(iii)
A/CONF.39/C.1/L.178	Hungary	20	207(i)(*c*)
A/CONF.39/C.1/L.179	Republic of Viet-Nam	24	243(*e*)
A/CONF.39/C.1/L.180	Republic of Viet-Nam	25	251(*b*)
A/CONF.39/C.1/L.181	Pakistan	23	233(*c*)
A/CONF.39/C.1/L.182	Pakistan	27	269(v)(*a*)
A/CONF.39/C.1/L.183	Pakistan	40	362(*a*)
A/CONF.39/C.1/L.184 and Add.1	Japan and Pakistan	43	394(*a*)
A/CONF.39/C.1/L.185 and Add.1	Czechoslovakia and Yugoslavia	22	224(ii)(*b*) and 224(iii)(*b*)
A/CONF.39/C.1/L.186	United Kingdom of Great Britain and Northern Ireland	21	214(i)(*b*) and 214(iv)
A/CONF.39/C.1/L.187	Mexico: Note on organization of work		[Document not reproduced in the report]
A/CONF.39/C.1/L.188	Congo (Brazzaville)	21	214(i)(*c*)
A/CONF.39/C.1/L.189	Congo (Brazzaville)	23	233(*d*)
A/CONF.39/C.1/L.190	Chile	21	214(ii)(*b*)
A/CONF.39/C.1/L.191	Japan	24	243(*f*)
A/CONF.39/C.1/L.192	Greece	22	224(i)(*b*)
A/CONF.39/C.1/L.193	India	22	224(ii)(*c*)
A/CONF.39/C.1/L.194	Belgium	22	224(iv)(*a*)
A/CONF.39/C.1/L.195	Bulgaria and Romania	22	224(ii)(*d*)
A/CONF.39/C.1/L.196	Thailand	23	233(*e*)
A/CONF.39/C.1/L.197	United States of America	29	278(i), 278(iii)(*a*) and 278(iv)(*a*)
A/CONF.39/C.1/L.198	Hungary and Poland	22	224(iv)(*b*)
A/CONF.39/C.1/L.199	Republic of Viet-Nam	27 & 28	269(i)(*b*)
A/CONF.39/C.1/L.200	Japan	38	344(*b*)
A/CONF.39/C.1/L.201	Ukrainian Soviet Socialist Republic	27	269(iii)(*a*)
A/CONF.39/C.1/L.202	Union of Soviet Socialist Republics	26	259(*v*)
A/CONF.39/C.1/L.203	Romania	27	269(iv)(*a*)
A/CONF.39/C.1/L.204	Romania and Sweden	26	259(iv)(*b*)
A/CONF.39/C.1/L.205/Rev.1	Venezuela	30, 31, 32 & 33	285(*a*)
A/CONF.39/C.1/L.206	Venezuela	38	344(*c*)
A/CONF.39/C.1/L.207	Japan	26	259(ii)
A/CONF.39/C.1/L.208	Cambodia	26	259(iv)(*c*)
A/CONF.39/C.1/L.209	Republic of Viet-Nam	29	278(iii)(*b*)
A/CONF.39/C.1/L.210	Australia	27	269(v)(*b*)
A/CONF.39/C.1/L.211	Philippines	33	304(*a*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.212	Ceylon	27	269(iv)(*b*)
A/CONF.39/C.1/L.213	Greece	27	269(iv)(*c*)
A/CONF.39/C.1/L.214	Federal Republic of Germany	27	269(v)(*c*)
A/CONF.39/C.1/L.215	United Republic of Tanzania	28	269(vi)(*a*)
A/CONF.39/C.1/L.216	Spain	27	269(iii)(*b*)
A/CONF.39/C.1/L.217	Spain	28	269(vi)(*b*)
A/CONF.39/C.1/L.218	Japan	32	294(ii)(*b*)
A/CONF.39/C.1/L.219	Australia	29	278(iv)(*b*)
A/CONF.39/C.1/L.220	Republic of Viet-Nam	38	344(*d*)
A/CONF.39/C.1/L.221	United Republic of Tanzania	30	285(*b*)
A/CONF.39/C.1/L.222/Rev.1	Republic of Viet-Nam	51	473(*a*)
A/CONF.39/C.1/L.223	Venezuela	34	312(*c*)
A/CONF.39/C.1/L.224	Netherlands	32	294(ii)(*c*)
A/CONF.39/C.1/L.225	Netherlands	33	304(*b*)
A/CONF.39/C.1/L.226	Mexico	34	312(*d*)
A/CONF.39/C.1/L.227	Peru	39	351(ii)(*b*)
A/CONF.39/C.1/L.228 and Add.1	Peru and Ukrainian Soviet Socialist Republic	43	394(*b*)
A/CONF.39/C.1/L.229	Peru	47	432(*a*)*
A/CONF.39/C.1/L.230	Peru	49	449(*b*)
A/CONF.39/C.1/L.231	Peru	51	473(*b*)
A/CONF.39/C.1/L.232	Netherlands	36	330(*b*)
A/CONF.39/C.1/L.233	Republic of Viet-Nam	39	351(ii)(*c*) and 351(iii)(*a*)
A/CONF.39/C.1/L.234/Rev.1	Republic of Viet-Nam	46	422(*a*)
A/CONF.39/C.1/L.235	Chile	35	321(*b*)
A/CONF.39/C.1/L.236 and Add.1	Bulgaria, Romania and Sweden	71	657(ii)(*a*)
A/CONF.39/C.1/L.237	Australia	37	337(*b*)
A/CONF.39/C.1/L.238	Czechoslovakia	37	337(*c*)
A/CONF.39/C.1/L.239	Philippines	43	394(*c*)
A/CONF.39/C.1/L.240	Bulgaria, Romania and Syria	37	337(*d*)
A/CONF.39/C.1/L.241	France	38	344(*e*)
A/CONF.39/C.1/L.242	China	39	351(ii)(*d*)
A/CONF.39/C.1/L.243	China	40	362(*b*)
A/CONF.39/C.1/L.244	Argentina	41	369(ii), 369(iii)(*b*), 369(iv)(*a*), 369(v) and 369(vi)(*b*)
A/CONF.39/C.1/L.245	Australia	39	351(ii)(*e*) and 351(iii)(*b*)
A/CONF.39/C.1/L.246	Hungary	41	369(iii)(*c*)
A/CONF.39/C.1/L.247 and Add.1	Czechoslovakia and Finland	42	382(i)(*a*)
A/CONF.39/C.1/L.248	Finland	71	657(ii)(*b*)
A/CONF.39/C.1/L.249	Finland	72	657(iv)(*3*)(*a*) and 657(iv)(*5*)
A/CONF.39/C.1/L.250	Switzerland	76	690
A/CONF.39/C.1/L.251 and Add.1-3	Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela	42	382(i)(*b*)
A/CONF.39/C.1/L.252	Venezuela	43	394(*d*)
A/CONF.39/C.1/L.253	India	41	369(vi)(*c*)
A/CONF.39/C.1/L.254	India	50	462(ii)(*a*)
A/CONF.39/C.1/L.255	India	61	561(*a*)
A/CONF.39/C.1/L.256	India	67	620(*a*)
A/CONF.39/C.1/L.257 and Corr.1	United Kingdom of Great Britain and Northern Ireland	41	369(i)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.258/Corr.1	Romania and Union of Soviet Socialist Republics	50	462(i)(*a*)
A/CONF.39/C.1/L.259 and Add.1	Congo (Brazzaville) and Venezuela	46	422(*b*)
A/CONF.39/C.1/L.260	United States of America	41	369(iv)(*b*)
A/CONF.39/C.1/L.261 and Add.1	Congo (Brazzaville) and Venezuela	47	432(*b*)
A/CONF.39/C.1/L.262	United States of America	40	362(*c*)
A/CONF.39/C.1/L.263 and Add.1	Chile and Malaysia	46	422(*c*)
A/CONF.39/C.1/L.264 and Add.1	Chile, Japan and Mexico	47	432(*c*)
A/CONF.39/C.1/L.265	Mexico	44	403(*a*)
A/CONF.39/C.1/L.266	Mexico	50	462(ii)(*b*)
A/CONF.39/C.1/L.267 and Add.1	Guyana and United States of America	42	382(ii)(*a*)
A/CONF.39/C.1/L.268	Guyana	42	382(i)(*c*)
A/CONF.39/C.1/L.269	Japan	44	403(*b*)
A/CONF.39/C.1/L.270	Singapore	39	351(i)
A/CONF.39/C.1/L.271/Rev.1	Australia	43	394(*e*)
A/CONF.39/C.1/L.272	Spain	42	382(i)(*d*)
A/CONF.39/C.1/L.273	Cambodia	42	382(i)(*e*)
A/CONF.39/C.1/L.274	United Kingdom of Great Britain and Northern Ireland	43	394(*f*)
A/CONF.39/C.1/L.275	United States of America	45	412(*a*)
A/CONF.39/C.1/L.276	United States of America	46	422(*d*)
A/CONF.39/C.1/L.277	United States of America	48	440(*a*)
A/CONF.39/C.1/L.278	Bulgaria and Poland	65	601(iii)(*a*)
A/CONF.39/C.1/L.279	Hungary and Poland	69	636(*a*)
A/CONF.39/C.1/L.280	Iran	43	394(*g*)
A/CONF.39/C.1/L.281	Australia	45	412(*b*)
A/CONF.39/C.1/L.282	Australia	46	422(*e*)
A/CONF.39/C.1/L.283	Australia	47	432(*d*)
A/CONF.39/C.1/L.284	Australia	48	440(*b*)
A/CONF.39/C.1/L.285	Canada	56	514(i)(*b*)
A/CONF.39/C.1/L.286	Canada	55	505(i)(*a*)
A/CONF.39/C.1/L.287	Ukrainian Soviet Socialist Republic	44	403(*c*)
A/CONF.39/C.1/L.288	Spain	44	403(*d*)
A/CONF.39/C.1/L.289 and Add.1	Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and Ukrainian Soviet Socialist Republic	49	449(*c*)
A/CONF.39/C.1/L.290/Rev.1	Malaysia	71	657(i)(*b*)
A/CONF.39/C.1/L.291	Malaysia	72	657(i)(*c*)
A/CONF.39/C.1/L.292	Byelorussian Soviet Socialist Republic	56	514(i)(*c*) and 514(ii)(*a*)
A/CONF.39/C.1/L.293	Finland	50	462(ii)(*c*)
A/CONF.39/C.1/L.294	Finland	61	561(*b*)
A/CONF.39/C.1/L.295	Finland	67	620(*b*)
A/CONF.39/C.1/L.296	Australia	49	449(*d*)
A/CONF.39/C.1/L.297	Australia	65	601(i)(*a*)
A/CONF.39/C.1/L.298 and Add.1	Japan and Republic of Viet-Nam	49	449(*e*)
A/CONF.39/C.1/L.299	Republic of Viet-Nam	59	540(iii)(*a*)
A/CONF.39/C.1/L.300	France	48	440(*c*)
A/CONF.39/C.1/L.301	China	49	449(*f*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.302	United States of America	50	462(i)(*b*)
A/CONF.39/C.1/L.303	Peru	53	487(*b*)
A/CONF.39/C.1/L.304	Peru	54	498(*a*)
A/CONF.39/C.1/L.305	Peru	55	505(ii)(*b*)
A/CONF.39/C.1/L.306 and Add.1 and 2	Finland, Greece and Spain	50	462(i)(*c*)
A/CONF.39/C.1/L.307 and Add.1 and 2	Colombia, Spain and Venezuela	53	487(*c*)
A/CONF.39/C.1/L.308	Romania	56	514(i)(*d*) and 514(ii)(*b*)
A/CONF.39/C.1/L.309	Finland	57	522(iii)(*a*)
A/CONF.39/C.1/L.310	United Kingdom of Great Britain and Northern Ireland	52	480
A/CONF.39/C.1/L.311	United Kingdom of Great Britain and Northern Ireland	53	487(*d*)
A/CONF.39/C.1/L.312	United Kingdom of Great Britain and Northern Ireland	50	462(ii)(*d*)
A/CONF.39/C.1/L.313	Netherlands	51	473(*c*)
A/CONF.39/C.1/L.314/Rev.1	Greece	51	473(*d*)
A/CONF.39/C.1/L.315	Greece	53	487(*e*)
A/CONF.39/C.1/L.316	Greece	54	498(*b*)
A/CONF.39/C.1/L.317	Greece	55	505(ii)(*c*)
A/CONF.39/C.1/L.318	Venezuela	57	522(i)(*a*), 522(ii)(*a*) and 522(iii)(*b*)
A/CONF.39/C.1/L.319	Venezuela	59	540(i)
A/CONF.39/C.1/L.320	Canada	59	540(ii)(*a*)
A/CONF.39/C.1/L.321 and Add.1	Austria, Canada, Finland, Poland, Romania and Yugoslavia	55	505(i)(*b*)
A/CONF.39/C.1/L.322	Italy and Switzerland	60	549(*a*)
A/CONF.39/C.1/L.323	Netherlands	49 (Draft declaration)	450 and 459
A/CONF.39/C.1/L.324	Australia	55	505(ii)(*d*)
A/CONF.39/C.1/L.325	United States of America	57	522(i)(*b*) and 522(ii)(*b*)
A/CONF.39/C.1/L.326	Spain	57	522(iii)(*c*)
A/CONF.39/C.1/L.327	China	56	514(i)(*e*)
A/CONF.39/C.1/L.328	China	71 & 72	657(i)(*a*)
A/CONF.39/C.1/L.329 and Corr.1	China	75	684(*a*)
A/CONF.39/C.1/L.330	Mexico	58	531(*a*)
A/CONF.39/C.1/L.331	Netherlands	58	531(*b*)
A/CONF.39/C.1/L.332/Rev.1	Ecuador	58	531(*c*)
A/CONF.39/C.1/L.333	Finland	59	540(ii)(*b*)
A/CONF.39/C.1/L.334	Hungary	60	549(*b*)
A/CONF.39/C.1/L.335	United States of America	59	540(iii)(*b*)
A/CONF.39/C.1/L.336	Japan	59	540(ii)(*c*)
A/CONF.39/C.1/L.337	Japan	60	549(*c*)
A/CONF.39/C.1/L.338	Japan	62	571(iii)(*1*)(*a*) and 571(iii)(*2*)(*a*)
A/CONF.39/C.1/L.339	Japan	62	571(ii)(*a*)
A/CONF.39/C.1/L.340	Switzerland	42	382(i)(*f*)
A/CONF.39/C.1/L.341	Chile	60	549(*d*)
A/CONF.39/C.1/L.342	France	62	571(iii)(*1*)(*b*)
A/CONF.39/C.1/L.343	Uruguay	62	571(i)(*a*)
A/CONF.39/C.1/L.344	[Text of article 17 provisionally adopted by the Drafting Committee]	17	185
A/CONF.39/C.1/L.345	Central African Republic and Gabon	62	571(ii)(*b*)
A/CONF.39/C.1/L.346	Colombia, Finland, Lebanon, Netherlands, Peru, Sweden and Tunisia	62	571(ii)(*c*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.347	Switzerland	62	571(i)(*b*)
A/CONF.39/C.1/L.348	Switzerland	62*bis*	583(*a*)
A/CONF.39/C.1/L.349 and Corr.1	Switzerland	63	587
A/CONF.39/C.1/L.350	United States of America	41	369(iii)(*d*) and 369(vii)
A/CONF.39/C.1/L.351	Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia	71	657(iii)
A/CONF.39/C.1/L.352/Rev.1 and Corr.1	Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia	62	571(ii)(*d*)
A/CONF.39/C.1/L.352/Rev.2	Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia	62*bis*	583(*b*)
A/CONF.39/C.1/L.353	Cuba	62	571(iii)(*3*)
A/CONF.39/C.1/L.354	Australia	42	382(ii)(*b*)
A/CONF.39/C.1/L.355	United States of America	62	571(ii)(*e*) and 571(iii)(*2*)(*b*)
A/CONF.39/C.1/L.356	Mexico	67	620(*c*)
A/CONF.39/C.1/L.357	Mexico	68	628
A/CONF.39/C.1/L.358	Switzerland	65	601(i)(*b*) and 601 (iii)(*b*)
A/CONF.39/C.1/L.359	Switzerland	69	636(*b*)
A/CONF.39/C.1/L.360	United States of America	65	601(i)(*c*), 601(ii), and 601 (iii)(*c*)
A/CONF.39/C.1/L.361	Ceylon and Czechoslovakia	62 (Draft resolution)	572(*a*)
A/CONF.39/C.1/L.362	Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia	62 (Draft resolution)	572(*b*)
A/CONF.39/C.1/L.363	France	65	601(i)(*d*)
A/CONF.39/C.1/L.364	Byelorussian Soviet Socialist Republic	72	657(iv)(*4*) and 657(v)
A/CONF.39/C.1/L.365	Japan	69	636(*c*)
A/CONF.39/C.1/L.366	Japan	70	645(*a*)
A/CONF.39/C.1/L.367	Thailand	70	645(*b*)
A/CONF.39/C.1/L.368	Mongolia	72	657(vi)(*a*)
A/CONF.39/C.1/L.369	United States of America	72	657(iv)(*1*), 657(iv)(*2*), 657(iv)(*3*)(*b*), 657(iv)(*6*) and 657(vi)(*b*)
A/CONF.39/C.1/L.370 and Add.1 to 7	[Draft report of the Committee of the Whole on its work at the first session of the Conference]		
A/CONF.39/C.1/L.371	Byelorussian Soviet Socialist Republic	75	684(*b*)
A/CONF.39/C.1/L.372	Mexico	71	657(ii)(*c*)
A/CONF.39/C.1/L.373	Mexico	72	657(iv)(*3*)(*c*)
A/CONF.39/C.1/L.374	United States of America	74	676(i)
A/CONF.39/C.1/L.375	Congo (Brazzaville)	74	676(ii)
A/CONF.39/C.1/L.376	United States of America and Uruguay	75	684(*c*)
A/CONF.39/C.1/L.377	Switzerland	62*bis*	583(*c*)
A/CONF.39/C.1/L.378	Nigeria: draft resolution on arrangements for the second session of the Conference		See chap. III, sect. B, draft resolution 3

Document A/CONF.39/15 *

REPORT OF THE COMMITTEE OF THE WHOLE ON ITS WORK AT THE SECOND SESSION OF THE CONFERENCE

[*Original: English*]
[*1 May 1969*]

CONTENTS

* Incorporating document A/CONF.39/15/Corr.2.

CONTENTS (*continued*)

CONTENTS (*continued*)

CHAPTER I

INTRODUCTION

A. Submission of the report

1. In accordance with resolution 2166 (XXI) adopted by the General Assembly of the United Nations on 5 December 1966, and pursuant to a resolution adopted by the United Nations Conference on the Law of Treaties at its fifth plenary meeting on 24 May 1968,[1] at the conclusion of its first session, the second session of the Conference opened on 9 April 1969 at the Neue Hofburg, Vienna.

[1] See Report of the Committee of the Whole on its work at the first session of the Conference (A/CONF.39/14), chap. III B, draft resolution 3.

2. At the second session of the Conference, the Committee of the Whole completed its consideration of the basic proposal before the Conference, namely the draft articles on the law of treaties adopted by the International Law Commission at its eighteenth session, [2] by taking decisions on certain articles which had been deferred by the Committee from the first to the second session (see A/CONF. 39/14, para. 14). These articles were:

(*a*) articles 2, 5*bis*, 8, 12, 17, 26, 26, 37, 55 and 66, to which amendments had been submitted proposing the addition of references to one or both of the following: "general multilateral treaties" and "restricted multilateral treaties"; and

(*b*) articles 62*bis* and 76, the former relating to the procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty and the latter to the settlement of disputes arising out of the interpretation or application of the proposed convention on the law of treaties.

3. The present document, which is essentially a continuation of and a supplement to the report of the Committee of the Whole on its work at the first session, contains the report of the Committee on its work during the second session, covering the articles just mentioned, two proposed new articles (62*ter* and 62*quater*) and final clauses for the draft convention on the law of treaties submitted by States participating in the second session of the Conference (see para. 8(*b*) below). Included in the chapter on final clauses are articles 76 and 77, the former proposed for inclusion in the text at the first session of the Conference and the latter at the second session.

B. Expression of thanks

4. At the outset of the present report, the Committee of the Whole wishes to reiterate the expression of thanks to the Federal Government and the people of Austria, to the International Law Commission, to the Drafting Committee of the Conference and to the Expert Consultant, Sir Humphrey Waldock, which will be found in paragraphs 3, 4 and 5 of the introduction to its previous report.

C. Election of officers and of the Drafting Committee: secretariat of the Conference

5. At the second session of the Conference, the officers of the Committee of the Whole, the officers and membership of the Drafting Committee and the secretariat of the Conference remained unchanged, except that, as regards the secretariat, Mr. V. Prusa was replaced as an Assistant Secretary of the Committee of the Whole by Mr. E. Valencia-Ospina (see A/CONF.39/14, paras. 6 and 7).

D. Basic proposal and background documentation

6. In addition to the basic proposal and background documentation listed in A/CONF.39/14, paragraphs 8 and 9, the Committee had before it at the second session of the Conference a second statement submitted by the International Bank for Reconstruction and Development (A/CONF.39/7/Add.2). In accordance with a request submitted at the first session, the secretariat also made available at the second session a document containing standard final clauses (A/CONF.39/L.1).

E. Meetings, organization of work and reports of the Drafting Committee

(i) Meetings

7. At the second session of the Conference, the Committee of the Whole held twenty-two meetings between 10 and 25 April 1969. During the period that the Committee of the Whole was in session, the Drafting Committee held thirteen meetings, between 11 and 25 April 1969.

(ii) Organization of Work

8. At the second session of the Conference, the Committee of the Whole followed the same procedure in considering the articles before it as at the first session. The general remarks made in A/CONF.39/14, paragraphs 12 and 13 are therefore equally applicable to the present report, subject to the following points:

(*a*) In organizing its work at the second session, the Committee of the Whole followed the guidelines set forth in paragraphs 5 to 8 and 13 to 16 of the memorandum by the Secretary-General on methods of work and procedures of the second session of the Conference (A/CONF.39/12), which had been approved by the Conference at its sixth plenary meeting, on 9 April 1969.

(*b*) In accordance with the suggestion contained in paragraph 6 of this memorandum by the Secretary-General, the Conference entrusted to the Committee of the Whole the consideration of proposed final clauses for the draft convention. These final clauses therefore form a separate chapter of the present report.

(*c*) In accordance with the suggestions contained in paragraph 7 of the Secretary-General's memorandum, the task of considering proposals for and preparing the text of a preamble to the draft convention on the law of treaties was entrusted to the Drafting Committee, for direct submission to the plenary Conference, as was the reviewing of a draft Final Act to be submitted by the Secretariat towards the end of the Conference. The Committee of the Whole did not, therefore, consider the preamble or the Final Act.

9. As regards the schedule of the work of the Committee of the Whole at the second session of the Conference, and the order of discussion of the remaining articles, the Committee followed as far as possible the proposal submitted by Ghana and India (A/CONF.39/C.1/L.2), which had been adopted by the Conference at its sixth plenary meeting. It was suggested in this proposal that the Committee of the Whole should discuss the outstanding matters before it as follows:

10 and 11 April: Articles 8, 17 and 26.

14 to 17 April: Articles 36, 37, 55, 66 and 2.

[2] See sect. B above.

18, 19 and 21 to 23 April
(possibly extended to
25 April): Articles 5*bis*, 12, 62*bis*, Final Clauses (including article 76) and adoption of reports.

After the adoption of this proposal, two new articles, namely 62*ter* and 62*quater*, were submitted to the Committee of the Whole, and discussed by it in conjunction with article 62*bis*. A proposed new article 77 was discussed together with article 76 and general provisions regarding the final clauses.

(iii) Reports of the Drafting Committee

10. The reports of the Drafting Committee were in the same form as at the first session of the Conference, and the remarks made in A/CONF.39/14, paragraphs 15 and 16 apply equally to this report. In addition, the Chairman of the Drafting Committee explained at the 105th meeting of the Committee of the Whole, on 25 April 1969, that, in accordance with rule 48 of the rules of procedure of the Conference (A/CONF.39/10) and paragraph 9 of the Secretary-General's memorandum on methods of work and procedures of the second session of the Conference (A/CONF.39/12), the Drafting Committee would co-ordinate and review all the texts adopted by the Committee of the Whole and would report on them directly to the plenary Conference. He also informed the Committee of the Whole that the Drafting Committee would report directly to the plenary on the decision it would take regarding the titles of sections, parts and articles of the draft Convention, a decision which had been deferred from the first session of the Conference.

F. Organization of the report of the Committee of the Whole; summary records and statements for the report

(i) Organization of the report

11. In addition to the introduction, the present report contains three other chapters, namely: chapter II, "Consideration by the Committee of the Whole of the draft articles on the law of treaties deferred from the first session of the Conference or submitted at the second session"; chapter III, "Consideration by the Committee of the Whole of proposed final clauses for the draft convention on the law of treaties"; and chapter IV, "Text of the remaining articles on the law of treaties and of final clauses adopted by the Committee of the Whole at the second session of the Conference." An annex contains a check-list of documentation submitted during the second session of the Conference to the Committee of the Whole.

12. Chapter II of the present report keeps to the same format, *mutatis mutandis*, as chapter II of the report of the Committee of the Whole on its work at the first session of the Conference. The remarks made in paragraphs 18 and 19 of the introduction to that report are therefore generally applicable to chapter II of the present document. Although at the second session of the Conference the Committee of the Whole discussed the articles, as far as possible, in the order set out in paragraph 9 above, in chapter II they are arranged in their numerical order. The titles of parts and sections of the draft convention have not been given this time in chapter II, in view of the limited number of articles which remained to be considered at the second session of the Conference and their sporadic placing throughout the various parts and sections of the draft Convention.

13. Chapter III of the present report, concerning the final clauses, including the proposed new articles 76 and 77, is arranged in the same manner as chapter II. First, the proposals and amendments are set out. The proceedings of the Committee of the Whole are then described, and this is followed by the texts adopted or other decisions taken by the Committee of the Whole.

(ii) Summary records

14. As in the case of A/CONF.39/14, (see para. 20 of that report), the present document is designed to read in conjunction with the summary records of the Committee, which appeared originally in documents A/CONF. 39/C.1/SR.84 to SR.105.

(iii) Statements for the report

15. In A/CONF.39/14, paragraph 21, reference is made to certain statements by representatives who requested that the report mention those statements by way of cross reference to the summary records in which they were to be found. At the second session, one such request was made, as follows:

105th meeting. Statement made by the representative of *Ecuador* in connexion with the Committee's consideration of draft article 2 and recording his delegation's view that the words "governed by international law", appearing in the definition of the term "treaty" covered both the formal and substantive elements of treaties, namely that they must be freely consented to by the contracting parties, be concluded in good faith and have a licit object.

G. Adoption of the Committee's reports

16. At the 105th meeting, the Committee of the Whole approved the draft reports submitted by the Rapporteur on the work of the Committee at the first session (A/CONF.39/C.1/L.370/Rev.1, vol. I, and A/CONF.39/C.1/L.370/Rev.1, vol. II) and at the second session (A/CONF.39/C.1/L.390 and Add.1-13) of the Conference.

CHAPTER II

CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON THE LAW OF TREATIES DEFERRED FROM THE FIRST SESSION OF THE CONFERENCE OR SUBMITTED AT THE SECOND SESSION

ARTICLE 2

A. International Law Commission text

17. The International Law Commission text provided as follows:

Article 2.—Use of terms

1. For the purposes of the present articles:

(*a*) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

(*b*) "Ratification", "Acceptance", "Approval" and "Accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

(*c*) "Full powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.

(*d*) "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State.

(*e*) "Negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty.

(*f*) "Contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.

(*g*) "Party" means a State which has consented to be bound by the treaty and for which the treaty is in force.

(*h*) "Third State" means a State not a party to the treaty.

(*i*) "International organization" means an intergovernmental organization.

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

B. Amendments

18. The texts of all amendments to article 2 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, appear in A/CONF.39/14, paragraph 35. Only amendments deferred until the second session, or submitted at that session, are set out below.

19. As recorded in A/CONF.39/14, paragraph 39, the Committee of the Whole decided at the first session to defer for consideration at the second session the amendments submitted to article 2 by Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania (A/CONF.39/C.1/L.19/Rev.1) and by France (A/CONF.39/C.1/L.24), in so far as the latter amendment proposed the inclusion of a definition of the term "restricted multilateral treaty" in paragraph 1 of article 2. In addition, at the second session, Ecuador submitted a revision (A/CONF.39/C.1/L.25/Rev.1) of an amendment it had put forward at the first session. Further amendments to article 2 were submitted at the second session by Austria (A/CONF.39/C.1/L.383), Belgium (A/CONF.39/C.1/L.381), Hungary (A/CONF.39/C.1/L.382), Switzerland (A/CONF.39/C.1/L.384/Corr.1) and Syria (A/CONF.39/C.1/L.385).

20. The amendments referred to in the preceding paragraph, arranged under sub-headings relating to paragraph 1 of article 2, its sub-paragraphs, and proposed new sub-paragraphs, were to the following effect:

Paragraph 1

(i) *Sub-paragraph* (a)

[Use of the term "Treaty"]

(a) *Ecuador* (A/CONF.39/C.1/L.25/Rev.1)[3]

Between the words "agreement" and "concluded" insert the words "freely consented to,".

[Referred to the Drafting Committee, see para. 24 below]

(b) *Switzerland* (A/CONF.39/C.1/L.384/Corr.1):

In paragraph 1(*a*), after the words "international agreement" add the words "providing for rights and obligations".

[Referred to the Drafting Committee, see para. 24 below]

(ii) *New sub-paragraph between sub-paragraphs* (a) *and* (b):

[Use of the term "General multilateral treaty"]

(a) *Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic* and *United Republic of Tanzania* (A/CONF.39/C.1/L.19/Rev.1):[4]

Insert between the present sub-paragraphs (*a*) and (*b*) the following new sub-paragraph:

General multilateral treaty means a multilateral treaty which deals with matters of general interest for the international community of States.

[Withdrawn, see para. 23 below]

(b) *Syria* (A/CONF.39/C.1/L.385):

Insert between sub-paragraphs (*a*) and (*b*) the following new sub-paragraph:

"General multilateral treaty" means a multilateral treaty which relates to general norms of international law or deals with matters of general interest to the international community at large, whether concluded in an international conference, under the auspices of an international organization, or through any other arrangements.

[Withdrawn, see para. 23 below]

---

[3] For the earlier version of this amendment (A/CONF.39/C.1/L.25), see A/CONF.39/14, para. 35(i)(*c*).

[4] For the earlier version of this amendment (A/CONF.39/C.1/L.19), see A/CONF.39/14, para. 35(ii)(*b*), footnote 6.

(iii) *Sub-paragraph* (b)

[Use of the terms "Ratification", "Acceptance", "Approval", and "Accession"]

Belgium (A/CONF.39/C.1/L.381):

In the French text of article 2, paragraph 1(*b*), replace the words "*dans chaque cas*" by the words "*selon le cas*".

[Referred to the Drafting Committee, see para. 24 below]

(iv) *New sub-paragraphs between sub-paragraphs* (c) *and* (d)

[Use of the terms "Adoption" and "Authentication"]

Austria (A/CONF.39/C.1/L.383):

Add the following new sub-paragraphs:

"Adoption" means the procedure whereby the wording of the text of a treaty is agreed upon.

"Authentication" means the formal international act whereby the adopted text of a treaty is declared definitive.

[Referred to the Drafting Committee, see para. 24 below]

(v) *Sub-paragraph* (d)

[Use of the term "Reservation"]

Hungary (A/CONF.39/C.1/L.382):

Bring the text of paragraph 1(*d*) into harmony with the text of paragraph 1(*b*) of the same article and article 16. The text would then read:

"Reservation" means a unilateral statement, however phrased or named, made by a State *when signing, ratifying, accepting, approving or acceding to a treaty.*

[Referred to the Drafting Committee, see para. 24 below]

(vi) *New sub-paragraph between sub-paragraphs* (d) *and* (e)

[Use of the term "Restricted multilateral treaty"]

France (A/CONF.39/C.1/L.24):

Add the following new sub-paragraph:

"Restricted multilateral treaty" means a treaty which is intended to be binding only on the States referred to in the treaty and whose entry into force in its entirety with respect to all the negotiating States is an essential condition of the consent of each of them to be bound by it.

[Withdrawn, see para. 22 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

21. The Committee of the Whole resumed the discussion of article 2 as deferred from the first session of the Conference, and the remaining amendments thereto, at its 87th meeting, on 14 April 1969. At its 105th meeting, on 25 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) Resumed consideration

22. At the 84th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 8, the amendment by *France* (A/CONF.39/C.1/L.24), in so far as it proposed the inclusion of a definition of the term "restricted multilateral treaty" in paragraph 1 of article 2, was withdrawn (see para. 38 below).

23. At the 87th meeting of the Committee of the Whole, it was decided, without objection, to consider the amendments by *Congo (Democratic Republic of)*, *Czechoslovakia*, *Hungary*, *Poland*, *Romania*, *Ukrainian Soviet Socialist Republic*, *United Arab Republic* and *United Republic of Tanzania* (A/CONF.39/C.1/L.19/Rev.1) and *Syria* (A/CONF.39/C.1/L.385), concerning the definition of the term "general multilateral treaty", when the Committee took up article 5*bis*. At the 105th meeting of the Committee of the Whole these amendments were withdrawn.

24. Also at its 87th meeting, the Committee of the Whole decided, without objection, to refer the amendments submitted at the second session by *Austria* (A/CONF.39/C.1/L.383), *Belgium* (A/CONF.39/C.1/L.381), *Ecuador* (A/CONF.39/C.1/L.25/Rev.1), *Hungary* (A/CONF.39/C.1/L.382), *Switzerland* (A/CONF.39/C.1/L.384/Corr.1) and *Syria* (A/CONF.39/C.1/L.385) to the Drafting Committee, to be taken up by that Committee in connexion with its consideration of article 2 and the subsisting amendments thereto referred to the Drafting Committee at the first session, namely amendments by *Austria* and *Spain* (A/CONF.39/C.1/L.1 and Add.1), *Ceylon* (A/CONF.39/C.1/L.17), *Chile* (A/CONF.39/C.1/L.22), *China* (A/CONF.39/C.1/L.13), *France* (A/CONF.39/C.1/L.24) (new sub-paragraph between sub-paragraphs (*b*) and (*c*) of paragraph 1), *Hungary* (A/CONF.39/C.1/L.23), *India* (A/CONF.39/C.1/L.40), *Malaysia* and *Mexico* (A/CONF.39/C.1/L.33 and Add.1), *Republic of Viet-Nam* (A/CONF.39/C.1/L.29), *Spain* (A/CONF.39/C.1/L.28), *Sweden* (A/CONF.39/C.1/L.11) and the *United States of America* (A/CONF.39/C.1/L.16) (sub-paras. (*b*) and (*d*) of para. 1).

(iii) Consideration of the report of the Drafting Committee

25. At the 105th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 2 adopted by the Drafting Committee (A/CONF.39/C.1/17; for text, see para. 26 below). The Committee of the Whole adopted this text without formal vote. [5]

(iv) Text adopted by the Committee of the Whole

26. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 2:

Article 2

1. For the purposes of the present Convention:

(*a*) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "ratification", "acceptance", "approval", and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*c*) "full powers" means a document emanating from the competent authority of a State designating a person to represent the State for

[5] See para. 8 above, and A/CONF.39/14, para. 13.

negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(*d*) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*e*) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(*f*) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*g*) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*h*) "third State" means a State not a party to the treaty;

(*i*) "international organization" means an intergovernmental organization.

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

ARTICLE 5bis

A. Proposed new article

27. As recorded in A/CONF.39/14, paragraph 68, the Committee of the Whole decided at the first session to defer for consideration at the second session an amendment proposing the addition of a new article *5bis*, submitted by Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia (A/CONF.39/C.1/L.74 and Add.1 and 2). At the second session a further amendment proposing the addition of a new article *5bis* was submitted by Algeria, Ceylon, Hungary, India, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (A/CONF.39/C.1/L.388 and Add.1) [6]

28. These amendments were to the following effect:

(a) *Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic* and *Yugoslavia* (A/CONF.39/C.1/L.74 and Add.1 and 2):

Insert the following new article between articles 5 and 6:

The right of participation in treaties

All States have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality.

[Withdrawn, see para. 30 below]

(b) *Algeria, Ceylon, Hungary, India, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Yugoslavia* and *Zambia* (A/CONF.39/C.1/L.388 and Add.1):

Insert the following new article between articles 5 and 6:

Every State has the right to participate in a multilateral treaty which codifies or progressively develops norms of general international law or the object and purpose of which are of interest to the international community of States as a whole.

[Rejected, see para. 31 below]

B. Proceedings of the Committee of the Whole

(i) Meetings

29. The Committee of the Whole discussed article *5bis* at its 88th to 91st meetings, between 14 and 16 April 1969, and at its 105th meeting, on 25 April 1969.

(ii) Consideration

30. At the 89th meeting of the Committee of the Whole, the amendment by *Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic* and *Yugoslavia* (A/CONF.39/C.1/L.74 and Add.1 and 2) was withdrawn.

31. At its 105th meeting, the Committee of the Whole voted on the amendment by *Algeria, Ceylon, Hungary, India, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Yugoslavia* and *Zambia* (A/CONF.39/C.1/L.388 and Add.1). A roll-call vote was requested. The results of the voting were as follows.

In favour: Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, Ghana, Hungary, India, Indonesia, Iraq, Kuwait, Mexico, Mongolia, Pakistan, Poland, Romania, Sierra Leone, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia, Zambia.

Against: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Central African Republic, China, Colombia, Costa Rica, Denmark, Dominican Republic, El Salvador, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Holy See, Honduras, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Monaco, Netherlands, New Zealand, Norway, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Abstentions: Barbados, Chile, Congo (Democratic Republic of), Cyprus, Ethiopia, Iran, Kenya, Lebanon, Libya, Mauritius, Morocco, Nigeria, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Trinidad and Tobago, Uganda.

This amendment was therefore rejected by 52 votes to 32, with 19 abstentions.

(iii) Decision

32. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended

[6] Original sponsors Algeria, Ceylon, Hungary, India, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania and Yugoslavia, co-sponsor Zambia (Add.1).

to the Conference an article *5bis* in the form proposed by Algeria, Ceylon, Hungary, India, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (A/CONF.39/C.1/L.388 and Add.1).

ARTICLE 8

A. International Law Commission text

33. The International Law Commission text provided as follows:

Article 8.—Adoption of the text

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

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

B. Amendments

34. The texts of all amendments to article 8 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, are set out in A/CONF.39/14, paragraph 91. Only amendments deferred until the second session or submitted at that session, or on which the Drafting Committee requested further guidance, are set out below.

35. As recorded in A/CONF.39/14, paragraph 94, the Committee of the Whole decided at the first session to defer for consideration at the second session the amendments to article 8 submitted by France (A/CONF.39/C.1/L.30) and the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.51/Rev.1) and the sub-amendment by Czechoslovakia (A/CONF.39/C.1/L.102) to the amendment by France (A/CONF.39/C.1/L.30). In addition, at the second session, further amendments to article 8 were submitted by Australia (A/CONF.39/C.1/L.380) and Austria (A/CONF.39/C.1/L.379). Lastly, the Drafting Committee requested further guidance on amendments by Peru (A/CONF.39/C.1/L.101 and Corr.1) and the United Republic of Tanzania (A/CONF.39/C.1/L.103) submitted during the first session, and on the amendment by Australia (A/CONF.39/C.1/L.380, submitted during the second session, all of which were initially referred by the Committee of the Whole to the Drafting Committee (see paras. 39 and 40 below).

36. The amendments and sub-amendment referred to in the preceding paragraph, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) *Paragraph 1*

(a) *Peru* (A/CONF.39/C.1/L.101 and Corr.1):

Replace the existing text of article 8 [paragraph 1] by the following:

The adoption of the text of the treaty takes place by unanimous consent when the number of States participating in its drawing up is limited or restricted, unless the said States shall decide to apply a different rule.

[Initially referred to the Drafting Committee, see para. 39 below; subsequently rejected, see para. 40(*a*) below]

(b) *Austria* (A/CONF.39/C.1/L.379):

Delete . . . the word "unanimous" and insert the word "all" between the words "of" and "the".

[Referred to the Drafting Committee, see para. 39 below]

(ii) *Paragraph 2*

(a) *France* (A/CONF.39/C.1/L.30):

Amend the beginning of paragraph 2 to read as follows:

2. The adoption of the text of a multilateral treaty other than a restricted multilateral treaty at an international conference... .

[Withdrawn, see para. 38 below]

(b) Sub-amendment by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30):

Amend the beginning of paragraph 2 to read as follows:

The adoption of the text of a *general multilateral treaty or a* multilateral treaty other than a restricted multilateral treaty at an international conference... .

[Withdrawn, see para. 38 below]

(c) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1): [7]

Amend the first part of paragraph 2 to read as follows:

The adoption of the text of a general or other multilateral treaty, with the exception of limited multilateral treaties, at an international conference takes place by the vote of two-thirds of the States... .

[Withdrawn, see para. 38 below]

(d) *Peru* (A/CONF.39/C.1/L.101 and Corr.1):

Replace the existing text of article 8 [paragraph 2] by the following:

The adoption of the text of a treaty at a general international conference at which the number of States participating is substantial takes place by the vote of two-thirds of the States participating in the Conference, unless by the same majority the said States shall decide to apply a different rule.

[Initially referred to the Drafting Committee, see para. 39 below; subsequently rejected, see para. 40(*b*) below]

(e) *United Republic of Tanzania* (A/CONF.39/C.1/L.103):

For the [words in] paragraph 2 reading: "unless by the same majority they shall decide to apply a different rule" substitute: "unless it is decided during the Conference to apply a different rule".

[Initially referred to the Drafting Committee, see para. 39 below; subsequently rejected, see para. 40(*d*) below]

(f) *Australia* (A/CONF.39/C.1/L.380):

In paragraph 2 insert the word "general" before the phrase "international conference".

[Initially referred to the Drafting Committee, see para. 39 below; subsequently rejected, see para. 40(*c*) below]

---

[7] For the earlier version of this amendment (A/CONF.39/C.1/L.51), see A/CONF.39/14, para. 91(ii)(*c*), footnote 19.

C. Proceedings of the Committee of the Whole

(i) Meetings

37. The Committee of the Whole resumed the discussion of article 8, as deferred from the first session of the Conference, and the remaining amendments thereto, at its 84th and 85th meetings, on 10 April, and at its 91st meeting, on 16 April 1969. At its 99th meeting, on 22 April 1969, the Committee of the Whole considered the report of the Drafting Committee on this article.

(ii) Resumed consideration

38. At the 84th meeting of the Committee of the Whole, all amendments of which *France* was sponsor or co-sponsor which sought to add references to restricted multilateral treaties in certain of the draft articles were withdrawn, including the amendment (A/CONF.39/C.1/L.30) to article 8. The sub-amendment by *Czechoslovakia* (A/CONF.39/C.1/L.102) to this amendment was also withdrawn. At the 85th meeting of the Committee, the amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1) was withdrawn.

39. At the 85th meeting, it was decided, without objection, to refer the amendments by *Australia* (A/CONF.39/C.1/L.380) and *Austria* (A/CONF.39/C.1/L.379) to the Drafting Committee, to be taken up by that Committee in connexion with its consideration of article 8 and the subsisting amendments thereto referred to the Drafting Committee at the first session of the Conference, namely the amendments by *Ceylon* (A/CONF.39/C.1/L.43), *Peru* (A/CONF.39/C.1/L.101 and Corr.1) and the *United Republic of Tanzania* (A/CONF.39/C.1/L.103) (see A/CONF.39/14, paras. 93 and 94).

40. At the 91st meeting of the Committee of the Whole, the Chairman of the Drafting Committee informed it that the Drafting Committee had decided to seek from the Committee of the Whole further guidance on the amendments by *Australia* (A/CONF.39/C.1/L.380), *Peru* (A/CONF.39/C.1/L.101 and Corr.1) and the *United Republic of Tanzania* (A/CONF.39/C.1/L.103). The Committee of the Whole thereupon proceeded to vote on these amendments, with the following results:

(*a*) The amendment by *Peru* (A/CONF.39/C.1/L.101 and Corr.1) to paragraph 1 was rejected by 55 votes to 13, with 21 abstentions.

(*b*) The amendment by *Peru* (A/CONF.39/C.1/L.101 and Corr.1) to paragraph 2 was rejected by 54 votes to 11, with 29 abstentions.

(*c*) The amendment by *Australia* (A/CONF.39/C.1/L.380) to paragraph 2 was rejected by 48 votes to 24, with 20 abstentions.

(*d*) The amendment by the *United Republic of Tanzania* (A/CONF.39/C.1/L.103) to paragraph 2 was rejected by 51 votes to 27, with 16 abstentions.

(iii) Consideration of the report of the Drafting Committee

41. At the 99th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 8 adopted by the Drafting Committee (A/CONF.39/C.1/16; for text, see para. 42 below). The Committee of the Whole adopted this text without formal vote. [8]

(iv) Text adopted by the Committee of the Whole

42. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 8:

Article 8

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

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

ARTICLE 12

A. International Law Commission text

43. The International Law Commission text provided as follows:

Article 12.—Consent to be bound by a treaty expressed by accession

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

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

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

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

B. Amendments

44. As recorded in A/CONF.39/14, paragraph 146, the Committee of the Whole decided at the first session to defer for consideration at the second session the one amendment submitted to article 12, namely the amendment by Czechoslovakia (A/CONF.39/C.1/L.104).

45. This amendment was to the following effect:

Consider the present wording of article 12 as paragraph 1 and add a paragraph 2 which would read as follows:

The consent to be bound by a general multilateral treaty may be expressed by accession by any State. Any State also has the right to become, by accession, a party to a multilateral treaty which affects its legitimate interest.

[Withdrawn, see para. 47 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

46. The Committee of the Whole resumed the discussion of article 12, as deferred from the first session of the Conference, at its 105th meeting, on 25 April 1969.

---

[8] See para. 8 above, and A/CONF.39/14, para. 13.

(ii) RESUMED CONSIDERATION

47. At the 89th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 5*bis*, the amendment by *Czechoslovakia* (A/CONF.39/C.1/L.104) was withdrawn.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

48. At the 105th meeting of the Committee of the Whole, the Chairman of the Drafting Committee made a statement introducing the text of article 12 adopted by the Drafting Committee at the first session of the Conference (for this text, see A/CONF.39/14, para. 145, footnote 29 and para. 49 below). The Committee of the Whole adopted this text without formal vote. [9]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

49. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 12:

Article 12

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

(*a*) the treaty provides that such consent may be expressed by that State by means of accession;

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

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

ARTICLE 17

A. International Law Commission text

50. The International Law Commission text provided as follows:

Article 17.—Acceptance of and objection to reservations

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

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

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

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

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

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

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

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

B. Amendments

51. The texts of all amendments to article 17 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, appear in A/CONF.39/14, paragraphs 175 and 179. Only amendments deferred until the second session are set out below.

52. As recorded in A/CONF.39/14, paragraph 187, the Committee decided at the first session to defer for consideration at the second session the amendments submitted to paragraph 1 of article 17 by Czechoslovakia (A/CONF.39/C.1/L.84) and to paragraph 2 of that article by France and Tunisia (A/CONF.39/C.1/L.113). No further amendments to article 17 were submitted to the Committee of the Whole at the second session of the Conference.

53. The amendments referred to in the preceding paragraph were to the following effect:

(a) *Czechoslovakia* (A/CONF.39/C.1/L.84):

Amend paragraph 1 to read:

A reservation expressly or impliedly authorized by a general multilateral treaty or other multilateral treaty, with the exception of cases provided for in paragraphs 2 and 3, does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

[Withdrawn, see para. 55 below]

(b) *France* and *Tunisia* (A/CONF.39/C.1/L.113):

Replace paragraph 2 by the following text:

A reservation to a bilateral treaty or to a restricted multilateral treaty requires acceptance by all the contracting States.

[Withdrawn, see para. 55 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

54. The Committee of the Whole resumed and completed the discussion of article 17, as deferred from the first session of the Conference, and the remaining amendment thereto (see para. 55 below) at its 85th meeting, on 10 April 1969.

(ii) RESUMED CONSIDERATION

55. At the 84th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 8, the amendment by *France* and *Tunisia* (A/CONF.39/C.1/L.113) to paragraph 2 of article 17 was withdrawn (see para. 38 above). At the 85th meeting of the Committee, the amendment by *Czechoslovakia* (A/CONF.39/C.1/L.84) to paragraph 1 of article 17 was also withdrawn.

56. At its 85th meeting, the Committee of the Whole voted upon a provisional text for article 17, which had been recommended by the Drafting Committee to the Committee of the Whole at the first session of the Con-

[9] *Ibid.*

ference and amended by the Committee of the Whole at that session (see A/CONF.39/14, paras. 185 and 186; for the text as amended, see para. 57 below). The Committee adopted this text by 60 votes to 15, with 13 abstentions.

(iii) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

57. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 17:

Article 17

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

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

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

4. In cases not falling under the preceding paragraphs of this article and unless the treaty otherwise provides:

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

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

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

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

ARTICLE 26

A. International Law Commission text

58. The International Law Commission text provided as follows:

Article 26.—Application of successive treaties relating to the same subject-matter

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

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

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

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

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

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

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

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

B. Amendments

59. The texts of all amendments to article 26 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, appear in A/CONF.39/14, paragraph 259. Only the amendment deferred until the second session is set out below.

60. As recorded in A/CONF.39/14, paragraph 262, the Committee of the Whole decided at the first session to defer for consideration at the second session the amendment to article 26 submitted by France (A/CONF.39/C.1/L.44). No further amendments to article 26 were submitted to the Committee of the Whole at the second session of the Conference.

61. The amendment referred to in the preceding paragraph was to the following effect:

At the end of paragraph 4(*a*) . . . add the following sentence:

however, when the earlier treaty is a restricted multilateral treaty and the later treaty is concluded between certain of the parties only, the provisions of the earlier treaty shall prevail;

[Withdrawn, see para. 63 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

62. The Committee of the Whole resumed the discussion of article 26, as deferred from the first session of the Conference, at its 85th meeting, on 10 April 1969. At its 91st meeting, on 16 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) RESUMED CONSIDERATION

63. At the 84th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 8, the amendment by *France* (A/CONF.39/C.1/L.44) to paragraph 4(*a*) of article 26 was withdrawn (see para. 38 above).

64. In view of the withdrawal of this amendment, the Committee of the Whole noted, at its 85th meeting, that article 26 would be considered by the Drafting Committee together with the amendments by *Cambodia* (A/CONF.39/C.1/L.208), *Japan* (A/CONF.39/C.1/L.207), *Romania* and *Sweden* (A/CONF.39/C.1/L.204) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.202) referred to the Drafting Committee by the Committee of the Whole

at the first session of the Conference (see A/CONF.39/14, paragraph 261).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

65. At the 91st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 26 adopted by the Drafting Committee (A/CONF.39/C.1/15; for text, see para. 66 below). The Committee of the Whole adopted this text without formal vote. [10]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

66. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 26:

Article 26

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

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

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

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

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

(*b*) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

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

ARTICLE 36

A. International Law Commission text

67. The International Law Commission text provided as follows:

Article 36.—Amendment of multilateral treaties

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

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

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

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

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

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

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

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

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

B. Amendments

68. The texts of all amendments to article 36 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, appear in A/CONF.39/14, paragraph 330. Only the one amendment deferred until the second session is set out below.

69. As recorded in A/CONF.39/14, paragraph 333, the Committee decided at the first session to defer for consideration at the second session the amendment to article 36 submitted by France (A/CONF.39/C.1/L.45). No further amendments to article 36 were submitted to the Committee of the Whole at the second session of the Conference.

70. The amendment referred to in the preceding paragraph was to the following effect:

Replace paragraph 1 by the following two paragraphs:

1. Restricted multilateral treaties can only be amended by agreement between all the parties.

2. Unless the treaty otherwise provides, the amendment of multilateral treaties not covered by the preceding paragraph shall be governed by the following provisions.

Renumber the other paragraphs accordingly.

[Withdrawn, see para. 72 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

71. The Committee of the Whole resumed the discussion of article 36, as deferred from the first session of the Conference, at its 86th meeting, on 11 April 1969. At its 91st meeting, on 16 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) RESUMED CONSIDERATION

72. At the 84th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 8, the amendment by *France* (A/CONF.39/C.1/L.45) to article 36 was withdawn (see para. 38 above).

73. In view of the withdrawal of this amendment, the Committee of the Whole noted, at its 86th meeting, that article 36 would be considered by the Drafting Committee together with the amendment by the *Netherlands* (A/CONF.39/C.1/L.232) referred to the Drafting Committee by the Committee of the Whole at the first session of the Conference (see A/CONF.39/14, para. 332).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

74. At the 91st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a

[10] See para. 8 above, and A/CONF. 39/14, para. 13.

report containing the text of article 36 adopted by the Drafting Committee (A/CONF.39/C.1/15; for text, see para. 75 below). The Committee of the Whole adopted this text without formal vote.[11]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

75. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 36:

Article 36

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

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

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

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

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

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

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

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

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

ARTICLE 37

A. International Law Commission text

76. The International Law Commission text provided as follows:

Article 37.—Agreement to modify multilateral treaties between certain of the parties only

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

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

(*b*) The modification in question:

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

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

(iii) is not prohibited by the treaty.

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

B. Amendments

77. The texts of all amendments to article 37 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, appear in A/CONF.39/14, paragraph 337. Only the amendments deferred until the second session are set out below.

78. As recorded in A/CONF.39/14, paragraph 340, the Committee decided at the first session to defer for consideration at the second session the amendments to article 37 submitted by Australia (A/CONF.39/C.1/L.237) and France (A/CONF.39/C.1/L.46). No further amendments to article 37 were submitted to the Committee of the Whole at the second session of the Conference.

79. The amendments referred to in the preceding paragraph were to the following effect:

(a) *France* (A/CONF.39/C.1/L.46):

At the beginning of paragraph 1, before the words "Two or more" insert the words "Except in the case of a restricted multilateral treaty,".

[Withdrawn, see para. 81 below]

(b) *Australia* (A/CONF.39/C.1/L.237):

At the beginning of paragraph 1, before the words "Two or more", insert the words "except in the case of a treaty of the type referred to in paragraph 2 of article 17,".

[Rejected, see para. 82 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

80. The Committee of the Whole resumed the discussion of article 37, as deferred from the first session of the Conference, and the remaining amendment thereto (see para. 81 below), at its 86th meeting, on 11 April 1969. At its 91st meeting, on 16 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) RESUMED CONSIDERATION

81. At the 84th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 8, the amendment by *France* (A/CONF.39/C.1/L.46) to article 37 was withdrawn (see para. 38 above).

82. At its 86th meeting, the Committee of the Whole voted upon the amendment by *Australia* (A/CONF.39/C.1/L.237) to article 37. It was rejected by 62 votes to 4, with 22 abstentions.

83. At the same meeting, the Committee of the Whole noted that in the light of the foregoing, article 37 would be considered by the Drafting Committee together with the amendments by *Bulgaria*, *Romania* and *Syria* (A/CONF.39/C.1/L.240) and *Czechoslovakia* (A/CONF.39/C.1/L.238) referred to the Drafting Committee by the Committee of the Whole at the first session of the Conference (see A/CONF.39/14, para. 339).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

84. At the 91st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a

[11] *Ibid.*

report containing the text of article 37 adopted by the Drafting Committee (A/CONF.39/C.1/15; for text, see para. 85 below). The Committee of the Whole adopted this text without formal vote. [12]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

85. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 37:

Article 37

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

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

(*b*) the modification in question is not prohibited by the treaty and:

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

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

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

ARTICLE 55

A. International Law Commission text

86. The International Law Commission text provided as follows:

Article 55.—Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only

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

(*a*) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; and

(*b*) Is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

B. Amendments

87. The texts of all amendments to article 55 submitted at the first session of the Conference, together with a brief indication of the manner in which they were disposed of, are set out in A/CONF.39/14, paragraph 505. Only the amendments deferred until the second session are set out below.

88. As recorded in A/CONF.39/14, paragraph 510, the Committee decided at the first session to defer for consideration at the second session the amendments to article 55 submitted by Australia (A/CONF.39/C.1/L.324) and France (A/CONF.39/C.1/L.47). No further amendments to article 55 were submitted to the Committee of the Whole at the second session of the Conference.

89. The amendments referred to in the preceding paragraph were to the following effect:

(a) *France* (A/CONF.39/C.1/L.47):

At the beginning of article 55, before the words "When a multilateral treaty", insert the words "Except in the case of a restricted multilateral treaty,".

[Withdrawn, see para. 91 below]

(b) *Australia* (A/CONF.39/C.1/L.324):

At the beginning of the article, before the words "When a multilateral treaty" insert the words "Except in the case of a treaty of the type referred to in paragraph 2 of article 17".

[Withdrawn, see para. 91 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

90. The Committee of the Whole resumed the discussion of article 55, as deferred from the first session of the Conference, at its 86th meeting, on 11 April 1969. At its 99th meeting, on 22 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) RESUMED CONSIDERATION

91. At the 84th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 8, the amendment by *France* (A/CONF.39/C.1/L.47) to article 55 was withdrawn (see para. 38 above). At the 86th meeting of the Committee of the Whole, in connexion with the Committee's consideration of article 55, the amendment by *Australia* (A/CONF.39/C.1/L.324) to the article was also withdrawn.

92. In view of the withdrawal of these amendments, the Committee of the Whole noted, at its 86th meeting, that article 55, as amended in principle at the first session, would be considered by the Drafting Committee together with the amendment by *Peru* (A/CONF.39/C.1/L.305) referred to the Drafting Committee by the Committee of the Whole at the first session of the Conference (see A/CONF.39/14, para. 509).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

93. At the 99th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 55 adopted by the Drafting Committee (A/CONF.39/C.1/16; for text, see para. 94 below). The Committee of the Whole adopted this text without formal vote. [13]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

94. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 55:

Article 55

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

[12] *Ibid.*

[13] *Ibid.*

(*a*) the possibility of such a suspension is provided for by the treaty; or

(*b*) the suspension in question is not prohibited by the treaty and:

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

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

ARTICLE 62*bis*

95. At its 92nd meeting, on 17 April 1969, the Committee of the Whole decided, without objection, to discuss articles 62*bis*, 62*ter* and 62*quater* together. It was also agreed that certain aspects of article 76 should be taken up in conjunction with article 62*bis*, in view of the fact that the proposed new articles 62*bis* (A/CONF.39/C.1/L.391, see paras. 97 and 98(*e*) below) and 76 (A/CONF.39/C.1/L.392, see paras. 130 and 131(*b*) below) submitted by Spain were interrelated. However, as there were no proposals to combine these articles into a single text, they are dealt with separately in this report.

A. Proposed new article

96. As recorded in A/CONF.39/14, paragraph 582, an amendment was submitted by Switzerland (A/CONF.39/C.1/L.348) at the first session, proposing that the International Law Commission's text of paragraph 4 of article 62, with certain consequential amendments, be inserted as a new article 62*bis*. This amendment, as indicated in A/CONF.39/14, paragraphs 577 and 584, was deferred for consideration at the second session of the Conference. At the second session, Switzerland resubmitted this amendment, in a revised form (A/CONF.39/C.1/L.393/Corr.1), as a proposed new article 62*quater*. It is considered in the present report under that article (see paras. 113 to 120 below).

97. Also at the first session of the Conference, as appears from A/CONF.39/14, paragraphs 577 and 584, the Committee deferred for consideration at the second session certain other amendments proposing the addition of a new article 62*bis* by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352/Rev.2) and Switzerland (A/CONF.39/C.1/L.377). At the second session of the Conference, the first of these amendments was resubmitted in a revised form (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2), with Austria, Bolivia, Costa Rica, Malta, Mauritius and Uganda as additional sponsors. Further, Japan indicated, at the 92nd meeting of the Committee of the Whole, that it wished its amendment (A/CONF.39/C.1/L.339) to article 62 to be taken as resubmitted for consideration in connexion with article 62*bis* (see A/CONF.39/14, para. 577). Lastly, at the second session, a further amendment proposing the addition of an article 62*bis* was submitted by Spain (A/CONF.39/C.1/L.391), and a sub-amendment by India, Indonesia, the United Republic of Tanzania and Yugoslavia (A/CONF.39/C.1/L.398) was presented to the amendment by Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia and Uganda (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2).

98. The amendments and the sub-amendment referred to in the previous paragraph were to the following effect:

(a) *Japan* (A/CONF.39/C.1/L.339) (see para. 97 above):

Replace paragraph 3 of article 62 by the following:

3. If objection has been raised by any other party, the parties concerned shall seek the settlement of the dispute arising out of the claim in the following manner:

(*a*) In a case where the dispute relates to a claim under article 50 or article 61, the dispute shall be referred to the International Court of Justice for decision at the request of either of the parties to the dispute;

(*b*) In all other cases, the parties to the dispute shall first of all seek a solution of the dispute through the means indicated in Article 33 of the Charter of the United Nations. If no solution has been reached within twelve months, the dispute shall be referred to arbitration by a tribunal provided for in the annex to the present Convention, unless the parties to the dispute agree to refer the dispute to the International Court of Justice.

3*bis*. Pending the settlement of the dispute in accordance with paragraph 3, the treaty shall continue in force, provided that the performance of the treaty may be suspended:

(i) by agreement of the parties, or

(ii) by a decision of the body to which the dispute has been referred in accordance with paragraph 3.

Add at the end of the text of the convention:

Annex

Arbitral Tribunal under article 62

1. The Tribunal shall be constituted by five members. Each party to the dispute shall nominate two members, one of whom may possess the nationality of the party concerned, within thirty days of the notification by one party to the other party of its intention to refer the dispute to arbitration. The fifth member, who may not possess the nationality of either party to the dispute, shall be appointed by the Secretary-General of the United Nations, within thirty days of the nomination of the four members by both parties.

2. The member appointed by the Secretary-General of the United Nations shall act as president of the tribunal.

3. The tribunal shall decide its own procedures.

4. The decision of the tribunal shall be given by a simple majority and the president shall have the casting vote if the necessity arises.

5. The decision of the tribunal shall be final and binding upon the parties to the dispute.

[Rejected, see para. 102(*b*) below]

(b) *Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia* and *Uganda* (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2):[14]

If the parties have been unable to agree, under article 62, upon some means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon some means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution accepted by the parties within the twelve months following such agreement,

[14] Earlier versions of this amendment are contained in A/CONF.39/14, paras. 571(ii)(*d*) and 583(*b*).

any one of the parties may set in motion the procedures specified in annex I to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Annex I

1. A permanent list of conciliators consisting of qualified jurists shall be drawn up by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators for a period of five years, which may be renewed.

2. The Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, chosen either from the list referred to in paragraph 1 above or from outside that list;

(*b*) one conciliator not of the nationality of that State or of one of those States, chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. A fifth member, who shall act as chairman, shall be chosen from the list by the four other members.

The conciliators chosen by the parties shall be appointed within a period of sixty days from the date on which the Secretary-General received the request.

The conciliators shall appoint their chairman within sixty days following their own appointment.

If the appointment of any one of the conciliators or of the chairman has not been made within the above-mentioned periods, it shall be made by the Secretary-General within sixty days following the expiry of the period applicable.

Any of the periods within which appointments must be made may be extended by agreement between all the parties to the dispute.

Any vacancy shall be filled in the manner specified for the initial appointment.

3. The commission thus constituted shall establish the facts and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The commission shall decide its own procedure. The commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the commission shall be taken by a majority vote of the five members. The Secretary-General shall provide the commission with such assistance and facilities as it may require. The expenses of the commission shall be borne by the United Nations.

4. The commission may draw the attention of the parties to the dispute to any measures likely to facilitate an amicable settlement. The commission shall be required to report within twelve months of its constitution. Its reports shall be transmitted to the Secretary-General and to the parties to the dispute.

5. If the conciliation procedure has not led to a settlement of the dispute within six months of the date of deposit of the commission's report, and if the parties have not agreed on a means of judicial settlement or to an extension of the above-mentioned period, any one of the parties to the dispute may request the Secretary-General to submit the dispute to arbitration.

The Secretary-General shall bring the dispute before an arbitral tribunal consisting of three members. One arbitrator shall be appointed by the State or States constituting one of the parties to the dispute. The State or States constituting the other party to the dispute shall appoint an arbitrator in the same way. The third member, who shall act as chairman, shall be appointed by the other two members.

The arbitrators shall be appointed within a period of sixty days from the date when the Secretary-General received the request.

The chairman shall be appointed within a period of sixty days from the appointment of the two arbitrators.

If the chairman or any one of the arbitrators has not been appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations within sixty days after the expiry of the period applicable.

Any vacancy shall be filled in the manner specified for the initial appointment.

6. The arbitral tribunal shall decide its own procedure. The tribunal, with the consent of the parties to the dispute, may invite any party to the treaty to submit its views orally or in writing. Decisions of the arbitral tribunal shall be taken by a majority vote. Its award shall be binding and definitive.

7. The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Adopted, see para. 102(*d*) below]

(c) *India, Indonesia, United Republic of Tanzania* and *Yugoslavia* (A/CONF.39/C.1/L.398): sub-amendment to the amendment by *Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia* and *Uganda* (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2):

Make the text of article 62*bis* as proposed in document A/CONF.39/C.1/L.352/Rev.3 as Part "B", and add Part "A" to read as follows:

The States parties to the present Convention may declare at any time, by notification to the depositary of this Convention, that they accept the provisions of Part "B" of this article, either in whole or in part, which will then apply between the parties making similar declarations, with effect from the date of receipt of each declaration by the depositary.

[Rejected, see para. 102(*c*) below]

(d) *Switzerland* (A/CONF.39/C.1/L.377):

Insert a new article 62*bis* reading as follows:

1. If the parties have been unable to reach any agreement on the settlement procedure within a period of three months after the objection referred to in article 62, paragraph 3, the party which has made the notification may, not more than six months after the objection, bring the dispute before the International Court of Justice by simple application, or before a commission of arbitration in conformity with the provisions of paragraph 2.

2. Unless the parties otherwise agree, the arbitration procedure shall be as follows:

(*a*) The commission of arbitration shall be composed of five members. Each of the parties shall appoint one member. The other three arbitrators shall be appointed jointly by the parties from nationals of third States. They shall be of different nationalities, shall not have their usual place of residence in the territory of the parties and shall not be in the service of the parties.

(*b*) The president of the commission of arbitration shall be appointed by the parties from among the arbitrators appointed jointly.

(*c*) If, within a period of three months, the parties have been unable to reach agreement on the appointment of the arbitrators to be appointed jointly, the President of the International Court of Justice shall make the appointment. If within a period of three months one of the parties has not appointed the arbitrator it is responsible for appointing, the President of the International Court of Justice shall make the appointment.

(*d*) If the President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is unable to do so, or is of the same nationality as

one of the parties, he shall be replaced by the most senior member of the Court whose nationality is not the same as that of any of the parties.

(*e*) Unless the parties otherwise agree, the commission of arbitration shall decide its own procedure. Failing that, the provisions of chapter III of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 shall apply.

(*f*) The commission of arbitration shall decide all questions submitted to it by simple majority vote, and its decisions shall be binding on the parties.

3. Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by the court of jurisdiction, the treaty shall remain in operation between the parties to the dispute.

4. If the party which has made the notification does not within the prescribed period of six months have recourse to one of the tribunals referred to in paragraph 1, it shall be deemed to have renounced its claim of invalidity or to the measure proposed.

[Rejected, see para. 102(*a*) below]

(*e*) *Spain* (A/CONF.39/C.1/L.391):

Add a new article 62*bis* reading as follows:

*Article 62*bis

If the parties have been unable to agree, in accordance with the provisions of article 62, on any means of reaching a settlement within four months following the date on which the objection was raised, or if they have agreed upon a means of settlement other than adjudication or arbitration and that means has not led to a settlement within twelve months following the date of such agreement, any party may request, through the Secretary-General of the United Nations, the initiation of the procedure provided for in the annex to the present Convention.

Annex

Article 1.—1. A "United Nations Commission for Treaties" (hereinafter called "the Commission") shall be set up as a permanent subsidiary organ of the General Assembly, composed of the representatives of [...] Member States, chosen in such a manner as to ensure wide geographical distribution and adequate representation of the world's principal legal, political and social systems.

2. The States elected as members of the Commission shall appoint, if possible, as their representatives, persons of recognized eminence and high legal competence.

3. The members of the Commission shall be elected for nine years and may be re-elected. The Commission shall be renewable as to one-third by elections held every three years.

Article 2.—1. The Commission shall adopt its own rules of procedure.

2. Resolutions of the Commission shall be adopted by a majority of votes.

3. The Secretary-General shall give the Commission the necessary assistance and facilities. The expenses of the Commission shall be defrayed by the United Nations.

Article 3.—The Commission shall consider the disputes submitted to it in accordance with the provisions of the Convention by the States which are parties to those disputes; it shall establish the facts and make proposals to the parties with a view to reaching an amicable and equitable settlement.

Article 4.—1. The Commission may perform the function assigned to it in the foregoing article in plenary session. It may also set up a special conciliation commission, if the Commission itself so decides or if all the parties to the dispute so request.

2. For the appointment of the special conciliation commissions, the Secretary-General of the United Nations shall draw up a permanent list of conciliators who are qualified jurists. To this end every State Member of the United Nations or party to the present Convention shall be invited to nominate two conciliators for a period of five years, which may be renewed.

3. When it is decided to set up a special conciliation commission, each of the parties to the dispute shall appoint two conciliators from among those on the list, of whom only one may be of its own nationality. The chairman shall be chosen by the Commission from the list of conciliators.

4. The conciliators chosen by the parties must be appointed within a period of one [two] month[s] following the date on which it was decided to set up the special conciliation commission. The chairman of the special conciliation commission must be appointed within the same period. If the conciliators have not been appointed by the parties within the period specified above, it shall be the duty of the Commission to appoint them.

5. The special conciliation commissions shall establish the facts and make proposals to the parties with a view to reaching an amicable and equitable settlement of the dispute. They shall report to the Commission on their proceedings.

Article 5.—If, three months from the date on which the Commission, or the special conciliation commission, as the case may be, has made proposals to the parties for settling the dispute, these proposals have not been accepted by the parties, and the parties have not agreed during that period on any means of settlement by arbitration or adjudication, the Commission shall decide whether the dispute is to be regarded as a legal dispute and in that case the Commission will submit it to an arbitral tribunal.

Article 6.—1. The arbitral tribunal shall be composed of one [two] member[s] nominated by each of the parties [only one of whom may be of the party's own nationality] and a chairman chosen by the Commission.

2. The members of the arbitral tribunal must be appointed within a period of three months from the date on which the Commission decided to submit the question to arbitration. The chairman must likewise be nominated within a period of three months from that date.

3. If the members of the arbitral tribunal have not been appointed by the parties within the stipulated period, the Commission shall appoint them.

4. The arbitral tribunal shall decide its own procedure. Its decisions shall be adopted by a majority and its award shall be final and binding.

5. The Secretary-General shall provide the arbitral tribunal with the assistance and facilities it may need. The expenses of the arbitral tribunal shall be defrayed by the United Nations.

[*Article 7.*—1. The States parties to a dispute have the right to be heard by the Commission in all proceedings connected with the dispute.

2. When the Commission is considering a dispute to which a State represented on the Commission is a party, that State shall abstain from voting on any resolution relating to that controversy.]

[*Article 8.*—1. If a State considers that its interests may be affected by the conciliation or arbitral procedure envisaged in the foregoing articles, it may ask the Commission to allow it to intervene in those proceedings. The Commission shall give a decision on that request.

2. Where the dispute relates to a multilateral treaty, it is to be understood that the States parties to that treaty have a right to intervene in the settlement or arbitration procedure. The Commission shall determine an appropriate procedure for exercising that right.]

Article 9. The Commission shall report annually on its activities to the General Assembly and may make recommendations to it on any matter related to its functions.

[Withdrawn, see para. 100 below]

B. Proceedings of the Committee of the Whole

(i) Meetings

99. The Committee of the Whole resumed the discussion of the proposed new article 62*bis*, as deferred from the first session of the Conference, at its 92nd to 99th meetings, between 17 and 22 April 1969. At the same time it took up the discussion of articles 62*ter*, 62*quater* and certain aspects of article 76 (see para. 95 above). At its 105th meeting, on 25 April 1969, the Committee considered the report of the Drafting Committee on article 62*bis*.

(ii) Resumed consideration

100. At the 99th meeting of the Committee of the Whole, after and in view of the adoption of the amendment by Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia and Uganda (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2) (see para. 102(*d*) below), the amendment by Spain (A/CONF.39/C.1/L.391) proposing the addition of a new article 62*bis* was withdrawn.

101. Also at the 99th meeting of the Committee of the Whole, Ghana moved the adjournment of the debate on articles 62*bis*, 62*ter* and 62*quater* for forty-eight hours. This motion was rejected by 46 votes to 44, with 7 abstentions.

102. The Committee of the Whole thereupon proceeded to vote upon the amendments and the sub-amendment before it relating to article 62*bis*, by a series of roll-call votes which had been requested:

(*a*) The results of the roll-call vote on the amendment by *Switzerland* (A/CONF.39/C.1/L.377) were as follows:

In favour: Australia, Austria, Barbados, Belgium, Cambodia, Canada, Chile, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Greece, Holy See, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, Philippines, Republic of Korea, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay.

Against: Afghanistan, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ethiopia, Ghana, Hungary, India, Indonesia, Iran, Iraq, Israel, Kenya, Kuwait, Libya, Malaysia, Mauritius, Mexico, Mongolia, Nigeria, Pakistan, Panama, Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, Thailand, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia.

Abstentions: Central African Republic, Ceylon, China, Colombia, Costa Rica, Ecuador, El Salvador, Gabon, Guatemala, Guyana, Honduras, Ivory Coast, Jamaica, Lebanon, Madagascar, Netherlands, Peru, Portugal, Republic of Viet-Nam, Senegal, Singapore, Spain, Sweden, Trinidad and Tobago, Tunisia, United States of America, Zambia.

This amendment was therefore rejected by 47 votes to 28, with 27 abstentions.

(*b*) The results of the roll-call vote on the amendment by *Japan* (A/CONF.39/C.1/L.339) were as follows:

In favour: Australia, Austria, Barbados, Belgium, Cambodia, Canada, Chile, China, Denmark, Dominican Republic, El Salvador, Federal Republic of Germany, Finland, France, Holy See, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mauritius, Monaco, New Zealand, Norway, Pakistan, Philippines, Republic of Korea, Republic of Viet-Nam, Switzerland, United Kingdom of Great Britain and Northern Ireland, Uruguay.

Against: Afghanistan, Algeria, Argentina, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Gabon, Ghana, Hungary, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Kenya, Kuwait, Libya, Malaysia, Mongolia, Nigeria, Panama, Poland, Romania, Saudi Arabia, Senegal, Sierra Leone, South Africa, Spain, Sudan, Syria, Thailand, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Central African Republic, Ceylon, Colombia, Costa Rica, Greece, Guatemala, Guyana, Honduras, Jamaica, Lebanon, Madagascar, Mexico, Netherlands, Peru, Portugal, Singapore, Sweden, Trinidad and Tobago, Turkey, United States of America.

This amendment was therefore rejected by 51 votes to 31, with 20 abstentions.

(*c*) The results of the roll-call vote on the sub-amendment by *India, Indonesia, United Republic of Tanzania* and *Yugoslavia* (A/CONF.39/C.1/L.398) to the amendment by Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia and Uganda (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2) were as follows:

In favour: Afghanistan, Algeria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Czechoslovakia, Ethiopia, Hungary, India, Indonesia, Iran, Iraq, Israel, Kuwait, Libya, Malaysia, Mongolia, Poland, Romania, Saudi Arabia, Sierra Leone, Singapore, South Africa, Sudan, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia.

Against: Australia, Austria, Barbados, Belgium, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Denmark, El Salvador, Federal Republic of Germany, Finland, France, Gabon, Greece, Guyana, Holy See, Honduras, Ireland, Italy, Ivory Coast, Jamaica, Japan, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Republic of Viet-Nam,

Senegal, Spain, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Zambia.

Abstentions: Argentina, Bolivia, Cameroon, Costa Rica, Cyprus, Dominican Republic, Ecuador, Ghana, Guatemala, Kenya, Liberia, Madagascar, Mauritius, Nigeria, Portugal, Republic of Korea, Trinidad and Tobago, Turkey, Uganda.

This sub-amendment was therefore rejected by 47 votes to 37, with 19 abstentions.

(*d*) The results of the roll-call vote on the amendment by *Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia* and *Uganda* (A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2) were as follows:

In favour: Australia, Austria, Barbados, Belgium, Bolivia, Cameroon, Canada, Central African Republic, Ceylon, China, Colombia, Costa Rica, Denmark, Ecuador, El Salvador, Federal Republic of Germany, Finland, France, Gabon, Greece, Guyana, Holy See, Honduras, Ireland, Italy, Ivory Coast, Jamaica, Japan, Lebanon, Liechtenstein, Luxembourg, Madagascar, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Republic of Korea, Republic of Viet-Nam, Senegal, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Zambia.

Against: Afghanistan, Algeria, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Ethiopia, Ghana, Hungary, India, Indonesia, Iran, Iraq, Israel, Kuwait, Libya, Malaysia, Mongolia, Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela.

Abstentions: Argentina, Cambodia, Chile, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Guatemala, Kenya, Liberia, Nigeria, Portugal, Singapore, Spain, Yugoslavia.

This amendment was therefore adopted by 54 votes to 34, with 14 abstentions.

103. Finally, at its 99th meeting, the Committee of the Whole agreed, without objection, to refer article 62*bis*, as adopted, to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

104. At the 105th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 62*bis*, and incorporating article 62*quater*, adopted by the Drafting Committee (A/CONF.39/C.1/18; for text, see para. 105 below). The Committee of the Whole adopted this text without formal vote. [15]

[15] See para. 8 above, and A/CONF.39/14, para. 13.

(iv) Text adopted by the Committee of the Whole

105. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 62*bis*:

Article 62bis

1. If, under paragraph 3 of article 62, the parties have been unable to agree upon a means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon some means of settlement other than judicial settlement or arbitration and that means of settlement has not led to a solution accepted by the parties within the twelve months following such agreement, any one of the parties may set in motion the procedures specified in Annex I to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations.

2. Nothing in the foregoing paragraph shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

Annex I

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the persons so nominated shall constitute the list. The nomination of a conciliator, including any conciliator nominated to fill a casual vacancy, shall be for a period of five years which may be renewed. A conciliator whose nomination expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 62bis, the Secretary-General shall bring the dispute before a Conciliation commission constituted as follows.

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, chosen either from the list referred to in paragraph 1 above or from outside that list;

(*b*) one conciliator not of the nationality of that State or of one of those States, chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within the period of sixty days following the date on which the Secretary-General received the request.

The four conciliators shall, within the period of sixty days following the date of the last of their own appointments, appoint as chairman a fifth member chosen from the list.

If the appointment of the chairman or of any of the other conciliators has not been made within the period required above for that appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period.

Any of the periods within which appointments must be made may be extended by agreement between all the parties to the dispute.

Any vacancy shall be filled in the manner specified for the initial appointment.

3. The Commission thus constituted shall establish the facts and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

4. The Commission may draw the attention of the parties to the dispute to any measures likely to facilitate an amicable settlement. The Commission shall be required to report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

5. If the conciliation procedure has not led to a settlement of the dispute within six months of the date of deposit of the Commission's report, and if the parties have not agreed on a means of judicial settlement or to an extension of the above-mentioned period, any one of the parties to the dispute may request the Secretary-General to submit the dispute to arbitration.

6. The Secretary-General shall bring the dispute before an arbitral tribunal consisting of three members. One arbitrator shall be appointed by the State or States constituting one of the parties to the dispute. The State or States constituting the other party to the dispute shall appoint an arbitrator in the same way. The third member, who shall act as chairman, shall be appointed by the other two members; he shall not be a national of any of the States parties to the dispute.

The arbitrators shall be appointed within a period of sixty days from the date when the Secretary-General received the request.

The chairman shall be appointed within a period of sixty days from the appointment of the two arbitrators.

If the chairman or any one of the arbitrators has not been appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations within sixty days after the expiry of the period applicable.

Any vacancy shall be filled in the manner specified for the initial appointment.

7. The arbitral tribunal shall decide its own procedure. The tribunal, with the consent of the parties to the dispute, may invite any party to the treaty to submit its views orally or in writing. Decisions of the arbitral tribunal shall be taken by a majority vote. Its award shall be binding and definitive.

8. The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

ARTICLE 62ter

106. At its 92nd meeting, on 17 April 1969, the Committee of the Whole decided, without objection, to discuss together articles 62*bis*, 62*ter* and 62*quater* and certain aspects of article 76 (see para. 95 above). However, as none of the amendments proposing the addition of these new articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. Proposed new article

107. Amendments proposing the addition of a new article 62*ter* were submitted at the second session of the Conference by Ceylon (A/CONF.39/C.1/L.395), Luxembourg (A/CONF.39/C.1/L.397/Corr.1) and Thailand (A/CONF.39/C.1/L.387).

108. These amendments were to the following effect:

(a) *Thailand* (A/CONF.39/C.1/L.387):

Insert a new article 62*ter* reading as follows:

Any State may at the time of signing this Convention or of depositing its instrument of ratification or accession, declare that it does not consider itself bound by article 62*bis* of this Convention. Other parties shall not be bound by article 62*bis* with respect to any party which has made such a declaration.

[Withdrawn, see para. 110 below]

(b) *Ceylon* (A/CONF.39/C.1/L.395):

Add a new article 62*ter* reading as follows:

A treaty may provide, or the States parties to a treaty may at any time agree, that the provisions of article 62*bis*, or any part thereof, shall not apply to that treaty.

[Rejected, see para. 111 below]

(c) *Luxembourg* (A/CONF.39/C.1/L.397/Corr.1):

Add an article 62*ter*, reading:

The States parties to the present Convention may, without prejudice to the general rules of international law, exclude from the application of the provisions of Part V of the present Convention any State which has not accepted with respect to those States an undertaking regarding compulsory arbitration or compulsory jurisdiction in any case where a party claims that a treaty is invalid or alleges a ground for terminating, or suspending the operation of, the treaty.

[Withdrawn, see para. 110 below]

B. Proceedings of the Committee of the Whole

(i) Meetings

109. The Committee of the Whole discussed the proposed new article 62*ter* at its 92nd to 99th meetings, between 17 and 22 April 1969, in conjunction with its consideration of articles 62*bis*, 62*quater*, and certain aspects of article 76 (see para. 106 above).

(ii) Consideration

110. At the 99th meeting of the Committee of the Whole, the amendments by *Luxembourg* (A/CONF.39/C.1/L.397/Corr.1) and *Thailand* (A/CONF.39/C.1/L.387), proposing the addition of a new article 62*ter*, were withdrawn.

111. Also at its 99th meeting, the Committee of the Whole voted upon the amendment by *Ceylon* (A/CONF.39/C.1/L.395). A roll-call vote was requested. The results of the voting were as follows:

In favour: Austria, Belgium, Canada, Ceylon, Chile, Cyprus, Denmark, Federal Republic of Germany, Finland, Guatemala, Ireland, Israel, Jamaica, Japan, Kenya, Lebanon, Liechtenstein, Mauritius, Mexico, Pakistan, Peru, Republic of Korea, Sweden, Trinidad and Tobago, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia.

Against: Bolivia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cuba, Ecuador, El Salvador, France, Gabon, Greece, Hungary, India, Indonesia, Italy, Ivory Coast, Kuwait, Malaysia, Monaco, Mongolia, Poland, Romania, Saudi Arabia, South Africa, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Venezuela.

Abstentions: Afghanistan, Algeria, Argentina, Australia, Barbados, Brazil, Cambodia, Cameroon, Central African Republic, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Czechoslovakia, Ethiopia, Ghana, Guyana, Holy See, Honduras, Iran, Iraq, Liberia, Libya, Luxembourg, Madagascar, Netherlands, New Zealand, Nigeria, Norway, Panama, Philippines, Portugal, Republic of Viet-Nam, Senegal, Sierra Leone, Singapore, Spain, Sudan, Switzerland,

Syria, Tunisia, Turkey, United Arab Republic, United States of America, Yugoslavia.

This amendment was therefore rejected, 28 votes being cast in favour and 28 against, with 46 abstentions.

(iii) DECISION

112. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended to the Conference an article 62*ter* in the form proposed in the amendment by *Ceylon* (A/CONF.39/C.1/L.395).

ARTICLE 62quater

113. At its 92nd meeting, on 17 April 1969, the Committee of the Whole decided, without objection, to discuss together articles 62*bis*, 62*ter* and 62*quater* and certain aspects of article 76 (see para. 95 above). However, as none of the amendments proposing the addition of these new articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. Proposed new article

114. An amendment proposing the addition of a new article 62*quater* was submitted at the second session of the Conference by *Switzerland* (A/CONF.39/C.1/L.393/Corr.1) (see para. 96 above).

115. This amendment was to the following effect:

Insert a new article 62*quater* reading as follows:

Nothing in article 62*bis* shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

[Adopted, see para. 117 below]

B. Proceedings of the Committee of the Whole

(i) MEETINGS

116. The Committee of the Whole initially discussed the proposed new article 62*quater* at its 92nd to 99th meetings, between 17 and 22 April 1969, in conjunction with its consideration of articles 62*bis*, 62*ter* and certain aspects of article 76 (see para. 106 above). At its 105th meeting, on 25 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

117. At the 99th meeting of the Committee of the Whole, a vote was taken on the amendment by *Switzerland* (A/CONF.39/C.1/L.393/Corr.1).

A roll-call vote was requested. The results of the voting were as follows:

In favour: Argentina, Australia, Austria, Barbados, Belgium, Brazil, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Denmark, Federal Republic of Germany, Finland, France, Guatemala, Guyana, Holy See, Honduras, Ireland, Israel, Italy, Japan, Lebanon, Liechtenstein, Luxembourg, Mauritius, Mexico, Monaco, New Zealand, Norway, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, South Africa, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Algeria, Bolivia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Ecuador, Hungary, India, Indonesia, Malaysia, Mongolia, Poland, Romania, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania.

Abstentions: Afghanistan, Cambodia, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, El Salvador, Ethiopia, Gabon, Ghana, Greece, Iran, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Libya, Madagascar, Netherlands, Nigeria, Pakistan, Panama, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sudan, Tunisia, Uganda, Venezuela, Yugoslavia, Zambia.

This amendment was therefore adopted by 45 votes to 21, with 36 abstentions.

118. Also at its 99th meeting, the Committee of the Whole agreed, without objection, to refer article 62*quater*, as adopted, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

119. At the 105th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 62*bis* adopted by the Drafting Committee and incorporating as paragraph 2 article 62*quater*. The Committee of the Whole adopted this text without formal vote. [16]

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

120. The text recommended by the Committee of the Whole to the Conference for adoption, which incorporates article 62*quater*, will be found under article 62*bis* (see para. 105 above).

ARTICLE 66

A. International Law Commission text

121. The International Law Commission text provided as follows:

Article 66.—Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:

(*a*) Releases the parties from any obligation further to perform the treaty;

(*b*) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

B. Amendments

122. Only one amendment, by *France* (A/CONF.39/C.1/L.49), was submitted to article 66 at the first session

[16] *Ibid.*

of the Conference. As recorded in A/CONF.39/14, paragraph 616, the Committee decided at the first session to defer this amendment for consideration at the second session.

123. The amendment was to the following effect:

In ... paragraph 2, after the words "multilateral treaty ", insert the words "other than a restricted multilateral treaty".

[Withdrawn, see para. 125 below]

C. Proceedings of the Committee of the Whole

(i) Meetings

124. The Committee of the Whole resumed the discussion of article 66, as deferred from the first session of the Conference, at its 86th meeting, on 11 April 1969. At its 99th meeting, on 22 April 1969, the Committee considered the report of the Drafting Committee on this article.

(ii) Resumed consideration

125. At the 84th meeting, in connexion with the Committee's consideration of article 8, the amendment by *France* (A/CONF.39/C.1/L.49) to article 66 was withdrawn (see para. 38 above).

126. In view of the withdrawal of this amendment, the Committee of the Whole, at its 86th meeting, adopted article 66 in principle, without objection, subject to its review by the Drafting Committee in the light of the decision of the Committee of the Whole at its first session to refer the article to the Drafting Committee (see A/CONF.39/14, para. 615).

(iii) Consideration of the report of the Drafting Committee

127. At the 99th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 66 adopted by the Drafting Committee (A/CONF.39/C.1/16; for text, see para. 128 below). The Committee of the Whole adopted this text without formal vote. [17]

(iv) Text adopted by the Committee of the Whole

128. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 66:

Article 66

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

[17] *Ibid.*

Chapter III

CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF PROPOSED FINAL CLAUSES FOR THE DRAFT CONVENTION ON THE LAW OF TREATIES

ARTICLE 76

129. At its 92nd meeting, on 17 April 1969, the Committee of the Whole agreed that certain aspects of article 76 should be taken up in conjunction with article 62*bis* (see para. 95 above). Article 76 was further discussed by the Committee of the Whole in connexion with the final clauses of the draft convention on the law of treaties.

A. Proposed new article

130. As recorded in A/CONF.39/14, paragraph 691, the Committee decided at the first session to defer for consideration at the second session the proposed new article 76 submitted by Switzerland (A/CONF.39/C.1/L.250). At the second session of the Conference, a proposed new article 76 was submitted by Spain (A/CONF.39/C.1/L.392).

131. These proposed new articles were to the following effect:

(a) *Switzerland* (A/CONF.39/C.1/L.250):

After article 75 of the draft, add a new article 76 reading as follows:

1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

[Rejected, see para. 134 below]

(b) *Spain* (A/CONF.39/C.1/L.392):

After article 75 add a new article 76 reading as follows:

Disputes on the interpretation or application of the Convention, other than the disputes referred to in article 62, which have not been submitted by the parties to a different method of settlement, may be submitted by any of them, through the Secretary-General

of the United Nations, to the procedure envisaged in the annex to the present Convention.

(The annex to which the text refers is that appearing in document A/CONF.39/C.1/L.391 in connexion with a new article 62*bis* proposed by Spain (see para. 98(*e*) above).)

[Withdrawn, see para. 133 below]

B. Proceedings of the Committee of the Whole

(i) Meetings

132. The Committee of the Whole initially discussed article 76, as deferred from the first session of the Conference, at its 92nd to 99th meetings, between 17 and 22 April 1969. At the same time, it took up the discussion of article 62*bis*, as deferred from the first session, and of articles 62*ter* and 62*quater*, as proposed at the second session. Article 76 was further discussed by the Committee of the Whole in conjunction with the Final Clauses, at its 100th to 105th meetings, between 23 and 25 April 1969.

(ii) Consideration

133. At the 100th meeting of the Committee of the Whole, it was announced that the proposed new article 76 submitted by *Spain* (A/CONF.39/C.1/L.392) had been withdrawn.

134. At its 104th meeting, the Committee of the Whole voted upon article 76 as proposed by *Switzerland* (A/CONF.39/C.1/L.250). A roll-call vote was requested. The results of the voting were as follows:

In favour: Australia, Austria, Barbados, Belgium, Cambodia, Canada, Chile, China, Colombia, Denmark, Dominican Republic, El Salvador, Federal Republic of Germany, Finland, France, Guyana, Holy See, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, Pakistan, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, Uruguay.

Against: Afghanistan, Algeria, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Ghana, Hungary, India, Indonesia, Iran, Iraq, Israel, Jamaica, Kenya, Kuwait, Libya, Madagascar, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Nigeria, Panama, Poland, Romania, Saudi Arabia, Sierra Leone, South Africa, Sudan, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela.

Abstentions: Argentina, Ceylon, Costa Rica, Gabon, Greece, Guatemala, Honduras, Ivory Coast, Lebanon, Liberia, Netherlands, Senegal, Singapore, Spain, Trinidad and Tobago, Tunisia, Uganda, United States of America, Yugoslavia, Zambia.

The proposed new article was therefore rejected by 48 votes to 37, with 20 abstentions.

(iii) Decision

135. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended to the Conference an article 76 in the form proposed by *Switzerland* (A/CONF.39/C.1/L.250).

ARTICLE 77

A. Proposed new article

136. At the second session of the Conference, proposals for the addition of a new article 77, as part of the final clauses, were submitted by Brazil, Chile, Kenya, Sweden and Tunisia (A/CONF.39/C.1/L.400) and Venezuela (A/CONF.39/C.1/L.399). Amendments to the first of these proposals were submitted by Iran (A/CONF.39/C.1/L.402) and Spain (A/CONF.39/C.1/L.401). Subsequently, a further proposal was submitted by Brazil, Chile, Kenya, Iran, Sweden, Tunisia and Venezuela (A/CONF.39/C.1/L.403).

137. These proposals and amendments were to the following effect:

(a) *Venezuela* (A/CONF.39/C.1/L.399):

Article 77.—Application of the Convention

The provisions of the present Convention shall apply only to treaties concluded in the future.

[Withdrawn, see para. 139 below]

(b) *Brazil, Chile, Kenya, Sweden* and *Tunisia* (A/CONF.39/C.1/L.400):

New article 77

Without prejudice to the application of the rules of customary international Law codified in the present Convention, the Convention will apply only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

[Withdrawn, see para. 139 below]

(c) *Spain* (A/CONF.39/C.1/L.401): amendment to the proposal by *Brazil, Chile, Kenya, Sweden* and *Tunisia* (A/CONF.39/C.1/L.400):

Replace the opening portion of the proposed new article, up to and including the words "in the present Convention", by the following wording:

Without prejudice to the application of the principles and rules of international law set forth in the present Convention.

[Not voted upon, see para. 139 below]

(d) *Iran* (A/CONF.39/C.1/L.402): amendment to the proposal by *Brazil, Chile, Kenya, Sweden* and *Tunisia* (A/CONF.39/C.1/L.400):

Insert after the words "in the present Convention" the following words "and the provisions as generally declaratory of established principles of international law".

[Withdrawn, see para. 139 below]

(e) *Brazil, Chile, Iran, Kenya, Sweden, Tunisia* and *Venezuela* (A/CONF.39/C.1/L.403):

New article 77

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject, in accordance with international law, independently of the Convention, the Convention will apply only to treaties which are concluded by

States after the entry into force of the present Convention with regard to such States.

[Adopted, see para. 140 below]

B. Proceedings of the Committee of the Whole

(i) Meetings

138. The Committee of the Whole discussed proposed new article 77, together with other final clauses, at its 100th to 105th meetings, between 23 and 25 April 1969.

(ii) Consideration

139. At the 103rd meeting of the Committee of the Whole, the proposals for a new article 77 by *Brazil, Chile, Kenya, Sweden* and *Tunisia* (A/CONF.39/C.1/L.400), and *Venezuela* (A/CONF.39/C.1/L.399) were withdrawn. The amendment by *Iran* (A/CONF.39/C.1/L.402) to the first of those proposals was also withdrawn. By virtue of the withdrawal of the proposal by *Brazil, Chile, Kenya, Sweden* and *Tunisia* (A/CONF.39/C.1/L.400), the amendment to that proposal by *Spain* (A/CONF.39/C.1/L.401) was disposed of.

140. At the 104th meeting of the Committee of the Whole, *Ecuador* proposed that the vote on new article 77 be postponed until 28 April 1969. This motion was rejected by 53 votes to 17, with 32 abstentions. The proposal by *Brazil, Chile, Iran, Kenya, Sweden, Tunisia* and *Venezuela* (A/CONF.39/C.1/L.403) was then put to the vote. A roll-call vote was requested. The results of the voting were as follows:

In favour: Argentina, Australia, Austria, Barbados, Belgium, Brazil, Canada, Central African Republic, Ceylon, Chile, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guyana, Holy See, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Libya, Liechtenstein, Luxembourg, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Sudan, Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela.

Against: Algeria, Bolivia, Congo (Democratic Republic of), Cuba, Ecuador.

Abstentions: Afghanistan, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Congo (Brazzaville), Cyprus, El Salvador, Ethiopia, Ghana, Guatemala, Honduras, Hungary, Indonesia, Madagascar, Malaysia, Mongolia, Morocco, Pakistan, Poland, Sierra Leone, Spain, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Zambia.

This proposal was therefore adopted by 71 votes to 5, with 29 abstentions.

141. At its 105th meeting, the Committee of the Whole decided, without objection, to refer article 77, as adopted, to the Drafting Committee with the request that the Drafting Committee report directly to the Conference on the article.

(iii) Text adopted by the Committee of the Whole

142. On the basis of the foregoing, and subject to its review by the Drafting Committee (see para. 141 above), the Committee of the Whole recommends to the Conference for adoption the following text of article 77:

Article 77

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject, in accordance with international law, independently of the Convention, the Convention will apply only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

GENERAL PROVISIONS REGARDING THE FINAL CLAUSES

A. Proposals and amendments

143. Proposals of a general character for the final clauses of the draft convention on the law of treaties were submitted to the Committee of the Whole at the second session of the Conference by Brazil and the United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.386/Rev.1),[18] and by Hungary, Poland, Romania and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.389 and Corr.1). Amendments to the first of these proposals were submitted by Ghana and India (A/CONF.39/C.1/L.394) and Switzerland (A/CONF.39/C.1/L.396).

144. These proposals and amendments were to the following effect:

(a) *Brazil* and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1):[19]

Article A: Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970 at United Nations Headquarters, New York.

Article B: Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

---

[18] Original sponsor Brazil (A/CONF.39/C.1/L.386), co-sponsor United Kingdom of Great Britain and Northern Ireland (Rev.1).

[19] In the original version of this amendment (A/CONF.39/C.1/L.386), the following were left blank: in Article A the dates until which the Convention remained open for signature; in Article D the number of instruments of ratification or accession required to bring the Convention into force, and in Article E the date upon which the Convention was done. In addition, in the original version, Article E was numbered Article F, and the following Article E, entitled "Notifications and other depositary functions" appeared: "The Secretary-General of the United Nations shall perform the functions laid down in the Convention, in particular in articles 71 and 72."

Article C: Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article A. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article D: Entry into Force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the forty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the forty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such States of its instrument of ratification or accession.

Article E: Authentic texts

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this twenty-fourth day of May, One thousand nine hundred and sixty-nine.

[Adopted, see para. 147(*c*) below, on the understanding recorded in that paragraph]

(b) *Ghana* and *India* (A/CONF.39/C.1/L.394): amendment to the proposal by *Brazil* and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1):

I

Article A: Signature

1. Number the existing paragraph as paragraph 1.

2. In the first line, after the word "by" insert a colon and insert the remainder of the paragraph, subject to 3 below, as sub-paragraph (*a*).

3. Delete the words "as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York."

4. Insert a new sub-paragraph (*b*) reading as follows:

"or

"(*b*) Parties to one or both of the following treaties:

"(i) Treaty banning nuclear weapon tests in the atmosphere, in outer space, and under water;

"(ii) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies;"

5. After sub-paragraph (*b*) of Article A, insert the following as the remainder of paragraph 1:

until 30 April 1970 at the Federal Ministry for Foreign Affairs of the Republic of Austria. The Government of Austria, hereafter called the "Initial Depositary", shall promptly inform the Secretary-General of the United Nations of each signature and of the date thereof.

6. Insert the following paragraph 2:

"2. On 1 May 1970, the Initial Depositary shall transmit the signed original of the Convention by the speediest means for final deposit to the Secretary-General of the United Nations. The Secretary-General of the United Nations is hereby designated as the Final Depositary, and shall be the depositary for the purpose of articles 72, 73, 74 and 75 of this Convention."

II

With the above changes, Article A would read as follows:

"*Article A: Signature*

"1. The present Convention shall be open for signature by:

"(*a*) All States Members of the United Nations or any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention or

"(*b*) Parties to one or more of the following treaties:

(i) Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water;

(ii) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies;

until 30 April 1970 at the Federal Ministry for Foreign Affairs of the Republic of Austria. The Government of Austria, hereinafter called the "Initial Depositary", shall promptly inform the Secretary-General of the United Nations of each signature and of the date thereof.

"2. On 1 May 1970, the Initial Depositary shall transmit the signed original of the Convention by the speediest means for final deposit to the Secretary-General of the United Nations. The Secretary-General of the United Nations is hereby designated as the Final Depositary, and shall be the depositary for the purpose of articles 72, 73, 74 and 75 of this Convention."

III

The remaining final clauses in document A/CONF.39/C.1/L.386/Rev.1 should be revised to accord with the foregoing text of Article A as follows:

"*Article B: Ratification and Accession*

"1. This Convention is subject to ratification. It shall remain open for accession by all the categories mentioned in paragraph 1 of Article A.

"2. Instruments of ratification and accession shall be deposited, in the first instance, with the Initial Depositary.

"3. On receipt of an instrument of ratification or accession, the Initial Depositary shall promptly transmit it to the Final Depositary, who shall receive in deposit any instrument so transmitted to him.

"4. Any notification relating to this Convention shall be adressed in the first instance to the Initial Depositary, which shall promptly transmit it to the Final Depositary.

"*Article C: Entry into Force*

"1. The present Convention shall enter into force on the thirtieth day following the date of receipt of the thirty-fifth instrument of ratification or accession in deposit by the Final Depositary from the Initial Depositary, through the procedure provided in paragraph 3 of Article B.

"2. For each Contracting Party ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit with the Final Depositary of its instrument of ratification or accession, through the procedure provided in paragraph 3 of article B.

"*Article D: Notifications and other Depositary Functions*

"The Final Depositary shall inform all signatories and Contracting Parties:

"(*a*) of the date of each signature as notified to him pursuant to paragraph 1 of Article A,

"(*b*) of the date of deposit with him of each instrument of ratification of and accession pursuant to paragraph 3 of Article B, and

"(*c*) of the date of entry into force of the Convention pursuant to paragraph 1 of Article C, and

"(*d*) of the date of receipt by him from an Initial Depositary and of the contents of any relevant notification.

"*Article E: Authentic texts*

"The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

"Done at Vienna, this twenty-fourth day of May, One thousand nine hundred and sixty-nine."

[Rejected, see para. 147(*b*) below]

(c) *Switzerland* (A/CONF.39/C.1/L.396): amendment to the proposal by *Brazil* and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1):

In Article D, paragraphs 1 and 2, replace the words "the forty-fifth instrument" by the words "the sixtieth instrument".

[Withdrawn, see para. 146 below]

(d) *Hungary, Poland, Romania* and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.389 and Corr.1):

Article A

The present Convention shall be open for signature by all States, until ..... at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until ..... at United Nations Headquarters, New York.

Article B

The present Convention is subject to ratification by signatories. It shall remain open for accession by any non-signatory State. The instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article C

1. The present Convention shall enter into force on the ..... day following the date of deposit of the ..... instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the ..... instrument of ratification or accession, the Convention shall enter into force on the ..... day after deposit by such State of its instrument of ratification or accession.

Article D

The Secretary-General of the United Nations shall perform the functions of Depositary of the Convention.

Article E

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic shall be deposited in the archives of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorized, have signed the present Convention.

Done, at Vienna, this ..... day of May, One thousand nine hundred and sixty-nine.

[Rejected, see para. 147(*a*) below]

B. Proceedings of the Committee of the Whole

(i) MEETINGS

145. The Committee of the Whole discussed the general provisions regarding final clauses, together with proposed new articles 76 and 77, at its 100th to 105th meetings, between 23 and 25 April 1969.

(ii) CONSIDERATION

146. At the 104th meeting of the Committee of the Whole, the amendment by *Switzerland* (A/CONF.39/C.1/L.396) to the proposal by *Brazil* and the *United Kingdom of Great Britain* and *Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1) was withdrawn.

147. Also at its 104th meeting, the Committee of the Whole voted upon the remaining amendment and proposals before it. There being no objection to a request for priority, the proposal by *Hungary, Poland, Romania* and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.389 and Corr.1) was put to the vote first. It was decided, after a procedural discussion, that the proposal by *Brazil* and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1) should be put to the vote, omitting the words "forty-fifth" appearing in paragraphs 1 and 2 of Article D of that proposal, it being left for the plenary Conference to determine the appropriate number of instruments of ratification or accession required to bring the Convention into force. Roll-call votes were requested on the amendment and the two proposals.

(*a*) The results of the roll-call vote on the proposal by *Hungary, Poland, Romania* and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.389 and Corr.1) were as follows:

In favour: Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroon, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, Ghana, Hungary, India, Indonesia, Iraq, Mexico, Mongolia, Pakistan, Poland, Romania, Sierra Leone, South Africa, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia, Zambia.

Against: Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Holy See, Honduras, Ireland, Israel, Italy, Ivory Coast, Japan, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Monaco, Netherlands, New Zealand, Nigeria, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Abstentions: Congo (Democratic Republic of), Cyprus, El Salvador, Ethiopia, Guyana, Iran, Jamaica, Kenya, Kuwait, Lebanon, Libya, Mauritius, Morocco, Saudi Arabia, Singapore, Trinidad and Tobago, Uganda.

This proposal was therefore rejected by 56 votes to 32, with 17 abstentions.

(*b*) The results of the roll-call vote on the amendment by *Ghana* and *India* (A/CONF.39/C.1/L.394) to the proposal by *Brazil* and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1) were as follows:

In favour: Afghanistan, Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cuba, Czechoslovakia, Ecuador, El Salvador, Ghana, Hungary, India, Indonesia, Iraq, Kenya, Mongolia, Morocco, Nigeria, Pakistan, Poland, Romania, Saudi Arabia,

Sierra Leone, Sudan, Syria, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Against: Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Central African Republic, China, Colombia, Costa Rica, Denmark, Dominican Republic, Federal Republic of Germany, France, Gabon, Greece, Guatemala, Holy See, Honduras, Ireland, Israel, Italy, Ivory Coast, Japan, Liberia, Liechtenstein, Luxembourg, Malaysia, Monaco, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Abstentions: Austria, Barbados, Cameroon, Ceylon, Chile, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Ethiopia, Finland, Guyana, Iran, Jamaica, Kuwait, Lebanon, Libya, Madagascar, Mauritius, Mexico, Singapore, South Africa, Sweden, Switzerland, Trinidad and Tobago, Zambia.

The amendment was therefore rejected by 48 votes to 32, with 25 abstentions.

(*c*) The results of the roll-call vote on the proposal by *Brazil* and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.386/Rev.1), in the form in which it was put to the vote, were as follows:

In favour: Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Brazil, Canada, Central African Republic, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Holy See, Honduras, Iran, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Lebanon, Liberia, Liechtenstein, Luxembourg, Madagascar, Malaysia, Mauritius, Monaco, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Against: Algeria, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, El Salvador, Ghana, Hungary, India, Iraq, Mexico, Mongolia, Nigeria, Panama, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Zambia.

Abstentions: Afghanistan, Cambodia, Cameroon, Congo (Democratic Republic of), Cyprus, Ethiopia, Indonesia, Kenya, Kuwait, Libya, Morocco, Saudi Arabia, Sierra Leone, Singapore, South Africa, Sudan, Trinidad and Tobago, Uganda, United Republic of Tanzania.

This proposal was therefore adopted, on the understanding recorded earlier in this paragraph, by 60 votes to 26, with 19 abstentions.

148. At its 105th meeting, the Committee of the Whole decided, without objection, to refer the general provisions regarding final clauses, as adopted, to the Drafting Committee, with the request that the Drafting Committee report directly to the Conference on these clauses.

(iii) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

149. On the basis of the foregoing, and subject to their review by the Drafting Committee (see para. 148 above), the Committee of the Whole recommends to the Conference for adoption the following general provisions regarding final clauses:

Article A: Signature

The present Convention shall he open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article B: Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article C: Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article A. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article D: Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the ..... instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the ..... instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such States of its instrument of ratification or accession.

Article E: Authentic texts

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this twenty-fourth day of May, One thousand nine hundred and sixty-nine.

CHAPTER IV

TEXT OF THE REMAINING ARTICLES ON THE LAW OF TREATIES AND OF THE FINAL CLAUSES ADOPTED BY THE COMMITTEE OF THE WHOLE AT THE SECOND SESSION OF THE CONFERENCE

Article 2
[Use of terms]

1. For the purposes of the present Convention:

(*a*) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "ratification", "acceptance", "approval", and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*c*) "full powers" means a document emanating from the competent authority of a State designating a person to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(*d*) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*e*) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(*f*) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*g*) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*h*) "third State" means a State not a party to the treaty;

(*i*) "international organization" means an intergovernmental organization.

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

Article 8
[Adoption of the text]

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

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

Article 12
[Consent to be bound by a treaty expressed by accession]

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

(*a*) the treaty provides that such consent may be expressed by that State by means of accession;

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

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

Article 17
[Acceptance of and objection to reservations]

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

2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

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

4. In cases not falling under the preceding paragraphs of this article and unless the treaty otherwise provides:

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

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

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

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

Article 26
[Application of successive treaties relating to the same subject-matter]

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

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

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

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

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

(*b*) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

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

Article 36

[*Amendment of multilateral treaties*]

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

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

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

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

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

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

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

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

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

Article 37

[*Agreements to modify multilateral treaties between certain of the parties only*]

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

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

(*b*) the modification in question is not prohibited by the treaty and:

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

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

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

Article 55

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

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(*a*) the possibility of such a suspension is provided for by the treaty; or

(*b*) the suspension in question is not prohibited by the treaty and:

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

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

*Article 62*bis

1. If, under paragraph 3 of article 62, the parties have been unable to agree upon a means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon some means of settlement other than judicial settlement or arbitration and that means of settlement has not led to a solution accepted by the parties within the twelve months following such agreement, any one of the parties may set in motion the procedures specified in Annex I to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations.

2. Nothing in the foregoing paragraph shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

Annex I

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the persons so nominated shall constitute the list. The nomination of a conciliator, including any conciliator nominated to fill a casual vacancy, shall be for a period of five years which may be renewed. A conciliator whose nomination expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 62*bis*, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows.

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, chosen either from the list referred to in paragraph 1 above or from outside that list;

(*b*) one conciliator not of the nationality of that State or of one of those States, chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within the period of sixty days following the date on which the Secretary-General received the request.

The four conciliators shall, within the period of sixty days following the date of the last of their own appointments, appoint as chairman a fifth member chosen from the list.

If the appointment of the chairman or of any of the other conciliators has not been made within the period required above for that appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period.

Any of the periods within which appointments must be made may be extended by agreement between all the parties to the dispute.

Any vacancy shall be filled in the manner specified for the initial appointment.

3. The Commission thus constituted shall establish the facts and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

4. The Commission may draw the attention of the parties to the dispute to any measures likely to facilitate an amicable settlement. The Commission shall be required to report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

5. If the conciliation procedure has not led to a settlement of the dispute within six months of the date of deposit of the Commission's report, and if the parties have not agreed on a means of judicial settlement or to an extension of the above-mentioned period, any one of the parties to the dispute may request the Secretary-General to submit the dispute to arbitration.

6. The Secretary-General shall bring the dispute before an arbitral tribunal consisting of three members. One arbitrator shall be appointed by the State or States constituting one of the parties to the dispute. The State or States constituting the other party to the dispute shall appoint an arbitrator in the same way. The third member, who shall act as chairman, shall be appointed by the other two members; he shall not be a national of any of the States parties to the dispute.

The arbitrators shall be appointed within a period of sixty days from the date when the Secretary-General received the request.

The chairman shall be appointed within a period of sixty days from the appointment of the two arbitrators.

If the chairman or any one of the arbitrators has not been appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations within sixty days after the expiry of the period applicable.

Any vacancy shall be filled in the manner specified for the initial appointment.

7. The arbitral tribunal shall decide its own procedure. The tribunal, with the consent of the parties to the dispute, may invite any party to the treaty to submit its views orally or in writing. Decisions of the arbitral tribunal shall be taken by a majority vote. Its award shall be binding and definitive.

8. The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

Article 66

[*Consequences of the termination of a treaty*]

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 77

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject, in accordance with international law, independently of the Convention, the Convention will apply only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article A: Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article B: Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article C: Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article A. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article D: Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the ..... instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the ..... instrument of rati-

fication or accession, the Convention shall enter into force on the thirtieth day after deposit by such States of its instrument of ratification or accession.

Article E: Authentic texts

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at Vienna, this twenty-fourth day of May, One thousand nine hundred and sixty-nine.

ANNEX

Check list of documentation submitted during the second session of the Conference to the Committee of the Whole by States participating in the Conference

[In the chronological list which follows, the reference under the heading "Para." is to the paragraph or paragraphs of this report in which the text of the document may be found.]

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.25/Rev.1	Ecuador	2	20(i)(*a*)
A/CONF.39/C.1/L.352/Rev.3 and Corr.1 and Add.1 and 2	Austria, Bolivia, Central African Republic, Colombia, Costa Rica, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Malta, Mauritius, Netherlands, Peru, Sweden, Tunisia and Uganda	62*bis*	98(*b*)
A/CONF.39/C.1/L.370/Rev.1/ Vol.1 (and Corr.1) and A/CONF.39/C.1/L.370/Rev.1/ Vol. II (and Corr.1)	[Draft report of the Committee of the Whole on its work at the first session of the Conference]		
A/CONF.39/C.1/L.379	Austria	8	36(i)(*b*)
A/CONF.39/C.1/L.380	Australia	8	36(ii)(*f*)
A/CONF.39/C.1/L.381	Belgium	2	20(iii)
A/CONF.39/C.1/L.382	Hungary	2	20(v)
A/CONF.39/C.1/L.383	Austria	2	20(iv)
A/CONF.39/C.1/L.384 and Corr.1	Switzerland	2	20(i)(*b*)
A/CONF.39/C.1/L.385	Syria	2	20(ii)(*b*)
A/CONF.39/C.1/L.386/Rev.1	Brazil and United Kingdom of Great Britain and Northern Ireland	Final Clauses (general provisions)	144(*a*)
A/CONF.39/C.1/L.387	Thailand	62*ter*	108(*a*)
A/CONF.39/C.1/L.388 and Add.1	Algeria, Ceylon, Hungary, India, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia	5*bis*	28(*b*)
A/CONF.39/C.1/L.389 and Corr.1	Hungary, Poland, Romania and Union of Soviet Socialist Republics	Final Clauses (general provisions)	144(*d*)
A/CONF.39/C.1/L.390 and Add.1 to 13	[Draft report of the Committee of the Whole on its work at the second session of the Conference]		
A/CONF.39/C.1/L.391	Spain	62*bis*	98(*e*)
A/CONF.39/C.1/L.392	Spain	76	131(*b*)
A/CONF.39/C.1/L.393 and Corr.1	Switzerland	62*quater*	115
A/CONF.39/C.1/L.394	Ghana and India	Final Clauses (general provisions)	144(*b*)
A/CONF.39/C.1/L.395	Ceylon	62*ter*	108(*b*)

Symbol	*Sponsors*	*Article*	*Para.*
A/CONF.39/C.1/L.396	Switzerland	Final Clauses (general provisions)	144(*c*)
A/CONF.39/C.1/L.397/Corr.1	Luxembourg	62*ter*	108(*c*)
A/CONF.39/C.1/L.398	India, Indonesia, United Republic of Tanzania and Yugoslavia	62*bis*	98(*c*)
A/CONF.39/C.1/L.399	Venezuela	Final Clauses (77)	137(*a*)
A/CONF.39/C.1/L.400	Brazil, Chile, Kenya, Sweden and Tunisia	Final Clauses (77)	137(*b*)
A/CONF.39/C.1/L.401	Spain	Final Clauses (77)	137(*c*)
A/CONF.39/C.1/L.402	Iran	Final Clauses (77)	137(*d*)
A/CONF.39/C.1/L.403	Brazil, Chile, Iran, Kenya, Sweden, Tunisia and Venezuela	Final Clauses (77)	137(*e*)

Blank page

Page blanche

D.—PROPOSALS FOR A PREAMBLE SUBMITTED TO THE DRAFTING COMMITTEE

DOCUMENT A/CONF.39/L.4

Mongolia and Romania: proposal submitted to the Drafting Committee for the preparation of a preamble to the Convention on the Law of Treaties

[*Original: French*]
[*14 April 1969*]

The States Parties to the present Convention,

Recalling that from ancient times relations have been established between peoples and States by the conclusion of treaties in the most diverse spheres of international life,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security, the promotion of friendly relations among nations, the sovereign equality of States and respect for the obligations deriving from treaties and other sources of international law,

Considering that the conclusion of instruments based on the free will and good faith of the parties is a prerequisite for the development of international co-operation,

Reaffirming that the *pacta sunt servanda* rule is one of the foundations of the stability of international treaty relations,

Believing that the codification of the law of treaties by an international convention would contribute to the development of friendly relations and co-operation among all States, whatever their constitutional and social systems, on the basis of respect for the right of peoples to self-determination, for national sovereignty and independence, for equality of rights and for non-interference in the domestic affairs of other States,

Resolved to make international law a more effective means for the maintenance of peace, the peaceful settlement of international disputes and the rule of justice among peoples.

Recognizing that every State, in conformity with the principle of the sovereign equality of States, has the right to participate in the conclusion of international treaties,

Affirming that the rules of customary international law will continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows.

DOCUMENT A/CONF.39/L.5 *

Switzerland: proposal submitted to the Drafting Committee for the preparation of a preamble to the Convention on the Law of Treaties

[*Original: French*]
[*18 April 1969*]

The States Parties to the present Convention,

Recalling that from ancient times the conclusion of treaties in the most diverse spheres of international life has been a means for developing co-operation among peoples and States,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security, the promotion of friendly relations among nations, the sovereign equality of States and respect for the obligations deriving from treaties and other sources of international law,

Considering the importance of treaties, whether bilateral or multilateral, as instruments for achieving those purposes,

Reaffirming that the *pacta sunt servanda* rule is one of the foundations of the stability of international treaty relations,

Stressing the need to respect the principle of good faith in every aspect of treaty relations between States,

Convinced that the codification of the law of treaties by an international convention must strengthen friendly relations and co-operation among all States, whatever their constitutional and social systems, on the basis of respect for national sovereignty and independence, for equality of rights and for non-interference in the domestic and foreign affairs of other States,

Resolved to make international law a more effective means for the maintenance of peace, the peaceful settlement of international disputes and the rule of justice among peoples,

Affirming that the rules of customary international law will continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows.

* Incorporating A/CONF.39/L.5/Corr.1.

Blank page

Page blanche

E.—PROPOSALS AND AMENDMENTS SUBMITTED TO THE PLENARY CONFERENCE [1]

DOCUMENT A/CONF.39/L.3

Union of Soviet Socialist Republics: amendment to article 17 [2]

[*Original: Russian*]
[*9 April 1969*]

EXPLANATORY MEMORANDUM ON THE QUESTION OF RESERVATIONS TO MULTILATERAL TREATIES

At the second session of the United Nations Conference on the Law of Treaties, the problem of reservations to multilateral treaties will have an important place. At its first session, the Conference did not succeed in finding a solution to this problem which would reflect an international treaty practice duly consonant with the interests of developing co-operation among all States.

The provisions provisionally adopted by the Drafting Committee at the first session for article 17 of the draft convention on the law of international treaties are unwarranted and out of keeping with the task of the codification and progressive development of the law of treaties.

The article is based on the erroneous idea that a reservation made to an international treaty by one of the parties to that treaty requires "acceptance" by the other parties to the treaty. This idea finds no confirmation in contemporary international law.

The formulation of a reservation is an act of State sovereignty and does not require acceptance by other States. When the right to formulate a reservation is exercised, all that is required is that the reservation should not conflict with the object and purpose of the treaty. The right of reservation makes it possible for States to become parties to a treaty when they accept the basic provisions, object and purpose of the treaty but, for various reasons, cannot agree to individual, often secondary, provisions of that treaty. In the same way, the right of reservation helps to widen the circle of participants in the treaty, and this in its turn leads to wider application of the treaty. This is precisely the conclusion reached, in particular, by the International Court of Justice in its advisory opinion of 28 May 1951 on the question of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. [3]

Alongside the right of States to make reservations, there exists in equal measure the sovereign right of States to raise objections to the reservations made by other States. However, a question arises concerning the legal consequences of objections to the reservations formulated. Unfortunately this important question was not properly settled in article 17, paragraph 4, sub-paragraph (*b*), of the draft convention on the law of treaties provisionally adopted by the Drafting Committee at the first session of the Conference. This sub-paragraph provides that:

> "an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State".

However, the International Court of Justice, in its advisory opinion of 28 May 1951, came to the conclusion that, if a party to the Convention objects to a reservation, "*it can in fact consider* that the reserving State is not a party to the Convention". [4] The Court thus confirmed the principle that the fact of objection to a reservation does not signify that an international treaty automatically ceases to be in force in relations between the reserving State and the State objecting to the reservation. Consequently the objecting State, and that State alone, guided by the specific circumstances of each case, takes the decision concerning the legal consequences of its objection to the reservation.

The Secretary-General of the United Nations, as depositary of a great many multilateral conventions, is guided in his practice by the aforementioned conclusion of the International Court of Justice and by the General Assembly resolution 598 (VI) of 12 January 1952. When reservations are made and objections are raised to them, the question whether the convention is in force between the States concerned in a form modified by the reservation or is not in force at all is decided by the objecting State.

In their treaty practice, as a rule, States *in fact consider* that the silence of a State with regard to the legal consequences of its objection to a reservation presupposes consent to the retention of the treaty in force in relations with the reserving State (with the exception of those provisions of the treaty to which the reservation is made). For example, the Federal Republic of Germany objected to the Soviet Union reservation to the Vienna Convention on Diplomatic Relations of 1961. Nevertheless, both the Federal Republic of Germany and the USSR take it for granted that the Convention is in force in relations between them. Such examples could be taken from the treaty practice of other countries as well. In the few cases where a State objecting to a reservation does not consider itself bound by an agreement with the reserving State, it makes a direct communication to that effect.

This practice has helped to increase the number of States bound to one another by a multilateral treaty and,

[1] The texts of proposals and amendments submitted in the Committee of the Whole will be found in the reports of that Committee (A/CONF.39/14 and A/CONF.39/15) under the article concerned.

[2] For the text of article 17 to which this amendment refers, see A/CONF.39/11/Add.1, 10th plenary meeting.

[3] *I.C.J. Reports 1951*, p. 15.

[4] *Ibid.*, p. 29.

consequently, to further the cause of the universal application of a treaty and the consolidation of international co-operation. In contrast, the application of article 17, paragraph 4, sub-paragraph (*b*), in the form proposed by the Drafting Committee at the first session of the Conference may lead to a completely anomalous situation in which, by virtue of the mere fact of objection to a reservation, the objecting State may, against its real intentions, find that it is not bound by a treaty with the reserving State.

The solution provisionally adopted at the first session of the Conference with regard to the legal consequences of objections to reservations marks a departure from international practice. That solution is not progressive development of the law of international treaties, but a patent step backward, a retrogression. It will not only hamper any increase in the number of States bound to one another by future multilateral treaties, but may cast doubt on relations under treaties already in force.

The provisions of article 17, paragraphs 4 and 5 as a whole, in the form in which they were provisionally adopted at the first session of the Conference, if finally approved, may lead to chaos in the practical application of multilateral treaties, which are now assigned such an important role in the development of international relations.

On the basis of the foregoing considerations, the USSR delegation feels bound to propose that article 17, paragraph 4, sub-paragraph (*b*), should be amended to read as follows:

"an objection by another contracting State to a reservation does *not* preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is *definitely* expressed by the objecting State".

DOCUMENT A/CONF.39/L.6

Brazil, Guyana and Liechtenstein: proposal concerning the custody of the Final Act

[*Original: English*]
[*25 April 1969*]

That the original of the Final Act be deposited in the archives of the Federal Ministry of Foreign Affairs of the Republic of Austria.

DOCUMENT A/CONF.39/L.7

Ghana: amendment to article 6 [5]

[*Original: English*]
[*28 April 1969*]

Redraft paragraph 1(*b*) to read:

"it appears from the practice of the States concerned or from other circumstances that their intention was *to consider that person as representing the State for such purposes and* to dispense with full powers".

DOCUMENT A/CONF.39/L.8

Belgium: amendment to article 2 [6]

[*Original: French*]
[*28 April 1969*]

Replace article 2, paragraph 2, by the following text:

"The provisions of paragraph 1 regarding the use of terms in the present Convention do not affect the use of those terms or the meanings which may be given to them in the internal law of any State".

DOCUMENT A/CONF.39/L.9

Romania: amendment to article 4 [7]

[*Original: French*]
[*28 April 1969*]

Redraft article 4 to read as follows:

"The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within such organization without prejudice to any of the relevant rules of the organization".

DOCUMENT A/CONF.39/L.10

Romania: amendment to article 7 [8]

[*Original: French*]
[*28 April 1969*]

Insert the words "*the competent authority of*" between the words "confirmed by" and the words "that State".

DOCUMENT A/CONF.39/L.11

United Republic of Tanzania: amendment to article 9 [9]

[*Original: English*]
[*28 April 1969*]

Replace the text of article 9 by the following:

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

"(*a*) by the signature, signature *ad referendum* or initialling by the representatives of the States parti-

[5] The text of article 6, paragraph 1 (*b*), as adopted by the Committee of the Whole and reviewed by the Drafting Committee, read:

"it appears from the practice of the States concerned or from other circumstances that their intention was not to require representatives to produce full powers".

[6] For the text of article 2 to which this amendment refers, see A/CONF.39/11/Add.1, 7th plenary meeting.

[7] For the text of article 4 to which this amendment refers, see A/CONF.39/11/Add.1, 7th plenary meeting.

[8] For the text of article 7 to which this amendment refers, see A/CONF.39/11/Add.1, 8th plenary meeting.

[9] For the text of article 9 to which this amendment refers, see A/CONF.39/11/Add.1, 9th plenary meeting.

cipating in the drawing up of the text, of the treaty or of the Final Act of the Conference incorporating the text, or

"(*b*) by such procedures as may be provided in the text or agreed upon by those States."

DOCUMENT A/CONF.39/L.12

Mexico and the United Kingdom of Great Britain and Northern Ireland: amendment to article 8[10]

[*Original: English*]
[*28 April 1969*]

In paragraph 2, replace the word "participating" by the words "present and voting".

DOCUMENT A/CONF.39/L.13

Belgium: amendment to article 9*bis*[11]

[*Original: French*]
[*29 April 1969*]

Replace 9*bis* by the following:

"The consent of *States* to be bound by a treaty may be expressed by signature, exchange of *letters or notes* constituting *the* treaty, ratification, approval, acceptance or accession, or by any other *agreed method.*"

DOCUMENT A/CONF.39/L.14

Belgium: amendment to article 10*bis*[12]

[*Original: French*]
[*29 April 1969*]

Replace article 10*bis* by the following:

"The consent of States to be bound by a treaty *concluded by an exchange of letters or notes* is expressed by that exchange when:

"(*a*) *the letters or notes so provide*;

"(*b*) it is otherwise established that *the* States were agreed that the exchange should have that effect."

DOCUMENT A/CONF.39/L.15

Luxembourg: amendment to the articles approved by the Committee of the Whole

[*Original: French*]
[*29 April 1969*]

Add a new article 23*bis* reading as follows, the present article 23*bis* consequently becoming article 23*ter*:

"The parties shall take any measures of internal law that may be necessary to ensure that treaties are fully applied."

DOCUMENT A/CONF.39/L.16

Poland: amendment to article 15[13]

[*Original: English*]
[*29 April 1969*]

In sub-paragraph (*a*), after the words "it has signed the treaty", insert the following words: "or has exchanged instruments constituting the treaty".

Sub-paragraph (*a*) would then read as follows:

"it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty".

DOCUMENT A/CONF.39/L.17

Hungary: amendment to article 20[14]

[*Original: English*]
[*29 April 1969*]

In paragraph 1 insert the words "in writing" after the words "a reservation may be withdrawn".

The text would then read:

"... a reservation may be withdrawn in writing at any time ..."

DOCUMENT A/CONF.39/L.18

Hungary: amendment to article 20[15]

[*Original: English*]
[*29 April 1969*]

1. Add a new paragraph 2 reading as follows:

"Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time and the consent of the State which has formulated the reservation concerned is not required for the withdrawal of the objection."

2. Renumber the present paragraph 2 as paragraph 3 and amend it as follows:

"3. Unless the treaty otherwise provides, or it is otherwise agreed:

"(*a*) the withdrawal of a reservation becomes operative only when notice of it has been received by the other contracting States;

"(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which has formulated the reservation concerned."

[10] For the text of article 8 to which this amendment refers, see A/CONF.39/11/Add.1, 8th plenary meeting.

[11] For the text of article 9*bis* to which this amendment refers, see A/CONF.39/11/Add.1, 9th plenary meeting.

[12] For the text of article 10*bis* to which this amendment refers, see A/CONF.39/11/Add.1, 10th plenary meeting.

[13] For the text of article 15 to which this amendment refers, see A/CONF.39/11/Add.1, 10th plenary meeting.

[14] For the text of article 20 to which this amendment refers, see A/CONF.39/11/Add.1, 11th plenary meeting.

[15] *Idem.*

DOCUMENT A/CONF.39/L.19

United Kingdom of Great Britain and Northern Ireland: amendment to article 45[16]

[*Original: English*]
[*30 April 1969*]

In paragraph 1 of article 45, after the words "an error in", insert the words "or concerning". Paragraph 1 would then read:

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

DOCUMENT A/CONF.39/L.20

Mongolia: amendment to article 34[17]

[*Original: Russian*]
[*6 May 1969*]

After the words "a general principle of", insert the word "international".

DOCUMENT A/CONF.39/L.21

Yugoslavia: amendment to article 23[18]

[*Original: English*]
[*6 May 1969*]

Insert between the words: "in force" and "is binding" the following words: "and a treaty partly or in whole provisionally applied". Article 23 would then read as follows:

"Every treaty in force and a treaty partly or in whole provisionally applied is binding upon the parties to it and must be performed by them in good faith."

DOCUMENT A/CONF.39/L.22

Hungary and the Union of Soviet Socialist Republics: amendment to article 32[19]

[*Original: Russian*]
[*6 May 1969*]

After paragraph 1, insert the following paragraph:

"2. The provisions of paragraph 1 shall not affect the rights of States which enjoy most-favoured-nation treatment."

Renumber the existing paragraph 2 as paragraph 3.

[16] For the text of article 45 to which this amendment refers, see A/CONF.39/11/Add.1, 18th plenary meeting.

[17] For the text of article 34 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

[18] For the text of article 23 to which this amendment refers, see A/CONF.39/11/Add. 1, 12th plenary meeting.

[19] For the text of article 32 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

DOCUMENT A/CONF.39/L.23

United Kingdom of Great Britain and Northern Ireland: amendment to article 34[20]

[*Original: English*]
[*6 May 1969*]

Amend article 34 to read as follows:

"Nothing in articles 30 to 33 precludes a rule set forth in a treaty from becoming binding upon a third State *so far as that rule would be binding upon it, in accordance with international law, independently of the treaty.*"

DOCUMENT A/CONF.39/L.24

Yugoslavia: amendment to the articles approved by the Committee of the Whole

[*Original: English*]
[*6 May 1969*]

After article 23 add a new article 23*bis* reading as follows:

"Every treaty applied provisionally in whole or in part is binding on the contracting States and must be performed in good faith."

DOCUMENT A/CONF.39/L.25

Republic of Viet-Nam: amendment to article 31[21]

[*Original: French*]
[*6 May 1969*]

After the words "that obligation", add the words "in writing".

DOCUMENT A/CONF.39/L.26

Spain: amendment to article 44[22]

[*Original: Spanish*]
[*6 May 1969*]

Replace the text of the draft article by the following:

"The omission by a representative expressing the consent of his State to be bound by a treaty to observe a specific restriction imposed by his State on the authority granted to him for that purpose may not be invoked as invalidating the consent unless the restriction was notified to the other negotiating States prior to his expressing such consent."

[20] For the text of article 34 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

[21] For the text of article 31 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

[22] For the text of article 44 to which this amendment refers, see A/CONF.39/11/Add.1, 18th plenary meeting.

DOCUMENT A/CONF.39/L.27

Nepal: amendment to article 34 [23]

[*Original: English*]
[*7 May 1969*]

Delete the words: "or a general principle of law, recognized as such".

DOCUMENT A/CONF.39/L.29

United Kingdom of Great Britain and Northern Ireland: amendment to article 57 [24]

[*Original: English*]
[*7 May 1969*]

1. Amend the opening phrase of paragraph 2(*a*) of article 57 to read as follows:

"(*a*) the other parties by unanimous agreement *to invoke the breach as a ground for suspending the operation of the treaty in whole or in part or for terminating it* either:"

2. Amend paragraph 2(*c*) of article 57 to read as follows:

"(*c*) any party *other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part* with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty."

DOCUMENT A/CONF.39/L.30

Hungary: amendment to article 54 [25]

[*Original: English*]
[*8 May 1969*]

Amend sub-paragraph (*b*) of article 54 to read as follows:

"at any time by consent of all the parties *after consultation with the other contracting States.*"

DOCUMENT A/CONF.39/L.31

Switzerland: amendment to article 57 [26]

[*Original: French*]
[*9 May 1969*]

Add a new paragraph 5 reading as follows:

"The foregoing paragraphs do not apply to provisions relating to the protection of the human person contained in conventions and agreements of a humanitarian character, in particular, to rules prohibiting any form of reprisals against protected persons."

[23] For the text of article 34 to which this amendment refers, see A/CONF.39/11/Add.1, 14th plenary meeting.

[24] For the text of article 57 to which this amendment refers, see A/CONF.39/11/Add.1, 21st plenary meeting.

[25] For the text of article 54 to which this amendment refers, see A/CONF.39/11/Add.1, 21st plenary meeting.

[26] For the text of article 57 to which this amendment refers, see A/CONF.39/11/Add.1, 21st plenary meeting.

DOCUMENT A/CONF.39/L.32/Rev.1

Afghanistan: draft resolution

[*Original: English*]
[*12 May 1969*]

The United Nations Conference on the Law of Treaties,

Having adopted the declaration on the "Prohibition of the threat or use of military, economic or political coercion in concluding a treaty" as part of the Final Act of the Conference,

1. *Requests* the Secretary-General of the United Nations to bring the declaration to the attention of all Member States as well as the organs of the United Nations,

2. *Requests* Member States to give to the declaration the widest possible publicity and dissemination.

DOCUMENT A/CONF.39/L.33

Switzerland: amendment to the articles approved by the Committee of the Whole

[*Original: French*]
[*12 May 1969*]

After article 75 of the draft convention, add a new article 76 reading as follows:

"1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

"2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

"3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application."

DOCUMENT A/CONF.39/L.34 *

Chile: amendment to article 61 [27]

[*Original: Spanish*]
[*12 May 1969*]

Amend the text of article 61 approved by the Committee of the Whole as follows:

Replace the words "any existing treaty" by the words "any treaty existing at that time";

Replace the words "becomes void and terminates" by the words "may be objected to with a view to its termination".

Article 61 would then read:

"If a new peremptory norm of general international law emerges, any treaty existing at that time which is in conflict with that norm may be objected to with a view to its termination."

DOCUMENT A/CONF.39/L.35

Iran: amendment to article 53 [28]

[*Original: French*]
[*13 May 1969*]

At the end of sub-paragraph (*b*) of paragraph 1, add the following:

"or by all the circumstances involved".

DOCUMENT A/CONF.39/L.36 and Add.1

Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Brazzaville), Cuba, Czechoslovakia, Hungary, India, Mongolia, Nepal, Poland, Romania, Sierra Leone, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia: amendment to the articles approved by the Committee of the Whole

[*Original: English*]
[*13 May 1969*]

Insert the following new article in the convention:

"Every State has the right to participate in a multilateral treaty which codifies or progressively develops norms of general international law or the object and purpose of which are of interest to the international community of States as a whole."

* Incorporating A/CONF.39/L.34/Corr.1.

[27] For the text of article 61 to which this amendment refers, see A/CONF.39/11/Add.1, 22nd plenary meeting.

[28] For the text of article 53 to which this amendment refers, see A/CONF.39/11/Add.1, 20th plenary meeting.

DOCUMENT A/CONF.39/L.37

Federal Republic of Germany: amendment to article 63 [29]

[*Original: English*]
[*14 May 1969*]

1. Insert new paragraph 1:

"1. The notification provided for under article 62, paragraph 1, has to be made in writing."

2. Combine the present paragraphs 1 and 2 of article 63 to read:

"2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers."

DOCUMENT A/CONF.39/L.38

Spain: draft resolution

[*Original: Spanish*]
[*14 May 1969*]

The United Nations Conference on the Law of Treaties,

Convinced that multilateral treaties effectively serve the needs of co-operation between States, both at the universal and at the regional level, on the basis of the principle of the sovereign equality of States and irrespective of their political, economic and social systems,

Considering that all States should be able to participate in multilateral treaties which codify or progressively develop norms of general international law or the object and purpose of which are of interest to the international community of States as a whole,

1. *Recommends* to the General Assembly of the United Nations that it consider periodically the advisability of inviting States which are not parties to multilateral treaties of interest to the international community of States as a whole to participate in such treaties;

2. *Decides* that the present declaration form part of the Final Act of the Conference on the Law of Treaties.

DOCUMENT A/CONF.39/L.39

Spain: amendment to the articles approved by the Committee of the Whole (final provisions) [30]

[*Original: Spanish*]
[*14 May 1969*]

Add a new article to read as follows:

[29] For the text of article 63 to which this amendment refers, see A/CONF.39/11/Add.1, 28th plenary meeting.

[30] For the text of the final provisions to which this amendment refers, see A/CONF.39/11/Add.1, 34th plenary meeting.

*Article C*bis

1. Except as provided in paragraph 2 of this article, no reservation is permitted to Part V of the present Convention.

2. At the time of signing, ratifying or acceding to the Convention, any State may declare that it does not consider itself bound by the provisions of paragraphs 6 to 10 inclusive of Annex I to the Convention with respect to the following categories of disputes:

(*a*) any dispute arising out of acts antecedent to the entry into force of the Convention with regard to all the parties to the said dispute; or

(*b*) any dispute concerning treaties relating to the defence and external security of the State or to territorial questions; or

(*c*) any dispute with a State with which, at the time when the procedure laid down in article 62 is set in motion, it has no diplomatic relations.

DOCUMENT A/CONF.39/L.41

Hungary, Poland, Romania, Union of Soviet Socialist Republics, United Republic of Tanzania and Zambia: amendment to draft final provisions[31]

[*Original: Russian*]
[*15 May 1969*]

Article A

Replace by the following text:

"The present Convention shall be open for signature by all States until 30 November 1969 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York."

Article C

Replace by the following text:

"Any State may accede to the present Convention by depositing an instrument of accession with the Secretary-General of the United Nations."

DOCUMENT A/CONF.39/L.42 and Add.1

Costa Rica and the Netherlands: amendment to the text of the preamble submitted by the Drafting Committee[32]

[*Original: English*]
[*19 May 1969*]

Delete [at the end of] the sixth preambular paragraph the word "and" between "States" and "of the prohibition", etc. and *add* after "the threat or use of force" [the words] "*and of universal respect for, and observance of, human rights and fundamental freedoms for all*".

[31] *Ibid.*

[32] For this text, see A/CONF.39/11/Add.1, 31st plenary meeting.

DOCUMENT A/CONF.39/L.43

Sweden: amendment to the text of the preamble submitted by the Drafting Committee[33]

[*Original: English*]
[*19 May 1969*]

Add to paragraph 4 of the draft preamble the following: "and in conformity with the principles of justice and international law".

The paragraph will read as follows: "*Affirming* that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,".

DOCUMENT A/CONF.39/L.44

Ecuador: amendment to the text of the preamble submitted by the Drafting Committee[34]

[*Original: Spanish*]
[*19 May 1969*]

In the third paragraph, replace the word "principle" by the words "principles of free consent and". The paragraph would then read:

"*Noting* that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized."

DOCUMENT A/CONF.39/L.45

Switzerland: amendment to the text of the preamble submitted by the Drafting Committee[35]

[*Original: French*]
[*19 May 1969*]

Insert the following wording as the last paragraph of the preamble:

"*Affirming* that the rules of customary law will continue to govern questions which have not been expressly regulated by the provisions of the present Convention."

DOCUMENT A/CONF.39/L.46

Sweden: amendment to the draft resolution relating to article 1 recommended by the Committee of the Whole[36]

[*Original: English*]
[*20 May 1969*]

Add, after the third preambular paragraph:

Cognizant of the varied practices of international organizations in this respect, and

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*

[36] See A/CONF.39/14, para. 32.

Desirous of assuring that the extensive experience of international organizations in this field be utilized to the best advantage,

Add, in the operative paragraph, after the word "study":

", in close consultation with the principal international organizations,".

DOCUMENT A/CONF.39/L.47 and Rev.1

Ghana, Ivory Coast, Kenya, Kuwait, Lebanon, Morocco, Nigeria, Sudan, Tunisia and the United Republic of Tanzania: draft declaration, proposed new article and draft resolution

[*Original: English*]
[*20 May 1969*]

Draft Declaration on Universal Participation in and Accession to the Convention on the Law of Treaties

The United Nations Conference on the Law of Treaties,

Convinced that multilateral treaties which deal with the codification and progressive development of international law or the object and purposes of which are of interest to the international community as a whole, should be open to universal participation;

Aware of the fact that article ... of the Convention on the Law of Treaties authorizes the General Assembly to issue special invitations to States not members of the United Nations, the specialized agencies or parties to the Statute of the International Court of Justice to accede to the present Convention;

Invites the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations so as to ensure the widest possible participation in the Convention on the Law of Treaties;

Expresses the hope that the States Members of the United Nations will endeavour to achieve the object of this declaration;

Requests the Secretary-General of the United Nations to bring the present declaration to the notice of the General Assembly;

Decides that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties.

Proposed new article

Procedures for Adjudication, Arbitration and Conciliation

If, under paragraph 3 of article 62, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

1. Any one of the parties to a dispute concerning the application or the interpretation of article 50 or 61 may, by application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration.

2. Any one of the parties to a dispute concerning the application or the intrepretation of any of the other articles in Part V of the convention may set in motion the procedure specified in Annex I to the present convention by submitting a request to that effect to the Secretary-General of the United Nations.

Annex I

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article ....., the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute. The report and conclusions of the Commission shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

Draft resolution

The United Nations Conference on the Law of Treaties,

Considering that the provisions in article ... concerning the settlement of disputes arising under Part V of the

Convention on the Law of Treaties, lays down that the expenses of any conciliation commission that may be set up under article . . . shall be borne by the United Nations,

Requests the General Assembly of the United Nations to take note of and approve the provisions of paragraph 7 of the annex to . . .

DOCUMENT A/CONF.39/L.48 and Add.1

Afghanistan, Ghana, India, Ivory Coast, Kuwait, Lebanon, Nigeria, Senegal, Syria and the United Republic of Tanzania: amendment to draft final provisions (article D) [37]

[*Original: English*]
[*20 May 1969*]

It is recommended that the number of ratifications or accessions necessary to bring the present Convention into force should be 35.

DOCUMENT A/CONF.39/L.49

India, Japan, Netherlands and the Union of Soviet Socialist Republics: amendment to article 21 (formerly article 19) [38]

[*Original: English*]
[*20 May 1969*]

A. *Paragraph 3*

Replace, in paragraph 3. the words "the reservation has the effects provided for in paragraphs 1 and 2" by the words originally used in the draft of the International Law Commission: "the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation".

The text would then read as follows:

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."

B. *Title*

Change the title of the article, which would then read: "Legal effects of reservations and of objections to reservations".

DOCUMENT A/CONF.39/L.50

Afghanistan, Nigeria, Poland, United Kingdom of Great Britain and Northern Ireland and Venezuela: draft resolution

[*Original: English*]
[*22 May 1969*]

TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

The United Nations Conference on the Law of Treaties,

Having adopted the Vienna Convention on the Law of Treaties on the basis of the draft articles prepared by the International Law Commission,

Resolves to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and development of the law of treaties.

[37] For the text of the final provisions to which this amendment refers, see A/CONF.39/11/Add.1, 34th plenary meeting.

[38] For the text of the article to which this amendment refers, see A/CONF.39/11/Add.1, 11th plenary meeting.

Blank page

Page blanche

F.—COMMUNICATIONS FROM THE EXPERT CONSULTANT

DOCUMENT A/CONF.39/L.28

Letter dated 5 May 1969 from the Expert Consultant addressed to the Chairman of the Drafting Committee

[*Original: English*]
[*7 May 1969*]

The Drafting Committee, I understand, asks why there is no mention of a ground for "denouncing" a treaty in article 41, paragraph 2, and in article 42. The answer is that we only use the term "denounce" in article 53 where the right to denounce arises not from a "ground" but from the express or implied *agreement* of the parties. We did not think that article 42 could have any application in cases where the matter was governed by the agreement of the parties.

As to article 41, paragraph 1 of the article deals expressly with cases provided for in the treaty itself and therefore mentions denunciation. Paragraph 2, on the other hand, deals with *grounds* of invalidity and termination and does not therefore mention "denunciation"; for we do not use this word in either of these connexions. We did not do so because it is a word of general meaning which may refer either to invalidity or a ground of termination or termination by agreement.

If you will look at article 53, you will easily see that it was purely for drafting reasons that we there used the word "denunciation" in cases of "*termination*" by *agreement*. In that article we had to use the word "termination" in the sense of "expire" and then used "denunciation" in order to denote the process of termination in the other sense of "putting an end" to the treaty.

For me, the real question would rather be whether "denunciation" should be mentioned in article *62*, because it is possible to conceive of disputes in connexion with a claim to an express or implied *right* to terminate a treaty arising under its own provisions. I did mention this possibility to the Drafting Committee; but they did not think it necessary to mention "denunciation" in article 62.

DOCUMENT A/CONF.39/L.40

Communication dated 13 May 1969 received from the Expert Consultant in reply to a question put by the representative of Afghanistan at the 22nd plenary meeting * of the Conference

[*Original: English*]
[*14 May 1969*]

Commission considered self-determination a principle operating wholly independently of article 59, paragraph 2(*a*), (see para. 11 of commentary).[1] My understanding Commission also considered article 40 and articles 45 to 50 as containing autonomous principles of general application.

---

* See A/CONF.39/11/Add.1, 22nd plenary meeting, para. 21.

[1] See sect. B above.

Blank page

Page blanche

G.—OBSERVATIONS OF THE SECRETARIAT

Documents A/CONF.39/D.C./R.56-R.62

OBSERVATIONS OF THE SECRETARIAT ON THE ARTICLES ADOPTED BY THE COMMITTEE OF THE WHOLE DURING THE FIRST SESSION OF THE CONFERENCE [1]

DOCUMENT A/CONF.39/D.C./R.56

Note on the observations of the Secretariat contained in documents A/CONF.39/D.C./R.57-R.62 [2]

[*Original: French*]
[*28 February 1969*]

1. On 18 May 1968, the Drafting Committee decided, pursuant to rule 48 of the rules of procedure, to co-ordinate and review at the beginning of the second session of the Conference the drafting of the articles of the draft convention adopted by the Committee of the Whole during the first session. In order to make its work easier, the Committee invited the Secretariat to examine the texts of the articles concerned in the five official languages of the Conference, with the help of the language services. Having examined these texts as requested, the Secretariat submits its observations in six documents bearing the symbols A/CONF.39/D.C./R.57 to 62.

2. Document A/CONF.39/D.C./R.57 contains the observations common to the English, French, Russian and Spanish texts and is being circulated in these four languages.

3. Document A/CONF.39/D.C./R.58, circulated in English only, contains the observations concerning the English text, other than those already given in document A/CONF.39/D.C./R.57.

4. Document A/CONF.39/D.C./R.59, circulated in French only, contains the observations concerning the French text, other than those already given in document A/CONF.39/D.C./R.57.

5. Document A/CONF.39/D.C./R.60, circulated in Spanish only, contains the observations concerning the Spanish text, other than those already given in document A/CONF.39D.C./R.57.

6. Document A/CONF.39/D.C./R.61, circulated in Russian only, contains the observations concerning the Russian text, other than those already given in document A/CONF.39/D.C./R.57.

7. Document A/CONF.39/D.C./R.62, circulated in Chinese only, contains all the observations concerning the Chinese text.

---

[1] A/CONF.39/14, chap. III.

[2] Only those documents which concern the English text (A/CONF. 39/D.C./R.57 and R.58) are reproduced in this section.

DOCUMENT A/CONF.39/D.C./R.57

Observations of the Secretariat common to the English, French, Russian and Spanish texts

[*Original: French*]
[*28 February 1969*]

Article 4

Replace "*or* to any treaty adopted" by "*and* to any treaty adopted".

The Convention applies to both categories of treaties and not to one *or* the other.

Article 6, paragraph 1

The existing wording of article 6, paragraph 1 seems to imply that provided the condition set out in sub-paragraph (*b*) is fulfilled any person may be considered as representing a State, even if he has no connexion with it. It should be noted that in the International Law Commission's text the words "a person is considered as representing a State" were accompanied by a restriction expressed by the word "*only*". This word was deleted by the Committee of the Whole at the first session of the Conference on the recommendation of the Drafting Committee.

Article 39, paragraph 1

Paragraph 1, as now worded, signifies that it is the consent, and not the validity of the consent, which may be impeached only through the application of the present Convention. If the Drafting Committee considers that paragraph 1 should refer to the validity of the consent and not the consent itself, the words "or the consent of a State" should be replaced by "or *of* the consent of a State".

Article 42

Delete the word "*inclusive*" after the words "articles 43 to 47" in the opening sentence.

This word is not used in article 14 after the words "articles 16 to 20".

Article 74, paragraph 2

Sub-paragraphs (*a*), (*b*) and (*c*) are not on the same footing: sub-paragraph (*a*) can be read with the opening phrase of the paragraph, but this is not true of sub-paragraphs (*b*) and (*c*), which must be read with sub-paragraph (*a*). Sub-paragraph (*a*) should be combined with the opening phrase, sub-paragraphs (*b*) and (*c*)

should become sub-paragraphs (*a*) and (*b*) respectively, and the text should be amended elsewhere as necessary.

With these amendments, paragraph 2 would read as follows:

"2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection may be raised. If, on the expiry of the time-limit:

"(*a*) no objection has been raised, *the depositary* shall make and initial the correction in the text and shall execute a *procès verbal* of the rectification of the text, and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

"(*b*) an objection has been raised to the proposed correction, *the depositary* shall communicate the objection to the signatory States and to the contracting States."

DOCUMENT A/CONF.39/D.C./R.58

Observations of the Secretariat concerning the English text

[*English only*]
[*28 February 1969*]

Article 14, paragraph 1

Delete the words "*the provisions of*" in the expression "Without prejudice to *the provisions* of articles 16 to 20".

These words do not appear in the similar expressions used in articles 23*bis* and 62, paragraph 5.

Article 18, paragraph 3

Substitute "*a*" for "*the*" in the expression "the reservation made previously".

The reference is to reservations in general, as in paragraphs 1 and 2, both of which refer to "*a* reservation".

Article 21, paragraph 4

In the last phrase delete "*shall*" before "*apply*".

Paragraphs 1, 2 and 3 of article 21 are in the present tense but paragraph 4 is in the future. It would be more consistent to use the present throughout.

Article 29, paragraph 4

Substitute "*the*" for "*a*" in the expression "a meaning which best reconciles the texts".

There can be only *one* meaning which *best* reconciles the texts.

Article 39, paragraph 2

For the sake of uniformity it would be better to follow, as the Russian text does, the lines of article 51 and to redraft the opening phrase of paragraph 2 of article 39 to read:

"A treaty may be terminated or *a party may denounce or withdraw from a treaty* only . . . ".

Article 53, paragraph 1

In sub-paragraph (*b*) substitute "implied *by*" for "implied *from*".

The present wording is not correct English.

Article 59, paragraph 1

The language services have been requested to find a better translation of the French word *portée* and the Spanish word *alcance* in sub-paragraph (*b*), which are at present rendered by "extent" in English.

The expression "extent of obligations" appears to have been introduced by the Drafting Committee to replace the words "scope of obligations" used in the text of the International Law Commission. The two expressions have the same meaning, though "scope of obligations" is perhaps the more usual; they both render the French and Spanish quite accurately.

Article 72, paragraph 1

1. In sub-paragraph (*a*) delete "*the*" before "*custody*".

"The" does not appear before "custody" in sub-paragraph (*c*).

2. In sub-paragraph (*f*) substitute "*has* been received or deposited" for "*have* been received or deposited".

The subject of the verb ("the number") is singular.

Document A/CONF.39/D.C./R.64

OBSERVATIONS OF THE SECRETARIAT RELATING TO THE ENGLISH, FRENCH, RUSSIAN AND SPANISH TEXTS OF ARTICLES REFERRED TO THE DRAFTING COMMITTEE DURING THE FIRST SESSION OF THE CONFERENCE, DISCUSSION OF WHICH WAS NOT COMPLETED IN THE COMMITTEE OF THE WHOLE

[*Original: English/French/Russian/Spanish*]
[*10 April 1969*]

Note by the Secretariat

At the request of the Chairman of the Drafting Committee, the Secretariat submits below its observations on the articles of the draft convention which were referred to the Drafting Committee, but discussion of which was not completed in the Committee of the Whole.

These observations, which were formulated with the assistance of the language services, are of the same kind as those contained in documents A/CONF.39/D.C./R.57-R.62.

Observations concerning the English text

Article 17: Provisional text adopted by the Drafting Committee [8]

Paragraph 1

In the first phrase substitute "authorized by *a* treaty" for "authorized by *the* treaty".

The reference is to treaties in general, not to a particular treaty previously mentioned; cf. paragraph 3 of the provisional text.

Paragraph 2

Substitute "the object and purpose of *a* treaty" for "the object and purpose of *the* treaty".

Same reasons as above.

Paragraph 3

Substitute "*a* reservation requires" for "*the* reservation requires".

The reference is to reservations in general, not to a particular reservation previously mentioned.

Paragraph 4(a)

Substitute "*a* reservation" for "*the* reservation".

Same reasons as above; cf. paragraph 4(*b*) of the provisional text.

Paragraph 4(c)

Substitute "*a* State's consent" for "*the* State's consent".

The reference is to any contracting State.

[8] A/CONF.39/14, para. 185.

Blank page

Page blanche

FINAL ACT
OF THE UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES

(Document A/CONF.39/26)

Blank page

Page blanche

1. The General Assembly of the United Nations, having considered chapter II of the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1,[1] Part II), which contained final draft articles and commentaries on the law of treaties,[2] decided, by its resolution 2166 (XXI) of 5 December 1966, to convene an international conference of plenipotentiaries to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. By the same resolution, the General Assembly requested the Secretary-General to convoke the first session of the conference early in 1968 and the second session early in 1969. Subsequently, the General Assembly, noting that an invitation had been extended by the Austrian Government to hold both sessions of the conference at Vienna, decided, by resolution 2287 (XXII) of 6 December 1967, that the first session should be convened at Vienna in March 1968. At its fifth meeting, held on 24 May 1968, at the conclusion of the first session, the Conference adopted a resolution[3] requesting the Secretary-General to make all the necessary arrangements for the Conference to hold its second session at Vienna from 9 April to 21 May 1969.

2. The first session of the United Nations Conference on the Law of Treaties was held at the Neue Hofburg, Vienna, from 26 March to 24 May 1968. The second session of the Conference was also held at the Neue Hofburg, from 9 April to 22 May 1969.

3. One hundred and three States were represented at the first session of the Conference, and one hundred and ten States at the second session, as follows: Afghanistan, Algeria, Argentina, Australia, Austria, Barbados (second session only), Belgium, Bolivia, Brazil, Bulgaria, Burma (second session only), Byelorussian Soviet Socialist Republic, Cambodia, Cameroon (second session only), Canada, Central African Republic, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador (second session only), Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea (first session only), Guyana, Holy See, Honduras, Hungary, Iceland (second session only), India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Lesotho (second session only), Liberia, Libya (second session only), Liechtenstein, Luxembourg (second session only), Madagascar, Malaysia, Mali (first session only), Malta (second session only), Mauritania (first session only), Mauritius, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama (second session only), Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia (first session only), South Africa, Spain, Sudan (second session only), Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda (second session only), Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen (first session only), Yugoslavia and Zambia.

4. The General Assembly invited the specialized agencies and interested intergovernmental organizations to send observers to the Conference. The following specialized agencies and interested intergovernmental organizations accepted this invitation:

Specialized and related agencies

International Labour Organisation
Food and Agriculture Organization of the United Nations
United Nations Educational, Scientific and Cultural Organization
International Civil Aviation Organization
International Bank for Reconstruction and Development and International Development Association
International Monetary Fund
World Health Organization
Universal Postal Union
Inter-Governmental Maritime Consultative Organization
International Atomic Energy Agency

Intergovernmental organizations

Asian-African Legal Consultative Committee
United International Bureaux for the Protection of Intellectual Property
Council of Europe
General Agreement on Tariffs and Trade
League of Arab States

5. The Conference elected Mr. Roberto Ago (Italy) as President.

6. The Conference elected as Vice-Presidents the representatives of the following States: Afghanistan, Algeria, Austria, Chile, China, Ethiopia, Finland, France, Guatemala (for 1969), Guinea, Hungary, India, Mexico, Peru, Philippines, Romania, Sierra Leone, Spain (for 1968), Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

NOTE. — Document A/CONF.39/26 incorporates A/CONF.39/26/Corr.2.

[1] *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9.*

[2] See sect. B above, p. 7.

[3] See A/CONF.39/14, chap. III, sect. B, draft resolution 3.

7. The following committees were set up by the Conference:

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee.

Committee of the Whole

Chairman: Mr. Taslim Olawale Elias (Nigeria)

Vice-Chairman: Mr. Josef Šmejkal (Czechoslovakia)

Rapporteur: Mr. Eduardo Jiménez de Aréchaga (Uruguay)

Drafting Committee

Chairman: Mr. Mustafa Kamil Yasseen (Iraq)

Members: Argentina, China, Congo (Brazzaville), France, Ghana, Japan, Kenya, Netherlands, Poland, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and, *ex-officio* in accordance with rule 48 of the Rules of Procedure, Mr. Eduardo Jiménez de Aréchaga (Uruguay), Rapporteur of the Committee of the Whole.

Credentials Committee

Chairman: Mr. Eduardo Suárez (Mexico)

Members: Ceylon, Dominican Republic, Japan, Madagascar, Mali (first session), Mexico, Switzerland, Union of Soviet Socialist Republics, United Republic of Tanzania (second session) and United States of America.

8. Sir Humphrey Waldock, Special Rapporteur of the International Law Commission on the law of treaties, acted as Expert Consultant.

9. The Secretary-General of the United Nations was represented by Mr. C. A. Stavropoulos, Under-Secretary-General, The Legal Counsel. Mr. A. P. Movchan, Director of the Codification Division of the Office of Legal Affairs of the United Nations, acted as Executive Secretary.

10. The General Assembly, by its resolution 2166 (XXI) convening the Conference, referred to the Conference, as the basis for its consideration of the law of treaties, chapter II of the report of the International Law Commission on the work of its eighteenth session (A/6309/Rev.1, Part II), containing the text of the final draft articles and commentaries on the law of treaties adopted by the Commission at that session. [4]

11. The Conference also had before it the following documentation:

(*a*) the relevant records of the General Assembly and of the International Law Commission relating to the law of treaties;

(*b*) comments and amendments relating to the final draft articles on the law of treaties submitted by Governments in 1968 in advance of the Conference in accordance with General Assembly resolution 2287 (XXII) (A/CONF.39/6 and Add.1-2);

(*c*) written statements submitted by specialized agencies and intergovernmental bodies invited to send observers to the Conference (A/CONF.39/7 and Add.1-2 and Add.1/Corr.1);

(*d*) a selected bibliography on the law of treaties (A/CONF.39/4), an analytical compilation of comments and observations made in 1966 and 1967 on the final draft articles on the law of treaties (A/CONF.39/5, Vols. I and II), standard final clauses (A/CONF.39/L.1), a guide to the draft articles on the law of treaties (A/C.6/376) and other pertinent documentation prepared by the Secretariat of the United Nations.

12. The Conference assigned to the Committee of the Whole the consideration of the final draft articles on the law of treaties adopted by the International Law Commission and the preparation of the final provisions and of any other instruments it might consider necessary. The Drafting Committee, in addition to its responsibilities for drafting, and for co-ordinating and reviewing all the texts adopted, was entrusted by the Conference with the preparation of the preamble and the Final Act.

13. On the basis of the deliberations recorded in the records of the Conference (A/CONF.39/SR.1 to SR.36) and the records (A/CONF.39/C.1/SR.1 to SR.105) and reports (A/CONF.39/14, Vols. I and II and A/CONF.39/15 and Corr.1 (Spanish only) and Corr.2) of the Committee of the Whole, the Conference drew up the following Convention:

Vienna Convention on the Law of Treaties

14. The foregoing Convention was adopted by the Conference on 22 May 1969 and opened for signature on 23 May 1969, in accordance with its provisions, until 30 November 1969 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 30 April 1970 at United Nations Headquarters in New York. The same instrument was also opened for accession in accordance with its provisions.

15. After 30 November 1969, the closing date for signature at the Federal Ministry for Foreign Affairs of the Republic of Austria, the Convention will be deposited with the Secretary-General of the United Nations.

16. The Conference also adopted the following declarations and resolutions, which are annexed to this Final Act:

Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

Declaration on universal participation in the Vienna Convention on the Law of Treaties

Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

Resolution relating to the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties

Resolution relating to article 66 of the Vienna Convention on the Law of Treaties and the Annex thereto

Tribute to the International Law Commission

[4] See sect. B above, p. 7.

Tribute to the Federal Government and people of the Republic of Austria

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at Vienna this twenty-third day of May, one thousand nine hundred and sixty-nine, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. By unanimous decision of the Conference, the original of this Final Act shall be deposited in the archives of the Federal Ministry for Foreign Affairs of the Republic of Austria.

ANNEX

Declarations and resolutions adopted by the United Nations Conference on the Law of Treaties

DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of the sovereign equality of States,

Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,

Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States,

Desiring to ensure that in the future no such pressure will be exerted in any form by any State in connexion with the conclusion of a treaty,

1. *Solemnly condemns* the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent,

2. *Decides* that the present Declaration shall form part of the Final Act of the Conference on the Law of Treaties.

DECLARATION ON UNIVERSAL PARTICIPATION IN THE VIENNA CONVENTION ON THE LAW OF TREATIES

The United Nations Conference on the Law of Treaties,

Convinced that multilateral treaties which deal with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole, should be open to universal participation,

Noting that articles 81 and 83 of the Vienna Convention on the Law of Treaties enable the General Assembly to issue special invitations to States which are not Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency, or parties to the Statute of the International Court of Justice, to become parties to the Convention,

1. *Invites* the General Assembly to give consideration, at its twenty-fourth session, to the matter of issuing invitations in order to ensure the widest possible participation in the Vienna Convention on the Law of Treaties;

2. *Expresses the hope* that the States Members of the United Nations will endeavour to achieve the object of this Declaration;

3. *Requests* the Secretary-General of the United Nations to bring this Declaration to the notice of the General Assembly;

4. *Decides* that the present Declaration shall form part of the Final Act of the United Nations Conference on the Law of Treaties.

RESOLUTION RELATING TO ARTICLE 1 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES

The United Nations Conference on the Law of Treaties,

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session, [a]

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

Cognizant of the varied practices of international organizations in this respect, and

Desirous of ensuring that the extensive experience of international organizations in this field be utilized to the best advantage,

Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study, in consultation with the principal international organizations, of the question of treaties concluded between States and international organizations or between two or more international organizations.

RESOLUTION RELATING TO THE DECLARATION ON THE PROHIBITION OF MILITARY, POLITICAL OR ECONOMIC COERCION IN THE CONCLUSION OF TREATIES

The United Nations Conference on the Law of Treaties,

Having adopted the Declaration on the prohibition of military, political or economic coercion in the conclusion of treaties as part of the Final Act of the Conference,

1. *Requests* the Secretary-General of the United Nations to bring the Declaration to the attention of all Member States and other States participating in the Conference, and of the principal organs of the United Nations;

2. *Requests* Member States to give the Declaration the widest possible publicity and dissemination.

RESOLUTION RELATING TO ARTICLE 66 OF THE VIENNA CONVENTION ON THE LAW OF TREATIES AND THE ANNEX THERETO

The United Nations Conference on the Law of Treaties,

Considering that under the terms of paragraph 7 of the Annex to the Vienna Convention on the Law of Treaties, the expenses of any conciliation commission that may be set up under article 66 of the Convention shall be borne by the United Nations,

Requests the General Assembly of the United Nations to take note of and approve the provisions of paragraph 7 of this Annex.

TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

The United Nations Conference on the Law of Treaties,

Having adopted the Vienna Convention on the Law of Treaties on the basis of the draft articles prepared by the International Law Commission,

Resolves to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and progressive development of the Law of treaties.

TRIBUTE TO THE FEDERAL GOVERNMENT AND PEOPLE OF THE REPUBLIC OF AUSTRIA

The United Nations Conference on the Law of Treaties,

Having adopted the Vienna Convention on the Law of Treaties,

Expresses its deep appreciation to the Federal Government and people of the Republic of Austria for making possible the holding of the Conference in Vienna and for their generous hospitality and great contribution to the successful completion of the work of the Conference.

[a] *Official Records of the General Assembly, Twenty-first session, Supplement No. 9* (A/6309/Rev.1), Part II.

Blank page

Page blanche

VIENNA CONVENTION
ON THE LAW OF TREATIES

(Document A/CONF.39/27)

Blank page

Page blanche

The States Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems,

Noting that the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized,

Affirming that disputes concerning treaties, like other international disputes, should be settled by peaceful means and in conformity with the principles of justice and international law,

Recalling the determination of the peoples of the United Nations to establish conditions under which justice and respect for the obligations arising from treaties can be maintained,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that the codification and progressive development of the law of treaties achieved in the present Convention will promote the purposes of the United Nations set forth in the Charter, namely, the maintenance of international peace and security, the development of friendly relations and the achievement of co-operation among nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Have agreed as follows:

PART I. INTRODUCTION

Article 1

Scope of the present Convention

The present Convention applies to treaties between States.

Article 2

Use of terms

1. For the purposes of the present Convention:

(*a*) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(*b*) "ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(*c*) "full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

(*d*) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(*e*) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(*f*) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(*g*) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(*h*) "third State" means a State not a party to the treaty;

(*i*) "international organization" means an intergovernmental organization.

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

Article 3

International agreements not within the scope of the present Convention

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

(*a*) the legal force of such agreements;

(*b*) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(*c*) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

NOTE. — Document A/CONF.39/27 incorporates A/CONF. 39/27/Corr.1.

Article 4

Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5

Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1. CONCLUSION OF TREATIES

Article 6

Capacity of States to conclude treaties

Every State possesses capacity to conclude treaties.

Article 7

Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

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

(*c*) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

Article 8

Subsequent confirmation of an act performed without authorization

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State.

Article 9

Adoption of the text

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

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

Article 10

Authentication of the text

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

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

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

Article 11

Means of expressing consent to be bound by a treaty

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

Article 12

Consent to be bound by a treaty expressed by signature

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

(*a*) the treaty provides that signature shall have that effect;

(*b*) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

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

2. For the purposes of paragraph 1:

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

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

Article 13

Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect; or
(*b*) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 14

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

1. The consent of a State to be bound by a treaty is expressed by ratification when:
(*a*) the treaty provides for such consent to be expressed by means of ratification;
(*b*) it is otherwise established that the negotiating States were agreed that ratification should be required;
(*c*) the representative of the State has signed the treaty subject to ratification; or
(*d*) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

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

Article 15

Consent to be bound by a treaty expressed by accession

The consent of a State to be bound by a treaty is expressed by accession when:
(*a*) the treaty provides that such consent may be expressed by that State by means of accession;
(*b*) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
(*c*) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 16

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

Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:
(*a*) their exchange between the contracting States;
(*b*) their deposit with the depositary; or
(*c*) their notification to the contracting States or to the depositary, if so agreed.

Article 17

Consent to be bound by part of a treaty and choice of differing provisions

1. Without prejudice to articles 19 to 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

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

Article 18

Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
(*a*) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
(*b*) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

SECTION 2. RESERVATIONS

Article 19

Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
(*a*) the reservation is prohibited by the treaty;
(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
(*c*) in cases not falling under sub-paragraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

Article 20

Acceptance of and objection to reservations

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

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

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

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
(*a*) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
(*b*) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

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

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

Article 21

Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(*a*) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(*b*) modifies those provisions to the same extent for that other party in its relations with the reserving State.

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

3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 22

Withdrawal of reservations and of objections to reservations

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

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(*a*) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation.

Article 23

Procedure regarding reservations

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

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

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

Article 24

Entry into force

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

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

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

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25

Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(*a*) the treaty itself so provides; or

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

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26

Pacta sunt servanda

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

Article 27

Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28

Non-retroactivity of treaties

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

Article 29

Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30

Application of successive treaties relating to the same subject-matter

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

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

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

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

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

(*b*) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3. INTERPRETATION OF TREATIES

Article 31

General rule of interpretation

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

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

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

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

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

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

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

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

Article 32

Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) leaves the meaning ambiguous or obscure; or

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

Article 33

Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

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

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authen-

tic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES

Article 34

General rule regarding third States

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

Article 35

Treaties providing for obligations for third States

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36

Treaties providing for rights for third States

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

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

Article 37

Revocation or modification of obligations or rights of third States

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38

Rules in a treaty becoming binding on third States through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV. AMENDMENT AND MODIFICATION OF TREATIES

Article 39

General rule regarding the amendment of treaties

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

Article 40

Amendment of multilateral treaties

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

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

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

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

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

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(*b*), applies in relation to such State.

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

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

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

Article 41

Agreements to modify multilateral treaties between certain of the parties only

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

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

(*b*) the modification in question is not prohibited by the treaty and:

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

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

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall

notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42

Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

Article 43

Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

Article 44

Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

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

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

(*b*) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(*c*) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45

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

A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

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

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

SECTION 2. INVALIDITY OF TREATIES

Article 46

Provisions of internal law regarding competence to conclude treaties

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

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Article 47

Specific restrictions on authority to express the consent of a State

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

Article 48

Error

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

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

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49

Fraud

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

Article 50

Corruption of a representative of a State

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

Article 51

Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

Article 52

Coercion of a State by the threat or use of force

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

Article 53

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

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54

Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties after consultation with the other contracting States.

Article 55

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

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

Article 56

Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) a right of denunciation or withdrawal may be implied by the nature of the treaty.

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

Article 57

Suspension of the operation of a treaty under its provisions or by consent of the parties

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

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties after consultation with the other contracting States.

Article 58

Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(*a*) the possibility of such a suspension is provided for by the treaty; or

(*b*) the suspension in question is not prohibited by the treaty and:

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

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1(*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59

Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(*a*) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(*b*) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60

Termination or suspension of the operation of a treaty as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(*b*) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(*c*) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(*a*) a repudiation of the treaty not sanctioned by the present Convention; or

(*b*) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61

Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(*a*) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(*a*) if the treaty establishes a boundary; or

(*b*) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63

Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64

Emergence of a new peremptory norm of general international law (jus cogens)

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

Article 65

Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66

Procedures for judicial settlement, arbitration and conciliation

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(*a*) any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(*b*) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in Part V of the present Convention may set in motion the procedure specified in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

Article 67

Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1 must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 68

Revocation of notifications and instruments provided for in articles 65 and 67

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 69

Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 70

Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71

Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:

(*a*) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72

Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(*a*) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(*b*) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI. MISCELLANEOUS PROVISIONS

Article 73

Cases of State succession, State responsibility and outbreak of hostilities

The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 74

Diplomatic and consular relations and the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75

Case of an aggressor State

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 76

Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77

Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

(*a*) keeping custody of the original text of the treaty and of any full powers delivered to the depositary;

(*b*) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(*c*) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(*d*) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;

(*e*) informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(*f*) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(*g*) registering the treaty with the Secretariat of the United Nations.

(*h*) performing the functions specified in other provisions of the present Convention.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.

Article 78

Notifications and communications

Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:

(*a*) if there is no depositary, be transmitted direct to the States for which it is intended, or if there is a depositary, to the latter;

(*b*) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(*c*) if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary in accordance with article 77, paragraph 1(*e*).

Article 79

Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and the contracting States are agreed that it contains an error, the error shall, unless they decide upon some other means of correction, be corrected:

(*a*) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(*b*) by executing or exchanging an instrument or instruments setting out the correction which it has been agreed to make; or

(*c*) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(*a*) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;

(*b*) an objection has been raised, the depositary shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and to the contracting States.

Article 80

Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

PART VIII. FINAL PROVISIONS

Article 81

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 November 1969, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 April 1970, at United Nations Headquarters, New York.

Article 82

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83

Accession

The present Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 81. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the thirty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 85

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of May, one thousand nine hundred and sixty-nine.

ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 66, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(*a*) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

Comparative table of the numbering of the articles of the Vienna Convention on the Law of Treaties and of the draft articles on the law of treaties considered by the Conference

(based on document A/CONF.39/28, dated 23 May 1969, prepared by the Secretariat)

Number of article in the Vienna Convention on the Law of Treaties	*Number of article in the draft articles on the law of treaties considered by the Conference*	*Relevant paragraphs in the report of the Committee of the Whole on the first session (A/CONF.39/14)*	*Relevant paragraphs in the report of the Committee of the Whole on the second session (A/CONF.39/15)*	*Plenary meeting at which article discussed*
1	1	22-32		7th
2	2	33-40	17-26	7th, 28th
3	3	41-48		7th
4	77 [Proposed new article]		136-142	30th
5	4	49-57		7th
6	5	58-66		7th, 8th
	5bis [Proposed new article]	67-69	27-32	33rd, 34th
7	6	70-79		8th
8	7	80-88		8th
9	8	89-95	33-42	8th, 9th
10	9	96-101		9th
11	*9bis* and *12bis* [Proposed new articles]	102-108 and 148		9th
12	10	109-126		9th
13	*10bis*	127-131		10th
14	11	109-116 and 132-138		10th
	11bis [Proposed new article]	109-116		
15	12	140-147	43-49	10th
16	13	149-155		10th
17	14	156-161		10th
18	15	162-171		10th
19	16	172-189		10th
20	17	172-189	50-57	10th, 11th
21	19	197-204		11th, 29th, 32nd, 33rd
22	20	205-211		11th, 29th
23	18	190-196		11th, 29th
24	21	212-221		11th
25	22	222-230		11th, 28th, 29th
26	23	231-240		12th
	[Proposed new article between articles 23 and *23bis*]			12th, 13th
27	*23bis* [Proposed new article]	231-240		13th
28	24	241-248		13th
29	25	249-256		13th
30	26	257-263	58-66	13th
31	27	264-275		13th
32	28	264-275		13th
33	29	276-282		13th
34	30	283-290		14th
35	31	291-300		14th, 28th
36	32	291-299; 301		14th, 28th
37	33	302-309		14th
38	34	310-317		14th, 15th
39	35	318-326		16th
40	36	327-334	67-75	16th
41	37	335-341	76-85	16th
	38	342-348		
42	39	349-359		16th
43	40	360-366		16th
44	41	367-379		16th
45	42	380-391		17th
46	43	392-400		18th
47	44	401-409		18th
48	45	410-418		18th

Comparative table of the numbering of the articles of the Vienna Convention on the Law of Treaties and of the draft articles on the law of treaties considered by the Conference (*continued*)

Number of article in the Vienna Convention on the Law of Treaties	*Number of article in the draft articles on the law of treaties considered by the Conference*	*Relevant paragraphs in the report of the Committee of the Whole on the first session (A/CONF.39/14)*	*Relevant paragraphs in the report of the Committee of the Whole on the second session (A/CONF.39/15)*	*Plenary meeting at which article discussed*
49	46	419-428		18th
50	47	429-437		18th
51	48	438-446		18th
52	49	447-459		18th, 19th
53	50	460-470		19th, 20th
54	51	471-477		20th
55	52	478-484		20th
56	53	485-495		20th, 21st
57	54	496-502		21st
58	55	503-511	86-94	21st
59	56	512-519		21st
60	57	520-528		21st, 30th
61	58	529-537		22nd
62	59	538-546		22nd
63	60	547-557		22nd
64	61	559-567		22nd, 23rd
65	62	568-581		25th
66	62*bis* [Proposed new article]	582-584	95-105	24th, 25th, 26th, 27th, 28th, 34th, 35th
	62*ter* [Proposed new article]		106-112	
	62*quater* [Proposed new article]		113-120	25th, 26th, 27th, 28th
67	63	585-592		28th
68	64	593-598		28th
69	65	599-610		23rd
70	66	611-617	121-128	23rd
71	67	618-625		23rd
72	68	626-633		23rd
73	69	634-641		23rd
74	69*bis*	547-558; 642		23rd
75	70	643-651		23rd
76	71	652-663; 665; 666		24th
77	72	652-662; 664; 667		24th
78	73	668-673		24th
79	74	674-681		24th
80	75	682-689		24th
	76 [Proposed new article]	690-692	129-135	29th
	77 [Proposed new article]*			
81	A**		143-149	34th
82	B**		143-149	34th
83	C**		143-149	34th
	C*bis*			34th
	[Proposed new article]			34th
84	D**		143-149	34th
85	E**		143-149	34th

* See article 4 of the Convention. ** One of the proposed general provisions regarding final clauses.