Department of External Affairs

Z CLASSIFIED

File No. 20-3-1-6

Subject: POLITICAL AFFAIRS -
TREATIES & AGREEMENTS -
TREATY MAKING POWERS -

Vol. 1 Dept. of C3
From [redacted]
To 19-4-65

LAW OF TREATIES - I.L.C. CODIFICATION PROJECT

REPLACES FILE 5475-AX-8-40

References to Related Files

File No.	Subject

File No. 20-3-1-6

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TO: MR. COTTHORNE
FEB 24 1964
REGISTRY

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FM PERMISNY FEB21/64 CONFD

TO EXTERNAL 257

GENEVA

SOVIET VIEWS ON SANCTITY OF TREATIES

LEGAL DIV MIGHT BE INTERESTED TO READ VERBATIM TEXT OF SOVIET STATEMENT AT SECURITY COUNCIL MTG ON FEB26. IN VIEW OF TRADITIONAL SOVIET VIEW ON SANCTITY OF TREATIES, IS THIS A NEW POSITION OR CAN IT BE RECONCILED WITH TRADITIONAL SOVIET VIEW BY ASSERTION THAT CHARTER IS ITSELF A TREATY?'''

000003

TRANSMITTAL SLIP

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS
OTTAWA, Canada

FROM: THE PERMANENT MISSION OF CANADA TO THE
UNITED NATIONS, NEW YORK

Security: UNCLAS

Date: Dec 30, 1963

Air or Surface: air

No. of enclosures: 1 ✓

The documents described below are for your information.

20-3-1-6
9 | -

Despatching Authority: M.A.MACPHERSON/AB

Copies	Description	Also referred to:
1	Letter LE 130(1-2) of Dec 4 from UN Legal Counsel acknowledging receipt of our let of Nov 26, in which we transmitted comments of Cdn Government on Part I of the draft articles on the Law of Treaties drawn up by the International Law Commission at its 14th session.	TO: Mr Copithorne JAN 7 1964 REGISTRY

Ext. 250 (Rev. 10/51) *(Instruction on Reverse Side)* 000004

INSTRUCTIONS

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UNITED NATIONS NATIONS UNIES

NEW YORK

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FILE NO.: LE 130 (1-2) 4 December 1963

Sir,

I have the honour to acknowledge the receipt of your letter of 26 November 1963, transmitting the comments of the Canadian Government on Part I of the draft articles on the Law of Treaties drawn up by the International Law Commission at its fourteenth session.

Accept, Sir, the assurances of my highest consideration.

Constantin A. Stavropoulos
Under-Secretary
Legal Counsel

The Secretary of State for
External Affairs
Department of External
Affairs
Ottawa, Canada

Legal/M.D. Cobbthorne/ts.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA. *(FILE COPY)*

NUMBERED LETTER

TO: THE PERMANENT MISSION OF CANADA TO THE UNITED NATIONS, NEW YORK.

FROM: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

Reference: Your letter No. 778 dated November 12, 1962.

Subject: International Law Commission Treaty Project.

Security: UNCLASSIFIED

No: L- 587

Date: November 26, 1963.

Enclosures: 1

Air or Surface Mail: Airmail

Post File No:

Ottawa File No. 20-3-1-6

References

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I should be grateful if you would transmit the attached letter to the United Nations Legal Counsel.

N. A. ROBERTSON

Under-Secretary of State for External Affairs.

Internal Circulation

Distribution to Posts

Ext. 181B (Rev. 2/52)

000007

, November 26,1963.

Sir,

I have the honour to refer to your letter LE.130(1-2) dated October 23, 1962, concerning the draft Articles on the Law of Treaties and attached commentaries drawn up by the International Law Commission during its 14th Session. I regret the delay in answering your letter.

As requested, I am enclosing comments of the Canadian Government on this draft.

Accept, Sir, the renewed assurances of my highest consideration.

N. A. ROBERTSON

Under-Secretary of State
for External Affairs.

Constantin A. Stavropoulos, Esq.,
Legal Counsel of the United Nations,
NEW YORK.

themselves the extent to which they are prepared to enter into treaty relations with one another. It is observed that the current practice with regard to treaties concluded under the auspices of the United Nations, as well as many other multilateral treaties, is to open them to participation by members of the United Nations, the specialized agencies, parties to the statute of the International Court of Justice and frequently, to such other states as may be invited by the General Assembly. In Article 8 the Commission is recommending the establishment of a presumption of intention on the part of contracting states that the treaty is to be open to all states in a limited and very clearly defined case, namely where the parties to certain types of treaties have not expressed themselves on the question of participation. It is assumed that the new rule is not to have retroactive effect.

4. It is noted that in Article 9(3)(b) and in Article 19(3), the Commission has proposed that silence should constitute a presumption of a state's consent after the expiry of a given period. The arguments against such a presumption of consent are well known as is the very real difficulty that occasionally exists at present of eliciting any expression of opinion from states. It is observed that under the rule formulated by the Commission, were a non-recognized state to enter a reservation, the consent of a non-recognizing contracting state to the reservation would be implied by the latter's silence. If the non-recognizing state were to object to the reservation, its position on recognition would seem to be jeopardized but it would presumably be open to the state to preface its objections with a denial of intent to recognize. In the course of the Commission's review of Article 19, it might however wish to consider excluding from that Article the presumption of a state's consent to reservations entered by states it does not recognize.

5. It is noted that under the rule set out in Article 17 concerning obligations prior to the entry into force of a treaty, a state which has taken any part in the drafting process, is obliged

November 26, 1963.

Canadian Comments on Draft Articles and Commentaries concerning the Law of Treaties drawn up by the International Law Commission at its 14th Session

In its Commentary on Article 4(6), the Commission has expressed the desire to have information from governments as to their practice with regard to instruments of full powers. In Canadian practice, the Prime Minister and the Secretary of State for External Affairs are considered to have general authority to bind the Government and full powers are therefore not issued for them. If full powers are requested and the representative of Canada is other than the Prime Minister or the Secretary of State for External Affairs, particular full powers are issued by the Secretary of State for External Affairs. While it has not been Canadian practice to issue general full powers, it is realized that circumstances might arise in which it would be advantageous to do so and accordingly, the Canadian government favours a provision recognizing such powers.

2. It is noted that in paragraph 7 of the Commentary on Article 4, it is stated that instruments of ratification, accession, acceptance and approval "are normally signed by Heads of State although in modern practice this is sometimes done by Heads of Government or by Foreign Ministers". The Commission might wish to be apprised that the usual Canadian practice in this regard is for such instruments to be executed by the Secretary of State for External Affairs.

3. It is noted that in Article 8 the Commission has recommended that where a general multilateral treaty as defined in Article 1(c), is silent concerning participation, it is to be assumed that the parties intended the treaty to be open to participation by all states. It is noted that the Commission is not recommending a derogation of the fundamental principle of international law that contracting parties are free to determine for

to refrain from acts calculated to frustrate the treaty. The Commission might wish to consider whether it is appropriate that this rule should be so broad as to cover states which, although participating in the negotiation of a treaty, have done so reluctantly expressing the strongest reservations about it.

6. It is noted that in Articles 18, 19 and 20 concerning reservations, the Commission has adopted the so-called flexible approach by which reservations to multilateral treaties are admissable providing they are compatible with the object and purpose of the treaty. A reservation is to be regarded as accepted by a contracting state if the latter has raised no objection to it within 12 months. It is noted however that as phrased at present, some question might arise as to whether compatibility with the object and purpose of the treaty is to be the basis on which a state may make a reservation (Article 18(d)) or the basis on which a state may object to a reservation (Article 20(2)(b)). If the former, it would seem to be still open to contracting states to object to reservations on other grounds. However, it seems to be the Commission's intention to make compatibility with the object and purpose of the treaty a prerequisite for the admissability of reservations as well as the only grounds on which an objection can be taken to a reservation. The Commission might find it desirable to state this intention unequivocably in order to remove any basis for an argument that states may still object to reservations on other grounds. It is also noted that the Commission is recommending the establishment of this rule concerning the compatibility of the reservation with the object and purpose of the treaty, only where the treaty is silent on the question of reservations (Article 18(d)). Treaties which permit reservations to some or all of their articles do not generally indicate standards of admissability, and the effect of the Commission's recommendations would therefore seem to be the creation of separate criteria for the admissibility

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of reservations in the case of a treaty which is silent in this regard, and in the case of a treaty which permits them. The Commission might accordingly wish to consider the desirability of extending the standard of admissibility it has formulated to reservations made pursuant to express treaty provisions.

Legal/M.D.Copithorne/ts.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: The Under-Secretary

(through M. Cadieux & U.N. Div.)

FROM: Legal Division

REFERENCE:

Security UNCLASSIFIED

Date November 26, 1963.

File No. 20-3-1-6

SUBJECT: International Law Commission Treaty Project.

___ We attach for your signature if you approve a letter to the United Nations Legal Counsel transmitting our comments as requested on the first third of the work of the International Law Commission on its treaty codification project. A summary and comments on the possibly controversial articles as well as those that might be considered to involve a Canadian
___ interest is flagged in the attached file.

2. The Commission's work has been largely of a technical legal nature and it would not seem necessary to refer the matter to the Minister. On the other hand while the letter from the United Nations is in the name of the Legal Counsel, it might be regarded as inappropriate for the reply to be in Mr. Cadieux's name in view of his membership on the Commission.

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Legal Division

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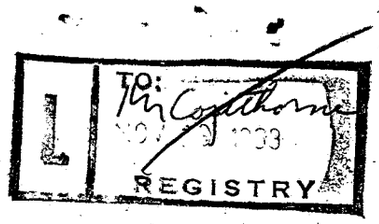

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TO EXTERNAL(LEGAL DIV:COPITHORNE)1899 PRIORITY

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18TH UNGA:PLENARY-6TH CTTEE ITEM RE EXTENDED PARTICIPATION IN LEAGUE TREATIES.

FOLLOWING REJECTION YESTERDAY BY VOTE OF 37-56(CDA)-9 OF CEYLON-GHANA AMENDMENT TO DELETE PARA EMBODYING MEMBER STATES FORMULA CZECHOSLOVAK AMENDMENT TO INTRODUCE ALL STATES FORMULA WAS DEFEATED BY VOTE OF 33-55(CDA)-14,USSR REQUEST FOR FURTHER SEPARATE ROLL CALL VOTE ON PARA AS A WHOLE WAS REJECTED BY 33-52(CDA)-17.WHOLE RESLN EMBODYING MEMBER STATES FORMULA WAS THEREAFTER ADOPTED BY 79(CDA)-0-22.

2.DEBATE ON THIS POINT LASTED BEST PART OF DAY AND WAS HIGHLIGHTED BY PERSONAL INTERVENTION OF SECGEN WHO EXPLAINED THAT ALL STATES FORMULA WOULD BE UNWORKABLE FOR SECRETARIAT.IN CASE OF ITS ADOPTION HE SAID SECRETARIAT WOULD HAVE TO SEEK FROM UNGA A COMPLETE LIST OF STATES WITH WHICH TO COMMUNICATE UNDER RESLN.

3.INCREASED MAJORITY IN FAVOUR OF MEMBER STATES FORMULA WAS ENSURED ESPECIALLY BY SWITCHES FROM 6TH CTTEE VOTING BY CYPRUS MADAGASCAR MEXICO CENTRAL AFRICAN REPUBLIC IVORY COAST AND SIERRA LEONE.

VOTING FOR FIRST TIME RWANDA STOOD FOR MEMBER STATES FORMULA AND BURUNDI AGAINST.TWO CONGOS VOTED IN FAVOUR.

4.ALL STATES GROUP RECEIVED FRESH SUPPORT OF BURMA SOMALIA AND UGANDA.CHAD MAURITANIA AND SUDAN WHICH HAD VOTED FOR ALL STATES FORMULA IN CTTEE AND DAHOMEY WHICH HAD VOTED FOR OTHER FORMULA WERE ABSENT.

5.OUTCOME WAS BITTER DEFEAT FOR USSR DEL(MOROZOV)AND GHANAIAN DEL (DADZIE)WHOSE PERSONAL PRESTIGE IN 6TH CTTEE WAS VERY MUCH AT STAKE.

....

The Under-Secretary

(through M. Cadieux & U.N. Div.)

Legal Division

UNCLASSIFIED

November 26, 1963.

20-3-1-6

International Law Commission Treaty Project.

We attach for your signature if you approve a letter to the United Nations Legal Counsel transmitting our comments as requested on the first third of the work of the International Law Commission on its treaty codification project. A summary and comments on the possibly controversial articles as well as those that might be considered to involve a Canadian interest is flagged in the attached file.

2. The Commission's work has been largely of a technical legal nature and it would not seem necessary to refer the matter to the Minister. On the other hand while the letter from the United Nations is in the name of the Legal Counsel, it might be regarded as inappropriate for the reply to be in Mr. Cadieux's name in view of his membership on the Commission.

Legal Division

UNITED NATIONS

Press Services
Office of Public Information
United Nations, N.Y.

(FOR USE OF INFORMATION MEDIA -- NOT AN OFFICIAL RECORD)

Press Release SG/1618
18 November 1963

SECRETARY-GENERAL'S STATEMENT IN ASSEMBLY PLENARY ON EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER LEAGUE OF NATIONS AUSPICES

The following is the text of a statement made by the Secretary-General in the General Assembly plenary meeting today:

"The representative of Guatemala has just requested me to indicate how I would seek to implement the provision in an amendment to the draft resolution now being considered by the General Assembly -- the amendment contained in Document A/L.432 -- which would request the Secretary-General to invite any State to accede to certain League of Nations treaties by depositing an instrument of accession with the Secretary-General.

"In this connexion, I feel it is incumbent upon me to bring the following to the attention of the Members of the Assembly: When the Secretary-General addresses an invitation or when an instrument of accession is deposited with him, he has certain duties to perform in connexion therewith. In the first place, he must ascertain that the invitation is addressed to, or the instrument emanates from, an a thority entitled to become a party to the treaty in question. Furthermore, where an instrument of accession is concerned, the instrument must, inter alia, be brought to the attention of all other interested States and the deposit recorded in various treaty publications of the Secretariat, provided they emanate from a proper authority. There are certain areas in the world the status of which is not clear. If I were to invite or to receive an instrument of accession from any such area, I would be in a position of considerable difficulty unless the Assembly gave me explicit directives on the areas coming within the "any State" formula. I would not wish to determine on my own initiative the highly political and

(more)

controversial question whether or not the areas the status of which was unclear were States within the meaning of the draft amendment now being considered. Such a determination, I believe, falls outside my competence.

"In conclusion, I must therefore state that if the 'any State' formula were to be adopted, I would be able to implement it, only if the General Assembly provided me with the complete list of the States coming within that formula, other than those which are Members of the United Nations or the specialized agencies, or parties to the Statute of the International Court of Justice."

* *** *

AMADGUN46

PRESS RELEASE GA/2873 - SUMMARY
EIGHTEENTH GENERAL ASSEMBLY - 125~~8TH PLENARY MEETING~~ (AM)
UNITED NATIONS, N.Y.

20-3-46

ASSEMBLY CONSIDERS EXTENDED ~~PARTICIPATION~~ IN MULTILATERAL TREATIES CONCLUDED UNDER LEAGUE AUSPICES; RECOMMENDS INTERNATIONAL LAW COMMISSION CONTINUE DRAFTING LAW OF TREATIES

THE GENERAL ASSEMBLY THIS MORNING TOOK UP THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

THE SIXTH COMMITTEE (LEGAL) PROPOSED A RESOLUTION IN ITS REPORT ON THIS ITEM (DOC. A/5602 AND CORR.1), WHICH WOULD HAVE THE ASSEMBLY EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE, REGARDING 21 MULTILATERAL TREATIES OF A TECHNICAL AND NON-POLITICAL NATURE, AND OPEN THEM FOR ACCESSION BY STATES OTHERWISE INELIGIBLE TO PARTICIPATE IN THE INTERNATIONAL AGREEMENTS.

THE TREATIES HAVE BEEN CLOSED SINCE 1946. AMONG THEM ARE CONVENTIONS CONCERNING SUCH MATTERS AS COUNTERFEITING, NARCOTICS AND DUAL NATIONALITY.

TWO AMENDMENTS INTRODUCED THIS MORNING IN THE ASSEMBLY DEAL WITH THE QUESTION OF WHICH STATES SHOULD BE INVITED TO BECOME PARTIES TO THE TREATIES.

THE DRAFT RESOLUTION AS IT STANDS WOULD HAVE THE SECRETARY-GENERAL INVITE MEMBER STATES OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES, PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE AND STATES DESIGNATED FOR THIS PURPOSE BY THE ASSEMBLY.

THE FIRST AMENDMENT (DOC. A/L.432), CO-SPONSORED BY CEYLON AND GHANA, WOULD HAVE THE ASSEMBLY DELETE REFERENCES TO THE INVITATIONS. THE OTHER AMENDMENT, BY CZECHOSLOVAKIA (DOC. A/L.432), WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES.

STATEMENTS THIS MORNING WERE MADE BY THE REPRESENTATIVES OF GHANA, CEYLON, CZECHOSLOVAKIA, USSR, UNITED STATES, GUATEMALA, AUSTRALIA, HUNGARY, FRANCE, ROMANIA AND JAMAICA. THE SECRETARY-GENERAL MADE A STATEMENT ON THE EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES (PRESS RELEASE SG/1618). GHANA SPOKE ON A POINT OF ORDER AND AUSTRALIA IN REPLY.

MORE

EARLIER, THE ASSEMBLY ADOPTED UNANIMOUSLY A RESOLUTION RECOMMENDING THAT THE INTERNATIONAL LAW COMMISSION (ILC) CONTINUE DRAFTING THE LAW OF TREATIES AND PROCEED WITH ITS WORK ON THE RESPONSIBILITY OF STATES, THE SUCCESSION OF STATES AND GOVERNMENTS, SPECIAL MISSIONS AND RELATIONS BETWEEN STATES AND INTER-GOVERNMENTAL ORGANIZATIONS.

IT ACTED ON THE REPORT OF THE SIXTH COMMITTEE (DOC. A/5601 AND CORR.2) DEALING WITH THE AGENDA ITEM : REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FIFTEENTH SESSION.

THE ASSEMBLY WILL CONTINUE ITS CONSIDERATION OF THE ITEM ON THE TREATIES AT 3:15 THIS AFTERNOON, WITH JAPAN, BOLIVIA, NICARAGUA, ALBANIA, ALGERIA, AND THE USSR (RIGHT OF REPLY) LISTED TO SPEAK.

(A MORE DETAILED ACCOUNT OF THIS MEETING APPEARS IN TAKES 1-12)

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UN

ESS RELEASE GA/2875 - TAKE 1
EIGHTEENTH GENERAL ASSEMBLY - 1258TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

THE GENERAL ASSEMBLY MET THIS MORNING TO TAKE UP TWO REPORTS OF THE SIXTH COMMITTEE (LEGAL) DEALING WITH:

-- THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION;

-- THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

THE FIRST REPORT (DOC. A/5601 AND CORR.2) SUBMITS FOR THE APPROVAL OF THE GENERAL ASSEMBLY A RESOLUTION, WHICH, IN PART, RECOMMENDS THAT THE LAW COMMISSION CONTINUE ITS WORK.

THE ILC REPORT (DOC. A/5509) DEALT PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS FIFTEENTH SESSION, HELD LAST SUMMER, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLE. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES. OTHER SECTIONS OF THE DOCUMENT REPORT ON THE COMMISSIONS WORK ON STATE RESPONSIBILITY, SUCCESSION OF STATES AND GOVERNMENTS, SPECIAL MISSIONS, RELATIONS BETWEEN STATES AND INTER-GOVERNMENTAL ORGANIZATIONS AND THE QUESTION OF THE LEAGUE OF NATIONS TREATIES.

THE RESOLUTION SUBMITTED TO THE GENERAL ASSEMBLY IN THE SIXTH COMMITTEE REPORT (DOC. A/5602 AND CORR.1) ON THE SECOND ITEM OF TODAYS AGENDA WOULD HAVE THE GENERAL ASSEMBLY EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE OF NATIONS REGARDING 21 MULTILATERAL TREATIES OF A TECHNICAL AND NON-POLITICAL NATURE.

THE ASSEMBLY, ACCORDING TO THE RESOLUTION, WOULD OPEN THESE TREATIES, WHICH HAVE BEEN CLOSED SINCE 1946, FOR ACCESSION TO STATES OTHERWISE INELIGIBLE TO PARTICIPATE IN THESE GOVERNMENTS. AMONG THE 21 TREATIES ARE CINVENTIONS CONCERNING SUCH MATTERS AS COUNTERFEITING, NARCOTICS AND DUAL NATIONALITY.

MORE

THE RESOLUTION WOULD HAVE THE ASSEMBLY REQUEST THE SECRETARY-GENERAL TO INVITE, TO BECOME PARTY TO THE TREATIES, MEMBER STATES OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES, PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, AND STATES DESIGNATED FOR THIS PURPOSE BY THE ASSEMBLY. THE RESOLUTION ALSO PROVIDES FOR CONSULTATION BETWEEN THE SECRETARY-GENERAL AND MEMBER AND NON-MEMBER STATES WHICH ARE PARTIES TO THE TREATIES AS TO WHETHER ANY OF THE TREATIES ARE NO LONGER IN FORCE, HAVE BEEN SUPERSEDED BY LATER TREATIES, ARE NO LONGER OF INTEREST FOR ACCESSION BY ADDITIONAL STATES, OR REQUIRE ACTION TO ADAPT THEM TO CONTEMPORARY CONDITIONS.

FINALLY, THE RESOLUTION WOULD HAVE THE ASSEMBLY REQUEST THE SECRETARY-GENERAL TO REPORT ON THESE MATTERS TO THE GENERAL ASSEMBLY AT THE NINETEENTH SESSION AND WOULD PLACE AN ITEM IN THIS CONNEXION ON THE 1964 PROVISIONAL AGENDA.

TWO AMENDMENTS, DEALING WITH THE QUESTION OF WHICH STATES SHOULD BE INVITED TO BECOME PARTY TO THE TREATIES, WERE CIRCULATED THIS MORNING.

AN AMENDMENT BY CEYLON (DOC. A/431) WOULD DELETE REFERENCES TO THE STATES TO BE INVITED. THIS WOULD HAVE THE EFFECT OF PROVIDING ONLY FOR CONSULTATIONS, WITH THE ASSEMBLY ASSUMING THE LEAGUE OF NATIONS FUNCTIONS WITH REGARD TO THE TREATIES.

THE SECOND AMENDMENT, BY CZECHOSLOVAKIA (DOC. A/432), WOULD HAVE THE SECRETARY-GENERAL INVITE "ANY STATE" TO ACCEDE TO THE TREATIES.

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PRESS RELEASE GA/2873 - TAKE 2
GHTEENTH GENERAL ASSEMBLY - 1253TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

THE ASSEMBLY UAS CALLED TO ORDER AT 10:40 A.M. BY THE PRESIDENT, CARLOS SOSA RODRIGUEZ (VENEZUELA).

K.S. ZABIGAILO (UKRAINE), THE RAPPORTEUR OF THE SIXTH COMMITTEE, INTRODUCED THE COMMITTEES REPORT ON THE ITEM DEALING UITH THE LAU COMMISSIONS REPORT.

THE PRESIDENT SAID THAT, THERE BEING NO SPEAKERS ON THIS ITEM, THE ASSEMBLY UOULD VOTE ON THE RESOLUTION.

THE ASSEMBLY THEN ADOPTED THE RESOLUTION UNANIMOUSLY.

THE PRESIDENT THEN TURNED TO THE ITEM DEALING UITH MULTILATERAL TREATIES. MR. ZABIGAILO (UKRAINE) INTRODUCED THE REPORT OF THE SIXTH COMMITTEE ON THIS SUBJECT.

HE NOTED THAT THE COMMITTEE HAD NOT REACHED UNANIMITY REGARDING THE QUESTION OF UHICH STATES SHOULD BE INVITED TO ACCEDE TO THE TREATIES. SOME REPRESENTATIVES BELIEVED, HE SAID, THAT ALL STATES SHOULD BE INVITED. ANY OTHER FORMULA, T SAID, UAS CONSIDERED INCONSISTENT UITH THE PRINCIPAL OF UNIVERSALITY AND UAS DISCRIMINATORY. THE MAJORITY, HOUEVER, ADOPTED THE RECOMMENDATION IN THE DRAFT RESOLUTION, HE SAID.

THE PRESIDENT SAID THAT, IN THE ABSENCE OF DISCUSSION ON THE REPORT ITSELF, THE ASSEMBLY UOULD TAKE UP THE DRAFT RESOLUTION RECOMMENDED BY THE SIXTH COMMITTEE.

E.. DADZIE (GHANA) SAID THAT GHANA UAS ALSO A CO-SPONSOR OF THE CEYLONESE AMENDMENT (DOC.A/431). HE THEN INTRODUCED THE AMENDMENT. EXPLINING THE PURPOSES OF THE RESOLUTION AS A UHOLE, HE REPRESENTATIVE OF GHANA SAID THAT IT UAS THE VIEJ OF THE CO-SPONSORS THAT IT UAS ILLOGICAL TO PROCEED UITH THE INVITATIONS TO ACCESSION UITHOUT FIRST DTERMINING THE VALUE OF THE 21 TREATIES.

MORE

UN 11

PRESS RELEASE GA/2373 - TAKE 3
EIGHTEENTH GENERAL ASSEMBLY - 1258TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

E.R.S.R. COOMARASWAMY (CEYLON), THE NEXT SPEAKER, SAID HIS DELEGATION BELIEVED THE SIXTH COMMITTEE SHOULD CONSIDER AT THE NINETEENTH SESSION OF THE GENERAL ASSEMBLY THE QUESTION OF AN "ALL STATE" FORMULA FOR THE DRAFT RESOLUTION. THIS WAS IMPORTANT, IF THE ASSEMBLY WERE TO ACCEPT THE UNIVERSALITY OF INTERNATIONAL LAW. ALL MULTILATERAL TREATIES SHOULD BE THROWN OPEN TO ALL STATES, AND NOT IMPOSED ON ANY. THEY SHOULD NOT BE LEFT OPEN ONLY TO THE SO-CALLED "CIVILIZED STATES". CEYLON BELIEVED, HE SAID, THAT PARAGRAPH 4 OF THE DRAFT RESOLUTION SHOULD BE DELETED AT THIS TIME AND CONSIDERED FURTHER NEXT YEAR.

VRATISLAV PECHOTA (CZECHOSLOVAKIA), INTRODUCING THE AMENDMENT THAT WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES, SAID THAT STRICT COMPLIANCE WITH NORMS OF INTERNATIONAL LAW REQUIRED FURTHER STUDY OF THE REATIES. FACTS IN THIS REGARD HAD NOT BEEN DETERMINED, HE DECLARED. THEREFORE, HE SAID, HIS DELEGATION SUPPORTED THE CEYLON AMENDMENT.

ANY EXCLUSION OF STATES FROM PARTICIPATING IN THE TREATIES, HE WENT ON, WOULD BE DISCRIMINATORY AND INCONSISTENT WITH INTERNATIONAL LAW. IT WAS TIME, HE ADDED, FOR THE UNITED NATIONS TO ABANDON SUCH POLICIES. THUS, HIS DELEGATION FELT IT NECESSARY TO INTRODUCE AN AMENDMENT.

ANY OTHER FORMULA, HE SAID, WAS POLITICALLY MOTIVATED TO EXCLUDE CERTAIN SOCIALIST STATES FROM PARTICIPATION.

PLATON D. MOROSOV (USSR) SAID THE ASSEMBLY MUST FIRST DECIDE WHETHER THE TREATIES CONCERNED WERE STILL IN FORCE. SOME WERE 40 YEARS OLD, AND THIS WAS A LONG TIME FOR TECHNICAL TREATIES. CONDITIONS MAY HAVE CHANGED AND THIS MIGHT HAVE TO BE TAKEN INTO ACCOUNT, HE SAID.

IN THE MEANTIME, NEW STATES HAD APPEARED AND THEY WERE CONCLUDING TREATIES THEMSELVES, INCLUDING TECHNICAL TREATIES. THIS ALSO COULD INFLUENCE THE VALUE OF THE OLD LEAGUE OF NATIONS TREATIES. MANY UNITED NATIONS TREATIES MAY HAVE SUPERSEDED CERTAIN CLAUSES IN OLD LEAGUE TREATIES.

JB 1253P 18 NOV 63

THE AMENDMENT, HE ADDED, DID NOT DELAY ACCESSION TO THE "ONE OR TWO" TREATIES ALREADY KNOWN TO BE IN FORCE AND WITH REGARD TO WHICH STATES COULD INDICATE THEIR INTENTION TO ACCEDE WITHOUT INVITATION.

RECALLING THAT A SIMILAR AMENDMENT HAD FAILED TO CARRY IN THE COMMITTEE BY ONE VOTE,MR. DADZIE SAID HE BELIEVED THAT THIS WAS DUE TO LACK OFCLARIFICATION AS TO WHAT THE AMENDMENT WOULD DO. BCAUSE THE AMENDMENT WOULD NOT PREVENT ACCESSION, HE HOPED NOW, WITH THAT CLARIFICATION, THE ASSEMBLY WOULD ADOPT THE AMENDMENT.

A 1203P 18 NOV 63

UN16
PRESS RELEASE GA/2873 - TAKE 4
EIGHTEENTH GENERAL ASSEMBLY - 1258TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

THE SOVIET REPRESENTATIVE SAID THAT IN FACT, MANY TECHNICAL-TYPE TREATIES CONCLUDED UNDER THE LEAGUE HAD MORE OR LRESS LOST THEIR SIGNIFICANCE. MANY WERE NO LONGER OF ANY PARTICULAR INTEREST TO STATES. THUS, THESE TREATIES MUST BE CAREFULLY STUDIED TO FIND OUT HOW MANY WERE REALLY IN FORCE, HAD NOT BEEN SUPERSEDED, AND STILL WERE OF INTEREST TO STATES.

THE SOVIET DELEGATION CONSIDERED THAT UNTIL THIS WAS DONE, IT WOULD BE HASTY TO DEAL WITH THE NEXT TASK -- AN INVITATION TO STATES TO ACCEDE TO ALL LEAGUE TREATIES. HOW COULD THE ASSEMBLY DECIDE AT THIS STAGE ON THIS QUESTIO, UNLESS THE SIGNIFICANCE OF THE TREATIES WAS FURTHER STUDIED? HE ASKED.

TO RETAIN PARAGRAPH 4 WOULD MEAN THE GENERAL ASSEMBLY WAS STATING THE TREATIES CONCERNED WERE APPROPRIATE AND DESIRABLE, AND THAT STATES SHOULD ACCEDE TO THEM; BUT IT COULD HARDLY DO THIS, WHILE THERE WERE STRONG FEELINGS THAT MANY OF THESE TREATIES WERE OBSOLETE OR EVEN "EXTINCT". PARAGRAPH 4 WAS CONTRARY TO PARAGRAPH 3 AND THUS SHOULD BE DELETED AS PROPOSED IN THE AMENDMENT SUBMITTED BY CEYLON AND GHANA.

MR. MOROZOV SAID NEW STATES SHOULD BE GIVEN THE CHANCE TO EXPRESS AN OPINION ON THE OLD LEAGUE TREATIES WHICH WERE FORMULATED BEFORE THOSE STATES ACHIEVED INDEPENDENCE. STUDY OF THE TREATIES, HE CONSIDERED, MIGHT LEAD TO REVISIONS TO THEM TO TAKE ACCOUNT OF CHANGES THAT HAD TAKEN PLACE OVER THE YEARS.

TO THROW THE TREATIES OPEN TO ACCESSION AT THIS STAGE WOULD ONLY CAUSE COMPLICATIONS SINCE MANY STATES WOULD PROBABLY HAVE STRONG RESERVATIONS ABOUT SOME OF THE TREATIES. WHY BE HASTY ABOUT TAKING A DECISION THAT WOULD HAVE NO PRACTICAL SIGNIFICANCE? HE ASKED. IT WAS BETTER TO WAIT FOR THE SECRETARY-GENERALS REPORT ON THE MATTER TO THE NINETEENTH SESSION.

THE SOVIET DELEGATION, HE SAID, WOULD VOTE FOR THE CEYLON-GHANA AMENDMENT.

JB 126P 18 NOV 63

MR. MOROZV SAID THAT IF THIS AMENDMENT WERE DEFEATED, THE QUESTION OF UNIVERSALITY OF TREATIES WOULD ARISE. ALL STHATES HAD THE INHERENT RIGHT TO PARTICIPATE IN MULTILATERAL TREATIES, HE DECLARED, AND THIS RIGHT COULD NOT BE LIMTED. ATTEMPTS AT LIMITATION WERE DISCRIMINATORY AND CONTRAVENED THE PRINCIPLE OF UNIVERSALITY. THE SVEREIGN EQUALITY OF STATES WAS A BASIC FOUNDATION OF INTERNATIONAL LAW, SAID MR. TMOROZOV, AND COULD NOT BE DENIED.

BY "SOPHISTICTED" FORMULATIONS SOME DELEGATIONS SOMETIMES TRIED TO GIVE AN APPEARANCE OF LEGALITY TO DISCRIMINATORY PROPOSALS, HE CONTINUED. FOR INSTANCE, MEMBERSHIP IN A SPECIALIZED AGENCY OF THE UNITED NATIONS WAS NOT A CRITERION FOR A STATES PARTICIPATION IN A MULTILATERAL TREATY.

AS IT STOOD, PARAGRA 4 WOULD MEAN THAT THE GENERAL ASSEMBLY COULD DECIDE TO INVITE STATES TO ACCEDE TO A TREATY -- OR DECIDE NOT TO INVITE IT -- PENDING ON ITS SYMPATHY OR ANTIPATHY TO THE STATES SOCIAL OR POLITICAL SYSTEM. BUT THE GENERAL ASSEMBLY WAS NOT A "POLITICAL CLUB", SAID THE SOVIET REPRESENTATIVE, THAT COULD ACT IN SUCH A MANNER.

MR.TOROZOV SAID THERE HAD BEEN ONLY A VERY NARROW MAJORITY IN FAVOUR OF PARAGRAPH 4 WHEN IT WAS VOTED ON IN THE SIXTH COMMITTEE. STATES SHOULD CONSIDER AT THIS STAGE WHETHER THEY THOUGHT A DISCRIMINATORY PROVISION SHOULD BE INCLUDED IN THE ASSEMBLYS RESOLUTION ON THIS SUBJECT. HE URGED THE DELETION OF PARAGRAPH 4, OR -- IN THE EVENT OF ITS RETENTION -- ADOPTION OF THE AMENDMENT OF CZECHOSLOVAKIA.

ON A MATTER SUCH AS THIS THE ASSEMBLY SHOULD NOT TAKE A DECISION THAT WOULD BE "POLITICALLY DISPLEASING" TO SCORES OF STATES. MR. MOROZOV SAID EVEN THOSE STATES THAT OPPOSED THE INVITATION TO ALL STATES TO ACCEDE TO THE TREATIES REALIZED THAT ONLY ONE OF THE TREATIES WAS OF IMMEDIATE VALUE.

IF PARAGRAPH 4 WERE RETAINED IN ITS PRESENT FORM IN THE DRAFT RESOLUTION, THE SOVIET DELEGATION COULD NOT SUPPORT TTHE RESOLUTION IN ITS ENTIRETY, MR. MOROZOV DECLARED.

JN2035P 18 NOV 63

STEPHEN M. SCHWEBEL (UNITED STATES) SAID HIS DELEGATION STRONGLY OPPOSED THE CEYLON-GHANA AMENDMENT. IN EFFECT, HE SAID, IT WOULD POSTPONE UNTIL NEXT YEAR AN ISSUE WHICH HAD BEEN EXTENSIVELY DEBATED THIS YEAR. FURTHERMORE, HE ADDED, IT WOULD BAR CERTAIN STATES FROM ADHERING TO THE TREATIES. ONE TREATY ON COUNTERFEITING WAS NEEDED NOW, HE SAID. OTHERS, TOO, MIGHT BE REQUIRED.

CONTINUING, HE SAID THAT THERE WAS "VIRTUALLY NO CHANCE" THAT THE ISSUES REGARDING THAT "ALL STATES" FORMULA COULD BE RESOLVED. HE ASKED IF THE ASSEMBLY BELIEVED THAT SUCH DISPUTES AS THOSE REGARDING THE STATUS OF THE ENTITIES OF NORTH KOREA, NORTH VIET-NAM, OR LATIVA, LITHUANIA OR ESTONIA, AND OTHERS WOULD BE RESOLVED DURING THE COMING YEAR.

THE QUESTION OF THE TREATIES, HE SAID, HAD BEEN CONSIDERED IN THE PAST TWO SESSIONS OF THE GENERAL ASSEMBLY. IT WAS TIME TO RESOLVE THIS ITEM BY ADOPTING THE DRAFT.

TURNING TO THE CZECHOSLOVAK AMENDMENT, MR. SCHWEBEL SAID HIS DELEGATION OPPOSED IT EVEN MORE STRONGLY THAN THE CEYLON-GHANA AMENDMENT.

THE ASSEMBLY, HE SAID, HAD NEVER ADOPTED THE "ALL STATES" FORMULA AND SHOULD NOT DO SO TODAY. SUCH A FORMULA WAS NOT WORKABLE. FURTHERMORE, THE SECRETARY-GENERAL COULD NOT PASS ON THE STATES OF EAST GERMANY OR ESTONIA, AS TO WHETHER OT NOT THEY WERE STATES. MEMBERS OF THE GENERAL ASSEMBLY DID NOT RECOGNIZE UNRECOGNIZED ENTITIES AS STATES, HE SAID. WHY SHOULD IT HAVE TO ENTER INTO TREATY RELATIONS WITH THESE ENTITIES? HE ASKED.

THE REPRESENTATIVE OF THE UNITED STATES WENT ON TO SAY THAT THE MOSCOW TREATY WAS NOT, CONTRARY TO THE VIEWS OF SOME DELEGATIONS, A PRECEDENT FOR THE "ALL STATES" FORMULA. IT HAD BEEN NECESSARY TO HAVE THREE DEPOSITORIES FOR THE TREATIES. THE SECRETARY-GENERAL, HE SAID, WAS ONLY A SINGLE DEPOSITORY. NEITHER WERE THE GENERAL ASSEMBLYS CALLS FOR ALL STATES CO-OPERATION -- AS IN THE RESOLUTION ON THE CONGO -- PRECEDENTS FOR THE "ALL STATES" FORMULA. THESE RESOLUTIONS HAD NOT INVITED THE DEPOSIT OF LEGAL INSTRUMENTS, HE SAID.

THE FORMULA IN THE DRAFT RESOLUTION BEFORE THE GENERAL ASSEMBLY, HE WENT ON, REPRESENTED A COMPROMISE, AS HAD BEEN ADOPTED AT THE VIENNA CONFERENCE ON CONSULAR AND DIPLOMATIC RELATIONS.

UN28
PRESS RELEASE GA/587E (TAKE 7
EIGHTEENTH GENERAL ASSEMBLY - 1258TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

ROBERTO HERRERA (GUATEMALA) SAID HIS DELEGATION AGREED WITH THE UNITED STATES REASONS FOR OPPOSING THE TUO AMENDMENTS.

HIS DELEGATION, HE SAID, HAD ASKED THE LEGAL COUNSEL IN THE SIXTH COMMITTEE WHETHER THE SECRETARY-GENERAL COULD DECIDE UHICH ENTITIES VERE OR VERE NOT STATES, IF THE PROPOSAL BY CZECHOSLOVAKIA VAS ADOPTED. HE RREQUESTED THE PRESIDENT TO ASK THE SAME QUESTION OF THE SECRETARY-GENERAL.

THE SECRETARY-GENERAL THEN MADE A STATEMENT IN REPLY TO THE REPRESENTATIVE OF GUATEMALA.

U THANT SAID THAT WHEN AN INSTRUMENT OF ACCESSION VAS DEPOSITED VITH THE SECRETARY-GENERAL, HE HAD CERTAIN DUTIES TO PERFORM IN CONSEQUENCE -- HE HAD, FOR INSTANCE, TO ASCERTAIN THAT IT EMANATED FROM AN AUTHORITY ENTITLED TO BECOME A PARTY TO THE TRUATY CONCERNED. IF THIS VAS THE CASE, THE INSTRUMENT MUST BE BROUGHT TO THE NOTICE OF ALL INTERESTED STATES.

HOVEVER, THERE VERE CERTAIN AREAS IN THE VORLD VHOSE STATUS VAS NOT CLEAR. IF HE RECEIVED AN INSTRUMENT OF ACCESSION FROM ANY SUCH AREA, HE VOULD BE PLACED IN CERTAIN DIFFICULTIES, UNLESS THE GENERAL ASSEMBLY GAVE HIM SOME EXPLICIT DIRECTIONS ON THE AREAS COMING VITHIN THE "ALL STATE" FORMULA, IF THAT FORMULA VERE PART OF A RESOLUTION, AS PROFOSED BY CZECHOSLOVAKIA IN ITS AMENDMENT.

AS SECRETARY-GENRAL, HE VOULD NOT VISH TO DETERMINE SUCH A HIGHLY POLITICAL QUESTIONAS TO UHICH AREAS, VHOSE STATUS VAS UNCLEAR, CAME VITHIN THE CONTEXT OF SUCH A FORMULA. SUCH A DECISION VAS OUTSIDE HIS COMPETENCE, U THANT CONTINUED.

IF THE "LL STATE" FORMULA VAS ADOPTED IN THIS RESOLUTION, HE VOULD BE ABLE TO IMPLEMENT IT ONLY IF THE ASSEMBLY PROVIDED HIM VITH "A COMPLETE LIST" OF THE STATES COMING VITHIN THE MEANING OF THE FORMULA, OTHER THAN THOSE MEMBERS OF THE UNITED NATIONS OR THE SPECIALIZED AGENCIES OR PARTIES TO THE STATUTE OF THE INTERNATIONAL COUT OF JUSTICE.

JNT248P 18 NOV 65

UN31

PRESS RELEASE G/2873 - TAKE 8
EIGHTEENTH GENERAL ASSEMBLY - 1258TH PLENARY MEETING (AM)
UNITED NATIONSN.Y.

SIR KENNETH BAILEY (AUSTRALIA) SAID HIS DELEGATION WOULD OPPOSE THE AMENDMENT OF CEYLON AND GHANA.

HE SAID INVITATIONS TO ACCEDE TO CERTAIN TREATIES COULD WELL BE SENT AT ONCE; IN OTHER CASES THEY MIGHT HAVE TO AWAIT THE SECRETARY-GENERALS CONSULTATIONS ON THE UTILITY OF THE TREATIES. HIS DELEGATION HAD FOUR REASONS FOR OPPOSING THE AMENDMET OF CEYLON D GHANA.

FIRST, OPERATIVE PARAGRAPH 4 WAS A CAREFULLY CONSIDERED, IMPORTANT AND INTEGRAL PART OF AN INTRICATE METHOD OF DEALING WITH A HIGHLY PROFESSIONAL MATTER, AND HAD BEEN ADOPTED BY THE SIXTH COMMITTEE ON ITS LAST VOTE WITHOUT DISSENT.

SECOND, THE PARAGRAPH HAS BEEN ADOPTED AFTER A "LENGTHY, FRANK AND FOOD" DEBATE ON A QUESTION TF PRINCIPLE. HE SAID "SUPPRESSION" OF PARAGRAPH 4 WAS BEING SOUGHT THIS YEAR IN THE HOPE THAT A DIFFERENT RESULT MIGHT BE ACCOMPLISHED IN 1964. AUSTRALIA WAS PREPARED TO DISCUSS THE "ALL STATE" FORMULA, WHENEVER IT WAS NECESSARY, BUT IT COULD SEE NO ADVANTAGE IN MAKING A FURTHER DEBATE NECESSARY IN 1964, WHEN THE MATTER HAD JUST BEEN DISCUSSED IN DETAIL AT THIS SESSION. FURTHERMORE, IF THE ASSEMBLY DECIDED IN 1964 THAT STATES OUTSIDE THE UNITED NATIONS FAMILY SHOULD BE INVITED TO ACCEDE TO THE TREATIES CONCERNED, IT COULD DO SO BY A SIMPLE RESOLUTION DESIGNATING THE STATES CONCERNED.

THIRD, IT WAS TIME FOR ACTION NOW ON THE MATTER INVOLVED IN PARAGRAPH 40. THIS WAS NOT A MATTER OF "RUSHING"ANYTHING, SINCE TREATIES WHICH WERE NOT READY TO BE THROWN OPEN NEED NOT BE. THERE WERE TWO LEAGUE TREATIES DEALING WITH THE SUPPRESSION OF COUNTERFEITING THAT WERE READY FOR ACCESSION BY NEW STATES, SAID SIR KENNETH.

FOURTH, SAID THE REPRESENTATIVE OF AUSTRALIA, PARAGRAPH 4 GREW OUT OF THE EARLIER PARAGRAPHS OF THE RESOLUTION. THERE WAS URGENT REASON NOR ACTION NOW, HE SAID. HOWEVER, THIS WAS NOT THE POINT. THE GENERAL ASSEMBLY, HE SAID, SHOULD NOT HAVE TO JUSTIFY ACTION ON THE GROUNDS OF URGENCY. THERE WAS NO REASON TO POSTPONE ACTION AS THE MATTER HAD BEEN SUFFICIENTLY CLARIFIED.

JN250P 18 NOV 63

TFET

PRESS RELEASE GA//873 - TAKE 9
EIGHTEENTH GENERAL ASSEMBLY - 1258TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

AS TO THE CZECHOSLOVAK AMENDMENT, SIR KENNETH SAID HIS DELEGATION WOULD VOTE AGAINST IT. THE QUESTION BEFORE THE GENERAL ASSEMBLY, TE SAID, WAS WHETHER THE SECRETARY-GENERAL SHOULD BE AUTHORIZED TO INVITE "ALL STATES" OR STATES IN THE "UNITED NATIONS FAMILY", AND OTHER STATES DESIGNATED BY THE GENERAL ASSEMBLY. THE TEXT OF THE RESOLUTION, HE SAID, ALREADY REPRESENTED A COMPROMISE.

THE PROCEDURE ADOPTED IN THE RESOLUTION, HE SZID, WAS EXACTLY IN ACCORD WITH UNITED NATIONS PRACTICE. FURTHERMORE, HE URGED ADOPTION OF THE RESOLUTION AS IT STOOD, BECAUSE IT WOULD NOT BE PROPER FOR THE SECRETARY-GENERAL TO DECIDE WHICH ENTITIES WERE STATES. HE WOULD HAVE TO SUBMIT THE MATTER TO THE GENERAL ASSEMBLY. THUS, IT WOULD HAVE THE SAME EFFECT OF THE "VIENNA FORMULA" CONTAINED IN THE RESOLUTION, HE SAID.

THE SECRETARY-GENERAL, HE RECALLED, HAD JUST STATED THAT THE QUESTION CONCERNING THE STATES HE SHOULD INVITE WAS BEYOND HIS COMPETENCE.

THE CHOICE, HE SAID, WAS BETWEEN A CONSTITUTIONAL AND NON-CONSTITUTIONAL METHOD OF ARRIVING AT THE SAME RESULT.

THE VIENNA FORMULA IN OPERATIVE PARAGRAPH 4 SHOULD, THEREFORE, BE RETAINED, HE SAID.

MR. DADZIE (GHANA), SPEAKING ON A POINT OF ORDER, SAID IT WAS NOT TRUE THAT THE REPRESENTATIVE OF AUSTRALIA HAD IMPLIED IN THE SIXTH COMMITTEE ON PARAGRAPH 4, ON THE QUESTION OF APPLICATION OF THE "VIENNA FORMULA (DOC. A/5602, PARAGRAPH 24(D)) WAS THE SAME AS A PROPOSAL TO DELETE THAT PARAGRAPH. A MAJORITY OF STATES WAS NOT OPPOSED TO THE QUESTION INVOLVED IN THE PRINCIPLE OF UNIVERSALTIY.

MR. DADZIE ASKED MEMBERS NOT BE BE "MISLAID" BY THE STATEMENT MADE BY THE REPRESENTATIVE OF AUSTRALIA.

JA 328P 18NOV 63

UN40
PRESS RELEASE GA/2873 (TAKE 10
EIGHTEENTH GENERAL ASSEMBLY - 1253TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

SIR KENNETH BAILEY OF AUSTRALIA, REPLYING TO THE REPRESENTATIVE OF GHANA, SAID THAT HE HAD NO INTENTION OF MISLEADING THE GENERAL ASSEMBLY. THE FOUNDATION OF HIS STATEMENT COULD BE FOUND ON PAGE 11 OF THE RAPPORTEURS REPORT. RECALLING THE PROCEDURE THAT OCCURRED IN THE SIXTH COMMITTEE ON THE DAY OF THE VOTE, THE REPRESENTATIVE OF AUSTRALIA SAID THE REPORT SPOKE FOR ITSELF.

ENDRE USTOR (HUNGARY) SAID THAT THE CEYLON AMENDMENT HAD BEEN DEFEATED BY ONLY ONE VOTE N IN THE COMMITTEE. FURTHERMORE, IT HAD BEEN SUPPORTED BY AFRICAN AND ASIAN STATES, FOR WHICH THE OPENING OF THE TREATIES WAS DESIGNED.

HIS DELEGATION HOPED, HE SAID, THAT THE AMENDMENT WOULD BE ADOPTED. HOWEVER, IF IT WERE NOT, HIS DELEGATION WOULD SUPPORT THE CZECHOSLOVAK AMENDMENT.

THE PRINCIPLE OF EQUALITY OF STATES REQUIRED THAT NO GROUP OF STATES HAD THE RIGHT TO BAR OTHER STATES FROM PARTICIPATION IN THE TREATIES. PARAGRAPH 4 AMOUNTED TO DISCRIMINATION, WHICH COULD NOT BE TOLERATED AMONG STATES ON THE BASIS OF THEIR SOCIAL AND ECONOMIC ORDER. SUCH DISCRIMINATION HAD TO BE ERADICATED, HE SAID.

THE CHARTER OF THE UNITED NATIONS DID NOT LIMIT THE AMOUNT OF EQUALITY, HE DECLARED.

IT WAS INEVITABLE, HE SAID, THAT DISCRIMINATORY CLAUSES OF THIS KIND WOULD BE ELIMINATED FROM PRACTICES IN THE NITED NATIONS.

REFERRING TO THE SECRETARY-GENERALS STATEMENT TODAY, THE REPRESENTATIVE OF HUNGARY SAID THAT ADOPTING THE "ALL STATES" FORMULA WOULD MERELY PLACE THESE TREATIES ON AN EAL FOOTING WITH OTHER EXISTING TREATIES, CONCLUDED UNDER THE LEAGUE OF NATIONS.

JN330P 18 NOV 63

PHILLIPE MONOD (FRANCE) SAID HIS DELEGATION WOULD VOTE FOR THE RESOLUTION AS IT STOOD.

THE CEYLON AMENDMENT, HE SAID, SOLVED NOTHING. IT MERELY DEFERRED THE QUESTION UNTIL NEXT YEAR, WHEN THE GENERAL ASSEMBLY WOULD BE FACED WITH THE SAME PROBLEM.

IN ADOPTING THE RESOLUTION NO DISCRIMINATORY ACT WOULD BE COMMITTED. THE CZECHOSLOVAK AMENDMENT WOULD REQUIRE THE SECRETARY-GENERAL TO GO BEYOND HIS COMPETENCE. THE SECRETARY-GENERAL HIMSELF, HE SAID, HAS SHOWN THE DIFFICULTIES WITH WHICH HE WOULD BE FACED.

THE STATEMENT OF THE REPRESENTATIVE OF HUNGARY WOULD CONVINCE NO ONE, THE REPRESENTATIVE OF FRANCE DECLARED.

HIS DELEGATION APPROVED THE §§83,,- 094.7)-", WHICH, IN HIS VIEW, WAS A "COMMON SENSE" FORMULA. THIS WAS THE ONLY ADMINISTRATIVELY AND JURIDICALLY REALISTIC FORMULA, HE STATED. IT WAS NOT DEFINITIVE AND DID NOT CLOSE THE DOOR TO ANY STATE. THE CZECHOSLOVAK AMENDMENT WAS POLITICALLY DANGEROUS, WHILE THE CEYLON PROPOSAL DID NOTHING BUT POSTPONE THE MATTER.

THE "VIENNA FORMULA", IN HIS VIEW, WAS A "DEMOCRATIC SOLUTION", HE SAID. IT WAS THE ONLY ONE COMPATIBLE WITH THE SPIRIT OF THE 21 TREATIES. THERE HAD BEEN NO CLAUSE IN THE TREATIES INVITING ALL STATES.

CONCLUDING, MR. MONOD SAID THAT THE ARGUMENTS PRESENTED SHOWED THAT THE TEXT OF THE DRAFT RESOLUTION WAS THE ONLY ACCEPTABLE MEANS. HE APPEALED TO THE ASSEMBLY, SAID, AND ENDED BY NOTING THAT THE INTRODUCTION OF PETROLEUM AS AN ISSUE, WHICH HAD TO BE CONSIDERED UNDER OTHER CIRCUMSTANCES.

JB 340P 16 NOV 63

PRESS RELEASE GA//2573 - TAKE 12
EIGHTEENTH GENERAL ASSEMBLY - 1256TH PLENARY MEETING (AM)
UNITED NATIONS, N.Y.

TRAIAN IONASCU (ROMANIA), (ROMANIA), THE NEXT SPEAKER, SAID THE TREATIES CONCERNED WERE OF A UNIVERSAL NATURE AND SHOULD BE OPEN TO ACCESSION BY ALL STATES WITHOUT DISCRIMINATION -- PARTICULARLY SINCE THEY WERE NOT POLITICAL, BUT TECHNICAL TREATIES.

THIS OPINION HAD BEEN SUPPORTED IN SUCH A NON-POLITICAL BODY AS THE INTERNATIONAL LAW COMMISSION, HE ADDED. PRINCIPLES SUCH AS THE SOVEREIGN EQUALITY OF STATES MUST BE RESPECTED, ROMANIA CONSIDERED, IN VIEW OF THEIR IMPORTANCE IN INTERNATIONAL LAW.

AS FOR THE ARGUMENT THAT ACCESSION TO THE TREATIES BY CERTAIN STATES WOULD BE "ACIT RECOGNITION" OF THOSE STATES, HE SAID THIS ARGUMENT HAD BEEN REJECTED IN THE PAST AND WAS IRRELEVANT. HIS DELEGATION SUPPORTED THE AMENDMENT OF CZECHOSLOVAKIA, AND ALSO HAD NO OBJECTION TO THE FORMULA PROPOSED BY CEYLOND AND GHANA. IF THE CZECHOSLOVAK AMENDMENT WERE REJECTED, APPROVAL OF THE OTHER AMENDMENT WAS THE ONLY ACTION THE ASSEMBLY COULD RIGHTLY TAKE.

L.B. FRANCIS (JAMAICA) RECALLED THAT THE REPRESENTATIVE OF THE SOVIET UNION HAD NOTED THAT THE CEYLON AMENDMENT HAD NOT CARRIED THE COMMITTEE BY ONLY ONE VOTE. BUT, HE SAID, THE ASSEMBLY HAD TO PROCEED ON THE BASIS OF THE MAJORITY WILL. HE WONDERED WHAT THE SOVIET REPRESENTATIVE WOULD HAVE SAID HAD THERE BEEN A LARGER MAJORITY VOTE AGAINST THE AMENDMENT. HE SAID THE ARGUMENTS IN FAVOUR OF THE TWO AMENDMENTS WERE "DIRECTED AT DEFEATING THE DRAFT RESOLUTION", BUT HAD ACTUALLY STRENGTHENED THE CASE FOR ITS SURVIVAL.

HE SAID DELETION OF OPERATIVE PARAGRAPH 4 WOULD LEAVE OPERATIVE PARAGRAPH 2 "MEANINGLESS AT THIS STAGE". ONCE MACHINERY WAS ESTABLISHED FOR ACCESSION BY STATES -- AS IN PARAGRAPH 1 OF THE RESOLUTION --AND ONCE THE CONSENT OF SIGNATORIES WAS OUTLINED -- AS IN PARAGRAPH 2 -- THERE WAS NO REASON TO HALT THE PROCESS BY REMOVING PARAGRAPH 4.

MORE

TURNING TO THE "ALL STATES" FORMULA, MR. FRANCIS SAID THE SIGNIFICANCE OF THE MOSCOW TREATY IN THIS CONTEXT SHOULD NOT BE OVER-EMPHASIZED. THAT TREATY HAD NOT CHANGED THE DIPLOMATIC SITUATION IN SOME AREAS OF THE WORLD, NOR HAD IT CHANGED THE DIPLOMATIC SITUATION AS BETWEEN SEVERAL COUNTRIES.

THE TREATY, HE ADDED, HAD RECEIVED "THE UNQUALIFIED DENUNCIATION OF OVER 600 MILLION PEOPLE", AND SURELY THIS HAD SERIOUSLY AFFECTED THE PRACTICAL UNIVERSALITY OF THE TREATY AND "THE PEACE OF MIND OF THE MAJORITY OF PERSONS HERE".

MR. FRANCIS ASKED WHY THE ASSEMBLY SHOULD ESPOUSE UNIVERSALITY IN RELATIVELY UNIMPORTANT MATTERS FOR THE BENEFIT OF THOSE WHO HAD RENOUNCED UNIVERSALITY IN A MUCH MORE SERIOUS MATTER.

TO ACCEPT THE "ALL STATES" FORMULA WOULD MEAN A CERTAIN DEGREE OF RECOGNITION OF SOME STATES BY OTHERS, WHICH WOULD NOT OTHERWISE HAVE READILY RECOGNIZED THEM; AND WOULD PROBABLY EVENTUALLY INVOLVE THEIR "CREEPING INTO THE UNITED NATIONS THROUGH THE SIDE DOOR".

THE "ALL STATES" FORMULA WAS GENERALLY GOOD, BUT IT IGNORED DIPLOMATIC REALITIES.

THE REPRESENTATIVE OF JAMAICA SAID THAT UNDER THE DRAFT RESOLUTION THE UNITED NATIONS WOULD REMAIN FREE TO INVITE STATES OTHER THAN THOSE MENTIONED IN PARAGRAPH 4. HE URGED THAT THE INTERESTS OF THE LATTER STATES NOT BE SACRIFICED FOR "THE ILLUSORY INTERESTS" OF A FEW. JAMAICA WOULD VOTE AGAINST BOTH AMENDMENTS.

THE PRESIDENT SAID THERE WERE STILL SIX SPEAKERS ON HIS LIST -- JAPAN, BOLIVIA, NICARAGUA, ALBANIA, ALGERIA AND THE USSR (RIGHT OF REPLY).

THE MEETING ADJOURNED AT 1:25 P.M. THE ASSEMBLY WILL MEET AGAIN AT ABOUT P.M. TODAY.

(END OF TAKE 12 AND PRESS RELEASE GA52873)

JA 350P 13 NOV 63

ACTION COPY

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REGISTRY

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FM CANDELNY NOV16/63 CONFD
TO EXTERNAL 1881 OPIMMED
INFO LDN WASHDC EMBPARIS NATOPARIS GENEVA
REF OURTEL 1607 OCT28
18TH UNGA:PLENARY:6TH CTTEE ITEM RE EXTEND PARTICIPATION IN LEAGUE TREATIES

(FOR LEGAL DIV(COPITHORNE).THIS ITEM ALONG WITH UNCONTROVERSIAL 1ST 6TH CTTEE ITEM RE ILC REPORT COMING UP IN PLENARY MORNING OF MON NOV18.CONTEST BETWEEN QUOTE ALL STATES UNQUOTE VERSUS QUOTE MBMER STATES UNQUOTE FORMULA WILL BE REOPENED.CEYLON HAS NOW INTRODUCED WITH VIEW TO DEFERRING PROBLEM FORMAL AMENDMENT TO DELETE OP 4TH PARA OF RESLN EMBODYING MEMBER STATES FORMULA.ALL STATES FORMULA IS MOVED THIS TIME BY CZECHOSLOVAKIA.

2.ACTIVE CANVASSING HAS BEEN GOING ON AMONG ALL GROUPS IN ANTICIPATION OF THIS SHOWDOWN.RESULTS OF LATTER WILL INFLUENCE RESULTS OF SHOWDOWN ON ITEM 3:FRIENDLY RELATIONS WHICH IS ANTICIPATED IN 6TH CTTEE AFTERNOON OF SAME DAY.MORE ABOUT LATTER IN OUR FOLLOWING TEL FOR BEESLEY.

3.UNLESS YOU INSTRUCT OTHERWISE WE WILL VOTE AS IN CTTEE BUT TAKE NO RPT NO ACTIVE PART IN DISCUSSION IN WHICH OF COURSE SOVIET BLOC WILL POSE AS CHAMPIONS OF QUOTE UNIVERSAL INTERNATIONAL LAW UNQUOTE AS AGAINST RESTRICTIVE WESTERN CONCEPTS.

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FM CANDELNY OCT29/63 RESTD

TO EXTERNAL 1614 PRIORITY

INFO WASHDC LDN EMBPARIS NATOPARIS UNESCOPARIS DISARMDELGVE BAG MOSCOW WARSAW PRAGUE DE LDN

REF YOURTEL L165 OCT21

18TH UNGA:6TH CTTEE:ITEM 2:EXTENDED PARTICIPATION IN LEAGUE TREATIES

DEBATE ON THE ITEM ENDED YESTERDAY WITH ADOPTION OF TEXT OF 9-POWER DRAFT RESLN QUOTED IN OURTEL 1508 OCT18 WITH A MINOR AMENDMENT BY POLAND AND INSERTION IN 4TH PARA OF VIENNA UN MEMBER STATES FORMULA.VOTE ON WHOLE RESLN WAS 69(CDA)-0-22.

2.POLISH AMENDMENT OF A TECHNICAL NATURE COMPLETES PARA3(C)IN PROVIDING THAT SECGEN WILL CONSULT NOT RPT NOT ONLY WITH QUOTE STATES REFERRED TO IN SUBPARAS(A)AND(B)UNQUOTE BUT ALSO QUOTE WITH UN ORGANS AND SPECIALIZED AGENCIES CONCERNED UNQUOTE.

3.ONLY REAL DIFFICULTY WHICH DELAYED COMPLETION OF THIS ITEM BY ONE WEEK AROSE OVER ISSUE OF ALL STATES VERSUS MEMBER STATES FORMULAS.SOVIET DEL TO START WITH MADE STRONG BID FOR INCLUSION OF FIRST FORMULA THEN SUGGESTED POSTPONEMENT OF DECISION ON THIS POINT UNTIL NEXT SESSION(IN LIGHT OF RESULT OF OCT21 VOTE IN PLENARY OF 47-41-12 AGAINST ADMISSION OF CHINA).BY THAT TIME HOWEVER MATTER HAD DEVELOPED INTO A PRESTIGE ISSUE AND IT WAS TOO LATE TO STOP IT FROM PROVOKING DEBATE WITH POLITICAL OVERTONES.

4.AS A RESULT CTTEE VOTED TODAY ON FOUR RESLNS ON FIRST TWO OF WHICH ROLL-CALL VOTE WAS TAKEN AT REQUEST OF USSR DEL.FIRST VOTE ON CEYLON MOVE TO POSTPONE DECISION TO NEXT YEAR WAS CLOSEST MOTION LOSING BY 39-40(CDA)-12.ON SECOND ROLL-CALL VOTE 5-POWER (GHANA INDONESIA MALI MOROCCO NIGERIA)PROPOSAL FOR INSERTION OF ALL STATE FORMULA WAS DEFEATED BY 38-42(CDA)-10.

5.CTTEE THEN ADOPTED VIENNA FORMULA INTRODUCED BY JAMAICA(IN FAVOUR OF WHICH SHORTER UN FORMULA HAD BEEN WITHDRAWN BY ITS

...2....

SPONSORS) BY VOTE OF 57(CDA)-12-14. FURTHER VOTE ON FOURTH PARA OF MAIN RESLN AS NOW INCLUDING VIENNA FORMULA WAS TAKEN AT INSISTENCE OF USSR DEL WITH RESULT OF 63(CDA)-10-15.

6. IN VOTING LA GROUP(WITH SEVERAL ABSENTEES) STOOD AGAINST POSTPONEMENT AND FOR VIENNA FORMULA EXCEPT FOR MEXICAN ABSTENTION. FRENCH-AFRICAN VOTE WAS SPLIT WHILE ENGLISH-SPEAKING AFRICAN COUNTRIES AND AAB GROUP VOTED GENERALLY IN FAVOUR OF ALL STATES FORMULA. ADVOCATES OF LATTER MADE GREAT USE OF ILC DECISION ON ARTICLE 8 OF DRAFT LAW OF TREATIES AND OF SO-CALLED PRINCIPLE OF UNIVERSALITY.

7. UN LEGAL COUNSEL HAD TO TAKE STAND TWICE DURING DEBATE TO STATE THAT SECGEN COULD NOT RPT NOT OPERATE ON BASIS OF ALL STATES FORMULA. EFFECTIVE LAST MINUTE STATEMECT BY FRENCH DEL(MONOD) DID MUCH TO DISPEL IMPRESSION GENERATED BY SOVIET WEEK-LONG PRESSURE AND TACTICS THAT CTTEE WAS BEING CALLED UPON TO TAKE A MOMENTOUS POLITICAL DECISION.

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PRESS RELEASE GA/L/1022
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 801ST MEETING (AM)
UNITED NATIONS, N.Y.

LEGAL COMMITTEE ADOPTS RESOLUTION ON EMPOWERING ASSEMBLY TO ASSUME SOME LEAGUE OF NATIONS FUNCTIONS ON MULTILATERAL TREATIES

THE SIXTH (LEGAL) COMMITTEE THIS MORNING ADOPTED A RESOLUTION"" WHICH WOULD HAVE THE GENERAL ASSEMBLY EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE OF NATIONS AND OPEN TO NEW STATES 21 MULTILATERAL TREATIES, CLOSED SINCE 1946. THE VOTE WAS 69 IN FAVOUR, NONE AGAINST, WITH 22 ABSTENTIONS.

IN ADOPTING THIS RESOLUTION, THE COMMITTEE ACCEPTED THE JAMAICAN AMENDMENT (DOC. A/C.6/L.536) DEALING WITH THE QUESTION OF WHICH NEW STATES SHOULD BE INVITED TO ACCEDE TO THE TREATIES. IT WOULD HAVE THE SECRETARY-GENERAL INVITE MEMBERS OF THE UNITED NATIONS, AND OF THE SPECIALIZED AGENCIES, PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE (ICJ) AND STATES "DESIGNATED FOR THIS PURPOSE BY THE GENERAL ASSEMBLY".

THE VOTE ON THIS AMENDMENT WAS 57 IN FAVOUR TO 12 AGAINST, WITH 14 ABSTENTIONS. AMONG THE 21 TREATIES ARE INTERNATIONAL AGREEMENTS CONCERNING SUCH MATTERS AS COUNTERFEITING, NARCOTICS AND DUAL NATIONALITY (DOC. A/C.6/L.498).

THE AMENDMENT, SPONSORED BY JAMAICA, COLOMBIA AND CONGO (LEOPOLDVILLE), WAS PLACED BEFORE THE COMMITTEE LAST FRIDAY AS A "COMPROMISE" SOLUTION TO THE PROBLEM OF WHICH STATES SHOULD BE INVITED TO ACCEDE TO THE TREATIES.

THE SPONSORS OF THE RESOLUTION -- AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN --
HAD BEEN UNABLE TO REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOT-NOTE TO THEIR DRAFT.

IN THIS REGARD, ONE OF TWO EARLIER AMENDMENTS WAS WITHDRAWN BEFORE TODAYS VOTE. THE FIRST (DOC. A/C.6/L.533/CORR.1 AND 2), SPONSORED BY GHANA, INDONESIA, MALI, MOROCCO AND NIGERIA, WOULD HAVE INVITED "ANY STATE" TO ACCEDE TO THE TREATIES. THE SECOND (DOC. A/C.6/L.534), SPONSORED BY AUSTRALIA, GREECE AND GUATEMALA, WOULD HAVE INVITED ONLY "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY". THIS WAS WITHDRAWN ON FRIDAY, 25 OCTOBER.

THE AMENDMENT ADOPTED TODAY IS SIMILAR TO THE "VIENNA FORMULA" FOLLOWED AT THE UNITED NATIONS CONFERENCES ON DIPLOMATIC AND CONSULAR RELATIONS.

AN AMENDMENT INTRODUCED TODAY BY CEYLON TO POSTPONE UNTIL NEXT YEAR A DECISION ON WHICH STATES SHOULD BE INVITED TO ACCEDE TO THE TREATIES, WAS NOT CARRIED.

MORE

"" (DOC. A/C.6/L.532/REV.1) THE TEXT OF THE OPERATIVE PARAGRAPH OF THE AMENDED RESOLUTION AS ADOPTED BY THE COMMITTEE APPEARS ON PAGE 9.

ARSENIO ALVAREZ CORRALES (NICARAGUA) STATED HIS SUPPORT FOR THE AMENDMENT SUBMITTED BY THE REPRESENTATIVE OF JAMAICA. THIS, HE SAID, FILLED THE GAPS LEFT BY THE TWO EARLIER AMENDMENTS. NICARAGUA WISHED TO BE A CO-SPONSOR OF THE JAMAICAN AMDNEMENT, HE ADDED.

STEPHAN VEROSTA (AUSTRIA) SAID THE "VIENNA FORMUL", WHICH THE JAMAICAN AMENDMENT FOLLOWED, WOULD SOLVE THE PROBLEM BEFORE THE COMMITTEE. HIS DELEGATION, THEREFORE, VAFOURED THE JAMAICAN PROPOSAL, HE STATED.

MOHAMMAD ALI HEDAYATI (IRAN) ASKED WHETHER A STATE, UNDER THE JAMAICAN AMENDMENT, WOULD HAVE TO ACCEPT AN OBLIGATION IT DID NOT FAVOUR. COULD A STATE FORMALLY EXPRESS ITS OPPOSITION TO A GIVEN STATE ACCEDING TO A TREATY? HE ASKED. THIS, HE OBSERVED, WOULD BE AGAINST THE PRINCIPLE OF UNIVERSALITY.

HIS DELEGATION WAS NOT OPPOSED TO THE SOVIET UNIONS SUGGESTION THAT THERE SHOULD BE FURTHER STUDY OF THE TREATIES. BUT WHO WOULD CARRY OUT THE STUDY? HE ASKED.

GUISEPPE SPERDUTI (ITALY) EXPRESSED HIS DELEGATIONS WISH TO VOTE FOR THE DRAFT RESOLUTION, ALTHOUGH HIS DELEGATION STILL RETAINED CERTAIN JURIDICAL RESERVATIONS. THE TREATIES, HE SAID, SHOULD BE ACCEPTED BY THE WIDEST NUMBER OF STATES. THEREFORE, HE WENT ON, HIS DELEGATION APPRECIATED THE JAMAICAN AMENDMENT, AND WAS IN FAVOUR OF THE "VIENNA FORMULA", WHICH HAD BEEN USED AT THE UNITED NATIONS CONFERENCES AND WHICH REFLECTED THE PRINCIPLE OF UNIVERSALTIY.

THE FIRST AMENDMENT, INVITING "ANY STATE", WOULD PERHAPS BE SUITABLE, HE SAID, HOWEVER, IT CHALLENGED CERTAIN TERRITORIAL ENTITIES, AS TO WHETHER THEY WERE, OR WERE NOT, "STATES". THE FIRST AMENDMENT COULD NOT SOLVE THE DIFFICULTY WITH REGARD TO WHICH STATES SHOULD BE INVITED TO ACCEDE TO THE TREATIES. THE SECRETARY-GENERAL, HE SAID, COULD NOT MAKE JUDICIAL DECISIONS REGARDING THE EXISTENCE OF STATES.

FURTHER, THE FIRST AMENDMENT WAS INCONSISTENT WITH THE DRAFT RESOLUTION ITSELF, HE OBSERVED. THE FIRST AMENDMENT WOULD GIVE POWERS TO THE SECRETARY-GENERAL THAT BELONGED TO THE GENERAL ASSEMBLY, ACCORDING TO THE DRAFT RESOLUTION, HE ADDED.

CONCLUDING, THE REPRESENTATIVE OF ITALY SAID THE JAMAICAN AMENDMENT WAS THE "APPROPRIATE" SOLUTION TO THE PROBLEM.

MORE

IADH PRESS RELEASE GA/L/1022

ALBERTO HERRARTE (GUATEMALA) RECALLED THAT THE SECOND AMENDMENT HAD BEEN WITHDRAWN IN FAVOUR OF THE JAMAICAN AMENDMENT. GUATEMALA, HE SAID, WOULD VOTE FOR THE LATTER AMENDMENT.

SANTIAGO BENDAVA (CHILE) STATED THAT THE NAJAICAN AMENDMENT OFFERED THE BEST SOLUTION TO THE QUESTION BEFORE THE COMMITTEE. IT EMBODIED THE "VIENNA FORMULA" WITH REGARD TO UNIVERSALITY.

IT WAS HIS VIEW, HE SAID, THAT THE ITEM SHOULD NOT BE POSTPONED UNTIL NEXT YEAR.

"THE VIENNA FORMULA" DID NOT PRECLUDE, HE SAID, FURTHER STUDY OF THE TREATIES, AND DID NOT PRECLUDE ANY STATE FROM ACCEDING TO THE TREATIES.

E.K. DADZIE (GHANA) ANNOUNCED THAT THE CO-SPONSORS OF THE FIRST AMENDMENT ACCEPTED THE APPEAL MADE ON FRIDAY, 25 OCTOBER, BY THE REPRESENTATIVE OD AFGHANISTAN THAT THERE SHOULD BE A SUSPENSION FOR ONE YEAR OF THE VOTING ON THE QUESTION OF WHICH STATES SHOULD BE INVITED TO ACCEDE TO THE TREATIES.

THE CO-SPONSORS WOULD VOTE, THEREFORE, FOR THE DELEGATION OF OPERATIOVE PARAGRAPH 4 OF THE DRAFT RESOLUTION, IF SUCH A FORMAL PROPOSAL WERE INTRODUCED.

REPLYING TO THE REPRESENTATIVE OF ITALY, MR. DADZIE SAID THERE WAS NO INCONSISTENCY BETWEEN THE FIRST AMENDMENT AND THE DRAFT RESOLUTION. THIS WAS NOT THE FIRST TIME THAT THE GENERAL ASSEMBLY HAD INVITED ALL STATEES TO ADHERE TO A RESOLUTION. A GENERAL ASSEMBLY RESOLUTION ON THE CONGO, HE SAID, HAD CALLED ON ALL STATES TO CONTRIBUTE TO LAW AND ORDER. WHY THEN COULD THE GENERAL ASSEMBLY NOT CALL ON "ALL STATES" TO ACCEDE TO THESE TREATIES? HE ASKED.

THE FIRST AMENDMENT WAS THE BEST SOLUTION TO THE QUESTION, AND THE CO-SPONSORS WOULD CONTINUE TO SUPPORT IT.

E.R.S.R. COOMARASWANY (CEYLON) FORMALLY PROPOSED THAT VOTING ON OPERATIVE PARAGRAPH 4 OF THE DRAFT RESOLUTION BE POSTPONED UNTIL THE NINETEENTH SESSION OF THE GENERAL ASSEMBLY.

HE ALSO MOVED THAT THE PRESENT ITEM BE PLACED ON THE COMMITTEES AGENDA FOR FRIDAY, 1 NOVEMBER.

MORE

U HLA MAUNG (BURMA) STATED THAT HIS DELEGATION CONSIDERED IT "HIGHLY DESIRABLE" TO POSTPONE CONSIDERATION OF THE ITEM UNTIL FURTHER STUDY OF THE TREATIES HAD BEEN REPORTED ON BY THE SECRETARY-GENERAL.

HE SAW NO PARTICULAR URGENCY FOR A DECISION TO BE TAKEN NOW. HIS DELEGATION, THEREFORE, SUPPORTED THE CELON PROPOSAL, HE SAID.

THE REPRESENTATIVE OF ITALY, EXERCISING HIS RIGHT OF REPLY, SAID THAT THE DRAFT RESOLUTION WOULD NAME THE GENERAL ASSEMBLY AS THE APPROPRIATE ORGAN TO MAKE DECISIONS WITH REGARD TO THE TREATIES.

HOWEVER, THE FIRST AMENDMENT PERMITTED THE SECRETARY-GENERAL TO MAKE DECISIONS THAT WERE WITHIN THE COMPETENCE ONLY OF THE GENERAL ASSEMBLY. IT WAS UP TO THE GENERAL ASSEMBLY TO TRANSFER THIS POWER TO THE SECRETARY-GENERAL AND THE JAMIACAN AMENDMENT WOULD DO JUST THAT, HE SAID.

STEPHEN M. SCHWEBEL (UNITED STATES), RECALLING THE CEYLON PROPOSAL FOR POSTPONEMENT, OBSERVED THAT IT WOULD NOT PROMOTE THE EFFECTIVENESS OF THE GENERAL ASSEMBLY. THE CURRENT DEBATE WOULD ONLY BE REPEATED NEXT YEAR, HE SAID. THE ISSUE BEFORE THE COMMITTEE, HE WENT ON, COULD NOT BE AVOIDED. DELAY, HE SAID, WAS NOT IN THE COMMITTEES INTEREST.

THE REPRESENTATIVE OF THE UNITED STATES ASKED IF THE NEXT ITEM WOULD ALSO BE DELAYED.

THE REPRESENTATIVE OF GHANA, HE SAID, HAD ASKED WHY THE GENERAL ASSEMBLY COULD CALL UPON ALL STATES IN ONE SITUATION AND NOT IN ANOTHER. THE ANSWER, HE ADDED, WAS THAT IN REGARD TO THE CONGO SITUATION THE GENERAL ASSEMBLY HAD NOT DECIDED WHICH STATES WERE, IN FACT, "STATES". THE CONGO RESOLUTION WAS UNLIKE THE ONE NOW BEFORE THE COMMITTEE.

THE ADOPTION OF THE "ALL STATES FORMULA", HE SAID, WOULD PRESENT THE PROBLEM OF WHICH "ENTITIES" WERE "STATES". THIS WOULD BE TIME-CONSUMING, HE ADDED.

HIS DELEGATION, HE WENT ON, PREFERRED THE SECOND AMENDMENT. HOWEVER, IN THE SPIRITE OF COMPROMISE THE UNITED STATES WOULD VOTE FOR THE JAMAICAN AMENDMENT.

SUHEIL CHAMMAS (LEBANON) SAID HIS DELEGATION BELIEVED THAT THE ISSUE OF WHICH STATES SHOULD BE INVITED WAS THE CRUX OF THE QUESTION BEFORE THE COMMITTEE. HIS DELEGATION WOULD SUPPORT THE CEYLON PROPOSAL. THE URGENCY OF THIS MATTER WAS NOT "GREAT". PERHAPS NEXT YEAR WOULD BE BETTER TIME TO CONSIDER THE ITEM.

MORE

IF THE FIRST AMENDMENT WERE VOTED ON, HIS DELEGATION WOULD ABSTAIN AND VOTE IN FAVOUR OF THE JAMAICAN AMENDMENT.

KENNETH BAILEY (AUSTRALIA), IN ANSWER TO QUESTIONS BY THE REPRESENTATIVE OF IRAN, SAID THE 21 MULTILATERAL TREATIES INDICATED THAT STATES ACCEPTING THEM WOULD PERMIT THE LEAGUE OF NATIONS TO ALLOW STATES TO ACCEDE, WITHOUT THE APPROVAL OF THE STATES ALREADY PARTIES TO THE TREATIES.

THE EFFECT OF THE DRAFT RESOLUTION AND THE JAMAICAN AMENDMENT WERE DESIGNED TO PLACE THE GENERAL ASSEMBLY IN "EXACTLY THE SAME SITUATION" AS THE LEAGUE OF NATIONS. THIS DID NOT, IN HIS VIEW, CONTRADICT THE PRINCIPLE OF UNIVERSALITY.

CONTINUING, MR. BAILEY SAID THE QUESTIONS RAISED BY THE REPRESENTATIVE OF IRAN WOULD NOT, IN FACT, ARISE.

TURNING TO THE DRAFT RESOLUTION, THE REPRESENTATIVE OF AUSTRALIA SAID HE REGRETTED THAT THE CO-SPONSORS OF THE FIRST AMENDMENT, WHO WITH AUSTRALIA WERE ALSO CO-SPONSORS OF THE RESOLUTION, FAVOURED THE DELETION OF OPERATIVE PARAGRAPH 4.

FURTHER, HE COULD NOT ACCEPT THE STATEMENT BY THE REPRESENTATIVE OF GHANA THAT THE RESOLUTION ON THE CONGO WAS SIMILAR IN EFFECT TO THE DRAFT RESOLUTION BEFORE THE COMMITTEE IF IT WAAS CHANGED BY THE FIRST AMENDMENT. THE CONGO RESOLUTION WAS IN KEEPING WITH THE CHARTER OF THE UNITED NATIONS. THE SITUATION WHICH HAD EXISTED IN THE CONGO AT THE TIME THE RESOLUTION WAS ADOPTED HAD NO RELATION TO THE QUESTION NOW BEFORE THE COMMITTEE, HE SAID.

HIS DELEGATION OPPOSED THE PROPOSAL TO DELAY THE VOTING UNTIL FRIDAY.

S. TUKUNJOBA (TANGANYIKA) SAID HIS DELEGATION WOULD SUPPORT THE PROPOSAL OF CEYLON TO POSTPONE THIS ITEM UNTIL NEXT YEAR. DURING THIS PERIOD, HE SAID, FURTHER STUDY ON THE TREATIES COULD BE UNDERTAKEN.

HASTY ACTION, HE SAID, WOULD NOT BE USEFUL -- ESPECIALLY WITH REGARD TO THE JAMAICAN AMENDMENT, WHICH HAD BEEN INTRODUCED ONLY ON FRIDAY, 25 OCTOBER.

THE REPRESENTATIVE OF TANGANYIKA WENT ON TO SAY THAT THE POLITICAL ATMOSPHERE MIGHT BE FURTHER IMPROVED BY NEXT YEAR, AND THE "ALL STATES FORMULA" MIGHT THEN BE ADOPTED.

MORE

ENDRE USTOR (HUNGARY) OBSERVED THAT NO DELEGATION HAD CHALLENGED THE PRINCIPLE OF UNIVERSALITY. THE OBJECTIONS, HE SAID, WERE ONLY OF A TECHNICAL NATURE. THERE WAS NO DIFFICULTY, HE SAID, IN ACCEPTING THE "ALL STATES FORMULA". THE QUESTION OF RECOGNITION OF THE "ENTITIES" TO BE INVITED COULD BE SOLVED BY THE GENERAL ASSEMBLY.

IT WAS UP TO THE NEW STATES TO DECIDE WHETHER THEY WANTED POSTPONEMENT. IF THEY DID, THE DELEGATIONS OF THE "OLD STATES" SHOULD RESPECT THEIR VIEW.

THE REPRESENTATIVE OF CEYLON, REPLYING TO THE REPRESENTATIVE OF THE UNITED STATES, SAID IT WAS UNFORTUNATE THAT THE LATTER HAD COMMENTED ON HIS STATEMENT "OUT OF CONTEXT".

PHILIPPE MONOD (FRANCE) STATED THAT CERTAIN MISUNDERSTANDINGS REMAINED REGARDING THE QUESTION BEFORE THE COMMITTEE. THE CHOICE OF AMENDMENTS PRESENTED A POLITICAL PROBLEM, HE SAID. BUT THE TASK OF THE LEGAL COMMITTEE WAS ONLY TO MAKE POSSIBLE THE PARTICIPATION OF NEW STATES IN THE TREATIES. THIS WAS A TASK INVOLVING JURIDICAL AND ADMINISTRATIVES AND THEY SHOULD NOT BE POLITICAL IN CONTENT.

IT WAS NOT IN THE INTEREST OF THE UNITED NATIONS FOR THE COMMITTEE TO GIVE A ROLE TO THE SECRETARY-GENERAL ABOVE HIS ADMINISTRATIVE FUNCTIONS, HE DECLARED.

HIS DELEGATION, FURTHERMORE, HAD DOUBTS WITH REGARD TO THE PROPOSAL FOR POSTPONEMENT. WHY WOULD INTERNATIONAL REALITIES CHANGE IN ONE YEAR -- OR EVEN FIVE YEARS -- AND REMOVE THE DIFFICULTIES NOW BEING FACED BY THE COMMITTEE? WHAT WAS THE BASIS FOR SUCH AN OUTLOOK? HE ASKED.

THE "VIENNA FORMULA" WOULD BE A PRACTICAL SOLUTION, HE SAID. IT WOULD NOT BE A VICTORY FOR ANY "CAMP". IT WAS, HE ADDED, A JURIDICALLY ACCEPTABLE SOLUTION, EVEN IF IT WAS NOT A PERFECT ONE.

POSTPONEMENT ONLY DEFERRED A DECISION. IT DID NOT, HE SAID, SOLVE ANYTHING. THE ITEM WOULD BECOME A "TIME BOMB", HE ADDED.

THE ADOPTION OF THE "VIENNA FORMULA" WOULD ALSO SPARE THE COMMITTEE FUTURE LENGTHY DEBATES, HE SAID.

CONCLUDING, HE SAID HIS DELEGATION WOULD VOTE FOR THE JAMAICAN AMENDMENT.

MORE

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), THEN ASKED THAT THE LIST OF SPEAKERS BE CLOSED, SO THAT THE VOTE COULD BE TAKEN THIS MORNING. THE COMMITTEE SO DECIDED.

TEN SPEAKERS REMAINED TO BE HEARD THIS MORNING AT THIS POINT.

P. D. MOROZOV (USSR), SPEAKING ON A POINT OF ORDER, WITHDREW FROM THE LIST OF SPEAKERS AND APPEALED TO OTHERS ON THE LIST TO DO THE SAME.

THE REPRESENTATIVE OF IRAN SAID HIS DELEGATION WOULD VOTE FOR THE JAMAICAN AMENDMENT, ALTHOUGH IT WAS NOT FULLY SATISFACTORY.

HE SUGGESTED THAT TO MEET THE VIEWS OF THOSE SUPPORTING THE "ALL STATES FORMULA", AN ITEM IN THIS CONNEXION COULD BE INCLUDED ON THE GENERAL ASSEMBLY AGENDA FOR NEXT YEAR.

THE GENERAL ASSEMBLY COULD "PRONOUNCE ITSELF" ON THE "ALL STATES FORMULA" AT ITS NINETEENTH SESSION, HE SAID.

MR. DADZIE (GHANA), REPLYING TO THE REPRESENTATIVES OF IRAN, FRANCE AND AUSTRALIA, RECALLED THAT THE REPRESENTATIVE OF IRAN HAD SAID THAT THE CO-SPONSORS OF THE FIRST AMENDMENT HAD NOT INDICATED WHY THE "VIENNA FORMULA" WAS NOT FULLY ACCEPTABLE TO THEM. THIS FORMULA, MR. DADZIE SAID, DID NOT MEAN THAT ALL STATES COULD BE INVITED. A PARTICULAR STATE COULD ONLY BE RECOMMENDED FOR INVITATION BY THE GENERAL ASSEMBLY.

WHAT WOULD BE THE RESULT, IF GHANA PROPOSED THAT THE PEOPLES REPUBLIC OF CHINA BE INVITED TO ACCEDE TO THE TREATIES? HE ASKED. FURTHER, EAST GERMANY, NORTH VIET-NAM AND NORTH KOREA COULD NOT BE INVITED, HE SAID.

REFERRING TO THE STATEMENT OF THE REPRESENTATIVE OF FRANCE, MR. DADZIE SAID THAT THE SIXTH COMMITTEE DID HAVE THE AUTHORITY TO MAKE RECOMMENDATIONS OF A POLITICAL NATURE. THE COMMITTEE WAS AN ORGAN OF THE GENERAL ASSEMBLY, HE OBSERVED.

REPLYING TO THE REPRESENTATIVE OF AUSTRALIA, HE SAID THE CONGO RESOLUTION, REFERRED TO EARLIER IN THE MEETING, SUPPORTED HIS ARGUMENT. IN THIS RESOLUTION THE GENERAL ASSEMBLY HAD CALLED UPON ALL STATES TO COMPLY WITH THE RESOLUTION.

IN THE CONGO SITUATION, THE SECRETARY-GENERAL HAD BEEN REQUESTED TO DEAL WITH ALL STATES, HE ADDED.

MORE

THE FIRST AMENDMENT NOW BEFORE THE COMMITTEE, HE SAID, RAISED NO FURTHER DIFFICULTIES.

HE THEN PROPOSED CHANGING THE WORD "INVITE" TO "CALL UPON" IN OPERATIVE PARAGRAPH 4 OF THE DRAFT RESOLUTION. THIS WOULD RESOLVE ALL THE DIFFICULTIES RAISED IN THE COMMITTEE, HE ADDED.

MR. SCHWEBEL (UNITED STATES), REPLYING TO GHANA AND CEYLON, SAID HE REGRETTED THAT THE REPRESENTATIVE OF CEYLON FELT HE HAD BEEN QUOTED OUT OF CONTEXT. THIS HAD NOT BEEN HIS INTENTION.

AS REGARDS THE CONGO RESOLUTION, HE WENT ON, IT WAS AN "INJUNCTIVE CALL" TO ALL STATES TO DO CERTAIN THINGS. THE SECRETARY-GENERAL WAS NOT REQUIRED TO COMMUNICATE WITH NON-MEMBER STATES, NOR WAS HE REQUIRED, HE SAID, TO ACCEPT A LEGAL INSTRUMENT FROM A NON-MEMBER "ENTITY". THE SUGGESTION OF THE REPRESENTATIVE OF GHANA CONCERNING CHANGES IN THE WORDING OF OPERATIVE PARAGRAPH 4 OF THE RESOLUTION HAD NOT CHANGED THE SITUATION. THE SECRETARY-GENERAL WOULD STILL HAVE THE PROBLEM OF ACCEPTING LEGAL INSTRUMENTS FROM "ENTITIES", HE CONCLUDED.

ON A POINT OF ORDER, THE REPRESENTATIVE OF LEBANON MOVED CLOSURE OF THE DEBATE. HE ASKED THAT FURTHER LISTED SPEAKERS NOT INSIST ON TAKING THE FLOOR.

THE CHAIRMAN SAID HE WAS REQUIRED TO ALLOW TWO FURTHER SPEAKERS AND THEN PUT THE MOTION TO A VOTE. THE REPRESENTATIVES OF GHANA AND UGANDA OPPOSED THE PROPOSAL MADE BY THE REPRESENTATIVE OF LEBANON.

THE CHAIRMAN THEN PUT THE LEBANESE MOTION TO A VOTE. THE RESULTS WERE: 35 IN FAVOUR, 33 AGAINST WITH 17 ABSTENTIONS.

THE DEBATE WAS THEN DECLARED CLOSED.

THE FIRST VOTE WAS ON THE PROPOSAL OF CEYLON TO DELETE OPERATIVE PARAGRAPH 4 OF THE RESOLUTION.

THE RESULTS OF THE VOTING WERE: 39 IN FAVOUR, 40 AGAINST WITH 12 ABSTENTIONS.

THE COMMITTEE THEN VOTED ON THE FIRST AMENDMENT (DOC.A/C.6/L.533 AND CORR.1 AND 2). THE RESULTS WERE 38 IN FAVOUR, 42 AGAINST WITH 10 ABSTENTIONS.

THE COMMITTEE THEN VOTED FOR THE JAMAICAN AMENDMENT (DOC. A/C.6/L.536).

THE RESULTS OF THE VOTING WERE : 57 IN FAVOUR, 12 AGAINST WITH 14 ABSTENTIONS.

THE REPRESENTATIVE OF THE USSR THEN REQUESTED A SEPARATE VOTE ON PARAGRAPH 4 AS A WHOLE.

THE RESULTS OF THE VOTING WERE: 63 IN FAVOUR, 10 AGAINST WITH 15 ABSTENTIONS.

THE COMMITTEE THEN VOTED ON THE DRAFT RESOLUTION AS A WHOLE (DOC. A/C.6/L/532/REV.1).

THE RESULTS OF THE VOTING WERE: 69 IN FAVOUR, NONE AGAINST WITH 22 ABSTENTIONS.

THE TEXT OF THE OPERATIVE PARAGRAPHS OF THE RESOLUTION AS ADOPTED IS AS FOLLOWS:

THE GENERAL ASSEMBLY:

(1.) DECIDES THAT THE GENERAL ASSEMBLY IS THE APPROPRIATE ORGAN OF THE UNITED NATIONS WHICH SHOULD EXERCISE THE POWER CONFERRED BY MULTILATERAL TREATIES OF A TECHNICAL AND NON-POLITICAL CHARACTER ON THE COUNCIL OF THE LEAGUE OF NATIONS TO INVITE STATES TO ACCEDE TO THOSE TREATIES;

(2.) RECORDS THAT THOSE MEMBERS OF THE UNITED NATIONS WHICH ARE PARTIES TO THE TREATIES REFERRED TO ABOVE ASSENT BY THIS RESOLUTION TO THE DECISION IN THE PRECEDING PARAGRAPH AND EXPRESS THEIR RESOLVE TO USE THEIR GOOD OFFICES TO SECURE THE CO-OPERATION OF THE OTHER PARTIES TO THE TREATIES SO FAR AS THIS MAY BE NECESSARY;

(3.) REQUESTS THE SECRETARY-GENERAL

(A) AS DEPOSITAY OF THE TREATIES REFERRED TO ABOVE, TO BRING TO THE NOTICE OF ANY PARTY WHICH IS NOT A MEMBER OF THE UNITED NATIONS THE TERMS OF THE PRESENT RESOLUTION;

(B) TO TRANSMIT COPIES OF THE PRESENT RESOLUTION TO MEMBERS OF THE UNITED NATIONS WHICH ARE PARTIES TO THESE TREATIES;

(C) TO CONSULT, WHERE NECESSARY, WITH THE STATES REFERRED TO IN SUB-PARAGRAPHS (A) AND (B) OF THIS PARAGRAPH AND WITH THE UNITED NATIONS ORGANS AND SPECIALIZED AGENCIES CONCERNED AS TO WHETHER ANY OF THE TREATIES IN QUESTION HAVE CEASED TO BE IN FORCE, HAVE BEEN SUPERSEDED BY LATER TREATIES, HAVE OTHERWISE CEASED TO BE OF INTEREST FOR ACCESSION BY ADDITIONAL STATES, OR REQUIRE ACTION TO ADTT THEM TO CONTEMPORARY CONDITIONS;

MORE

(D) TO REPORT ON THESE MATTERS TO THE GENERAL ASSEMBLY AT ITS NINETEENTH SESSION;

(4.) FURTHER REQUESTS THE SECRETARY-GENERAL TO INVITE (EACH STATE WHICH IS A MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY OR A PARTY TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE OR HAS BEEN DESIGNATED FOR THIS PURPOSE BY THE GENERAL ASSEMBLY, AND"" WHICH, OTHERWISE, HIS NOT ELEGIBLE TO BECOME A PARTY TO THE TREATIES IN QUESTION, TO ACCEDE THERETO BY DEPOSITING AN INSTRUMENT OF ACCESSION WITH THE SECRETARY-GENERAL OF THE UNITED NATIONS;

(5.) DECIDES TO PLACE ON THE PROVISIONAL AGENDA OF ITS NINETEENTH SESSION AN ITEM ENTITLED: "GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS".

THE MEETING ADJOURNED AT 1:50 P.M. UNTIL 10:30 A.M. TOMORROW, 29 OCTOBER.

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""PHRASE IN BRACKETS IS THE TEXT OF AMENDMENT (DOC. A/C.6/L.536).

JA-HS-JB 330P 28 OCT 63

(Seen by M. Cadieux)

Oct 23/63 Legal file

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PRESS RELEASE GA/L/1020
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 799TH MEETING (PM)
UNITED NATIONS, N.Y.

DISCUSSION CONTINUES IN SIXTH COMMITTEE ON INTENDED PATICIPATION IN MULTILATERAL TREATIES

THE SIXTH (LEGAL) COMMITTEE THIS AFTERNOON CONTINUED ITS CONSIDERATION OF THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF TURKEY, CEYLON, YUGOSLAVIA, BULGARIA, IRAN, TUNISIA, ETHIOPIA, UNITED STATES, AUSTRALIA, GHANA, IVORY COAST, SPAIN AND VENEZUELA. THE USSR, IRAN, IRAQ, UNITED ARAB REPUBLIC, UNITED KINGDOM AND NEW ZEALAND SPOKE UNDER THE RIGHT OF REPLY.

THE COMMITTEE HAS BEFORE IT A NINE-POWER DRAFT RESOLUTION (DOC. A/C.6/L.532/REV.1) WHICH WOULD HAVE THE GENERAL ASSEMBLY EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE OF NATIONS AND OPEN TO NEW STATES 21 MULTILATERAL TREATIES CLOSED SINCE 1946.

THIS RESOLUTION DOES NOT INDICATE WHICH STATES WOULD BE INVITED TO BECOME PARTIES TO THE TREATIES. THE SPONSORS -- AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN -- COULD NOT REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOTNOTE TO THE DRAFT.

TWO ALTERNATIVES IN THE FORM OF AMENDMENTS BY GHANA, INDONESIA, MALI, MOROCCO AND NIGERIA (DOC. A/C.6/L.533, CORR. 1 AND 2), AND BY AUSTRALIA, GREECE AND GUATEMALA (DOC. A/C.6/L.534) ARE ALSO BEFORE THE COMMITTEE. THE FIRST AMENDMENT WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES; AND THE SECOND AMENDMENT WOULD INVITE "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

THE SOVIET UNION HAS OFFERED A "COMPROMISE SOLUTION" UNDER WHICH THE COMMITTEE WOULD ADOPT ONLY THE PARTS OF THE RESOLUTION CALLING FOR FURTHER STUDY AND CONSULTATIONS WITH REGARD TO THE TREATIES. THE ITEM WOULD ALSO BE INCLUDED ON NEXT YEARS GENERAL ASSEMBLY AGENDA.

THE INTERNATIONAL LAW COMMISSION (ILC) AT ITS RECENT SESSION STUDIED THIS QUESTION AND REPORTED ON IT IN DOCUMENT A/5509. THE DRAFT RESOLUTION, ACCORDING TO ITS SPONSORS, EMBODIES THE RECOMMENDATIONS OF THE ILC.

MORE

PRINCIPLE OF UNIVERSALITY IN INTERNATIONAL LAW

TALAT MIRAS (TURKEY) SAID THE DRAFT RESOLUTION, ALTHOUGH NOT JURIDICALLY FLAWLESS, WAS ACCEPTABLE TO HIS DELEGATION.

AS FOR THE TWO AMENDMENTS, THE FIRST WOULD GIVE RISE TO CERTAIN DIFFICULTIES. TURKEY, THEREFORE, FAVOURED THE SECOND AMENDMENT AND WOULD VOTE FOR THE RESOLUTION AND THE LATTER AMENDMENT, HE SAID.

E.R.S.R. COOMARASWAMY (CEYLON) SAID THE ILC HAD CONSIDERED ONLY THE TCHNICAL ASPECTS OF THE 21 TREATIES. HOWEVER, HE SAID, MANY OF THE TREATIES MIGHT NOT BE OF INTEREST TO NEW STATES. THIS REMAINED TO BE EXAMINED, HE ADDED.

HIS DELEGATION, HE SAID, HAVING STUDIED THE DRAFT RESOLUTION AND THE COMMENTS OF PREVIOUS SPEAKERS, VIEWED THE PROBLEM AS ONE THAT NEEDED FURTHER STUDY.

CEYLON, HE SAID, SUPPORTED THE FIRST AMENDMENT, WHICH REFLECTED THE PRINCIPLE OF UNIVERSALITY OF INTERNATIONAL LAW. THIS LAW WAS NOT APPLICABLE ONLY TO THE 111 MEMBERS OF THE UNITED NATIONS.

THE "TRULY REPRESENTATIVE" GOVERNMENTS OF PEOPLES MUST BE ALLOWED TO PARTICIPATE IN GENERAL MULTILATERAL TREATIES. IT WOULD BE UNDIGNIFIED FOR A COMMITTEE OF LAWYERS NOT TO ADOPT THE "ALL STATES" FORMULA, HE OBSERVED.

INTERNATIONAL LAW, HE ADDED, APPLIED TO ALL STATES.

HIS DELEGATION, HE CONCTUDED, WOULD VOTE FOR THE DRAFT RESOLUTION AND THE FIRST AMENDMENT. B. BLAGOJEVIC (YUGOSLAVIA) SAID IT WAS ON THE BASIS OF UNIVERSALITY THAT THE PROBLEMS OF INTERNATIONAL LAA HAD TO BE SOLVED.

OTHERWISE, HE ADDED, CONFLICT WITH THE PRINCIPLES OF THE UNITED NATIONS CHARTER AND INTERNATIONAL LAW WOULD BE THE RESULT.

THE LC SOLUTION TO THIS PROBLEM, HE SAID, DID NOT APPLY TO THE PROBLEM OF SUCCESSION OF STATES AND GOVERNMENTS.

THERE COULD NOT BE CLOSED TREATIES, IF THE PRINCIPLE OF UNIVERSALITY WAS TO BE MAINTAINED. THIS WAS A PEREMPTORY NORM OF INTERNATIONAL LAW, HE SAID.

THE COMMITTEE HAD TO WORK FOR THE GOAL OF UNIVERSALITY AND THE CODIFICATION OF INTERNATIONAL LAW, HE STATED.

IN THIS CONNEXION, THE TREATY QUESTION COULD HAVE BEEN SOLVED LONG AGO, HAD THE PRACTICES OF UNIVERSALITY AND EQUALITY OF ALL STATES BEEN FOLLOWED IN THE PAST.

THE GENERAL ASSEMBLY SHOULD DECIDE THIS QUESTION THIS YEAR, AND HIS DELEGATION WOULD SUPPORT THE RESOLUTION AND THE FIRST AMENDMENT.

MORE

PRACTICAL APPROACH TO TREATIES URGED

ANGUEL ANGUELOV (BULGARIA) SAID THERE HAD BEEN A PRACTICAL AND A THEORICAL APPROACH TO THIS ITEM. HIS DELEGATION AGREED WITH THE FORMER APPROACH. AS FOR THE LATTER, WHICH RAISED DOUBTS ABOUT THE LEGAL METHOD OF THE SOLUTION PROVIDED FOR BY THE DRAFT, THERE WAS SOME TRUTH IN IT, BUT THE CONSENSUS, IN HIS VIEW, FAVOURED THE PRACTICALMETHOD, HE SAID.

THE MAJORITY OF THE TREATIES, HE WENT ON, WERE INTENDED BY THE LEAGUE OF NATIONS TO BE OPEN TO ALL STATES. TO RESTRICT THEM WOULD LEAD TO AN EFFECT CONTRARY TO THAT ORIGINALLY INTENDED.

IT WAS HIS BELIEF, HE SAID, THAT A DETAILED STUDY OF THE TREATIES WOULD SHOW THE UNACCEPTABILITY OF RESTRICTING THEIR PARTICIPATION CLAUSES. THE QUESTION OF SUCCESSION OF STATES WAS NOT INVOLVED, WITH REGARD TO PARTICIPATION OF STATES IN GENERAL MULTILATERAL TREATIES.

PARTICIPATION, HE SAID, DID NOT IMPLY RECOGNITION OF A STATE.

THE REPRESENTATIVE OF BULGARIA CITED EXAMPLES WHICH, HE SAID, ILLUSTRATED THISPOINT. HE ADDED THAT THE SUBSTANCE OF THE PROBLEM WAS NON-POLITICAL. IT WAS TO GIVE THE LARGEST NUMBER OF STATES AN OPPORTUNITY TO BECOME PARTIES TO THE GENERAL MULTILATERAL TREATIES.

HIS DELEGATION, HE CONCLUDED, OPPOSED THE SECOND AMENDMENT.

INVITATION TO ALL STATES TO PARTICIPATE

MOHAMMAD ALI (IRAN) SAID HE CONSIDERED THE DRAFT SATISFACTORY. THE FIRST AMENDMENT, HE SAID, PRESENTED A QUESTION OF A STATES OBLIGATION VIS A VIS ANOTHER STATE. AN OBLIGATION UNACCEPTABLE TO A STATE COULD NOT BE IMPOSED UPON IT, HE ADDED.

THE REPRESENTATIVE OF IRAN SUGGESTED A CHANGE IN THE RESOLUTION WHICH, HE SAID, WOULD EMBODY THE PRINCIPLE OF UNIVERSALITY AND NOT BE COUNTER TO JURIDICAL PRACTICE.

HE PROPOSED THAT THE SECRETARY-GENERAL INVITE "ALL STATES WITH THE CONSENT OF THE PARTIES TO THE TREATIES".

SADOK BOUZAYEN (TUNISIA) OBSERVED THAT MULTILATERAL TREATIES SHOULD BE OPEN TO ALL STATES. RESTRICTIONS WOULD, IN HIS VIEW, HAMPER THE PROGTESSIVE DEVELOPMENT OF INTERNATIONAL LAW. THEY COULD NOT BE THE SPECIAL PRESERVE OF SOME STTES.

MORE

EXCLUSION AMOUNTED TO DISCRIMINATION AND WAS CONTRARY TO THE PRINCIPLE OF UNIVERSALITY, HE SAID.

MULTILATERAL TREATIES, UNDER EXTENDED PARTICIPATION, WERE ESSENTIAL TO INTERNATILNAL ORDER AND THE FRIENDLY CO7OPERATION AMONG STATES. FURTHER PARTICIPATION DID NOT IMPLY RECOGNITION OF A STATE.

HIS DELEGATION, HE SAID, APPROVED OF THE UNITED NATIONS PROCEDURE OF ASKING NEW STATES TO WHICH TREATIES THEY CONSIDERED THEMSELVES BOUND.

IT WAS DESIRABLE, HE WENT ON, TO STUDY FURTHER THE 21 TREATIES TO DETERMINE THEIR USEFULNESS OR ADAPTABILITY TO CONTEMPORARY CONDITIONS.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ANNOUNCED THAT THE DEBATE ON THIS ITEM HAD ENDED. THE COMMITTEE, HE SAID, WOULD NOW DISCUSS THE RESOLUTION AND THE AMENDMENTS.

GEBRE TSADIK DEGEFU (ETHIOPIA) SAID THE INTERNATIONAL LAW COMMISSION HAD RECOMMENDED THREE METHODS OF DEALING WITH THIS QUESTION. ITS SUGGESTION, AS REFLECTED IN THE DRAFT RESOLUTION, WAS A PRACTICAL AND EFFECTIVE PROCEDURE AND HAD THE SUPPORT OF HIS DELEGATION.

ON THE TWO AMENDMENTS, HIS DELEGATION SUPPORTED THE FIRST, WHICH, HE SAID, CONFIRMED THE PRINCIPLE OF UNIVERSALITY AND THE DOOR TO WIDE PARTICIPATION IN THE TREATIES WOULD BE OPENED. ETHIOPIA, HE CONCLUDED, WOULD VOTE FOR THE DRAFT AND THE FIRST AMENDMENT.

THE USEFULNESS OF COMPROMISE SOLUTION QUESTIONED

STEPHEN M. SCHWEBEL (UNITED STATES), RECALLING THE SOVIET "COMPROMISE SOLUTION", SAID HIS DELEGATION BELIEVED IT WOULD NOT ADVANCE THE WORK OF THE COMMITTEE. AT LEAST ONE OF THE TREATIES, HE SAID, WAS IMMEDIATELY RELEVANT AND MANY STATES WOULD WANT TO ACCEDE TO IT.

THERE WAS NO MERIT", HE WENT ON, IN PUTTING OFF THE ISSUE FOR ANOTHER YEAR; THIS WOULD BE A WASTEFUL PROCEDURE. THE REPRESENTATIVE OF THE UNITED STATES SAID THAT IN HIS OPINION NO SUBSTANTIATCHANGES IN INTERNATIONAL RELATIONS WERE LIKELY TO OCCUR WITHIN THE FOLLOWING YEAR. THE COMMITTEE WOULD THUS NOT BE IN A BETTER POSITION TO RESOLVE THE POLITICAL ISSUE INVOLVED, HE SAID.

MORE

MR. SCHWEBEL RECALLED THAT THE REPRESENTATIVE OF THE UNITED STATES, IN A STATEMENT BEFORE THE COMMITTEE LAST FRIDAY, 18 OCTOBER, HAD CITED THE PROBLEM OF WHETHER OR NOT KATANGA LAST YEAR WOULD, UNDER THE "ALL STATES FORMULA", HAVE BEEN INVITED TO ACCEDE TO THE TREATIES. AS A FURTHER EXAMPLE, HE SAID, A SIMILAR PROBLEM MIGHT ARISE WITH REGARD TO LATVIA, LITHUANIA AND ESTONIA, WHOSE INDEPENDENCE THE UNITED STATES HAD RECOGNIZED.

AT THIS POINT P. D. MOROZOV (USSR) RAISED A POINT OF ORDER. HE SAID THE UNITED STATES REPRESENTATIVE COULD NOT, WITH REGARD TO THIS DEBATE, SPEAK ON CONSTITUTIONAL REPUBLICS OF THE SOVIET UNION. THE UNITED STATES WAS NOT BEING STUDIED AND NEITHER COULD THE USSR BE CONSIDERED. MR. SCHWEBELS REMARKS WERE WRONG ASSERTIONS DEALING WITH THE TERRITORY OF THE SOVIET UNION.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ASKED MR. SCHWEBEL TO CONTINUE AND REQUESTED HIM, FOR THE SAKE OF GOODWILL, TO AVOID RAISING QUESTIONS WHICH MIGHT LEAD TO POLITICAL DISPUTES.

MR. SCHWEBEL STATED HE WOULD NOT "ALLUDE TO THE SOVIET VIEW OF THE TERRITORIES IN QUESTION". HE REPEATED THAT THE UNITED STATES HAD RECOGNIZED THE INDEPENDENCE OF LATVIA, LITHUANIA AND ESTONIA AND WENT ON WITH HIS STATEMENT.

CONTINUING, THE REPRESENTATIVE OF THE UNITED STATES SAID THAT IF THE "ALL STATES FORMULA" WERE ADOPTED, THE SECRETARY GENERAL MIGHT BE FACED WITH THE PROBLEM OF INVITING LATVIA, LITHUANIA AND ESTONIA. MR. SCHWEBEL SAID HE WAS NOT REFERRING TO THIS FOR THE SAKE OF PROVOCATION, BUT TO DEMONSTRATE THE POLITICAL COMPLEXITIES INVOLVED.

THE SIXTH COMMITTEE SHOULD NOT ATTEMPT TO SETTLE SUCH QUESTIONS, HE OBSERVED.

FURTHERMORE, HE SAID, THE TEST BAN TREATY WAS NOT A PRECEDENT FOR THE "ALL STATES FORMULA", ALTHOUGH SOME DELEGATIONS HAD SUGGESTED THAT IT WAS. THE CONTRARY WAS TRUE, BECAUSE THREE STATES -- THE ORIGINAL SIGNATORIES -- WERE REQUIRED TO SERVE AS THE DEPOSITORIES FOR FURTHER ACCESSIONS. THE SECRETARY-GENERAL WAS NOT "THREE STATES", BUT ACTED AS A SINGLE ENTITY.

TURNING TO THE PROPOSAL OFFERED BY THE REPRESENTATIVE OF IRAN, THE REPRESENTATIVE OF THE UNITED STATES SAID THAT PRIMA FACIE IT DID NOT APPEAR ACCEPTABLE.

MR. MOROZOV, SPEAKING UNDER THE RIGHT OF REPLY, STATED THAT THE STATEMENT BY THE REPRESENTATIVE OF THE UNITED STATES HAD NOT BEEN CONDUCIVE TO SERIOUS DISCUSSION. HIS DELEGATION WOULD SIMPLY IGNORE IT, HE SAID. IT WAS AN ATTEMPT TO RETURN TO INTONATIONS USED IN THE PAST.

MORE

REFERRING TO THE PROPOSAL BY IRAN, THE REPRESENTATIVE OF THE USSR SAID THAT ANY VOTE ON THE QUESTION OF THE TREATIES, CARRIED OUT ON THE BASIS OF POLITICAL FACTORS, WOULD BE AGAINST THE PRINCIPLE OF UNIVERSALITY AND THOSE ADVANCED BY THE ILC.

HIS DELEGATION, HE SAID, WAS READY TO RELY ON THE SECRETARY-GENERAL, CONFIDENT THAT HE WOULD ACT IMPARTIALLY. THE PROPONENTS OF THE SECOND AMENDMENT, HE ADDED, DID NOT WISH TO TRUST THE SECRETARY-GENERAL WITH THE PROBLEM.

THE SECOND AMENDMENT WOULD PREVENT MILLIONS OF PEOPLE FROM PARTICIPATING IN THESE TREATIES, MERELY BECAUSE THEIR POLITICS WERE NOT LIKED BY A CERTAIN GROUP OF STATES, HE SAID.

THE UNITED STATES SHOULD NOT INSIST ON FORCING A DECISION ON THIS QUESTION. WHY DID IT WANT TO RUN COUNTER TO PREVAILING OPINION? HE ASKED. PERHAPS A YEAR FROM NOW A DECISION COULD BE TAKEN. NO ONE, HE SAID, COULD FORETELL WHAT WOULD HAPPEN IN THAT TIME. HE ASKED ALL DELEGATIONS NOT TO ACT HASTILY.

THOSE DELEGATIONS DEMANDING AN IMMEDIATE VOTE, HE SAID, MIGHT GET A MAJORITY. BUT WOULD THAT BE A VICTORY? WOULD IT HELP EXTEND FRIENDLY RELATIONS? HE ASKED.

CONCLUDING, THE REPRESENTATIVE OF THE SOVIET UNION SAID HT WOULD OVERLOOK THE "MISPRINT" THAT HAD APPEARED IN THE UNITED STTATES STATEMENT.

THE REPRESENTATIVE OF IRAN, THE NEXT SPEAKER, SAID HIS PROPOSAL HAD BEEN ONLY A SUGGESTION TO RID THE COMMITTEE OF A "POLITICAL SNARE". IT WAS OF A LEGAL NATURE. IF SUCH A SOLUTION WAS UNACCEPTABLE, HIS DELEGATION WOULD HAVE TO VOTE AGAINST THE "ALL STATES FORMULA", HE SAID.

E. K. DADZIE (GHANA) SAID THE DEBATE DURING THE PAST FEW MINUTES HAD REMINDED HIM OF THE DAYS OF THE "COLD WAR". THERE HAD BEEN PROGRESS SINCE THEN, HE SAID, AND IT SHOULD NOT BE ALLOWED TO DETERIORATE.

THE SUGGESTION BY IRAN HAD MERITS. THE "ALL STATES" PROBLEM WAS NO LONGER A "POLITICAL LUXURY" FOR USE BY CERTAIN STATES, HE SAID. THE PROPOSAL BY IRAN OFFERED A SOLUTION BRIDGING THE GAP BETWEEN THE "STATES MEMBERS" PROPOSAL AND THE "ALL STATES" FORMULA. HE CITED THE EXAMPLE OF WESTERN SAMOA, A NON-MEMBER OF THE UNITED NATIONS, WHICH WOULD BE EXCLUDED FROM PARTICIPATION IN THE TREATIES BY THE SECOND AMENDMENT.

MR. SCHWEBEL (UNITED STATES) OBSERVED THAT, CONTRARY TO WHAT THE REPRESENTATIVE OF THE USSR HAD IMPLIED, THE UNITED STATES HAD NOT DEMANDED A DECISION.

MORE

FURTHERMORE, HE HAD ONLY OFFERED A REALISTIC VIEW OF INTERNATIONAL RELATIONS.

HIS DELEGATION, HE SAID, REGRETTED THE ALLEGATIONS THAT IT HAD RAISED A "COLD WAR" ISSUE. THE PROBLEMHAD ARISEN IN THE "ALL STATES" PROPOSAL. MOREOVER, HE CONTINUED, ALL DELEGATIONS HAD CONFIDENCE IN THE SECRETARY7GENERAL AND ANY SUGGESTION TO THE CONTRARY WAS NOT RELEVANT.

THE UNITED STATES WAS HAPPY TO ACCEPT THE SOVIET UNIONS APPEAL FOR MAINTAINING THE SPIRIT OF FRIENDLY RELATIONS. BUT IN THIS CONNEXION IT DID NOT HAVE TO AGREE WITH THE VIEWS OF THE USSR. THIS WAS A CASE WHERE NATIONAL AND INTERNATIONAL INTERESTS OF THE UNITED STATES WERE INVOLVED.

MRS. R. BURNETT (NEW ZEALAND), EXERCISING HER RIGHT OF REPLY TO GHANA, STATED THAT WESTERN SAMOA, THOUGH NOT A MEMBER OF THE UNITED NATIONS, WAS A MEMBER OF ONE OF THE SPECIALIZED AGENCIES. THUS, UNDER THE SECOND AMENDMENT IT WOULD BE ALLOWED TO ACCEDE TO TH TREATIES.

ANTONIO DE LUNA (SPAIN) OBSERVED THE IRAN PROPOSAL WAS JURIDICALLY ACCEPTABLE AND "MOST REASONABLE".

ALTHOUGH IT WAS TRUE THAT PARTICIPATION IN OPEN MULTILAGERAL TREATIES DID NOT IMPLY RECOGNITION OF ONE STATE BY ANOTHER, THERE EXISTED CERTAIN CLOSED TREATIES, WHICH COULD NEVER BE OPENED FOR ACCESSION TO OTHERS AGAINST THE WILL OF THE PARTIEES TO THEM, HE SAID.

IN THIS CONTEXT, THE REPRESENTATIVE OF SPAIN SAID, THE PROPOSAL BY IRAN WAS USEFUL.

LEON AMON (IORY COAST) SAID THE IRANIAN PROPOSAL REPRESENTED AN ACCEPTABLE COMROMISE. HHOWEVER, HE ADDED, IF IT WERE NOT ACTED UPON, HIS DELDELEGATION WOULD CONTINUE TO SUPPORT THE DRAFT RESOLUTION AND THE FIRST AMENDMENT.

HE THEN SUGGESTED AN ALTERNATIVE PROPOSAL BY WHICH THE UNITED NATIONS WOULD INVITE THE MEMBERS OF THE ORGANIZATION AND ITS SPECIALIZED AGENCIES AND NON-MEMBER STATES, WHICH WOULD OTHERWISE BE INELIGIBLE TO ACCEDE TO THE TREATIES.

MORE

THE REPRESENTATIVE OF GHANA THANKED THE REPRESENTATIVE OF NEW ZEALAND FOR HER INFORMATION REGARDING WESTERN SAMOA. HE WENT ON TO SAY THAT THE SAME PROBLEM WOULD ARISE WITH REGARD TO ANDORRA, BHUTAN, BAHREIN, OMAN AND SIKKIM.

NEW PROPOSAL ON INVITATION TO ACCEDE TO TREATIES

KENNETH BAILEY (AUSTRALIA) PROPOSED THAT THE SECRETARY-GENERAL BE REQUESTED TO INVITE ACCESSION TO THE TREATIES BY MEMBERS OF THE UNITED NATIONS AND SPECIALIZED AGENCIES, PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, AND OTHER STATES "DESIGNATED BY THE GENERAL ASSEMBLY".

THE REPRESENTATIVE OF IRAN THEN STATED THAT WITH REGARD TO HIS PROPOSAL, HE HAD BEEN INFORMED THAT CONSENTS OF STATES TO OPEN THE TREATIES HAD BEEN GIVEN TO THE LEAGUE OF NATIONS. AFTER FURTHER CONSULTATIONS, HE ADDED, HE WOULD OFFER A MORE CONCRETE PROPLSAL.

REFERRING TO THE RAMIARKS OF THE REPRESENTATIVE OF GHANA, HE SAID THAT IRAN CONSIDERED BAHREIN AS AN INTEGRAL PART OF ITS TERRITORY.

THE REPRESENTATIVE OF THE USSR THEN APPEALED TO DELEGATIONS NOT TO TAKE A DECISION ON THIS MATTER. AN "INJUDICIOUS" VOTE, HE SAID WOULD HAVE FARREACHING EFFECTS. IT WOULD BE BETTER TO STUDY THIS MATTER FURTHER, HE SAID.

THE AUSTRALIAN PROPOSAL WAS MERELY ANOTHER "SOPHISTICATED METHOD" OF "DODGING" THE PRINCIPLE OF UNIVERSALITY.

M. K. YASSEEN (IRAQ) INFORMED THE COMMITTEE THAT IRAQ CONSIDERED BAHREIN AN INTEGRAL PART OF THE ARAB WORLD.

MISS J.A.C. GUTTERIDGE (UNITED KINGDOM) SAID SHE COULD NOT AGREE WITH THE REPRESENTATIVE OF GHANAS REMARKS REGARDING OMAN.

RAOUF EL REEDY (UNITED ARAB REPUBLIC), REFERRING TO BAHREIN, SAID HE WISHED TO ASSOCITE HIS DELEGATION WIH THE STATEMENT MADE BY IRAQ.

CONSTANTIN A. STAVOROPOULOS, UNITED NATIONS LEGAL COOUNSEL, SAID HE HAD EXPRESSED THE OPINION OF THE SECRETARY-GENERAL AND NOT HIS OWN, WHEN HE HAD STATED LAST WEEK IN THE COMMITTEE THAT IF THE FIRST AMENDMENT WERE ADOPTED, THE SECRETARY-GENERAL WOULD HAVE TO ASK THE GENERAL ASSEMBLY TO DRAW UP A LIST OF STATES TO BE INVITED TO ACCEDE TO THE TREATIES.

AMANDO MOLINA LANDAETA (VENEZUELA) ASKED IF "TECHNICAL" DIFFICULTIES WOULD PREVENT THE HOLDING OF A MEETING TOMORROW, 24 OCTOBER.

THE CHAIRMAN NOTED THAT TOMORROW WAS UNITED NATIONS DAY AND ADJOURNED THE MEETING AT 5:50 P.M. UNTIL FRIDAY, 25 OCTOBER, AT 3 P.M.

JA 935P 23 OCT 63

Legal S/R

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PRESS RELEASE GA/L/1019
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 798TH MEETING (PM)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE HEARS FIVE STATEMENTS ON LEAGUE OF NATIONA MULTILATERAL TREATIES

STATEMENTS WERE MADE THIS AFTERNOON BY THE REPRESENTATIVES OF INDIA, IVORY COAST, BELGIUM, ROMANIA AND VENEZUELA AS THE SIXTH (LEGAL) COMMITTEE CONTINUED ITS CONSIDERATION OF THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

THE COMMITTEE HAS BEFORE IT A NINE-POWER DRAFT RESOLUTION (DOC. A/C.6/L.532/REV.1) BY WHICH THE GENERAL ASSEMBLY WOULD EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE OF NATIONS AND OPEN TO NEW STATES 21 MULTILATERAL TREATIES CLOSED SINCE 1946.

THIS RESOLUTION DOES NOT INDICATE WHICH STATES WOULD BE INVITED TO BECOME PARTIES TO THE TREATIES.

THE SPONSORS 7- AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN 7- COULD NOT REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOTNOTE TO THE DRAFT.

TWO ALTERNATIVES IN THE FORM OF AMENDMENTS BY GHANA, INDONESIA, MALI, MOROCCO AND NIGERIA (DOC. A/C.6/L.533/CORR. 1 AND 2), AND BY AUSTRALIA, GREECE AND GUATEMALA (DOC. A/C.6/L.534) ARE ALSO BEFORE THE COMMITTEE.

THE FIRST AMENDMENT WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES; AND THE SECOND AMENDMENT WOULD INVITE "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

THE SOVIET UNION YESTERDAY OFFERED A "COMPROMISE SOLUTION" UNDER WHICH THE COMMITTEE WOULD ADOPT ONLY THE PARTS OF THE RESOLUTION CALLING FOR FURTHER STUDY AND CONSULTATIONS WITH REGARD TO THE TREATIES. THE ITEM WOULD ALSO BE INCLUDED ON NEXT YEARS GENERAL ASSEMBLY AGENDA.

THE INTERNATIONAL LAW COMMISSION (ILC) AT ITS RECENT SESSION STUDIED THIS QUESTION AND REPORTED ON IT IN DOCUMENT A/5509. THE DRAFT RESOLUTION, ACCORDING TO ITS SPONSORS, EMBODIES THE RECOMMENDATIONS OF THE ILC.

MORE

S.S. MORE (INDIA), RECALLING THE BACKGROUND TO THIS ITEM, SAID THE ILC SHOULD STUDY FURTHER THE SUBSTANCE OF THE TREATIES, WITH A VIEW TOWARDS ADPATING THESE AGREEMENTS TO CONTEMPORARY CONDITIONS.

HE CITED THE ILC REPORT ON THE TREATIES AS DEMONSTRATING THAT THE 21 TREATIES WERE OPEN BY THE FACT THAT THE GENERAL ASSEMBLY COULD ACT AS DEPOSITORY FOR THESE AGREEMENTS.

THE GENERAL ASSEMBLY, HE SAID, WAS THE MOST COMPETENT ORGAN FOR THIS PURPOSE. IN THIS CONNEXION THE ILC RECOMMENDATION, AS REFLECTED IN THE DRAFT RESOLUTION, WAS SIMPLE AND USEFUL, HE SAID.

AS FOR THE RESOLUTION ITSELF, THE REPRESENTATIVE OF INDIA HAD SOME DOUBTS AS TO THE DETAILS OF THE TEXT, WHICH MIGHT GIVE RISE TO CERTAIN DIFFICULTIES. THE RESOLUTION SHOULD BE MODIFIED, HE ADDED.

HIS DELEGATION, HE WENT ON, SUPPORTED THE FIRST AMENDMENT. THIS WAS NOT, IN HIS VIEW, A POLITICAL MATTER, BUT IN KEEPING WITHIN THE PRINCIPLE OF UNIVERSALITY.

THE MERE EXISTENCE OF AN "ENTITY" AS A PARTY TO A TREATY DID NOT IMPLY RECOGNITION OF THE "ENTITY". THERE WERE ALREADY EXAMPLES OF THIS, HE ADDED. THE SAME METHODS USED IN THESE EARLIER TREATIES COULD BE EMPLOYED IN THE 21 TREATIES.

THE COMMITTEE, BY ADOPTING THE "ALL STATES" FORMULA, WOULD MAKE A CONTRIBUTION TO THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW.

LEON AMON (IVORY COAST) SAID THE DRAFT RESOLUTION, ALTHOUGH IT WOULD AVOID DELAYS, USED A LEGAL PRINCIPLE THAT MAY OFFEND SOME STATES WHICH WERE ALREADY PARTIES TO THE TREATIES. THE RESOLUTION DID NOT, IN HIS VIEW, APPEAR TO BE EFFECTIVE.

THE CO-SPONSORS OF TTE DRAFT, HE SAID, COULD HAVE PROVIDED ALTERNATIVES TO THESE "FLAWS". HOWEVER, HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION, SUBJECT TO THESE OBSERVATIONS REGARDING THE INADEQUACIES OF THE DRAFT.

MORE

QUESTION OF SUCCESSION RAISED

M. DEWULF ,BELGIUM), EXPLAINING HIS DELEGATIONS VIEWS ON THE RESOLUTION AND THE TWO AMENDMENTS, SAID BELGIUM HOPED THAT THE NEWLY"INDEPENDENT STATES WOULD BE PARTICIPATING IN THE 21 TREATIES. IN THIS CONNEXION, HE ADDED, HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION.

HOWEVER, APPROVAL OF THE DRAFT DID NOT IMPLY THAT THE SOLUTION IT OFFERED WAS THE BEST ONE. THERE WERE, HE CONTINUED, ADVANTAGES TO THE PROTOCOL METHOD OF OPENING THE 21 TREATIES FOR ACCESSION BY THE NEW STATES. FURTHER, IN THE VIEW OF HIS DELEGATION, THE DRAFT WAS ".943 48&8$" AND "LESS CAUTIOUS" THAN THE RECOMMENDATIONS OF THE ILC.

THE ILC, HE WENT ON TO SAY, HAD NOT GONE SO FAR AS TO SAY THAT THE GENERAL ASSEMBLY WAS THE COMPETENT ORGAN TO EXERCISE POWERS WITH REGARD TO THE TREATIES. THE RESOLUTION, IF ADOPTED, WOULD DO THIS, HE SAID.

CONTINUING, HE RECALLED THAT THE GENERAL ASSEMBLY IN 1946 HAD DECLARED IN A RESOLUTION (24 (I)) THAT IT WAS WILLING, IN PRINCIPLE, TO ASSUME AND EXERCISE CERTAIN FUNCTIONS AND POWERS PREVIOUSLY ENTRUSTED TO THE LEAGUE OF NATIONS. IN THIS REGARD, THE ASSEMBLY SHOULD NOT, PERHAPS, DECIDE THAT TI WAS THE SUCCESSOR TO THE LEAGUE.

THE SUCCESSION IN INTERNATIONAL ORGANIZATIONS, HE CONTINUED, WAS A COMPLEX PROBLEM. MR. DEWULF STATED THAT THE APPROVAL BY HIS DELEGATION OF THE DRAFT RESOLUTION DID NOT IMPLY ACCEPTANCE OF THE GENERAL ASSEMBLY AS SUCCESSOR TO THE LEAGUE OF NATIONS.

A SIMILAR OBSERVATION, HE SAID, COULD BE MADE WITH REGARD TO THE SUCCESSION OF STATES AND GOVERNMENTS. NEITHER DID IT IMPLY, HE WENT ON, THE ADMISSION OF CERTAIN THEORIES IN THIS FIELD.

TURNING TO THE TWO AMENDMENTS, THE REPRESENTATIVE OF BELGIUM SAID HIS DELEGATION COULD NOT SUPPORT THE FIRST AMENDMENT AND WAS IN FAVOUR OF THE SECOND.

MORE

GHEORGHE JUCU (ROMANIA) SAID THAT HIS DELEGATION SHARED THE OPINION OF THE ILC THAT A RESOLUTION OF THE GENERAL ASSEMBLY, RATHER THAN THE PROTOCOL METHOD, COULD SOLVE THE PROBLEM OF THE TREATIES.

THE DRAFT RESOLUTION COULD ACHIEVE THAT OBJECTIVE, HE ADDED. THE TWO AMENDMENTS, HOWEVER, EXPRESSED OPPOSING VEWS AS TO HOW TO COMPLETE THE RESOLUTION, HE ADDED.

THE SECOND AMENDMENT WENT BACK TO THE DAYS OF STRAINED INTERNATIONAL RELATIONS. HIS DELEGATION SUPPORTED THE PRINCIPLE OF THE FIRST AMENDMENT.

GENERAL MULTILATERAL TREATIES, HE SAID, BY THEIR VERY NATURE, REPRESENTED AN APPLICATION OF THE PRINCIPLES OF THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW. THE PARTICIPATION OF THE ENTIRE INTERNATIONAL COMMUNITY GAVE OPPORTUNITIES FOR CO-OPERATION AMONG ALL STATES. THIS WAS ONE OF THE TASKS OF THE UNITED NATIONS, ACCORDING TO ITS CHARTER, HE ADDED.

IT WOULD BE INEQUITABLE, HE SAID, AS WELL AS CONTRARY TO THE PURPOSES OF THE UNITED NATIONS, IF THE RIGHTS OF ALL STATES TO PARTICIPATE IN GENERAL MULTILATERAL TREATIES WERE LIMITED.

ARMANDO MOLINA LANDAETA (VENEZUELA), EXPLAINING HIS DELEGATIONJS POSITION ON THE ITEM BEFORE THE COMMITTEE, SAID THE PROTOCOL METHOD OF RESOLVING THE PROBLEM OF THE 21 TREATIES WAS THE BEST PROCEDURE. HOWEVER, IT WOULD BE DIFFICULT TO IMPLEMENT AND WOULD GIVE RISE TO OTHER DIFFICULTIES. THE SIMPLEST METHOD, HE SAID, AS THE ILC HAD RECOMMENDED, WAS THE APPOINTMENT OF A UNITED NATIONS BODY TO EXERCISE CERTAIN LEAGUE OF NATIONS POWERS.

THIS SOLUTION WAS REFLECTED IN THE DRAFT RESOLUTION, HE ADDED. THE REPRESENTATIVE OF VENEZUELA SAID THAT THE RESOLUTION WAS ACCEPTABLE, BECAUSE IT OFFERED NEW STATES THE POSSIBILITY OF PARTICIPATION IN THE 21 TREATISS. THEREFORE, HIS DELEGATION WOULD SUPPORT THE RESOLUTION. HOWEVER, FROM A LEGAL POINT OF VIEW, THE RESOLUTION WAS NOT ENTIRELY ADEQUATE. IT COULD NEVER ENSURE EFFECTIVE PARTICIPATION OF THE NEW STATES. IT WAS ONLY A PROVISIONAL MEASURE, HE ADDED.

CONTINUING, THE REPRESENTATIVE OF VENEZUELA STATED THE RESOLUTION HAD NOT FULLY TAKEN INTO CONSIDERATION ALL OF THE ILC RECOMMENDATIONS.

VENEZUELA, HE SAID, WOULD VOTE IN FAVOUR OF THE SECOND AMENDMENT.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA) ADJOURNED THE MEETING AT 4:10 P.M. UNTIL 3:00 P.M. TOMORROW, WEDNESDAY, 23 OCTOBER.

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PRESS RELEASE GA/L/1021
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 800TH MEETING (PM)
UNITED NATIONS, N.Y.

LEGAL COMMITTEE RECEIVES THIRD AMENDMENT TO DRAFT RESOLUTION ON MULTILATERAL TREATIES

STATEMENTS WERE MADE THIS AFTERNOON BY THE REPRESENTATIVES OF CONGO (LEOPOLDVILLE), UNITED KINGDOM, JAMAICA AND AFGHANISTAN, AS THE SIXTH (LEGAL) COMMITTEE CONTINUED ITS CONSIDERATION OF THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

THE COMMITTEE HAS BEFORE IT A NINE-POWER DRAFT RESOLUTION (DOC.A/C.6/L.532/REV.1) WHICH WOULD HAVE THE GENERAL ASSEMBLY EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE OF NATIONS AND OPEN TO NEW STATES 21 MULTILATERAL TREATIES CLOSED SINCE 1946.

THIS RESOLUTION DOES NOT INDICATE WHICH STATES WOULD BE INVITED TO BECOME PARTIES TO THE TREATIES. THE SPONSORS -- AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN -- COULD NOT REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOT-NOTE TO THE DRAFT.

TWO ALTERNATIVES IN THE FORM OF AMENDMENTS BY GHANA, INDONESIA, MALI, MOROCCO AND NIGERIA (DOC.A/C.6/L.533, CORR. 1 AND 2), AND BY AUSTRALIA, GREECE AND GUATEMALA (DOC.A/C.6/L.534) ARE ALSO BEFORE THE COMMITTEE. THE FIRST AMENDMENT WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES; AND THE SECOND AMENDMENT WOULD INVITE "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

IN ADDITION, A THIRD, "COMPROMISE" ALTERNATIVE AMENDMENT WAS INTRODUCED TODAY BY JAMAICA (DOC.A/C.6/L.536). IT WOULD INVITE MEMBERS OF THE UNITED NATIONS AND OF THE SPECIALIZED AGENCIES AND PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE (ICJ) AND STATES "DESIGNATED FOR THIS PURPOSE BY THE GENERAL ASSEMBLY". OTHER PROPOSALS HAVE ALSO BEEN MADE BY A NUMBER OF DELEGATIONS.

THE INTERNATIONAL LAW COMMISSION (ILC) AT ITS RECENT SESSION STUDIED THIS QUESTION AND REPORTED ON IT IN DOCUMENT A/5509. THE DRAFT RESOLUTION, ACCORDING TO ITS SPONSORS, EMBODIES THE RECOMMENDATIONS OF THE INTERNATIONAL LAW COMMISSION.

MORE

NEW AMENDMENT SUPPORTED

SIMON-PIERRE TSHIMBALANGA (CONGO - LEOPOLDVILLE) SAID HIS DELEGATION FULLY SUPPORTED THE DRAFT RESOLUTION. AS FOR THE AMENDMENTS AND PROPOSALS, HIS DELEGATION DID NOT FIND THE FIRST TWO AMENDMENTS SATISFACTORY. HE QUOTED FROM A NUMBER OF LEGAL CASES IN SUPPORT OF HIS VIEW.

THE REPRESENTATIVE OF THE CONGO WENT ON TO SAY THAT THE PRINCIPLE OF UNIVERSALITY WAS INCOMPLETE IN BOTH OF THE FIRST TWO AMENDMENTS.

HIS DELEGATION SUPPORTED THE "COMPROMISE SOLUTION" SUGGESTED BY AUSTRALIA AND FORMALLY SUBMITTED TODAY BY JAMAICA.

I.M. SINCLAIR (UNITED KINGDOM), REFERRING TO THE SOVIET UNIONS PROPOSAL TO ADOPT A RESOLUTION THAT WOULD PROVIDE FOR FURTHER STUDY OF THE TREATIES, SAID HIS DELEGATION SAW NO "GREAT MERIT" IN POSTPONING THE ISSUE.

THE CONSIDERATIONS TO BE GIVEN TO THE TECHNICAL ASPECTS OF THE TREATIES DID NOT, IN HIS VIEW, PRECLUDE THE COMMITTEE FROM DECIDING TO OPEN THE 21 TREATIES TO ACCESSION BY STATES NOW.

NO STATE WAS OBLIGED TO ACCEDE NOW, HE SAID. THEY COULD WAIT UNTIL THE RESULTS OF FURTHER STUDIES WERE MADE KNOWN.

TURNING TO THE "POLITICALLY CONTENTIOUS" ISSUE OF WHICH FORMULA FOR ACCESSION SHOULD COMPLETE THE RESOLUTION, THE REPRESENTATIVE OF THE UNITED KINGDOM SAID HIS DELEGATION "APPRECIATED" THE PROPOSAL MADE BY IRAN -- TO INVITE ALL STATES AGREED UPON BY THE SIGNATORIES TO THE TREATIES. IN THIS CONNEXION, HOWEVER, HE SAID, THE PROPOSAL SUGGESTED BY AUSTRALIA -- WHICH WOULD HAVE THE GENERAL ASSEMBLY DECIDE WHICH STATES, IN ADDITION TO MEMBERS OF THE UNITED NATIONS, WOULD BE INVITED TO ACCEDE -- WAS A "SOLUTION" ACCEPTABLE TO THE UNITED KINGDOM DELEGATION.

MORE

(THIS IS THE SAME PROPOSAL FORMALLY INTRODUCED TODAY BY JAMAICA.)

WHILE THE UNITED KINGDOM DELEGATION SUPPORTED THE SECOND AMENDMENT, IT WOULD VOTE FOR THE JAMAICAN PROPOSAL.

L.B. FRANCIS (JAMAICA) ASKED THAT CO-SPONSORS JOIN HIM NOW.

ABDUL HAKIM TABIBI (AFGHANISTAN) SAID THE SPONSORS OF THE TWO AMENDMENTS NOW FOUND THEMSELVES IN A DILEMMA. THERE WERE TOO MANY PROPOSALS AND THE SPONSORS HAD NO INTENTION OF BEING INVOLVED IN A POLITICAL DEBATE, HE SAID.

THE TREATIES IN QUESTION, HE WENT ON, MIGHT NOT MEET THE NEEDS OF AFRICAN AND ASIAN COUNTRIES. HE ASKED DELEGATIONS NOT TO RUSH TO ACCEDE TO THESE TREATIES. TIME HAD CHANGED WORLD CONDITIONS.

IT WAS NOT THE INTENTION OF THE SPONSOR, HE WENT ON, TO INJECT A POLITICAL ISSUE INTO THE COMMITTEE, WHICH USUALLY HANDLED TECHNICAL MATTERS. THEREFORE, IN HIS VIEW, AN IMMEDIATE DECISION WAS NOT URGENT.

IF THE SPONSORS FELT IT WAS URGENT, HE WOULD VOTE FOR THE RESOLUTION AND THE FIRST AMENDMENT. HOWEVER, HE DID NOT BELIEVE THIS WAS SO. AMENDMENTS, OF ANY KIND, HE SAID WOULD NOT SOLVE THE QUESTION.

THE BEST WAY OUT OF THE DILEMMA, HE SAID, WAS TO REQUEST THE SECRETARY-GENERAL TO EXAMINE THE TREATIES WITH A VIEW TO ASCERTAINING THEIR USEFULNESS.

POSTPONEMENT FOR ONE YEAR, HE SAID, COULD HELP TO SOLVE THE ISSUE. THE RESOLUTION AND AMENDMENTS COULD WAIT UNTIL THEN.

MR. FRANCIS (JAMAICA) SAID THE REPRESENTATIVE OF COLOMBIA HAD INDICATED HE WOULD BE A CO-SPONSOR OF HIS AMENDMENT.

INTRODUCING THE AMENDMENT, THE REPRESENTATIVE OF JAMAICA NOTED THAT THE FIRST TWO AMENDMENTS WOULD BE UNACCEPTABLE TO MANY DELEGATIONS. JAMAICA, HE WENT ON, SOUGHT TO HARMONIZE THE DIFFERENCES.

THE ADVANTAGE OF HIS AMENDMENT, HE WENT ON, WAS THAT IT DID NOT CLOSE THE DOOR TO ANY STATE; THE GENERAL ASSEMBLY WOULD BE FREE TO INVITE STATES TO ACCEDE TO THE TREATIES.

HE NOTED THAT THE VIENNA CONFERENCE ON DIPLOMATIC RELATIONS HAD ADOPTED THE SAME FORMULA EMBODIED IN THIS AMENDMENT.

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ARMANDO MOLINA LANDAETA (VENEZUELA) SAID HE WOULD SUPPORT THE JAMAICAN COMPROMISE PROPOSAL.

MISS RAJASPERA (MADAGASCAR) SAID ALL THE AMENDMENTS NEEDED FURTHER STUDY. THE VOTE, THEREFORE, SHOULD BE POSTPONED UNTIL MONDAY.

DIEGO URIBE (COLOMBIA) SAID HE WOULD CO-SPONSOR THE JAMAICAN AMENDMENT, AS IT RECONCILED MANY OF THE VIEWS EXPRESSED IN THIS DEBATE.

CO-SPONSORS WITHDRAW SECOND AMENDMENT

KENNETH BAILEY (AUSTRALIA), SPEAKING ON THE DOCUMENTS BEFORE THE COMMITTEE, ANNOUNCED THAT THE CO-SPONSORS OF THE SECOND AMENDMENT WOULD NOW WITHDRAW IT AND SUPPORT THE JAMAICAN AMENDMENT.

HIS DELEGATION, HE SAID, FOUND THE FIRST AMEDMENT UNACCEPTABLE ON JURIDICAL GROUNDS. THE SECRETARY-GENERALS OFFICE WAS NOT POLITICAL, AND THE FIRST AMENDMENT WAS POLITICAL IN NATURE, HE ADDED. GOVERNMENTS HAD TO TAKE POLITICAL DECISIONS THEMSELVES. WITH REGARD TO THE PRINCIPLE OF UNIVERSALITY, HE SAID, THE TEST BAN TREATY ARRANGEMENT FOR ACCESSION OFFERED NO GUIDE OR PRECEDENT WITH REGARD TO THE LEAGUE OF NATIONS TREATIES, CONTRARY TO THE VIEWS OF SOME DELEGATIONS.

FURTHERMORE, UNIVERSALITY COULD NOT BE ATTAINED BY LEAVING THE MATTER TO THE SECRETARY-GENERAL. IT HAD TO BE ACHIEVED POLITICALLY. THE "VIENNA FORMULA" WAS A MEANS OF ACCOMPLISHING THIS OBJECTIVE.

CONTINUING, THE REPRESENTATIVE OF AUSTRALIA SAID THAT SOME OF THE TREATIES WERE READY FOR ACCESSION, AS THEY STOOD. AS FOR THE OTHERS, THE DRAFT RESOLUTION AND THE JAMAICAN AMENDMENT PROVIDED FOR FURTHER EXAMINATION AND CONSULTATION BETWEEN THE SECRETARY-GENERAL AND STATES, AS TO THE USEFULNESS OF THE TREATIES.

CONTINUING, MR. BAILEY SAID THE TREATIES SHOULD BE PUT INTO OPERATION AS SOON AS POSSIBLE.

HE DID NOT AGREE, HE SAID, WITH THE REPRESENTATIVE OF AFGHANISTAN THAT THE ISSUE SHOULD BE POSTPONED. THE QUESTIONS OF URGENCY AND HASTINESS WERE NOT RELEVANT, FOR THE COMMITTEE HAD THOROUGHLY CONSIDERED THE ITEM BEFORE IT.

ACTION SHOULD NOT BE WITHHELD FOR ANOTHER YEAR, HE SAID. CONTROVERSY COULD NOT BE AVOIDED BY DELAY. UNANIMOUS ADOPTION OF THE "VIENNA FORMULA" IN THE PAST SHOULD BE THE BASIS OF THE COMMITTEES WORK TODAY.

MORE

E.K. DADZIE (GHANA), SPEAKING UNDER THE RIGHT OF REPLY, SAID THE APPARENT ABSENCE OF "GREAT URGENCY", WITH REGARD TO THIS ITEM, INDICATED THAT THE COMMITTEE SHOULD AWAIT THE RESULT OF FURTHER STUDY AND CONSULTATION.

ACCORDINGLY, HIS DELEGATION WOULD YIELD TO THE APPEAL OF THE REPRESENTATIVE OF AFGHANISTAN TO POSTPONE FOR ONE YEAR A DECISION ON THIS ISSUE. THIS WAS, IN HIS VIEW, A SUSPENSION OF PARAGRAPH FOUR OF THE DRAFT RESOLUTION - WHICH REQUIRES COMPLETION BY ONE OF THE THREE AMENDMENTS -- WHILE PARTS OF THE RESOLUTION COULD BE VOTED ON THIS YEAR.

FURTHER, HE SUPPORTED THE REQUEST OF MADAGASCAR FOR PUTTING OFF THE VOTE UNTIL MONDAY.

MISS E.H. LAURENS (INDONESIA), REPLYING TO AFGHANISTAN, SAID HER DELEGATION WAS WILLING TO YIELD TO THE APPEAL FOR POSTPONEMENT AND SUPPORT THE MADAGASCAR PROPOSAL.

P.D. MOROZOV (USSR) RESERVED HIS RIGHT TO REPLY.

G.E. EFETIE (NIGERIA) SUPPORTED THE PROPOSAL MADE BY MADAGASCAR.

THE REPRESENTATIVE OF AFGHANISTAN, REPLYING TO AUSTRALIA, SAID HIS PROPOSAL FOR POSTPONEMENT HAD JUST BEEN UPHELD BY THE REPRESENTATIVES OF GHANA AND INDONESIA.

THE CHAIRMAN THEN ADJOURNED THE MEETING UNTIL 10:30 A.M. ON MONDAY, 28 OCTOBER.

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PRESS RELEASE GA/L/1018
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 797TH MEETING (AM)
UNITED NATIONS, N.Y.

CONSIDERATION OF GENERAL MULTILATERAL TREATIES
TBMMMMMMMMMMMMMXXS CONTINUES IN SIXTH COMMITTEE

THE SIXTH (LEGAL) COMMITTEE THIS MORNING CONTINUED ITS CONSIDERATION OF THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGE OF NATIONS.

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF THE UNITED KINGDOM, FINLAND, POLAND, FRANCE, UNITED ARAB REPUBLIC, UKRAINE, SYRIA, CZECHOSLOVAKIA, BRAZIL, SPAIN AND AFGHANISTAN. IN ADDITION, THE USSR EXERCISED ITS RIGHT OF REPLY AND OFFERED A "COMPROMISE SOLUTION" TO THE DRAFT RESOLUTION ON THIS ITEM.

(see last page)

THE COMMITTEE HAS BEFORE IT A DRAFT RESOLUTION BY WHICH THE GENERAL ASSEMBLY WOULD EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGE OF NATIONS AND OPEN TO NEW STATES 21 MULTILATERAL TREATIES CLOSED SINCE 1946.

THE 9-POWER RESOLUTION (DOC.A/C.6/L.532/REV.1) DOES NOT INDICATE WHICH STATES WOULD BE INVITED TO BECOME PARTIES TO THE TREATIES.

THE SPONSORS -- AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN -- COULD NOT REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOTNOTE TO THE DRAFT.

TWO ALTERNATIVES IN THE FORM OF AMENDMENTS BY GHANA, INDONESIA, MALI, MOROCCO AND NIGERIAL (DOC/A/C/6/L.533/CORR.1 AND 2), AND BY AUSTRALIA, GREECE AND GUATEMALA (DOC.A/C/6/L.534) ARE ALSO BEFORE THE COMMITTEE.

THE FIRST AMENDMENT WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES; AND THE SECOND AMENDMENT WOULD INVITE "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

I.M. SINCLAIR (UNITED KINGDOM) RECALLED THAT THE UNITED NATIONS LEGAL COUNSEL AT THE COMMITTEES MEETING LAST FRIDAY HAD INDICATED THAT THE SECRETARY-GENERAL WOULD HAVE TO ASK THE GENERAL ASSEMBLY FOR A LIST OF STATES TO BE INVITED TO ACCEDE TO THE TREATIES, IF THE

FIRST AMENDMENT WERE ADOPTED.

MORE

HE ALSO REFERRED TO THE STATEMENT LAST FRIDAY BY THE REPRESENTATIVE OF THE USSR AND SAID THAT HE HAD CONSIDERED CAREFULLY WHAT WAS SAID, AND WHAT WAS NOT SAID.

HE STATED THAT NO MENTION HAD BEEN MADE OF THE TEST BAN TREATY, WHICH, ALTHOUGH IT EMBRACED THE "ALL STATES" FORMULA, DID SO BY A UNIQUE DEVICE. THE THREE ORIGINAL SIGNATORIES TO THAT TREATY, HE SAID, WERE THE DEPOSITORIES AND STATES WISHING TO ACCEDE TO IT COULD TRANSMIT THEIR INSTRUMENTS OF ACCESSION TO ANY OF THE THREE POWERS. THIS WAS DONE, MR. SINCLAIR SAID, TO AVOID THE PROBLEM WHICH WOULD ARISE UNDER THE FIRST AMENDMENT. IT ALSO PROVED THAT THE UNITED KINGDOM ADHERED TO THE PRINCIPLE OF UNIVERSALITY.

TURNING TO THE DRAFT RESOLUTION ITSELF, HE SAID IT ADEQUATELY AND ACCURATELY REFLECTED THE RECOMMENDATIONS OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THIS QUESTION.

THE ILC HAD STUDIED THE PROBLEM AT ITS RECENT SESSION AND REPORTED ON IT IN DOCUMENT A/5509. THE RESOLUTION ACCORDING TO ITS SPONSORS, EMBODIED THE ILC SUGGESTIONS.

CONCLUDING, THE REPRESENTATIVE OF THE UNITED KINGDOM SAID HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION, ON THE UNDERSTANDING IT WOULD BE COMPLETED BY THE ADOPTION OF THE SECOND AMENDMENT.

VOITTO SAARIO (FINLAND) SAID THAT MOST OF THE TREATIES WERE EITHER OBSOLETE OR OBSOLESCENT. OTHERS REQUIRED REVISION. THIS PROVIDED AN OPPORTUNITY FOR THE NEW STATE FOR WHOM THE TREATIES WERE INTENDED, TO CONTRIBUTE TO THE PROGRESEIVE DEVELOPMENT OF INTERNATIONAL LAW.

MR. SAARIO DECLARED THE METHOD OF AN AMENDING PROTOCOL TO OPEN THE TREATIES WAS TOO CUMBERSOME, AND THE ILC HAD COME FORTH WITH THE BEST SOLUTION. HOWEVER, HE WENT ON, IT WOULD BE WISE TO DETERMINE WHICH OF THE 21 TREATIES STILL HELD INTEREST TO NEW STATES. MOREOVER THERE WERE LEGAL DIFFICULTIES IN CONNEXION WITH THE TEXT OF THE DRAFT RESOLUTION WHICH RENDERED IT PREMATURE.

FURTHER STUDY AND CONSULTATIONS WERE NEEDED, HE CONCLUDED.

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E. WYZNER (POLAND) SAID HE DOUBTED THE URGENCY OF THE PROBLEM BECAUSE "NO SIGNIFICANT INTEREST" HAD BEEN SHOWN BY NEW STATES FOR WHICH THE OPENING OF THE TREATIES WAS INTENDED. MANY OF THE TREATIES WERE OBSOLETE, HAD CEASED TO BE IN FORCE, OR HAD BEEN SUPERSEDED BY NEWER AGREEMENTS. THE AUTHORS OF THE DRAFT RESOLUTION, HOWEVER, HAD REALIZED THIS BY REQUESTING CONSULTATIONS AS TO THE RELEVANCE OF THE TREATIES IN VIEW OF CONTEMPORARY CONDITIONS.

SUGGESTING MODIFICATIONS TO THE TEXT OF THE DRAFT, CERTAIN PARTS OF WHICH HE SAID LACKED LOGIC, MR. WYZNER DECLARED THAT HSI DELEGATION FAVOURED OPENING THE TREATIES. HOWEVER, THE TREATIES WOULD BE OF INTEREST TO NEW STATES ONLY IF THEY WERE ADAPTED TO MODERN CIRCUMSTANCES.

ON THE TWO AMENDMENTS TO THE RESOLUTION, HE SAID POLAND DEFENDED THE FIRST ONE, WHICH CORRESPONDED TO THE PRINCIPLE OF UNIVERSALITY OF INTERNATIONAL LAW. THE "QUASI-LEGAL" ARGUMENTS OF THOSE AGAINST THIS AMENDMENT TO THE EFFECT THAT THE SECRETARY-GENERAL WOULD BE PRESENTED WITH AN "INSURMOUNTABLE" TASK, SHOWED A LACK OF CONFIDENCE IN THE SECRETARY7GENERAL, HE STATED.

CONTINUING, HE SAID THAT CONTRARY TO THE REMARKS OF THE UNITED KINGDOM EARLIER IN THE MEETING, POLAND VIEWED THE TEST BAN TREATY, WHICH "SO RADICALLY IMPROVED THE INTERNATIONAL ATMOSPHERE", AS A STRIKING EXAMPLE OF THE "ALL STATES" FOMULA. IT WOULD BE HIGHLY PARADOXICAL IF THE STATES THAT HAD REACHED AGREEMENT ON OPENING TO ALL STATES THE TEST BAN TREATY, WHICH WAS POLITICAL IN NATURE, COULD NOT DO SO ON THESE 21 TREATIES OF A TECHNICAL CHARACTER.

CONCLUDING, THE REPRESENTATIVE OF POLAND, DECLARED HE WOULD SUPPORT THE DRAFT RESOLUTION ON THE UNDERSTANDING THAT THE FIRST AMENDMENT TOO, WOULD BE ADOPTED.

PHILIPPE MONOD (FRANCE) STATED THAT ALL OF THE DELEGATIONS WHICH HAD SPOKEN ON THIS ITEM HAD AGREED ON THE PRINCIPLE OF WIDER PARTICIPATION IN THE TREATIES AND THAT, WITH SLIGHT DIVERGENCIES, THERE WERE NO SERIOUS DIFFERENCES AS TO THE SUOSTANCE OF THE RESOLUTION. THE COMMENTS ON JURIDICAL TECHNICALITIES, THOUGH USEFUL, WERE SUPERFLUOUS.

THE CO-SPONSORS, HE WENT ON, HAD NOT CALLED THE DRAFT A PERFECT SOLUTION. THEY, THEMSELVES, HAD SEEN THAT MANY PROBLEMS WOULD REMAIN. THEY WERE RIGHT, HOWEVER, IN NOT HESITATING IN THE FACE OF THE OBSTACLES, AND THUS HAD NOT JEOPARDIZED THE FINAL RESULT.

MORE

REFERRING TO THE TECHNICAL PROBLEMS THAT HAD BEEN RAISED BY A NUMBER OF DELEGATIONS, THE REPRESENTATIVE OF FRANCE MADE SEVERAL SUGGESTIONS, WHICH HE FELT MIGHT AVOID THESE DIFFICULTIES. HOWEVER, HE SAID, THE SUBSTANCE OF THE MATTER STILL WAS SMALL AND FURTHER STUDIES MIGHT REVEAL THEM EVEN LESS IMPORTANT.

FOR THESE REASONS, HE DECLARED, HIS DELEGATION CONSIDERED IT REGRETTABLE THAT A POLITICAL PROBLEM HAD ARISEN, WHICH SHOULD NOT HAVE BEEN RAISED IN CONNEXION WITH THESE TREATIES. THE SECRETARY-GENERAL SHOULD NOT BE ASKED TO PERFORM AN IMPOSSIBLE TASK. FURTHER, IT WOULD BE DANGEROUS TO REQUEST HIM TO TAKE ACTIONS BEYOND HIS RESPONSIBILITIES AND AGAINST HIS WILL.

MR. MONOD ASKED MEMBERS OF THE COMMITTEE TO REFLECT ON THE CONSEQUENCES WHEREBY A "FEW WORDS" WOULD COMPEL THE SECRETARY-GENERAL TO FAIL IN HIS DUTY OF OBJECTIVITY. THE SECOND AMENDMENT WAS THE ONLY POSSIBLE PROCEDURE, HE ASSERTED.

FRANCE WOULD VOTE IN FAVOUR OF THE DRAFT RESOLUTION AND THE SECOND AMENDMENT, HE CONCLUDED.

RAOUF EL REEDY (UNITED ARAB REPUBLIC) REGARDED THE PROTOCOL METHOD OF OPENING THE TREATIES AS HAVING PRACTICAL DIFFICULTIES AND LEGAL UNCERTAINTIES. THE METHOD CONTAINED IN THE DRAFT RESOLUTION, WHICH VIEWED THE UNITED NATIONS AS THE LEGAL SUCCESSOR TO THE LEAGUE OF NATIONS, WAS LEAST COMPLICATED.

HIS DELEGATION, HE SAID, WOULD HAVE PREFERRED THE DRAFT TO EXPRESS THIS SUCCESSION MORE EMPHATICALLY, AND WHILE IT DID NOT CONSIDER THE DRAFT AS A FINAL INTERPRETATION OF THIS QUESTION, IT SATISFIED THE NEEDS WITH RESPECT TO THE TREATIES.

CONTINUING, MR. EL REEDY SAID THAT HIS DELEGATION SUPPORTED THE PRINCIPLE OF UNIVERSALITY AND, THEREFORE, OPPOSED THE SECOND AMENDMENT. HE SAID THE TEST BAN TREATY HAD BEEN BASED ON THIS PRINCIPLE AND HE HOPED THAT THE COMMITTEE, IN VIEW OF THE IMPROVED INTERNATIONAL ATMOSPHERE, WOULD RECOMMEND TO THE GENERAL ASSEMBLY A RESOLUTION CALLING FOR WIDER PARTICIPATION IN THE TREATIES.

MRS. E.I. ZGURSKAYA (UKRAINE) STATED THAT THE SECOND AMENDMENT CLEARLY CONFLICTED WITH THE PRINCIPLE OF UNIVERSALITY OF INTERNATIONAL LAW, AND DISCRIMINATED AGAINST SOME STATES.

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THE SECOND AMENDMENT, SHE SAID, WENT BACK TO THE FORMULA OF THE "DARK DAYS" OF THE PAST. THIS HAD OUTLIVED ITS TIME. ALL STATES SHOULD BE PERMITTED TO PARTICIPATE IN THE TREATIES. VIEWING TREATIES AS A JURIDICAL FORM OF INTERNATIONAL CO-OPERATION, MR. ZGURSKAYA SAID THE COMMITTEE HAD TO TAKE STEPS TO INSURE THE DEVELOPMENT OF UNIVERSALITY.

THE TEST BAN TREATY, SHE WENT ON, HAD BEEN A CONVINCING EXAMPLE, BY WHICH THE THREE ORIGINAL SIGNATORIES HAD BEEN GUIDED BY THE "ALL STATES" FORMULA. THE LEGAL COMMITTEE SHOULD FOLLOW THIS EXAMPLE. THE FEARS EXPRESSED BY SOME DELEGATIONS THAT THE SECRETARY-GENERAL COULD NOT FIND EQUITABLE SOLUTIONS, WERE NOT WELL FOUNDED.

HER DELEGATION, SHE CONCLUDED, WOULD VOTE AGAINST THE SECOND AMEND7 MENT. FURTHER, IT COULD NOT SUPPORT THE DRAFT RESOLUTION UNLESS THE FIRST AMENDMENT WERE ADOPTED.

ADNAN NACHABE (SYRIA) SAID HIS DELEGATION FAVOURED THE FIRST AMEND-MENT WHICH OPENED THE TREATIES TO ALL STATES. THIS CONFIRMED THE PRINCIPLE OF UNIVERSALITY. THE LARGEST NUMBER OF STATES SHOULD PARTICIPATE IN MULTILATERAL TREATIES.

V. PECHOTA (CZECHOSLOVAKIA) SAID INTERNATIONAL LAW GUARANTEED THE RIGHT OF ALL STATES TO ENTER INTO GENERAL MULTILATERAL TREATIES. THIS WAS REFLECTED IN THE DRAFT RESOLUTION. HOWEVER, CERTAIN ASPECTS RAISED SOME DOUBTS THAT HAD TO BE EXAMINED. IT HAD NOT YET BEEN ESTABLISHED, HE WENT ON, HOW MANY OF THE TREATIES WERE STILL IN FORCE. IT WOULD NOT BE USEFUL TO INVITE STATES TO ACCEDE TO TREATIES THAT DID NOT EXIST.

FURTHER STUDY WAS NECESSARY WITH REGARD TO THE SUBSTANCE OF THE TREATIES. AN INTERIM SOLUTION, AS PROVIDED FOR IN THE DRAFT RESOLUTION, WAS POSSIBLE, HOWEVER, HE STATED.

THE PRINCIPLE OF UNIVERSALITY HAD TO BE ADHERED TO. DISCRIMINATION, HE ADDED, REPRESENTED A FLAGRANT VIOLATION OF THIS PRINCIPLE. IT HAD EXISTED BEFORE, BUT NOW IT WAS INADMISSIBLE. THE OBJECT OF THIS DIS-CRIMINATION, HE SAID, WAS TO KEEP OUT OF THE UNITED NATIONS CERTAIN SOCIALIST STATES.

HIS DELEGATION WAS WILLING TO GO ALONG WITH THE INTERIM SOLUTION, ON THE ASSUMPTION THAT IT WOULD APPLY THE PRINCIPLE OF UNIVERSALITY.

MORE

P. D. MOROZOV (USSR), EXERCISING HIS RIGHT OF REPLY, SAID THAT THE TEST BAN TREATY HAD ADOPTED THE "ALL STATES" FORMULA. HOWEVER, HE ADDED, PERHAPS IT WOULD BE MORE JUDICIOUS TO ADOPT ONLY A PART OF THE DRAFT RESOLUTION. HE THEN PROPOSED THAT ONLY THOSE PARAGRAPHS THAT PROVIDED FOR FURTHER STUDY OF THE QUESTION BE ADOPTED.

HE SAID IT WOULD BE BEST TO ADOPT UNANIMOUSLY THE DRAFT RESOLUTION AND THE FIRST AMENDMENT. IN VIEW OF THE DEBATE THAT HAD DEVELOPED, HOWEVER, THE COMMITTEE SHOULD CONSIDER HIS PROPOSAL. A DECISION THAT WOULD BRING BACK THE "COLD WAR" WOULD BE A HASTY ONE. IT WOULD BE WISE TO "BIDE OUR TIME".

GILBERTO AMADO (BRAZIL) SAID HIS DELEGATION FAVOURED THE PRINCIPLE OF UNIVERSALITY. THE COMMITTEE, HOWEVER, SHOULD FOLLOW THE PROCEDURES DICTATED BY INDIVIDUAL INTERESTS, WHICH WOULD SOME DAY DISAPPEAR.

HIS DELEGATION WOULD WAIT UNTIL THE CO SPONSORS OF THE DRAFT RESOLUTION EXPRESSED THEIR VIEWS ON THE SOVIET PROPOSAL, BUT IN THE MEANTIME WOULD SUPPORT THE DRAFT RESOLUTION AND THE SECOND AMENDMENT.

ANTONIO DE LUNA (SPAIN) SAID HIS DELEGATION SUPPORTED THE RESOLUTION, THOUGH IT HAD "DEFECTS". HOWEVER, AFTER HEARING THE REPRESENTATIVE OF THE USSR HIS DELEGATION WOULD FAVOUR HIS PROPOSAL.

ABDUL HAKIM TABIBI (AFGHANISTAN) STATED THAT HIS DELEGATION FAVOURED THE DRAFT RESOLUTION AND THE FIRST AMENDMENT. IT ALSO SUPPORTED PROPOSALS FOR A NEW LOOK AT THE TREATIES TO ADAPT THEM TO CONTEMPORARY CONDITIONS. THE SECRETARIAT, HE SAID, SHOULD STUDY THEM FURTHER. HE SAID HIS DELEGATION WOULD VOTE FOR THE DRAFT RESOLUTION. HOWEVER, IN VIEW OF THE SOVIET SUGGESTION, THE COMMITTEE SHOULD SOJOURN TO GIVE TIME FOR THE SPONSORS TO STUDY THE NEW PROPOSAL.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA) ADJOURNED THE MEETING AT 1:10 PM UNTIL TOMORROW AFTERNOON.

JB&HS437P 21 OCT 63

file copy

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

94

OUTGOING MESSAGE

DATE	FILE		SECURITY
Oct.21/63	20-3-1-6		CONFID
	9	9	

FM: EXTERNAL

	NUMBER	PRECEDENCE
TO: CANDEL NY	L-165	OPIMMED

INFO: (for COMCENTRE: This telegram required by CANDEL for meeting morning Oct. 22nd.)

Ref.: URTELS 1508 OCT 18 AND 1514 OCT 19

Subject: 18TH UNGA SIXTH COTTEE ITEM 2, EXTENDED PARTICIPATION IN LEAGUE TREATIES

IT IS NOT RPT NOT CLEAR TO US WHETHER THE LEAgUE IN FACT AUTHORIZED THE ASSEMBLY TO EXERCISE THE FUNCTIONS ENVISIONED IN RESOLUTION 24(1) OF 1946. IF IT DID THE PRESENT RESOLUTION WOULD APPEAR REDUNDANT ON OUR READING OF THE 1946 RESOLUTION. IF IT DID NOT RPT NOT OUR COMMENTS ARE AS FOLLOWS:

WHILE WE ENTERTAIN SOME DOUBTS AS TO THE LEGAL PROPRIETY OF THE PROCEDURE SET OUT IN THE DRAFT RESOLUTION WHICH APPEARS TANTAMOUNT TO AN EXERCISE OF LEGISLATIVE POWERS BY THE ASSEMBLY, WE BELIEVE THAT THIS NARROW CASE COULD IN FUTURE BE DISTINGUISHED IF NECESSARY ON GROUNDS THAT IT CONCERNED MATTERS OVERLOOKED IN THE TRANSFER OF POWERS FROM THE LEAGUE TO THE UNITED NATIONS. YOU MAY therefore SUPPORT RESOLUTION.

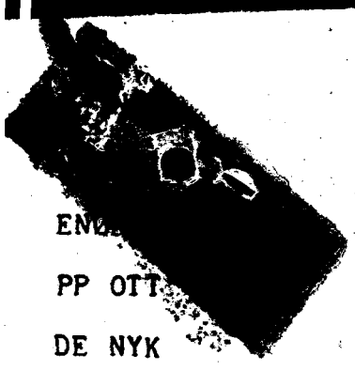
2. WITH REGARD TO "ALL STATES" QUESTION WE NOTE ~~STAVROUPOLOUS~~ STHURGOPOULOS'S STATEMENT AND TRUST IT WILL PROVE POSSIBLE TO SECURE A WORDING

LOCAL DISTRIBUTION

ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG ..... NAME E.D. Copithorne/ijl	Legal	2-5406	SIG M. CADIEUX NAME .....

EXT. 18 (REV. 12/61)

SIMILAR TO THAT ADOPTED FOR THE DRAFT MARRIAgE CONVENTION AS DESCRIBED IN YOUR REFTEL



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PP OTT

DE NYK

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FM CANDELNY OCT18/63 UNCLAS

TO EXTERNAL 1508 PRIORITY

REF OURTEL 1481 OCT16

J-3

18TH UNGA:SIXTH CTTEE:ITEM TWO

TEXT OF DRAFT RESLN SUBMITTED BY DELS OF AUSTRALAI GHANA GREECE GUATEMALA INDONESIA MALI MOROCCO NIGERIA AND PAK FOLLOWS:QUOTE THE GENERAL ASSEMBLY,

HAVING CONSIDERED THE QUESTION OF EXTENDED PARITICPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS,AND THE REPORT OF THE INTERNATIONAL LAW COMMISSION THEREON,

NOTING THAT THERE ARE TWENTY-ONE SUCH TREATIES OF A TECHINCAL AND NON-POLITICAL CHARACTER WHICH BY THEIR TERMS AUTHORIZED THE COUNCIL OF THE LEAGUE OF NATIONS TO INVITE ADDITIONAL STATES TO BECOME PARTIES,AND THUS WERE NOT RPT NOT INTENDED TO BE CLOSED TO NEW STATES,

FURTHER NOTING THAT SINCE THE COUNCIL OF THE LEAGUE CEASED TO EXIST, A LARGE NUMBER OF NEW STATES HAVE COME INTO BEING,AND THAT MANY OF THEM HAVE BEEN UNABLE TO BECOME PARTIES TO THE TREATIES IN QUESTION THROUGH LACK OF AN INVITATION TO ACCEDE,

RECALLING THE RECOMMENDATION OF THE ASSEMBLY OF THE LEAGUE OF NATIONS AT ITS FINAL SESSION,THAT MEMBERS OF THE LEAGUE SHOULD FACILITATE IN EVERY WAY THE ASSUMPTION BY UN OF FUNCTIONS AND POWERS ENTRUSTED TO THE LEAGUE UNDER INTERNATIONAL AGREEMENTS OF A TECHNICAL AND NON-POLITICAL CHARACTER,

FURTHER RECALLING THAT THE GENERAL ASSEMBLY,BY RESLN 24(I) OF FEB12 1946,DECLARED THAT UN WAS WILLING IN PRINCIPLE TO ASSUME THE EXERCISE OF CERTAIN FUNCTIONS AND POWERS PREVIOUSLY ENTRUSTED TO THE LEAGUE OF NATIONS UNDER INTERNATIONAL AGREEMENTS,

1.DECIDES THAT THE GENERAL ASSEMBLY IS THE APPROPRIATE ORGAN OF UN WHICH SHOULD EXERCISE THE POWER CONFERED BY MULTILATERAL TREATIES OF

....2

"E.S. Turnbull"

A TECHNICAL AND NON-POLITICAL CHARACTER ON THE COUNCIL OF THE LEAGUE OF NATIONS TO INVITE STATES TO ACCEDE TO THOSE GREATIES;

2.RECORDS THAT THOSE MEMBERS OF UN WHICH ARE PARTIES TO THE TREATIES REFERRED TO ABOVE ASSENT BY THIS RESLN TO THE DECISION IN THE PRECEDING PARA AND EXPRESS THEIR RESOLVE TO USE THEIR GOOD OFFICES TO SECURE THE COOPERATION OF THE OTHER PAETIES TO THE TREATIES SO FAR AS THIS MAY BE NECESSARY;

3.REQUESTS THE SECGEN(A)AS DEPOSITARY OF THE TREATIES REFERRED TO ABOVE,TO BRING TO THE NOTICE OF ANY PARTY WHICH IS NOT A MEMBER OF UN THE TERMS OF THE PRESENT RESLN(B)TO TRANSMIT COPIES OF THE PRESENT RESLN TO MEMBERS OF UN WHICH ARE PARTIES TO THESE TREATIES (C)TO CONSULT,WHERE NECESSARY,WITH THE STATES REFERRED TO IN SUB-PARAS(A)AND(B)OF THIS PARA AS TO WHETHER ANY OF THE TREATIES IN QUESTION HAVE CEASED TO BE IN FORCE,HAVE BEEN SUPERSEDED BY LATER TREATIES,HAVE OTHERWISE CEASED TO BE OF INTEREST FOR ACCESSION BY ADDITIONAL STATES,OR REQUIRE ACTION TO ADAPT THEM TO CONTEMPORARY CONDITIONS(D)TO REPORT ON THESE MATTERS TO THE GENERAL ASSEMBLY AT ITS NINETEENTH SESSION;

4.FURTHER RE UESTS SECGEN TO INVITE.....WHICH, OTHERWISE,IS NOT RPT NOT ELIGIBLE TO BECOME A PARTY TO THE TREATIES IN QUESTION,TO ACCEDE THERETO BY DEPOSITING AN INSTRUMENT OF ACCESSION WITH SECGEN OF UN;

5.DECIDES TO PLACE ON THE PROVISIONAL AGENDA OF ITS NINETEENTH SESSION AN ITEM ENTITLED:GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.UNQUOTE.

Legal S/R
Pole
Legal Div

UN66

PRESS RELEASE GA/L/1017
EIGHTEENTH GENERAL ASSEMBLY A SIXTH COMMITTEE, 796 TH MEETING (PM)
UNITED NATIONS, N.Y.

DEBATE ON MULTILATERAL TREATIES CONTINUES IN SIXTH COMMITTEE

THE SIXTH (LEGAL) COMMITTEE THIS AFTEROON CONTINUED ITS CONSIDERATION OF THE QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS.

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF GUATEMALA, CHILE, ITALY, CHINA, UNITED STATES, CYPRUS, TANGANYIKA, HUNGARY, GHANA, USSR AND IRAQ.

THE COMMITTEE HAS BEFORE IT A DRAFT RESOLUTION BY WHICH THE GENERAL ASSEMBLY WOULD EMPOWER ITSELF TO ASSUME CERTAIN FUNCTIONS OF THE LEAGUE OF NATIONS AND OPEN TO NEW STATES 21 MULTILATERAL TREATIES CLOSED SINCE 1946.

THE 9-POWER RESOLUTION (DOC. A/C.6/L.532) DOES NOT INDICATE WHICH STATES WOULD BE INVITED TO BECOME PARTIES TO THE TREATIES.

THE SPONSORS -- AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN -- COULD NOT REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOTNOTE TO THE DRAFT.

AMDNEMENTS BY GHANA INDONESIA, MALI, MOROCCON NIGERIA AND PAKISTAN (DOC. A/C.6/L.533/CORR.1), AND BY AUSTRALIA, GREECE AND GUATEMALA (DOC. A/C.6/L.534) ARE ALSO BEFORE THE COMMITTEE.

THE FIRST AMENDMENT WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES; AND THE SECOND AMENDMENT WOULD INVITE "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA) ANNOUNCED AT THE START OF THE MEETING THAT PAKISTAN HAD WITHDRAWN AS A SPONSOR OF THE FIRST AMENDMENT.

ROBERTO HERRERA IBARGUEN (GUATEMALA), SPEAKING AS A SPONSOR OF THE RESOLUTION AND THE SECOND AMENDMENT, SAID THAT IF THE FIRST AMENDMENT, WHICH WOULD INVITE "ANY STATE" TO ACCEDE TO THE TREATIES, WERE ADOPTED, THE SECRETARY7GENERAL WOULD THEN BE COMPELLED TO MAKE A POLITICAL DECISION. HE WOULD BE ASKED TO DEFINE

MORE

THE TERM "ANY STATE". THE SECRETARY-GENERAL, MR. HERRERA WENT ON TO SAY, MIGHT REFUSE TO EXERCISE THIS RESPONSIBILITY UNLESS THE GENERAL ASSEMBLY DREW UP A LIST OF THE STATES TO BE INVITED.

THE REPRESENTATIVE OF GUATEMALA THEN ASKED THE UNITED NATIONS LEGAL COUNSEL, COSSTANTIN A. STAVROPOULOS, FOR HIS VIEWS ON THIS MATTER. MR. STAVAROPOULOS AGREED THAT THE TERMS WOULD REQUIRE A DEFINITION BY THE GENERAL ASSEMBLY.

SANTIAGO BENADAVA (CHILE) RECALLED THAT THE DRAFT RESOLUTION HAD BEEN BASED ON A RECOMMENDATION BY THE INTERNATIONAL LAW COMMISSION (ILC).

THE ILC AT ITS RECENT SESSION REPORTED ON THIS QUESTION (DOC. A/5509).

THE REPRESENTATIVE OF CHILE SAID THE POSITION OF HIS DELEGATION WAS BASED ON ITS DESIRE TO HAVE NEWLY INDEPENDENT STATES PARTICIPATE IN THE 21 TREATIES, AND ON THE NATURE OF THE AGREEMENTS THEMSELVES. THESE TREATIES, HE SAID, WERE OF A UNIVERSAL CHARACTER. IT WAS DESIRABLE TO HAVE THE LARGEST NUMBER OF PARTICIPANTS. IN THIS CONNEXION, THE DRAFT RESOLUTION PROVIDED A LEGALLY PRACTICABLE SOLUTION.

HOWEVER, HE SAID, HIS DELEGATION HAD DOUBTS OF A LEGAL NATURE ABOUT OPERATIVE PARAGRAPH 2, WHICH LEFT OPEN THE QUESTION CONCERNING MEMBER STATES ABSTAINING ON THE RESOLUTION. HE ADDED THAT NON MEMBER STATES WOULD NOT BE BOUND BY THE RESOLUTION. IT WOULD BE ADVISABLE TO CLARIFY THESE POINTS, HE DECLARED.

REGARDING THE AMENDMENTS, THE REPRESENTATIVE OF CHILE SUPPORTED THE SECOND ONE. THIS DID NOT CONFLICT WITH THE PRINCIPLE OF UNIVERSALITY, BUT WAS PURELY PRACTICAL IN NATURE, TO AVOID PRESENTING THE SECRETARY-GENERAL WITH A "VERY DELICATE QUESTION". THE FIRST AMENDMENT WOULD GIVE RISE TO A POLITICAL CONTROVERSY. THE QUESTION BEFORE THE COMMITTEE, HE SAID, WAS ONLY A TECHNICAL ONE.

GIUSEPPE SPERDUTI (ITALY) ALSO NOTED THAT THE DRAFT RESOLUTION WAS IN KEEPING WITH THE RECOMMENDATION OF THE ILC. HE STATED THAT PARAGRAPH 2 OF THE DRAFT CONTAINED AN "ASTONISHING PROPOSAL".

THE PROVISION THAT THE GENERAL ASSEMBLY SHOULD EXERCISE CERTAIN POWERS OF THE LEAGUE OF NATIONS WAS NOT NEEDED, HE ASSERTED. THIS ASSENT HAD BEEN GIVEN IN 1946 WITH THE SUCCESSION OF THE UNITED NATIONS TO THE LEAGUE. TO ADMIT THAT IT WAS STILL NECESSARY, WOULD BE TANTAMOUNT TO SAYING THAT THE TRANSFER OF POWERS HAD NOT TAKEN PLACE.

MORE

WHAT THE RESOLUTION INVOLVED, HE SAID, WAS NOT A TRANSFER OF POWERS, BUT A REVISION OF THE PARTICIPATION CLAUSES IN THE TREATIES THEMSELVES.

AS AN EXAMPLE, MR. PSERDUTI QUOTED FROM THE ARTICLES OF A 1930 CONVENTION RELATED TO DOUBLE NATIONALITY, WHICH HAD BECOME CLOSED AFTER 31 DECEMBER OF THAT YEAR.

FUTHERMORE, HE WENT ON, EIGHT MORE OF THE 21 TREATIES WERE IN THE SAME JURIDICAL SITUATION. THUS THE RESOLUTION COULD ONLY OPEN 12 OF THE AGREEMENTS. IF, HOWEVER, THE COMMITTEE WANTED TO OPEN ALL THE TREATIES, AN INTERNATIONAL PROTOCOL WOULD BE REQUIRED, GIVING THE CONSENT OF THE SIGNATORIES TO THE TREATIES TO OPEN THEM TO "ANY MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

THE COMMITTEE HAD TO DECIDE ITS OBJECTIVE, HE SAID. AS FOR HIS DELEGATION, IT BELIEVED THAT THE DESIRES OF THE NEW MEMBER STATES, WITH REGARD TO THE TREATIES, SHOULD BE ADHERED TO.

THE LEGAL COUNSEL, SPEAKING NEXT, SAID THAT THE PROTOCOL METHOD HAD BEEN STUDIED AS ONE ALTERNATIVE. THIS "TRADITIONAL" PROCEDURE, HE SAID, WAS COMPLEX. WHILE IT WAAS TRUE THAT SOME OF THE TREATIES WERE CLOSED, THE RESOLUTION PROVIDED FOR CONSULTATION WITH STATES, AS TO WHETHER THEY WERE STILL OF INTEREST OR COULD BE ADAPTED TO CONTEMPORARY CONDITIONS. PERHAPS A PROTOCOL WOULD BE NEEDED IN THE FUTURE, HE SAID. BUT IN HIS VIEW, THE CONSULTATION SHOULD TAKE PLACE FIRST.

CHA LIANG-CHIEN (CHINA) SAID THAT HIS DELEGATION SUPPORTED THE RESOLUTION AND ALSO THE SECOND AMENDMENT. THERE WERE "POLITICAL ENTITIES", HE SAID, NOT TO BE REGARDED AS STATES. THE SECRETARY7 GENERAL WAS NOT IN A POSITION TO MAKE DECISIONS IN THIS REGARD, MR. CHA SAID.

FURTHER, ACCORDING TO THE USUAL PROCEDURE ONLY MEMBERS OF THE UNITED NATIONS AND SPECIALIZED AGENCIES WERE INVITED TO ACCEDE TO TREATIES.

THE SECOND AMENDMENT, HE SAID, WAS NEEDED FOR "LEGAL PRECISION".

MRS. EDNA F. KELLY (UNITED STATES) SAID AN EXAMINATION OF THE LEAGUE OF NATIONS TREATIES SHOULD DETERMINE WHICH WERE STILL OF INTEREST AND WHAT ACTION MIGHT BE NECESSARY TO ADAPT THEM TO PRESENT-DAY CONDITIONS.

THE DRAFT RESOLUTION, SHE SAID, CALLED FOR SUCH A STUDY, BUT DID NOT DELAY OPENING OF 21 OF THE TREATIES, SOME OF WHICH MIGHT BE "IMMEDIATELY NECESSARY". THE PROCEDURES PROVIDED FOR IN THE DRAFT OFFERED A SIMPLIFIED AND EFFICIENT METHOD, SHE ADDED. WHAT WAS INVOLVED WAS A SIMPLE ADAPTATION OF THE PARTICIPATION CLAUSES OF THE TREATIES TO THE FACT THAT THE LEAGUE HAD BEEN SUCCEEDED BY THE UNITED NATIONS.

MORE

TURNING TO THE TWO AMENDMENTS, MRS. KELLY SAID THE UNITED STATES "REGRETTED" THAT A "HIGHLY CONTROVERSIAL POLITICAL ISSUE" HAD BEEN INJECTED INTO THIS MATTER. THE UNITED STATES, SHE DECLARED, STRONGLY SUPPORTED THE SECOND AMENDMENT.

UNLESS THE SECRETARY7GENERAL WAS GIVEN PRECISE DIRECTIONS, SHE SAID, HE WOULD HAVE TO DECIDE WHICH "ENTITIES" THAT ARE NOT MEMBERS OF THE UNITED NATIONS SHOULD BE INVITED TO BECOME PARTIES TO THE TREATIES.

SUPPOSE, SHE CONTINUED, THE FIRST AMENDMENT HAD BEEN ADOPTED ONE YEAR AGO. WOULD THE SECRETARY-GENERAL BE OBLIGED TO COMMUNICATE WITH KATANGA? SHE ASKED. THE SECRETARY-GENERAL, SHE SAID, "QUITE RIGHTLY" WOULD WISH TO AVOID THIS POLITICAL FUNCTION.

RECALLING THAT NO "ALL STATES" PROPOSAL HAD EVER BEEN ACCEPTED IN THE UNITED NATIONS, THE REPRESENTATIVE OF THE UNITED STATES SAID THAT THE UNITED NATIONS TREATIES SHOULD BE OPEN ONLY TO MEMBERS OF THE ORGANIZATION AND ITS SPECIALIZED AGENCIES.

CALLING ON THE SPONSORS OF THE FIRST AMENDMENT TO WITHDRAW IT, UNLESS THEY WOULD LIKE TO SPEND SOME WEEKS DISCUSSING WHICH ENTITIES ARE STATES, MRS. KELLY URGED MEMBERS OF THE COMMITTEE TO VOTE AGAINST THE FIRST AND IN FAVOUR OF THE SECOND AMENDMENT.

A.J. JACOVIDES (CYPRUS) SAID HIS DELEGATION ATTACHED GREAT IMPORTANCE TO THE NEXT ITEM ON THE AGENDA -- ON FRIENDLY RELATIONS AMONG STATES -- AND IT BELIEVED NO "USEFUL PURPOSE" COULD BE SERVED ON AN "EXTENSIVE ACADEMIC CONTROVERSY" WITH REGARD TO THE MATTER NOW BEFORE THE COMMITTEE.

CYRPUS, HE SAID, SUPPORTED THE DRAFT RESOLUTION, BUT WISHED TO "VOICE REGRET" THAT THE CONFLICT IN THE TWO AMENDMENTS HAD ARISEN. IT WAS A MATTER OF LIMITED SIGNIFICANCE NOT TO BE RAISED AT A TIME OF GENERAL RELAXATION OF WORLD TENSION, HE OBSERVED.

HE SAID HE WAS VERY MUCH IMPRESSED WITH THE ARGUMENTS FOR UNIVERSALITY, BUT HE COULD NOT OVERLOOK THE PRACTICAL DIFFICULTIES OF THE FIRST AMENDMENT. THE SECRETARY-GENERAL, HE SAID, COULD BECOME EMBROILED IN A POLITICAL CONTROVERSY. THE QUESTION OF THE REPRESENTATION OF CHINA AND "THE THREE DIVIDED COUNTEIES" WERE COMPLEX AND IMPORTANT PROBLEMS NOT TO BE TACKLED BY THE SIXTH COMMITTEE.

HE APPEALED TO THE COMMITTEE TO ADOPT THE RESOLUTION AND MOVE ON TO THE "MAIN" ITEM ON ITS AGENDA.

MORE

S. TUKUNJOBA (TANGANYIKA) SAID A FUNDAMENTAL PRINCIPLE WAS INVOLVED. IT HAD BEEN THE ORIGINAL INTENTION OF THE LEGAUE OF NATIONS, HE SAID, TO INVITE "ANY STATE" TO THE TREATIES, AND THE UNITED NATIONS, ASS THE SUCCESSOR TO THE LEAGUE, SHOULD DO THE SAME. THE QUESTION, HE SAID, WAS NOT POLITICAL AND PARTICIPATION IN THE TREATIES DID NOT IMPLY RECOGNITION OF NON-MEMBER STATES OR THEIR ELIGIBILITY TO MEMBER-SHIP IN THE UNITED NATIONS.

TANGANYIKA, HE WENT ON, WOULD SUPPORT THE "ANY STATE" PROPOSAL, WHICH WAS IMPORTANT TO GIVE INTERNATIONAL LAW A UNIVERSAL ASPECT. STATES MUST NOT EXCLUDE OR DISCRIMINATE, HE SAID. THEY HAD TO CO-OPERATE ON THE BASIS OF THE RULES AND NORMS FORMING INTERNATIONAL LAW.

CONCLUDING, HE SAID THAT EXCLUSION WOULD HINDER THE GROWTH OF INTER-NATIONAL LAW. SUPPORT OF THE FIRST AMENDMENT WOULD BE THE BEST WAY FOR INTERNATIONAL LAW TO "GRIP THE IMAGINATION OF THE PEOPLE OF THE WORLD".

ENDRE USTOR (HUNGARY) SAID THAT THERE EXISTED MULTILATERAL TREATIES WHICH WERE OPEN TO NEW STATES, IN ADDITION TO THE CLOSED AGREEMENTS. TTHE DRAFT RESOLUTION, HE SAID, WAS DESIGNED TO OPEN THE CLOSED TREATIES TO THE NEW STATES. IN HIS VIEW, NOT ONLY THE 21 TREATIES SHOULD BE OPENED, BUT ALSO ALL GENERAL MULTILATERAL AGREEMENTS OF A TECHNICAL CHARACTER.

REGARDING THE TWO AMDNEMENTS, MR. USTOR TERMED THE POLITICAL ASPECTS AS "UNWHOLESOME". NEW STATES AND SOCIALIST STATES, HE SAID, DEFENDED THE PRINCIPLE OF UNIVERSALITY REGARDING PARTICIPATION IN TREATIES. THE RELIEVED POLITICAL ATMOSPHERE, HE ADDED. MIGHT HELP TO SOLVE THIS PROBLEM.

THE OPPONENTS OF UNIVERSALITY, HE WENT ON, ARGUED THAT THE SECRETARY-GENERAL WOULD BE FACED WITH "UNSURMOUNTABLE" DECISIONS TO BE MADE REGARDING SOME "ENTITIES". THIS ARGUMENT, THE REPRESENTATIVE OF HUNGARY DECLARED, HAD BEEN REFUTED. ALL THAT WAS BEING ASKED, HE SAID, WAS TO PLACE THE CLOSED TREATIES ON AN "EQUAL FOOTING" WITH THE OPEN TREATIES, WHICH WERE ACCESSIBLE TO NON-MEMBER STATES OF THE LEAGUE OF NATIONS.

THE SPONSORS OF THE SECOND AMENDMENT, HE SAID, SHOULD CONSIDER THIS ARGUMENT AND WITHDRAW IT. THIS WOULD CONTRIBUTE TO THE ATMOSPHERE OF RELIEVED INTERNATIONAL TENSIONS.

E.K. DADZIE (GHANA), SPEAKING FOR THE CO-SPONSORS OF THE RESOLUTION, SAID HE MERELY WANTED TO INDICATE THEIR INTENTION TO CLARIFY ANY PROBLEMS IN THE RESOLUTION, WHICH HAD BEEN RAISED BY CHILE AND ITALY.

MORE

P.D. MOROZOV (USSR) STATED THAT IT WAS CLEAR THAT THE QUESTION BEFORE THE COMMITTEE, AS TO WHO SHOULD BE THE DEPOSITORY OF TREATIES, WAS NOT AN URGENT ONE. HOWEVER, HE WENT ON, A VERY IMPORTANT ASPECT CONCERNED THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND PEACEFUL CO-EXISTENCE.

CERTAIN DELEGATIONS, HE SAID, SOUGHT TO UNDERMINE THE CHARTER OF THE UNITED NATIONS AND THE SOVEREIGN EQUALITY OF "ALL STATES". HE SAID THAT ATTEMPTS WERE BEING MADE TO EXCLUDE "QUITE AN IMPORTANT GROUP" OF COUNTRIES, WHOSE POLITICAL SYSTEMS WERE NOT TO THE LIKING OF OTHER COUNTRIES.

IN THE SECOND AMENDMENT, HE SAW A RENEWAL OF THIS DISCRIMINATION. THIS WAS IN CLNFLICT WITH THE PRINCIPLE OF UNIVERSALITY AND WOULD CREATE A FURTHER HARMFUL PRECEDENT, HE DECLARED.

WERE THE SUPPORTERS OF THIS AMENDMENT LIVING IN 1962 OR 1963? HE ASKED. DID THEY WANT TO SLACKEN INTERNATIONAL TENSION?

THIS WAS THE POLITICAL ASPECT OF THE PROBLEM, HE SAID. THE JURIDICAL ASPECT HAD TO BE DEMONSTRATED TOO. THE ARGUMENTS FOR THE SECOND AMENDMENT WERE ARTIFICIAL, HE SAID.

RECALLING THAT THE REPRESENTATIVE OF THE UNITED STATES HAD CITED THE EXAMPLE OF THE SECRETARY7GENERAL BEING PLACED IN THE POSITION OF HAVING TO DECIDE WHETHER OR NOT TO INVITE KATANGA TO BECOME A PARTY TO THE TREATIES. MR. MOROZOV SAID IT WAS ALWAYS ASSUMED THAT THE SECRETARY-GENERAL WOULD NOT BE CAPABLE OF TACKLING SUCH A TASK. IT WOULD BE APPROPRIATE TO ASSUME OTHERWISE, HE SAID, THAT THE SECRETARY-GENERAL WOULD BE ABLE TO FIND A SOLUTION TO THE "ENIGMA ABOUT KATANGA".

HE APPEALED TO THE SUPPORTERS OF THE SECOND AMENDMENT NOT TO CONTINUE ITS "DISCRIMINATORY PRACTICES". IF THE FIRST AMENDMENT WAS NOT APPROVED, HE CONCLUDED, THE USSR WOULD NOT SUPPORT THE DRAFT RESOLUTION.

MR. SPERDUTI (ITALY), REPLYING TO THE LEGAL COUNSEL, SAID HIS DELEGATION SUPPORTED THE DRAFT RESOLUTION, PROVIDING THAT ITS RESULT WOULD NOT LIMIT THE CHOICE OF THE NEW STATES AS TO WHICH TREATIES THEY MIGHT ACCEDE TO.

M. K. YASSEEN (IRAQ) SAID HE UNDERSTOOD THE REASONS AS TO WHY THE REPRESENTATIVE OF ITALY HAD SUGGESTED THE NEED FOR AN INTERNATIONAL PROTOCOL TO THE TREATIES. BUT A "LIBERAL" INTERPRETATION OF THE PARTICIPATION CLAUSES MIGHT ALLOW FOR AN AVOIDANCE OF SUCH A MEASURE, HE OBSERVED.

THE CHAIRMAN ADJOURNED THE MEETING AT 5:35 P.M. THE COMMITTEE WILL MEET AGAIN AT 10:30 A.M. ON MONDAY, 21 OCTOBER.

JA 1121P 18 OCT 63

UNIC

PRESS RELEASE GA/L/1016
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 795TH MEETING (AM)
UNITED NATIONS, N.Y.

DRAFT RESOLUTION TO OPEN MULTILATERAL TREATIES TO NEW STATES INTRODUCED IN SIXTH COMMITTEE TODAY

A DRAFT RESOLUTION, BY WHICH THE GENERAL ASSEMBLY WOULD EMPOWER ITSELF TO OPEN TO NEW STATES 21 MULTILATERAL TREATIES CLOSED SINCE 1946, WAS INTRODUCED THIS MORNING IN THE SIXTH (LEGAL) COMMITTEE.

THE 9-POWER RESOLUTION (DOC.A/C.6/L.532) LEFT OPEN AS TO WHICH NEW STATES WOULD BE INVITED TO BECOME PARTIES TO THE TREATIES. THE SPONSORS - AUSTRALIA, GHANA, GREECE, GUATEMALA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN -- COULD NOT REACH AGREEMENT ON THIS MATTER, ACCORDING TO A FOOTNOTE TO THE DRAFT.

AMENDMENTS BY GHANA, INDONESIA, MALI, MOROCCO, NIGERIA AND PAKISTAN (DOC.A/C.6/L.533), AND BY AUSTRALIA, GREECE AND GUATEMALA (DOC.A/C.6/L.534) WERE ALSO PLACED BEFORE THE COMMITTEE.

THE FIRST AMENDMENT WOULD INVITE "ANY STATE" TO ACCEDED TO THE TREATIES; AND THE SECOND AMENDMENT WOULD INVITE "EACH STATE MEMBER OF THE UNITED NATIONS OR OF A SPECIALIZED AGENCY".

THE COMMITTEE TODAY WAS CONSIDERING THE SECOND ITEM ON ITS FOUR-PART AGENDA: "QUESTION OF EXTENDEDPARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS". IN CONNEXION WITH THE DRAFT RESOLUTION INTRODUCED, STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF AUSTRALIA, GHANA AND IRAQ.

KENNETH BAILEY (AUSTRALIA), INTRODUCING THE DRAFT RESOLUTION IN BEHALF OF THE SPONSORS, STATED THAT ITS PURPOSE WAS TO FACILITATE THE ACCESSION BY STATES TO 21 TREATIES OF A TECHNICAL AND NON-POLITICAL CHARACTER.

THESE TREATIES, HE SAID, HAD BECOME CLOSED WITH THE DISSOLUTION OF THE LEAGUE OF NATIONS. HOWEVER, THEY WERE INTENDED TO REMAIN OPEN.

OBSERVING THAT THE DRAFT RESOLUTION FOLLOWED THE SUGGESTIONS MADE IN THE REPORT (DOC.A/5509) OF THE INTERNATIONAL LAW COMMISSION, WHICH STUDIED THE QUESTION AT ITS RECENT SESSION, MR. BAILEY TERMED THE PLAN FOR SOLUTION OF THE

MORE

TD3,069
UNNUNPRESS RELEASE GA/L/1016

PROBLEM AN "ADMINISTRATIVE SHORTCUT". THE REPRESENTATIVE OF AUSTRALIA THEN EXPLAINED THE DRAFT, PARAGRAPH BY PARAGRAPH.

SINCE THE LEAGUE OF NATIONS CEASED TOEXIST, HE SAID, A LARGE NUMBER OF NEW STATES HAD COME INTO BEING, MANY OF WHICH HAD BEEN UNABLE TO ACCEDE TO THE TREATIES.

HE CITED THE EXAMPLE OF AN INTERNATIONAL CONVENTION DEALING WITH COUNTERFEITING OF CURRENCY. WHILE THIS WAS CLOSED TO MANY STATES, THE UNITED KINGDOM ACCEDED TO IT IN 1959. AS FOR THE USEFULNESS OF THE TREATY; MR. BAILEY SAID THAT INTERPOL, THE INTERNATIONAL POLICE ORGANIZATION, HAD RECENTLY REQUESTED THAT ACCESSION TO THIS TREATY BE FACILITATED.

CONTINUING HIS EXPLANATION, MR. BAILEY SAID THE GENERAL ASSEMBLY SHOULD DECIDE THAT IT WILL EXERCISE THE POWERS CONFERRED ON THE LEAGUE, WITH REGARD TO THE TREATIES. FURTHER, HE WENT ON, THE ASSEMBLY SHOULD REQUEST THE SECRETAY-GENERAL TO INVITE STATES, WHICH OTHERWISE WERE NOT ELIGIBLE TO BECOME A PARTY TO THE TREATIES, TO DO SO.

CONCLUDING, HE SAID THAT THIS OFFERED A "PRACTICAL AND EFFECTIVE" SOLUTION TO THE PROBLEM.

E. K. DADZIE (GHANA), SPEAKING IN SUPPORT OF THE 6-POWER AMENDMENT, WHICH WOULD INVITE "ANY STATE", SAID THE TIME HAD COME WHEN THE GENERAL ASSEMBLY SHOULD PRACTICE UNIVERSALITY.

AS A RESULT OF "DISCRIMINATORY PRACTICES", HE CONTINUED, ASSEMBLY RESOLUTIONS HAD ADMITTED TO UNITED NATIONS FACILITIES SUCH NON-MEMBER STATTS AS THE FEDERAL REPUBLIC OF GERMANY, SWITZERLAD, MONACO AND LIECHTENSTEIN, WHILE THEY KEPT OUT THE GERMAN DEMOCRATIC REPUBLIC, THE PEOPLES REPUBLIC OF VIET-NAM, THE PEOPLES DEMOCRATIC REPUBLIC OF KOREA AND THE PEOPLES REPUBLIC OF CHINA.

MR. DADZIE, READING THE TEXT OF THE PROPOSED AMENDMENT, NOTED AN ERROR IN THE DOCUMENT. THE WORDS "EACH STATES", AS IT APPEARED IN L.533, HE SAID, SHOULD READ "ANY STATE".

MUSTAFA KAMIL YASSEEN (IRAQ) SAID IT WWAS THE VIEW OF HIS DELEGATION THAT THE TREATIES HAD A COMMON INTEREST TO THE VARIOUS STATES, AND THAT IT FAVOURED A "WIDE" PARTICIPATION. THE GENERAL ASSEMBLY, HE WENT ON, SHOULD FULFIL THIS TASK OF THE LEAGUE OF NATIONS.

IRAQ SUPPORTED THE RESOLUTION, HE DECLARED, AND WOULD VOTE IN FAVOUR OF THE AMENDMENT THAT PROVIDED AN INVITATION TO "ALL STATES" TO JOIN THE TREATIES.

MORE

THERE WERE TWO OTHER DEVELOPMENTS: ON A MOTION BY THE REPRESENTATIVE OF CYPRUS, A.J. JACOVIDES, THE COMMITTEE DECIDED THAT THE SECRETARIAT SHOULD PROVIDE IT WITH CERTAIN DOCUMENTS CONCERNING THE NEXT ITEM ON ITS AGENDA; AND, AT THE REQUEST OF THE REPRESENTATIVE OF DAHOMEY, LOUIS IGNACIO-PINTO, THE COMMITTEE DELETED DAHOMEY AS A SPONSOR OF DOCUMENT A/C.6/L.531, WHICH IS NOT YET AVAILABLE.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA) ADJOURNED THE MEETING AT 1:10 P.M. UNTIL 3 P.M. TOMORROW, 18 OCTOBER.

JA 443P 17 OCT 63

Phone for text 20-3-1-6 9 9 Hillo

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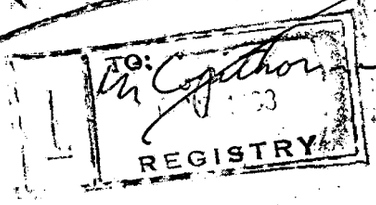

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FM CANDELNY OCT16/63 CONFD

TO EXTERNAL 1481 PRIORITY

18TH UNGA:6TH CTTEE-ITEM2

2ND AGENDA ITEM, NAMELY EXTENDED PARTICIPATION IN LEAGUE OF NATIONS TREATIES, WAS INTRODUCED TODAY. INDIA HAS NOT RPT NOT CARRIED OUT ITS PROPOSED MOVE TO REFER ITEM TO A STUDY GROUP AND GENERAL DISCUSSION WILL TAKE PLACE ON BASIS OF A SIX-POWER DRAFT RESLN NOT RPT NOT YET DISTRIBUTED.

2. WE HAVE SEEN ADVANCE COPY OF DRAFT RESLN CO-SPONSORED BY AUSTRALIA GHANA GREECE GUATEMALA INDONESIA AND PAK. IN PROPOSED OPERATIVE CLAUSES(A) UNGA DECIDES THAT IT IS APPROPRIATE ORGAN TO EXERCISE PERTINENT POWER CONFERRED UPON COUNCIL OF LEAGUE OF NATIONS;(B) UNGA CALLS ON GOOD OFFICES OF PARTIES TO THESE CONVENTIONS TO FACILITATE ACCESSION BY NEW STATES;(C) SECGEN(1) TO BRING RESLN TO NOTICE OF ANY PART NOT RPT NOT A MEMBER OF UN;(2) TO TRANSMIT COPIES OF CONVENTIONS TO NEW STATES AND CONSULT WITH THEM AS TO THEIR ACTUAL INTEREST IN RESPECTIVE CONVENTIONS; AND(D) SECGEN TO EXTEND INVITATIONS TO ACCEDE AS NEEDED.

3. ONE STUMBLING BLOCK RESULTS FROM LAST HOUR MANOEUVRE BY GHANA TO INCLUDE QUOTE ALL STATES UNQUOTE FORMULA UNDER(C). THEREFORE, CTTEE WILL PROBABLY BE FACED TOMORROW WITH DOCU LEAVING THIS POINT BLANK. AUSTRALIAN(BAILEY) AND GREEK(DIMITSAS) ARE DISTRESSED AT THIS DEVELOPMENT. WE ARE READYING OURSELVES FOR PROCEDURAL FLURRY WHICH MIGHT TAKE PLACE AT START OF DEBATE. SECRETARIAT WILL HAVE TO TAKE STAND.

4. ITEM RAISES ALSO ASPECTS RELATING TO STATE SUCCESSION IN REGARD TO TREATIES. IT IS LIKELY THAT, ENCOURAGED BY DOUBTS CAST UPON TREATIES QUOTE IMPOSED UNQUOTE BY METROPOLIS DURING DISCUSSION ON ILC REPORT, SEVERAL AFRICAN STATES WILL ATTEMPT TO READ INTO RESLN FIRST INVITATION TO DECIDE IN GENERAL WHICH TREATIES ARE OF INTEREST TO THEM.

5. DEBATE WILL PROBABLY LAST UNTIL OCT21 WHILE PRIVATE USA-USSR DISCUSSIONS ON HANDLING OF ITEM THREE RE FRIENDLY RELATIONS TAKE PLACE

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cc 20-5-2-2
20-5-2-2-2
24-12-7-18-6

TO: Mr Copithorne
REGISTRY

J.2

FM CANDELNY OCT19/63 CONFD

TO EXTERNAL 1514 OPIMMED

INFO LDN WASHDC EMBPARIS NATOPARIS DISARMDELGVE UNESCOPARIS

REF OURTEL1508 OCT18

18TH UNGA:6TH CTTEE:ITEMS2(AND3)

STATEMENTS IN CTTEE AND PRIVATE CONVERSATIONS INDICATE A GENERAL READINESS TO ACCEPT FORMULA PROPOSED IN DRAFT RESLN AS BEST ADMIN SHORTCUT IN CIRCUMSTANCES. ITALIAN DEL(SPERDUTI)EXPRESSED PREFERENCE ON LEGAL GROUNDS FOR PROTOCOL OF AMENDMENT BUT WILL NEVERTHELESS APPROVE PROPOSED FORMULA.

2. BELGIAN DEL(DEWULF)HAVE PRIVATE RESERVATIONS ABOUT LANGUAGE OF FIRST OPERATIVE PARA WHEREBY UNGA APPOINTS ITSELF AS APPROPRIATE ORGAN OF UN TO EXERCISE POWERS CONFERRED ON COUNCIL OF LEAGUE. YOU WILL RECALL THAT SEVERAL MEMBERS OF INTERNATIONAL LAW COMMISSION WERE SOMEWHAT RETICENT ON THIS POINT. BELGIANS WOULD REPLACE IN FIRST PARA OPENING WORD QUOTE DECIDES UNQUOTE BY QUOTE ESTIMATES UNQUOTE AND IN SECOND PARA WORD QUOTE DECISION UNQUOTE BY QUOTE DESIGNATION UNQUOTE SO AS TO WRITE IN CONCEPT OF DEL OF POWERS.

3. AS CTTEE IS RUNNING BEHIND ITS AGENDA AND THERE IS GENERAL DESIRE TO START ITEM3 ON OCT23, BELGIANS ARE UNLIKELY TO PRESS FORMAL AMENDMENT. MOREOVER, IN OUR VIEW, REF IN 5TH PREAMBLUAR PARA TO RESLN24(1) OF FEB12, 1946 GIVES GENERAL SENSE OF RESLN. PLEASE COMMENT.

4. DISCUSSION SO FAR TENDS TO BE FOCUSSED ON 4TH OPERATIVE PARA ON WHICH COSPONSORS OF MAIN RESLN CAME TO A CLEAR SPLIT. AMENDMENT MOVED BY AUSTRALIA GREECE AND GUATEMALA PROPOSES INSERTION OF WORDS QUOTE EACH STATE MEMBER OF UN OR OF A SPECIALIZED AGENCY UNQUOTE. AMENDMENT TO INSERT WORDS QUOTE ANY STATE UNQUOTE WAS ORIGINALLY MOVED BY GHANA INDONESIA MALI MOROCCO NIGERIA AND PAK BUT PAK HAS NOW WITHDRAWN.

5. YOU WILL RECALL THAT A SIMILAR MOVE WAS STAGED IN 3RD CTTEE LAST YEAR ON ART4 OF DRAFT MARRIAGE CONVENTION AND VOTE WAS 51-28-13 IN

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FAVOUR OF MODIFIED MEMBER STATE FORMULA ADDING QUOTE AND OF ANY OTHER STATE INVITED BY UNGA OF UN TO BECOME A PARTY TO CONVENTION UNQUOTE.LEGAL COUNSEL STAVROUPOULOS MADE STATEMENT TO EFFECT THAT GHANAIAN FORMULA WOULD PLACE SECGEN IN RATHER D FFICULT POSITION. VOTING WILL TAKE PLACE OCT22.

6.MOROZOV(USSR)MADE STATEMENT SUGGESTING THAT HE VIEWS VOTE ON THIS POINT AS TEST OF STRENGTH PRIOR TO CONSIDERATION OF ITEM3.MTG OCT18 IN OFFICE OF STAVROUPOULOS CONCERNING HANDLING OF LATTER ITEM HAS REVEALED GENERAL DESIRE TO AVOID PROCEDURAL DEBATE IN CTTEE AND SUGGESTED ROOM FOR COMPROMISE.3RD MTG IS SCHEDULED FOR EVENING OF OCT22.WITH ELECTIONS TO INTERNATIONAL COURT OF JUSTICE AND ITEM2 OUT OF WAY,FINAL COMPROMISE ON PROCEDURE WILL MOST PROBABLY BE REACHED PRECLUDING NEED FOR 3RD WORKING DOCU.WE ARE,FOR OUR PART, ACTIVELY EXPLORING WITH COSPONSORS AREAS OF COMPROMISE,STRATEGIC POINT BEING RELATIONSHIP OF EVENTUAL SESSIONAL STUDY GROUP TO MAIN CTTEE.

7.IT HAS NOW BEEN EXPLAINED THAT RATHER SPECTACULAR WITHDRAWAL OF DAHOMEYS NAME FROM OUR WORKING PAPER IS DUE TO PERSONAL CONFLICT BETWEEN PESSOU--WHO IS MEMBER OF OUR WORKING GROUP AND DEL ON 6TH CTTEE ALTHOUGH NAME SHOWN ON LIST OF DELS IS ADJIBADE--AND HEAD OF DEL PINTO.

DANGER TO THE SANCTITY OF TREATIES BY THE INCLUSION OF THI PRINCIPLE IN THE DRAFT. THE CONCEPT, HE SAID, COULD ONLY BE USED TO INVALIDATE "UNJUST" TREATIES.

CHA LIANG-CHIEN (CHINA) STATED THAT ARTICLE 36, WHICH WOULD VOID A TREATY PROCURED BY THE THREAT OR USE OF FORCE, HAD BEEN WELCOMED BY HIS DELEGATION. CHINA, HE SAIDN WAS AMONG THOSE COUNTRIES THAT HAD BEEN THE OBJECT OF TREATIES IMPOSED BY FORCE. THE QUESTION, HOWEVER, OF HOW TO DETERMINE THE PRESENCE OF A THREAT OF FORCE STILL REMAINED.

THERE EXISTED, HE WENT ON, THE POSSIBILITY THAT A STATE MIGHT CLAIM [illegible] THREAT SO AS NOT TO CARRY OUT ITS

COMMENTING ON THE REBUS SIC STANTIBUS CLAUSE, MR. CHA STATED THAT HE AGREED WITH THE VIEW THAT A TREATY BECAME INVALID WHEN THE CONDITIONS UNDER WHICH IT HAD BEEN CONCLUDED NO LONGER PREVAILED. THERE WAS A DANGER, OWEVER, IN THE ABSENCE OF CRITERIA, IN DETERMINING JUST WHEN A FUNDAMENTAL CHANGE IN CIRCUMSTANCES HAD OCCURRED.

FURTHER STUDIES, IN HIS OPINION, WERE NEEDED TO PREVENT "ABUSES" IN THE APPLICATION OF THS CLAUSE.

DRISS BENEJELLOUN (MOROCCO) SAID A VALID TREATY MUST BE IN HARMONY WITH ACCEPTABLE INERNATIONAL NORMS, AS SHOWN IN THE PRINCIPLE OF JUS COGENS (ARTICLE 37). TREATIES OUTSIDE THIS PRINCIPTE WERE VOID, HE ADDEDDM AMONG THE LATTER WERE "UNBALANCED" TREATIES. CERTAIN MILITARY PACTS CONCLUDED BY TWO STATES MIGHT AFFECT A THIRD STATE. THESE MATTERS SHOULD BE STUDIED BY THE ILC.

FURTHERMORE, THE REPRESENTATIVE OF MOROCCO CONTINUED, THE ILC [illegible] OF THE USE OF ECONOMIC PRESSURE TO OBTAIN TREATIES.

MOROCCO, HE STATED, APPRECIATED THE WORK DONE BY THE ILC IN OBJECTIVELY DEFINING THE REBUS SIC STANTIBUS CLAUSE AND ITS "VERY USEFUL" EFFORTS ON THE QUESTION OF SUCCESSION OF STATES, WHICH, HE STATED, WAS VERY IMPORTANT TO NEWLY INDEPENDENT STATES.

CONCLUDING, MR. BENJELLOUN SAID MOROCCO WOULD SUPPORT THE DRAFT RESOLUTION.

MORE

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EMILIO N, ORIBE (URUGUAY), SPEAKING O THE "FAMOUS" REBUS SIC STANTIBUS CLAUSE, SAID THE ILC HAD TACKLED THE PROBLEM OF INSTABILITY, OFTEN RAISED IN CONNEXION WITH THIS PRINCIPLE OF INTERNATIONAL LAW.

CONTINUING, HE DECLARED IT WAS IMPORTANT TO NOTE THAT THE PRINCIPLE OF JUS COGENS WAS MAKING ITS FIRST APPEARANCE IN THE CODIFICATION OF INTERNATIONAL LAW. URUGUAY SUPPORTE ITS INCLUSION IN THE DRAFT LAW OF TREATIES.

NOTING THAT ARTICLE 103 OF THE CHARTER OF THE UNITED NATIONS PROVIDED THAT OBLIGATIONS UNDER THE CHARTER PREVAILED OVER OTHER INTERNATIONAL AGREEMENTS, MR. ORIBE STATED THAT THE INCLUSION OF JUS COGENS IN THE LAW OF TREATIES REPRESENTED A STEP FORWARD FROM ARTICLE 103. THERE STILL WAS, HOWEVER, THE QUESTION OF HOW TO APPLY THIS NEW RULE.

ABOUT ARTICLE 36, ON COERCION, HE SAID IT ACQUIRED FUNDAMENTAL SIGNIFICANCE BECAUSE IT REPRESENTED A FURTHER ADVANCE OVER THE PROHIBITION OF THE USE OF FORCE BY THE ADDITIONAL SANCTION OF VOIDING TREATIES CONCLUDED IN THIS MANNER. THIS WAS "REMARKABLE PROGRESS", HE DECLARED.

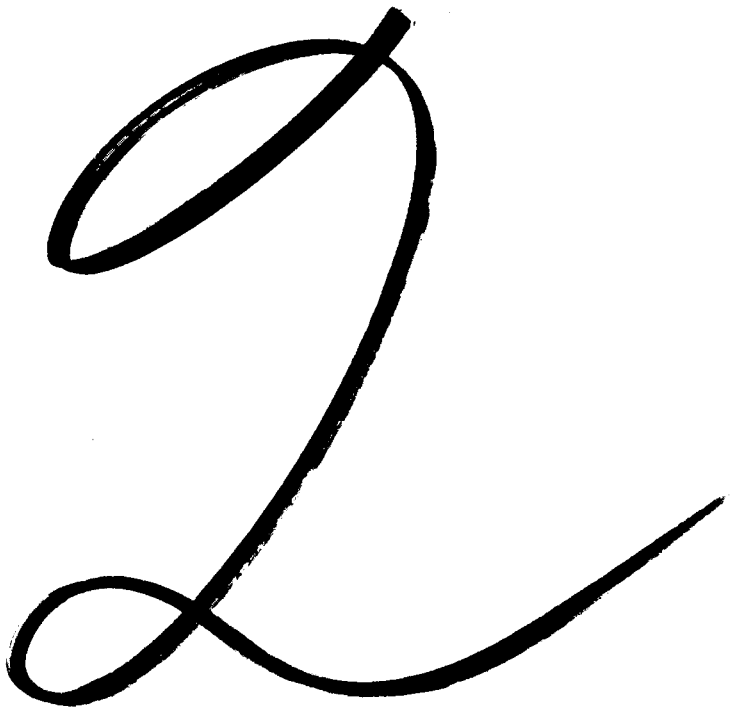
HIS DELEGATION SUPPORTED ARTICLE 44 ON FUNDAMENTAL CHANGES OF CIRCUMSTANCES. FURTHER, IT WOULD SUPPORT THE DRAFT RESOLUTION.

MRS. EDNA F. KELLY (UNITED STATES) SAID HER DELEGATION AGREED WITH THE TEXT OF THE DRAFT RESOLUTION WHICH "ACKNOWLEDGED THE HIGH PROFESSIONAL ABILITY" OF THE ILC HOWEVER, THE UNITED STATES BELIEVED THAT IT REMAINED FOR THE FIFTH (BUDGETARY) COMMITTEE TO DETERMINE WHETHER FUNDS WERE AVAILABLE TO FINANCE A WINTER SESSION OF THE ILC. SUGGESTING THAT THE COMMISSION DEFER ITS WINTER SESSION TO 1965, EVEN IF IT WERE "TECHNICALLY" POSSIBLE TO HOLD THE MEETINGS, MRS. KELLY CONCLUDED BY INDICATING THAT THE UNITED STATES WOULD SUPPORT THE DRAFT RESOLUTION.

EARLIER IN THIS AFTERNOONS MEETING, CONSTANTIN A. STAVROPOULOS, UNITED NATIONS LEGAL COUNSEL, ANNOUNCED TO THE COMMITTEE THAT TECHNICAL DIFFICULTIES SUCH AS AVAILABILITY OF SERVICES MIGHT PREVENT HOLDING THE PROPOSED WINTER SESSION OF THE ILC. HE PROPOSED THAT THE REGULAR SUMMER SESSION BE EXTENDED BY TWO WEEKS.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), NOTED THAT THREE SPEAKERS, ALBANIA, BRAZIL AND ITALY, REMAINED ON HIS LIST FOR THIS ITEM, AND ADJOURNED THE MEETING AT 6:05 P.M. UNTIL TOMORROW, 15 OCTOBER, AT 10:30 A.M., WHEN THE COMMITTEE IS EXPECTED TO CONCLUDE ITS CONSIDERATION OF THE ILC REPORT AND ACT ON THE DRAFT RESULUTION.

JA X 855P 14 OCT 73



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FM CANDELNY OCT16/63 RESTD

TO EXTERNAL 1479 PRIORITY

INFO LDN WASHDC EMBPARIS NATOPARIS DISARMDELGVE UNESCOPARIS

REF OURTEL1393 OCT9

18TH UNGA-6TH CTTEE-ILC REPORT

CONSIDERATION OF THIS FIRST AGENDA ITEM ENDED OCT15 WITH UNANIMOUS ADOPTION OF RESLN INTRODUCED BY CEYLON AND GUATEMALA AND CO-SPONSORED BY CDA COLOMBIA INDIA AND INDONESIA.GIVEN TACIT AGREEMENT TO KEEP TO TERMS OF LAST YEARS RRESLN,ISOLATED LAST MINUTE MOVE BY LIBERIAN REP(CHESSON)DELETE FROM PARA4(C)REF TO NEW STATES PROVED MOST UN-POPULAR.HE HAD TO WITHDRAW IT ALMOST INSTANTLY.

2.MANY STATEMENTS MADE DURING DEBATE,WHICH OCCUPIED 14 MTGS INSTEAD OF PLANNED 9 OR 10,WERE IN NATURE OF PRELIMINARY COMMENTS ON 2ND INSTALMENT OF DRAFT LAW OF TREATIES.THEY REVOLVED PRINCIPALLY AROUND DRAFT ARTICLES31(PROVISIONS OF INTERNAL LAW REGARDING COMPET-ENCE TO ENTER INTO TREATIES,36,37AND45(VOIDANCE OF TREATIES OWING TO PEREMPTORY NORMS OF INTERNATIONAL LAW),AND 44(REBUS SIC STANTIBUS). ON ACCOUNT OF WIDE DIVERGENCE OF VIEWS PARTICULARLY UNDER LAST TWO HEADINGS AND NUMBEROUS REFS TO QUOTE UNEQUAL TREATIES UNQUOTE,WE WILL BE FORWARDING SEPARATELY ANALYSIS OF DISCUSSION.

3.QUESTION OF WINTER MTG TOOK A NEW TURN AS LEGAL COUNSEL STAVROP-OULUS FINALLY ANNOUNCED THAT DRAFT ARTICLES ON SPECIAL MISSIONS WO-ULD NOT RPT NOT BE READY IN TIME.(IT BECAME QUITE APPARENT ALSO THAT FUNDS FOR MTG WOULD NOT RPT NOT BE MADE AVAILABLE BY 5TH CTTEE). MEMBERS OF ILC WILL,THEREFORE,BE CONSULTED AS TO EXTENDING SUMMER SESSION BY TWO WEEKS AND HOLDING WINTER SESSION ONLY IN 1965.

4.WE DISCUSSED MATTER WITH EL ERIAN(UAR)WHO UNDERSTOOD THAT SUMMER SESSION COULD NOT RPT NOT START EARLIER THAN PLANNED AND MIGHT PER-HAPS BEGIN A FEW DAYS LATER ON ACCOUNT OF UNCTD.HE SEEMED PERSONALLY RESIGNED TO LONGER SUMMER MTG LASTING UNTIL LATTER PART OF JUL ON UNDERSTANDING THAT SECRETARIAT WOULD SPEED UP DISTRIBUTION OF REPORT TO GOVTS.

Legal Div

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PRESS RELEASE GA/L/1015
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 794TH MEETING (AM)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE TO CONSIDER DRAFT RESOLUTION ON LEAGUE OF NATIONS TREATIES

THE SIXTH (LEGAL) COMMITTEE THIS MORNING TOOK UP THE SECOND ITEM ON ITS FOUR7PART AGENDA: "QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS".

THE INTERNATIONAL LAW COMMISSION (ILC), AT ITS SESSION HELD THIS SUMMER, REVIEWED THIS QUESTION. IN ITS REPORT (DOC. A/5509) TO THE GENERAL ASSEMBLY, THE ILC CONCLUDED, IN PART, THAT MANY OF THE LEAGUE OF NATIONS TREATIES MAY NO LONGER HOLD ANY INTEREST FOR STATES, AND THAT THE TREATIES SHOULD BE ADAPTED TO CONTEMPORARY CONDITIONS.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ANNOUNCED THAT A DRAFT RESOLUTION ON THIS ITEM WOULD BE SUBMITTED SHORTLY.

THE COMMITTEE WILL MEET AGAIN TOMORROW, 17 OCTOBER, AT 10:30 A.M.

JB 150P 16 OCT 63

UN22

PRESS RELEASE GA/L/1014
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 793RD MEETING (AM)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE CONCLUDES DEBATE ON LAW COMMISSION REPORT; RECOMMENDS CONTINUATION OF ILC WORK

THE SIXTH (LEGAL) COMMITTEE THIS MORNING CONCLUDED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) AND ADOPTED UNANIMOUSLY A SEVEN-POWER RESOLUTION (DOC.A/C.6/L.529 AND CORR.1) WHICH, IN PART, RECOMMENDS THAT THE ILC CONTINUE ITS WORK IN PROGRESS.

THE VOTE ON THE RESOLUTION WAS 83 IN FAVOUR WITH NO ABSTENTIONS. TWENTY-EIGHT DELEGATIONS WERE ABSENT.

THE ILC REPORT (DOC.A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS MOST RECENT SESSION, HELD AT GENEVA FROM MAY TO JULY 1963, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF ITALY AND BRAZIL, BRINGING THE FINAL NUMBER OF SPEAKERS IN THE GENERAL DEBATE ON THIS ITEM TO 52.

THE NEXT ITEM BEFORE THE COMMITTEE IS TITLED, "QUESTION OF EXTENDED PARTICIPATION IN GENERAL MULTILATERAL TREATIES CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS".

AN ORAL AMENDMENT PROPOSED BY LIBERIA WOULD HAVE DELETED THE WORDS IN OPERATIVE PARAGRAPH 4 (C): "WITH APPROPRIATE REFERENCE TO THE VIEWS OF STATES WHICH HAVE ACHIEVED INDEPENDENCE SINCE THE SECOND WORLD WAR".

THE REPRESENTATIVE OF LIBERIA, JOSEPH CHESSON, VIEWED THAT CLAUSE, IN CONNEXION WITH THE WORK OF THE ILC ON STATE SUCCESSION, AS RECOGNIZING TWO GROUPS OF MEMBER STATES IN THE UNITED NATIONS. HE WITHDREW HIS AMENDMENT, HOWEVER, WHEN SEVERAL MEMBERS, INCLUDING NEWLY INDEPENDENT MEMBER STATES, STATED THE CLAUSE WAS NOT DISCRIMINATORY AND INDICATED THAT THEY WOULD VOTE AGAINST THE AMENDMENT.

GIUSEPPE SPERDUTI (ITALY), SPEAKING IN THE GENERAL DEBATE, SAID THAT HIS DELEGATION WAS "NOT COMPLETELY IN ACCORD" WITH ARTICLE 31 OF THE DRAFT LAW OF TREATIES. THIS ARTICLE CONCERNS THE COMPETENCE OF STATE, UNDER THEIR OWN INTERNAL LAWS, TO ENTER INTO TREATIES.

MORE

THE ASPECT OF CMPETENCE, HE SAID, HAD TO TAKE INTO ACCOUNT THE RELATIONSHIP OF INTERNATIONAL LAW AND CONSTITUTIONAL LAW. ARTICLE 31, HE ADDED, WAS NOT LOGICAL. IT CONFLICTED WITH PART I OF THE LAW OF TREATIES, ADOPTED BY THE ILC AT ITS 1962 SESSION.

TURNING TO THE PRINCIPLE OF JUS COGENS -- WHICH RECOGNIZES THE EXISTENCE IN INTERNATIONAL LAW OF "PEREMPTORY NORMS", THE VIOLATION OF WHICH WOUTD VOID A TREATY (ARTICLE 37) -- MR. SPERDUTI COMMENTED THAT THIS RULE HAD ALWAYS BEEN A SUBJECT OF DISPUTE. HOWEVER, HE WENT ON, THE "SPEEDY EVOLUTION" OF INTERNATIONAL LAW SINCE THE FOUNDING OF THE UNITED NATIONS, HAD SEEN THE PHENOMENON OF NEW PRINCIPLES PLAY A FUNDAMENTAL ROLE IN TREATY LAWS.

ON THE "CONTROVERSIAL" REBUS SIC STANTIBUS CLAUSE, WHICH ACCEPTS A "FUNDAMENTAL CHANGE OF CIRCUMSTANCES" AS AFFECTING THE VALIDITY OF TREATIES (ARTICLE 44), THE REPRESENTATIVE OF ITALY HAD "VERY SERIOUS DOUBTS" AS TO ITS INCLUSION IN THE DRAFT. IT WAS NECESSARY IN INTERNATIONAL LAW, HE SAID, TO ESTABLISH CONCEPTS THAT WERE NOT "VAGUE". HE SUGGESTED THAT COMPROMISE SOLUTIONS TO THE PROBLEMS POSED IN ARTICLE 44 SHOULD DE
WTEIO

EV KZDO (BRAZIL), THE FINAL SPEAKER ON THIS ITEM, STATED THAT THE CONCEPT OF JUS COGENS, OR PEREMPTORY NORMS, WAS "INCONTESTABLE". IT COULD NOT, HOWEVER, CO-EXIST WITH OTHER RULES PRACTISED IN PRESENT DAY INTERNATIONAL LAW. ITS EMERGENCE, HE SAID, MIGHT INVALIDATE PRE-EXISTING RULES AND PAST POLITICAL PRACTICES OF STATES.

HIS DELEGATION, HE SAID, FOUND ARTICLE 37 ON JUS COGENS AN EXAMPLE OF THE "COURAGEOUS ACHIEVEMENTS" OF THE ILC. THE PH NATURE OF GENERALLY ACCEPTED RULES HAD TO BE RECOGNIZED. THESE NORMS COULD NOT BE DEROGATED BY STATES WITHOUT DISTURBING INTERNATIONAL ORDER.

ANOTHER EXAMPLE OF THE ACCOMPLISHMENTS OF THE ILC, MR. AMADO ADDED, WAS ARTICLE 36, WHICH WOULD VOID A TREATY PROCURED BY THE THREAT OR USE OF FORCE.

CODIFICATION, HE SAID, MEANT THE PROGRESS OF INTERNATIONAL LAW. ONCE THE POSSIBILITY OF CONCLUDING "DEFECTIVE" TREATIES HAD BEEN ELIMINATED, "INEQUITABLE" TREATIES COULD BE BANNED FOR ALL TIME IN INTERNATIONAL LIFE. ALL COUNTRIES COULD THEN FIND ADEQUATE PROTECTION AND SECURITY, HE CONCLUDED.

LUIS ITURRALDE CHINEL (BOLIVIA), SPEAKING BEFORE THE VOTE ON THE DRAFT RESOLUTION, SAID THAT THE WORK OF THE ILC ON THE LAW OF TREATIES HAD AFFIRMED LEGAL PRINCIPLES ACCEPTED THROUGHOUT THE WORLD. ARTICLES 31, ON COMPETENCE; 36, ON COERCION; AND 44, ON FUNDAMENTAL CHANGE OF CIRCUMSTANCES, WERE OF "PARTICULAR IMPORTANCE". THE INCLUSION OF THE LATTER, WHICH HE SAID EMBODIED "JUSTICE", WAS OF "SPECIAL SATISFACTION" TO THE PEOPLE OF LATIN AMERICA.

MORE

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RASHID A. AL-RASHID (KUWAIT) ALSO SPOKE IN SUPPORT OF THE RESOLUTION AND EXPRESSED HIS DELEGATIONS APPRECIATION TO THE ILC FOR ITS PROMOTION OF THE RULE OF LAW.

IN ANOTHER DEVELOPMENT, CHHIM KHET (CAMBODIA), AT THE START OF THIS MORNINGS MEETING EXERCISED HIS RIGHT OF REPLY TO THAILAND, ON A LEGAL DISPUTE BETWEEN THE TWO COUNTRIES, WHICH HAD BEEN MENTIONED YESTERDAY BY THE REPRESENTATIVE OF THAILAND. REPLYING, VISHIAN VATANAKUN (THAILAND) SAID HE HAD ONLY REFERRED TO THAT QUESTION IN CONNEXION WITH HIS STATEMENT "CLARIFYING" ONE OF THE ARTICLES OF THE DRAFT LAW OF TREATIES.

THE CHAIRMAN, JOSE MARIA RUDA, ADJOURNED THE MEETING AT 1:15 P.M. UNTIL TOMORROW, WEDNESDAY, 16 OCTOBER, AT 10:30 A.M., WHEN THE COMMITTEE WILL TAKE UP ITS NEXT ITEM.

HS&JB 335P 15 OCT 63

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UN46

PRESS RELEASE GA/L/1013
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 792ND MEETING (PM)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE DEBATE ON LAW COMMISSION REPORT CONTINUES

THE SIXTH (LEGAL) COMMITTEE THIS AFTERNOON CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION.

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF SPAIN, CHINA, MOROCCO AND URUGUAY, BRINGING THE NUMBER OF SPEAKERS ON THIS ITEM TO 50.

THE REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT RTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT TS MOST RECENT SESSION, HELD ATGENEVA, FROM COMMISSIONLAPPROVEDTAEFURTHER 25 DRAFT ARTICLES.

THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

THE COMMITTEE HAS BEFORE IT A SEVEN-POWER DRAFT RESOLUTION (DOC. A/C.6/L.529 AND CORR.1), WHICH WOULD, IN PART, RECOMMEND THAT THE ILC CONTIUE ITS WORK ON THE LAW OF TREATIES. IT EXPECTS TO ACT ON IT TOMORROW.

ANTONIN DE LUNA (SPAIN) SAID HIS DETEGATION SUPPORTED THE REPORT AS A WHOLE. HOWEVER, IT OPPOSED THE SPANISH TEXT, WHICH WAS A POOR TRANSLATION. THIS WAS DUE NOT TO INCOMPETENT TRANSLATION BUT TO UNFAMILIARITY WITH TME MEANINGS OF SPANISH JURIDICAL TERMS. CITING EXAMPLES OF WHAAT HE TERMED INACCURACIES, HE PROPOSED THAT DOCUMENTS DEALING WITH JURIDICAL AFFAIRS DISTRIBUTED BY THE SECRETARIAT SHOULD FIRST BE APROVED BY THE COMMITTEE.

TAKING UP THE SUBSTANCE OF THE REPORT, THE REPRESENTATIVE OF SPAIN COMMENTED IN DETAIL ON ARTICLE 31, CONCERNING THE COMPETENCE OF STATES, UNDER THEIR OWN INTERNAL LAWS, TO ENTER INTO TREATIES.

INTERNATIONAL LAW, HE SAID, HAD TO RELECT CONSTITUTIONAL PRACTICES. WHAT WERE THE DETERMING FACTORS OF COMPETENCE? HE ASKED. ONE STATE, HE OBSERVED, COULD WITHHOLD ITS OBLIGATIONS TO A TREATY ON THE PRETEXT THAT THE OTHER PARTY HAD NOT YET COMPLIED WITH ITS INTERNAL LAWS.

ON THE RINCIPLE OF REBUS SIC TANTIBUS, WHICH RECOGNIZES TH EFFECCIPBUBBLANGES"OFHN."FUNDAMENTAL CHA
DE LUNA SAID HE SAW NO
MORE

FORWARDING SLIP
CR. 24 (1-57) (E)

UNITED NATIONS NATIONS UNIES

NEW YORK

The Secretary-General of the United Nations has the honour to request that

..... the communication enclosed herein, of

..... which a copy is attached for information,

be forwarded to the address indicated.

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

FILE NO.: LE 130(1-2-1)

10 October 1963

Sir,

I am directed by the Secretary-General to draw your attention to the report of the International Law Commission covering the work of its fifteenth session, held at Geneva from 6 May to 12 July 1963. Chapter II of this report contains part II of Draft articles on the law of treaties, drawn up by the Commission and accompanied by commentaries.

In accordance with the provisions of its Statute, the Commission decided to invite Governments to submit their observations on part II of this draft, which relates to the invalidity and termination of treaties.

In pursuance of a decision taken by it at its tenth session in 1958, the Commission does not prepare its final draft until the second session following that at which it has drawn up the preliminary draft to be submitted to Governments for observations. Accordingly, the Commission will prepare a final report on the subject at its seventeenth session, which will begin in May 1965, after studying these observations; the report will be submitted to the General Assembly at its twentieth session.

The Secretary of State for External Affairs
Department of External Affairs
Ottawa
Canada

The observations which the Secretary-General receives from Governments will first be communicated to the Special Rapporteur on the law of treaties, to enable him to take them into account in drafting the new proposals which he will submit to the Commission. These observations will also be reproduced in a document which will be circulated to the Commission.

I should therefore be most grateful if you would kindly communicate to the Secretary-General, as soon as possible and not later than 1 September 1964, any observations that your Government may wish to make on the above-mentioned draft articles, in order that these observations may be submitted to the Special Rapporteur and to the other members of the Commission in good time before the Commission reconsiders the articles at its seventeenth session.

The Commission's report covering the work of its fifteenth session has been published as Supplement No. 9 to the official records of the eighteenth session of the General Assembly (A/5509). In accordance with the usual practice, the report is not enclosed with this letter, as it has already been circulated to Member States.

Accept, Sir, the assurances of my highest consideration.

Constantin A. Stavropoulos
Legal Counsel

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

FILE NO.: LE 130(1-2-1)

Le 10 octobre 1963

Monsieur le Secrétaire d'Etat,

Je suis chargé par le Secrétaire général d'appeler votre attention sur le rapport de la Commission du droit international concernant les travaux de sa quinzième session, tenue à Genève du 6 mai au 12 juillet 1963. Le chapitre II de ce rapport contient la seconde partie d'un Projet d'articles sur le droit des traités établi par la Commission et accompagné de commentaires.

Conformément aux dispositions de son statut, la Commission a décidé d'inviter les gouvernements à présenter leurs observations sur la première partie de ce projet qui porte sur le défaut de validité et la terminaison des traités.

En vertu d'une décision prise par la Commission à sa dixième session, en 1958, la Commission n'élabore son projet final qu'à la deuxième session suivant celle où elle a rédigé le premier projet destiné à être soumis aux gouvernements pour observations. C'est donc à sa dix-septième session qui doit s'ouvrir au mois de mai 1965 que la Commission après avoir pris connaissance de ces observations, établira un rapport définitif sur la question; il sera présenté à l'Assemblée générale à sa vingtième session.

UNITED NATIONS NATIONS UNIES

Les observations que le Secrétaire général recevra des gouvernements seront tout d'abord communiquées au Rapporteur spécial chargé de la question du droit des traités afin qu'il puisse en tenir compte en rédigeant les nouvelles propositions qu'il soumettra à la Commission. Ces observations seront également reproduites dans un document qui sera soumis à la Commission.

Je vous serais donc très reconnaissant de vouloir bien communiquer dès que possible au Secrétaire général, au plus tard le 1er septembre 1964, toutes observations que votre Gouvernement désirerait présenter au sujet du projet d'articles susmentionné, afin que ces observations puissent être soumises au Rapporteur spécial et aux autres membres de la Commission en temps voulu, avant que la Commission ne réexamine les articles au cours de sa dix-septième session.

Le rapport de la Commission sur les travaux de sa quinzième session a été publié comme Supplément no 9 aux documents officiels de la dix-huitième session de l'Assemblée générale (A/5509). Selon la pratique habituelle, comme ce rapport a déjà fait l'objet d'une distribution aux Etat membres lors de sa parution, il ne vous est pas transmis avec la présente lettre.

Veuillez agréer, Monsieur le Secrétaire d'Etat,
les assurances de ma très haute considération.

Le Conseiller juridique

Constantin A. Stavropoulos

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

FILE NO.: LE 130(1-2-1)

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The Secretary of State for External Affairs
Department of External Affairs
Ottawa
Canada

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Accept, Sir, the assurances of my highest consideration.

Constantin A. Stavropoulos
Legal Counsel

UN23

PRESS RELEASE GA/L/1012
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 791ST MEETING
UNITED NATIONS, N.Y.

SEVEN DELEGATIONS MAKE STATEMENTS ON REPORT OF INTERNATIONAL LAW COMMISSION

STATEMENTS WERE MADE BY THE REPRESENTATIVES OF THAILAND, BYELORUSSIA, UNITED ARAB REPUBLIC, JAMAICA, PAKISTAN, GHANA AND CAMEROON, AS THE SIXTH (LEGAL) COMMITTEE THIS MORNING CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION.

THUS FAR, 46 STATES HAVE PARTICIPATED IN THE GENERAL DEBATE ON THIS ITEM, WHICH IS EXPECTED TO BE CONCLUDED BY THIS AFTERNOON.

THE ILC REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS MOST RECENT SESSION, HELD AT GENEVA FROM MAY TO JULY 1963, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

THE COMMITTEE HAS BEFORE IT A SVEN-POWER DRAFT RESOLUTION (DOC. A/C.6/L.529 AND CORR.1), WHICH WOULD, IN PART, RECOMMEND THAT THE ILC CONTINUE ITS WORK ON THE LAW OF TREATIES.

VICHIAN WATANAKUN (THAILAND) SAID HIS DELEGATION WANTED TO THANK THE ILC FOR ITS WORK ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW.

TURNING TO THE DRAFT ARTICLES OF THE LAW OF TREATIES, THE REPRESENTATIVE OF THAILAND SUGGESTED THAT THE FINAL FORM OF THESE LAWS SHOULD BE SUBMITTED TO AN INTERNATIONAL CONFERENCE, SIMILAR TO THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA.

COMMENTING ON ARTICLE 31, WHICH CONCERNS THE COMPETENCE OF STATES UNDER THEIR OWN INTERNAL LAWS TO ENTER INTO TREATIES, HE STATED THE ILC HAD REACHED A COMPROMISE SOLUTION IN FAVOUR OF INTERNATIONAL LAW OVER INTERNAL LAW. IT WAS IDEALISTIC, HOWEVER, TO THINK THAT STATES WOULD HAVE IN COMMON LEGAL SYSTEMS THAT COULD ACCEPT THE "PROGRESSIVE" PRINCIPLE SUGGESTED IN ARTICLE 31.

CONTINUING, MR. WATANAKUN OBSERVED THAT THE TEXT DEALING WITH "ERROR" (ARTICLE 34) HAD BEEN WORDED TOO BROADLY. THUS, HE SAID, IT COULD BE USED TO RULE OUT THE IDEA EMBODIED IN THE ARTICLE.

MORE

THE DELEGATION OF THAILAND, HE WENT ON, "WELCOMED" ARTICLES 35 AND 36, ON COERCION. ARTICLE 36, WHICH WOULD INVALIDATE A TREATY PROCURED BY THE THREAT OR USE OF FORCE, HAD TO BE INCLUDED IN THE LAW OF TREATIES. SMALL NATIONS HAD SUFFERED UNDER TREATIES CONCLUDED BY FORCE. FURTHER, ARTICLES 37 AND 45, RECOGNIZING THE EXISTENCE IN INTERNATIONAL LAW OF "PEREMPTORY NORMS", THE VIOLATION OF WHICH INVALIDATED TREATIES, SHOULD BE VIEWED AS A NEW RULE OF INTERNATIONAL LAW. HIS DELEGATION, HE SAID, ALSO SUPPORTED THE PRINCIPLE OF REBUS SIC STANTIBUS, WHICH TAKES INTO ACCOUNT THE EFFECT ON TREATIES OF A "FUNDAMENTAL CHANGE IN CIRCUMSTANCE".

I.T. STELMASHOK (BYELORUSSIA) SIAD HE ATTACHED "GREAT IMPORTANCE" TO THE RULE THAT TREATIES CONFLICTING WITH PEREMPTORY NORMS WERE VOID, AS WELL AS THOSE PROCURED BY THE THREAT OR USE OF FORCE.

PARTICULAR ATTENTION, HE STATED, SHOULD BE GIVEN TO PROTECTING SMALLER COUNTRIES FROM "INEQUITABLE" TREATIES, WHICH HAD BEEN CONCLUDED UNDER THE "CAMOUFLAGE" OF ECONOMIC ASSISTANCE.

CESSION OF TERRITORY BEING STUDIED BY THE ILC, THE REPRESENTATIVE OF BYELORUSSIA SAID THIS WAS A PROBLEM OF WHETHER THE SOVEREIGNTY OF A NEW STATE HAD BEEN UNDERMINED BY A FORMER COLONIAL POWER. THE SOLUTION TO THIS QUESTION, HE SAID, MIGHT DETERMINE WHETHER FUTURE THREATS TO INTERNATIONAL PEACE AND SECURITY MIGHT ARISE. HIS DELEGATION DID NOT SUPPORT THE OPINION OF THOSE WHO FAVOURED PAST PRACTICES AS A POINT OF DEPARTURE FOR THE WORK IN THIS AREA; THE PRACTICES THAT HAD BEEN FOLLOWED HAD BEEN THOSE OF "COLONIAL" POWERS, IN ORDER TO OBTAIN SPECIAL RIGHTS AND PRIVILEGES FROM STATES. THE DEPENDENT STATES HAD NO RIGHTS, ONLY OBLIGATIONS. A NEW POINT OF VIEW HAD TO BE ADOPTED, HE DECLARED.

THE TIME HAD COME, MR. STELMASHOK SAID, TO REJECT UNEQUAL AGREEMENTS. THE STRICT RESPECT OF SOVEREIGNTY AND THE RIGHT TO SELF-DETERMINATION HAD TO BE INALIENABLE RIGHTS. MOREOVER, A NEW STATE HAD THE RIGHT TO RECOGNIZE THOSE TREATIES IT HAD INHERITED, ONLY IF THEY CORRESPONDED TO THE WILL OF THE NEW STATE.

CONCLUDING, THE REPRESENTATIVE OF BYELORUSSIA INDICATED HIS DELEGATIONS INTENTION TO SUPPORT THE DRAFT RESOLUTION BEFORE THE COMMITTEE.

ABDULLAH EL-ERIAN (UNITED ARAB REPUBLIC), SPEAKING OF THE "HIT QUALITY" OF THE WORK OF THE ILC, SAID ARTICLE 31, ON COMPETENCE, HAD NOT, HOWEVER, RECONCILED ANY CONFLICT THAT MIGHT EXIST BETWEEN INTERNATIONAL LAW AND INTERNAL LAW.

HE COMMNDED THE PRINCIPLES CONTAINED IN ARTICLE 36 ON COERCION, AND IN ARTICLE 37 ON PEREMPTORY NORMS OF INTERNATIONAL LAW. AS A RESULT OF THE ADOPTION

MORE

OF THE CHARTER OF THE UNITED NATIONS, HE SAID, THESE ARTICLES WERE NOW "ESTABLISHED CONCEPTS".

HE DECLARED HIS DELEGATION ALSO APPROVED THE INCLUSION OF TH "CONTROVERSIAL" REBUS SIC STANTIBUS CLAUSE.

L.B. FRANCIS (JAMAICA) DECLARED THAT THE EMERGENCE OF NEW STATES DEMONSTRATED THE NEED FOR THE CODIFICATION OF THE LAW OF TREATIES AND OTHER INTERNAIONAL LAWS.

WHILE HE WAS IN FAVOUR OF THE REBUS SIC STANTIBUS CLAUSE, THE MANNER IN WHICH IT HAD BEEN DRAFTED (ARTICLE 44) SEEMED TO RESERVE THE RIGHT OF WITHDRAWAL FROM A TREATY. IF THIS WERE NOT THE INTENT OF THE ILC, THEEN THE ARTICLE REQUIRED FURTHER CONSIDERATION. IN THIS CONNEXION, HE NOTED THAT IT HAD BEEN SUGGESTED THAT A FUNDAMENTAL CHANGE IN CIRCUMSTANCES COULD BE DEALT WITH AS A SUBJECT OF STATE SUCCESSION. FUNDAMENTAL CHANGE, HOWEVER, COULD BE A CONSEQUENCE OF SUCCESSON, 5£3 9?'34;3$.

HISTORY, HE WENT ON, WAS REPLETE WITH INSTANCES WHEN PEACE HAD BEEN "RUFFLED" BY THE INSISTENCE ON THE OBSERVANCE OF TREATIES NOT REFLECTING CHANGED CONDITIONS.

JAMAICA, AS A NEW STATE, VIEWED THE PRINCIPLE IN ARTICLE 44 AS AN INDICATION THAT PROGRESSIVE INTERNATIONAL LAW WAS IN THE REALM OF ACHIEVEMENT.

HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION, HE CONCLUDED.

A.T. SAADI (PAKISTAN), COMMENDING THE ILC FOR ITS DRAFT, STATED THAT IN ARTICLES 33 AND 34, ON "FRAUD" AND "ERROR", MEASURES FOR TIME LIMITS SHOULD BE INCLUDED.

ON ARTICLE 43 -- BY WHICH THE IMPOSSIBILITY OF PERFORMANCE WOULD INVALIDATE A TREATY -- THE REPRESENTATIVE OF PAKISTAN PROPOSED TWO FURTHER PARAGRAPHS BE ADDED TO THE THREE-PART ARTICLE, TO EMBRACE CIRCUMSTANCES WHICH HAD NOT BEEN ADEQUATELY COVERED.

E.K. DADZIE (GHANA) SAID IT WAS TIME FOR THE COMMITTEE TO EXPAND THE WORK PROGRAMME OF THE ILC, ITS "EXTREMELY USEFUL" TASK ON THE CODIFICATION OF INTERNATIONAL LAW NOW REQUIRED AN INCREASED NUMBER OF SESSIONS.

IN ITS STUDY OF THE DRAFT ARTICLES, MR. DADZIE SAID GHANA WOULD DRAW A LINE BETWEEN INTERNATIONAL LAW ASIT WAS PRESENTED IN THE ILC REPORT, AND THE INTERNATIONAL LAW OF THE PAST, WHICH "FAVOURED COLONIALISM AND OPPRESSION". THE STRUCTURE OF INTERNATIONAL LAW, HE ADDED, HAD REQUIRED "OVERHAULING". ALL POWRS SHOULD STAND NOW ON EQUAL FOOTING.

COMMENTING ON "UNEQUAL" TREATIES, THE REPRESENTATIVE OF GHANA DECLARED

MORE

THEY HAD BEEN DESIGNED TO ENRICH SOME STATES AND IMPOVERIST OTHERS. THE AFRICAN STATES ESPECIALLY HAD SUFFERED UNDER THIS SYSTEM.

THE ORGANIZATION OF AFRICAN UNITY "WOULD SEEK TO ABROGATE" SUCH TREATIE, WHICH HAD BEEN IMPOSED ON THEM BY "COLONIAL" POWERS, HE ASSERTED.

ACCORDINGLY, THE PRINCIPLES OF JUS COGENS -- THE EXISTENCE OF PEREMPTORY NORMS -- AND REBUS SIC STANTIBUS, WERE, FROM THE POINT OF VIEW OF THE NEW AFRICAN STATES, "WELCOME ADDITIONS".

AS AN EXAMPLE OF A FUNDAMENTAL CHANGE IN CIRCUMSTANCES, MR. DADZIE RECALLED THAT UNTIL RECENTLY THERE EXISTED IN GHANA A CONCESSION TO "ANOTHER STATE" OF ITS GOLD FIELDS, WHICH YIELDED EACH YEAR GOLD WORTH MILLIONS OF POUNDS. THE TREATY HAD BEEN SGNED IN THE NINETEENTH CENTURY AND PROVIDED THE LESSOR AN ANNUAL RENT OF 65 POUNDS.

CONCLUDING, HE SAID THAT GHANA WOULD SUPPORT THE DRAFT RESOLUTION.

FRANCOIS NNANG (CAMEROON) DECLARED HIS DELEGATION VIEWED THE DRAFT LAW OF TREATIES AS "MORE REALISTIC" THAN INTERNATIONAL LAW AS TAGHT IN UNIVERSITIES. THE TRADITIONAL CONCEPTS WERE OBSOLETE, HE DECLARED.

HIS DELEGATION, HOWEVER, FOUND "OBSCURITIES AND GAPS" IN THE DRAFT TEXTS. IT WAS, IN HIS VIEW, THE DUTY OF THE ILC TO PROVIDE THE GREATEST POSSIBLE SAFEGUARDS AGAINST FUTURE LEGAL DISPUTES.

COMMENTING ON "INEQUITABLE" TREATIES, MR. NNANG SIAD THAT SUCH AGREEMENTS, WHICH HAD BEEN CONCLUDED BY ECONOMIC COERCION, HAD NEVER BEEN EXERCISED SO MUCH AS NOW. IN THIS REGARD, HE VIEWED THE QUESTION OF STATES SUCCESSION AS "MOST CRUCIAL". EMERGING STATES NOT HAVING RECOURSE TO LEGAL MEANS COULD BECOME A "THEATRE OF ARMED STRUGGLE". TREATIES THAT HAD BEEN CONTRACTED FOR THEM BY THE ADMINISTERING POWER, WERE OF NO INTEREST TO EMERGING STATES.

THE REPRESENTATIVE OF CAMEROON SAID INTERNATIONAL LAW, IN ORDER TO BE THE "LAW OF PEACE", HAD TO BE PRACTICAL AND CONSTRUCTIVE, REFLECTING PRESENT WORLD CONDITIONS.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINALN ADJOURNED THE MEETING AT 12:52 P.M. UNTIL AFTER THE ADDRESS TO THE GENERAL ASSEMBLY THIS AFTERNOON BY THE PRESIDENT OF MAURITANIA.

JB 353P 14 OCT 63

TRANSMITTAL SLIP

TO: The Under-Secretary of State for External Affairs, Ottawa

FROM: The Permanent Mission of Canada to the United Nations, New York

Security: Unclassified

Date: October 14, 1963

Air or Surface:

No. of enclosures: 3

The documents described below are for your information.

Despatching Authority: P. Charpentier-lk

20-3-1-6
91 -

94

Copies	Description	Also referred to:
3	Letter from the U.N. Legal Counsel dated October 10, 1963 re the report of the International Law Commission. – M. Cadieux's Report (attached) – 6th Committee discussions (1963) – New Zealand brief for 6th Committee (1963) – M.D.C.'s briefs for M. Cadieux, 1963	23 VIII 64 TO: Mr Copithorne OCT 21 REGISTRY

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INSTRUCTIONS

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2. This form should *NOT* be used to cover documents requiring action.

3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.

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20-3-1-6

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PRESS RELEASE GA/L/1011
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 790TH MEETING (PM)
UNITED NATIONS, N.Y.

CONSIDERATION OF LAW COMMISSION REPORT CONTINUES
IN SIXTH COMMITTEE

THE SIXTH (LEGAL) COMMITTEE THIS AFTERNOON CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (PLC) ON THE WORK OF ITS FIFTEENTH SESSION.

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF NIGERIA, PHILIPPINRDZN VENEZUELA, PANAMA AND TURKEY.

THE REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS MOST RECENT SESSION, HELD AT GENEVA, FROM MAY TO JULY 1963, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

THE COMMITTEE HAS BEFORE IT A SEVEN-POWER DRAFT RESOLUTION (DOC. A/C.6/L.529 AND CORR.1), WHICH WOULD, IN PART, RECOMMEND THAT THE ILC CONTINUE ITS WORK ON THE LAW OF TREATIES.

S. ADUKE MOORE ((,8&348-) SAID HER DELEGATION APPRECIATED THE WORK OF THE ILC, ESPECIALLY ITS CODIFICATION OF THE LAW OF TREATIES.

COMMENTING ON ARTICLE 36, WHICH WOULD VOID A TREATY PROCURED BY THE THREAT OR USE OF FORCE, SHE DECLARED THAT IT WAS OF PARTICULAR IMPORTANCE TO YOUNG STATES, SUCH AS NIGERIA.

TREATIES THAT HAD BEEN CONCLUDED AS A PRECONDITION OF INDEPENDENCE, WERE OBTAINED "UNDER DURESS" AND HAD NOT EXPRESSED THE FREE WILL OF ALL OF THE PARTIES. THIS, TOO, COULD BE CONSIDERED AS FORCE, AND THE DRAFTERS OF THE LAW OF TREATIES SHOULD CONSIDER SUCH A SITUATION.

THE DRAFT RESOLUTION, SHE SAID, REFLECTED THE GENERAL OPINION OF THE COMMITTEE AND NIGERIA WOULD SUPPORT IT.

PRIVADO G. JIMENEZ (PHILIPPINES) DECLARED THAT HIS DELEGATION CONSIDERED THE DRAFT ARTICLES OF THE LAW OF TREATIES "MOST PROGRESSIVE".

TURNING TO THE ARTICLES THEMSLVES, HE SUGGESTED THAT THEPHRASEOLOGY OF ARTICLE 31, REGARDING THE COMPETENCE OF STATES UNDER THEIR INTERNAL LAWS TO ENTER INTO TREATIES, WAS TOO VAGUE. HE ASKED THAT IT BE CLARIFIED SO AS TO AVOID FUTURE INTERNATIONAL MISUNDERSTANDINGS.

MORE

ON ARTICLE 36, THE REPRESENTATIVE OF THE PHILIPPINES SAID THE ILC COULD HAVE BROADENED THE CONCEPT TO TAKE ACCOUNT OF "NEWER FORMS" OF FORCE. THERE EXISTED, ALSO, ECONOMIC COERCION CAMOUFLAGED BY THE SEMBLANCE OF LEGALITY. SUCH INTERNATIONAL AGREEMENTS COULD BE PREVENTED, IN HIS VIEW, BY DETAILED PROVISION FOR THEIR INVALIDATION.

MR. JIMINEZ DECLARED HIS DELEGATION WANTED TO ASSOCIATE ITSELF WITH THOSE WHO HAD SUPPORTED THE INCLUSION OF ARTICLE 44. THIS CONTAINS THE REBUS SIC STANTIBUS CLAUSE -- WHICH RECOGNIZES THE EFFECT ON TREATIES OF A "FUNDAMENTAL CHANGE OF CIRCUMSTANCES".

HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION, HE ADDED.

ARMANDO MOLINA LANDAETA (VENEZUELA) SAID HE REGRETTED THAT THE REPORT HAD REACHED HIS GOVERNMENT TOO LATE FOR IT TO HAVE MADE A DETAILED ANALYSIS OF THE LAW OF TREATIES. ON FIRST IMPRESSION, HE SAID, THE TEXT OF ARTICLES, AS A WHOLE, MERITED ACCEPTANCE, HOWEVER. IT REFLECTED THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW.

THE DELEGATION OF VENEZUELA, HE CONTINUED, FELT THAT REGARDING ARTICLE 36, ON COERCION, IT WOULD BE BETTER PRESENTED IN A BROADER MANNER. THIS WOULD HELP AVOID A RESTRICTIVE INTERPRETATION, HE ADDED.

THE ILC HAD BEEN "QUITE RIGHT", HE SAID, IN INCLUDING THE PRINCIPLES OF *JUS COGENS AND REBUS SIC STANTIBUS*, WHICH HAD PREVIOUSLY BEEN CONSIGNED TO "DOCTRINARY TEACHING".

THE REPRESENTATIVE OF VENEZUELA, CITING A NUMBER OF OTHER ARTICLES, SUGGESTED THAT THEY HAD NOT BEEN CLEARLY ENOUGH ANE REQUIRED MORE PRECISE TERMS.

VENEZUELA, MR. MOLINA LANDAETA CONCLUDED WOULD SUPPORT THE DRAFT RESOLUTION.

CESAR A. QUINTERO (PANAMA), CALLING THE DRAFT LAW OF TREATIES AN "ADMIRABLE EFFORT", DISCUSSED ARTICLE 31, ON COMPETENCE OF STATES, IN GREAT DETAIL.

HE SAID THE ILC HAD ADOPTED A COMPROMISE FORMULA IN INCLUDING THE WORD "MANIFEST" IN THE TEXT. THE EFFECT OF THIS WOULD INVALIDATE TREATIES THAT CONFLICTED ONLY WITH "MANIFEST" INTERNAL LAWS. THE TREATY WOULD NOT OTHERWISE BECOME VOID.

HIS DELEGATION DID NOT SHARE THE VIEW OF OTHERS THAT THIS INTRODUCED AN ELEMENT OF INSTABILITY INTO TREATIES.

THE PRINCIPLES OF JUST COGENS, THE TERMINATION OF TREATIES CONCLUDED IN ERROR, BY FRAUD AND BY FORCE, AND THE REBUS SIC STANTIBUS CLAUSE, ALL WERE SUPPORTED BY MR. QUINTERO.

MANY STATES FEARED THE REBUS SIC STANTIBUS CLAUSE, HE OBSERVED. HOWEVER, IT WAS A "SAFETY VALVE", WHICH WAS NEEDED WITHIN THE LAW OF TREATIES.

MORE

THE REPRESENTATIVE OF PANAMA SAID THAT ZCERTAIN OBSOLETE" ANACHRONISTIC AND UNEQUAL" TREATIES, WHICH HAD BEEN CONCLUDED IN THE PAST, COULD NOT CONTINUE TO SURVIVE FOREVER. WHILE THE REBUS SIC STANTIBUS CLAUSE ALONE COULD NOT PUT AN END TO SUCH TREATIES, IT WAS, NEVERTHELESS, ONE ASPECT OF THE PROBLEM.

CONCLUDING, MR. QUINTERO STATED THAT INTERNATIONAL LAW COULD NO LONGER BE AN INSTRUMENT OF SPECIFIC NATIONS AND SPECIFIC INTERESTS.

TALAT MIRAS (TURKEY) OBSERVED THAT THE ILC, IN ITS DRAFT ARTICLES, HAD ATTEMPTED NOT TO OVERLOOK ANYTHING. IT CONTAINED MATERIAL THAT HAD GONE FAR BEYOND CLASSICAL THEORIES. HOWEVER, HIS DELEGATION, HE SAID, FELT THAT SOME ARTICLES, SUCH AS ARTICLE 37, HAD NOT BEEN MADE SUFFICIENTLY CLEAR.

ON QUESTIONS COVERED BY THE REPORT, OTHER THAN THE TREATY LAWS, THE REPRESENTATIVE OF TURKEY GENERALLY APPROVED OF THE WORK IN PROGRESS.

TURKEY, HE CONCLUDED, WOULD SUPPORT THE DRAFT RESOLUTION.

STEFAN VEROSTA (AUSTRIA), EXERCISING HIS RIGHT OF REPLY, RECALLED THAT THE REPRESENTATIVE OF HUNGARY HAD COMMENTED ON HIS REMARKS.

(THIS MORNING ENDRE USTOR OF HUNGARY SAID THAT MARXISTS WOULD REJECT THE VIEW EXPRESSED BY THE REPRESENTATIVE OF AUSTRIA -- THE PREVIOUS SPEAKER -- WHO IN COMMENTING ON THE DRAFT HAD SAID, "NATURAL LAA IS BACK AGAIN".)

MR. VEROSTA SAID THE USE OF THE WORDS "NATURAL LAW" WAS SYMBOLIC. IT HAD BEEN AT ONE POINT IN HISTORY A TERM USED TO EXPRESS THE LINK BETWEEN LAW AND ETHICS. HE DECLARED: "PLEASE FORGET ABOUT THE LAW OF NATURE."

FURTHER, HE SAID HE THOUGHT THE DRAFT ARTICLES WERE A "SOURCE OF JOY" NOT ONLY FOR HIMSELF BUT FOR THE REPRESENTATIVE OF HUNGARY , TOO.

MR. USTOR (HUNGARY) SAID HE WAS REPLYING TO THE REPLY. HE APOLOGIZED FOR HAVING BEEN SUPERFICIAL IN HIS OWN WORDS. HE SAID HE HAD HAD OPPORTUNITIES TO DISCUSS PHILOSOPHY AND LAW WITH PROFESSOR VEROSTA AND WHILE THEY HAD NOT ALWAYS AGREED, THEY WERE TOGETHER ON MANY MATTERS. HE HOPED THERE WOULD BE FURTHER PRIVATE DISCUSSIONS BETWEEN THEM ALONG THESE LINES.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ADJOURNED THE MEETING AT 4:25 P.M., AFTER REMINDING THE COMMITTEE THAT TWO MEETINGS HAD BEEN SCHEDULED FOR MONDAY, 14 OCTOBER, THE FIRST TO BEGIN AT 10:30 A.M.

JA 935P 11 OCT 63

20-3-1-6

UN23

PRESS RELEASE GA/L/1010
EIGHTEENTH GENERAL ASSEMBLY -- SIXTH COMMITTEE, 789TH MEETING (AM)
UNITED NATIONS, N.Y.

COMMITTEE HEARS STATEMENTS BY REPRESENTATIVES OF BELGIUM, AUSTRIA, HUNGARY, PERU, ECUADOR AND ALGERIA ON LAW COMMISSION REPORT

STATEMENTS WERE MADE TODAY BY THE REPRESENTATIVES OF BELGIUM, AUSTRIA, HUNGARY, PERU, ECUADOR AND ALGERIA AS THE SIXTH (LEGAL) COMMITTEE THIS MORNING CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION.

THE REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS MOST RECENT SESSION, HELD AT GENEVA, FROM MAY TO JULY 1963, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

THE COMMITTEE HAS BEFORE IT A SEVEN-POWER DRAFT RESOLUTION (DOC. A/C.6/L.529) AND CORR.1), WHICH WOULD, PART, RECOMMEND THAT THE ILC CONTINUE ITS WORK ON THE LAW OF TREATIES.

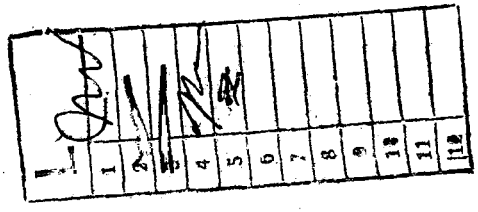
M. DEWULF (BELGIUM), SPEAKING ON THE LAW OF TREATIES, SAID THAT IN ITS PRESENT FORM THE DRAFT DID NOT CONTAIN MANY OF THE DETAILS AND RULES HE CONSIDERED NECESSARY. FURTHERMORE, CERTAIN RULES MIGHT BE INTERPRETED HASTILY AND COULD LEAD TO INTERNATIONAL MISUNDERSTANDINGS. HE CITED ARTICLE 37, WHICH DEALS WITH THE PRINCIPLE OF JUS COGENS -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF INTERNATIONAL LAW -- AS AN EXAMPLE OF THIS.

TURNING TO THE RINCIPLE OF DUS COGENS AND THAT OF REBUS SIC STANTIBUS -- WHICH RECOGNIZES THE EFFECT ON TREATIES OF A "FUNDAMENTAL CHANGE OF CIRCUMSTANCES" -- THE REPRESENTATIVE OF BELGIUM SAID HE HOPED THAT THE ILC WOULD CLARIFY ITS POSITION. IN THIS CONNEXION, HE RECALLED THAT THE REPRESENTATIVE OF IRAQ HAD YESTERDAY CALLED THE LATTER PRINCIPLE THE ENFANT TERRIBLE OF INTERNATIONAL LAW.

THE ILC HAD, HOWEVER, DONE AN EXCELLENT JOB IN NOT OVERLOOKING THE EXISTENCE OF THESE DIFFICULTIES.

HIS DELEGATION, HE STATED, FELT THAT THE COMMITTEE SHOULD DRAW ATTENTION TO THE FACT THAT CERTAIN ASPECTS OF THE SUBJECT HAD BEEN CONSIDERED BY THE ILC.

MORE



MR. DEWULF SAID BELGIUM WOULD SUPPORT THE DRAFT RESOLUTION.

STEFAN VEROSTA (AUSTRIA) SAID THAT THE OBSERVATIONS MADE BY PREVIOUS SPEAKERS HAD ADEQUATELY COVERED THE REPORT. THERE WAS NOTHING LEFT FOR HIM TO DO, HE SAID, BUT TO "THROW AWAY" HIS PREPARED TEXT. HE INDICATED THAT HIS REMARKS WOULD BE OF A GENERAL NATURE.

HAVING READ AND RE-READ THE DRAFT ARTICLES, MR. VEROSTA SAID, THE WORK OF THE ILC COULD BE SUMMED UP BY DECLARING: "NATURAL LAW IS BACK AGAIN".

THE REPRESENTATIVE OF AUSTRIA, RECALLING THE AGE OF ROMAN LAW, TWICE STATED, FIRST IN LATIN AND THEN IN ENGLISH: "EVEN I YOU DRIVE NATURE OUT WITH A FORK, SHE WILL COME BACK AGAIN." REPEATING IT THE SECOND TIME HE INTERJECTED BETWEEN THE TWO CLAUSES THE WORDS, "WITH GUNS AND POWER POLITICS".

TWO MAJOR WORLD WARS, HE WENT ON TO SAY, SEEMED TO HAVE BEEN NECESSARY TO BRING BACK "HUMAN REASON".

THE ILC HAD RE-STATED IN ITS DRAFT THE RULES OF UNIVERSAL INTERNATIONAL LAW, HE SAID. THIS WAS A HISTORICAL MOMENT IN HIS OPINION.

HOWEVER, THE LAW OF TREATIES WAS ONLY A PAPER, AND IT WOULD BE DIFFICULT TO BRING THE DRAFT ARTICLES INTO AN INTERNATIONAL CONVENTION. THE REPRESENTATIVE OF AUSTRIA SAID THAT THE "NOBLE" ARTICLES WOULD EVENTUALLY BE "WATERED DOWN".

AS TIME PASSED, THE LAW TREATIES MIGHT REMAIN ONLY AS A "COURAGEOUS CONTRIBUTION", AND NOTHING ELSE.

THE GENERAL ASSEMBLY SHOULD PROVIDE FOR AN ALTERNATIVE. HE SUGGESTED THAT THE PROCESS OF CODIFICATION OF TREATY LAWS SHOULD NOT TAKE LONGER THAN FIVE YEARS AND SHOULD CULMINATE IN A CONFERENCE ON THE LAW OF TREATIES, LIKE THE VIENNA CONFERENCE ON DIPLOMATIC RELATIONS. CONFERENCES ON THE OTHER ITEMS BEING TAKEN UP BY THE ILC SHOULD BE HELD IN 1965 AND 1966, BEFORE THE LAW OF TREATIES CONFERENCE.

MOREOVER, TO HELP SOLVE THE PROBLEM OF FINANCING SUCH CONFERENCES, HIS DELEGATION SUGGESTED THAT DURING A FORTHCOMING SESSION OF THE GENERAL ASSEMBLY THE SIXTH COMMITTEE COULD CONSTITUTE ITSELF AS A STATES CONVENTION.

CONCLUDING, MR. VEROSTA DECLARED HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION.

ENDRE USTOR (HUNGARY) OBSERVED THAT THE DISCUSSION IN THE COMMITTEE WAS TAKING PLACE IN A RELIEVED POLITICAL CLIMATE. THIS OPPORTUNITY SHOULD BE USED, HE SAID, TO FURTHER THE CODIFICATION OF INTERNATIONAL LAW. INTERNATIONAL RELATIONS, HOWEVER, STILL INDICATED THAT SOME STATES WERE NOT GUIDED BY INTERNATIONAL LAW, BUT RATHER BY PRINCIPLES THAT MIGHT BE CALLED "MACHIAVELLIAN".

MORE

THE LAW OF TREATIES, HE WENT ON, PROVIDED "SOME REALLY EXCITING READING". RECALLING THAT THE REPRESENTATIVE OF AUSTRIA HAD JUST REFERRED TO THE DRAFT BY SAYING "NATURAL LAW IS BACK AGAIN", THE REPRESENTATIVE OF HUNGARY SAID MARXISTS WOULD REJECT THIS VIEW. FROM A DIALECTICAL POINT OF VIEW THE CURRENT DRAFT WAS A REFLECTION OF CHANGED WORLD CONDITIONS.

TURNING TO THE TEXT OF ARTICLE 36, WHICH WOULD VOID A TREATY PROCURED BY THE THREAT OR USE OF FORCE, MR. USTOR SAID THAT ANY FORM OF FORCE -- NOT ONLY PHYSICAL FORCE -- INVALIDATED A TREATY.

HE STATED HE AGREED WITH ARTICLES 37 AND 45, ON THE INVALIDITY OF TREATIES CONFLICTING WITH PEREMPTORY NORMS, ADDING THAT THESE RULES OF LAW EXIST.

REGARDING REBUS SIC STANTIBUS, HE SAID THE PROBLEM OF FUNDAMENTAL CHANGES OF CIRCUMSTANCE, COULD NOT BE PUT ASIDE, AS SOME HAD SUGGESTED. THIS PRINCIPLE, AS THE ILC HAD REPORTED, SHOULD FIND A PLACE IN INTERNATIONAL LAW.

AS FOR OTHER SUBJECTS IN THE REPORT, THE REPRESENTATIVE OF HUNGARY STATED HIS DELEGATIONS SATISFACTION WITH THE WORK NOW IN PROGRESS.

CONCLUDING, MR. USTOR WELCOMED THE "APPARENT TREND" IN THE ACTIVITIES OF THE ILC AND "FULLY SUPPORTED" THE DRAFT RESOLUTION.

ALBERTO ULLOA (PEU) SAID THERE WERE DIFFICULTIES IN THE PRORAMME OF THE ILC. THE COMMISSIONS WORK WAS LEGAL, NOT POLITICAL, HE SAID. THE LAW COULD NEVER SUCCEED WHEN IT ACTED AGAINST REALITY. THE PRACTICES OF STATES HAD TO BE CONSIDERED, HE ADDED.

INEVITABLY, HE SAID, DOCTRINE AND PRINCIPLE CAME UP AGAINST POLITICAL REALITIES AND COULD NOT CHANGE THEM.

THE REPRESENTATIVE OF PERU DECLARED THAT THE SUBSTANCE OF THE REPORT COULD NOT BE EXAMINED UNTIL STATES HAD TIME TO STUDY THE DOCUMENTS. HE OBSERVED, HOWEVER, THAT CERTAIN CONCEPTS IN THE LAW OF TREATIES, SUCH AS NULLITY AND REBUS SIC STANTIBUS, WERE NEITHER CLEAR NOR PRECISE.

MR. ULLOA ASKED WHY THE ILC HAD NOT CONSIDERED THE HAVANA CONVENTION OF 1928, WHICH, HE SAID, COVERED THE CODIFICATION OF INTERNATIONAL LAW.

GONZALO ALCIVAR (ECUADOR), SPEAKING ON THE USE OF FORCE (ARTICLE 36), STATED THAT BEFORE THE COVENANT OF THE LEAGUE OF NATIONS THE PRINCIPLE THAT THE THREAT OR USE OF FORCE VOIDED A TRETY HAD NOT EXISTED. THUS, "FROM WESTPHALIA TO SAN FRANCISCO WE FIND A ROAD OF GOOD INTENTIONS", HE SAID. HOWEVER, POLITICAL REALITIES HAD DEFEATED INTERNATIONAL LAW IN THOSE YEARS.

HE SAID THE OBSERVATION MADE YESTERDAY BY THE REPRESENTATIVE OF IRAQ (THAT ARTICLE 36 SHOULD BE BROADENED) WAS "IMPORTANT" AND SHOULD BE STUDIED BY ILC.

MORE

THE REPRESENTATIVE OF PERU CITED SEVERAL STATEMENTS AND RESOLUTIONS ADOPTED AT INTERNATIONAL CONFERENCES DEMONSTRATING THE INVIOLABILITY OF STATES. "VICTORY CONVEYED NO RIGHTS," HE DECLARED.

CONTINUING, MR. ALCIVAR SAID THE PRINCIPLE OF JUS COGENS MERITED ACCEPTANCE, AS WELL AS THE CLAUSE OF REBUS SIC STANTIBUS. THESE SHOULD BE "EFFECTIVE RIGHTS", HE ASSERTED, NOT MERELY "DOCTRINE".

A TREATY WAS NOT SACROSANCT SOLELY BECAUSE IT WAS A TREATY. IT HAD TO BE CONCLUDED WITH THE FRAMEWORK OF PEREMPTORY NORMS OF INTERNATIONAL LAW.

MOHAMMAD KHELLADI (ALGERIA) SAID HIS DELEGATION EXPECTED "BETTER PROTECTION" OF ITS INTERESTS FROM THE CODIFICATION OF INTERNATIONAL LAW. ALGERIA HAD BEEN THE VICTIM OF TRADITIONAL DOCTRINE IN INTERNATIONAL LAW.

ALGERIA CONSIDERED, HE STATED, THAT TREATIES HAD TO EXPRESS THE FREE WILL OF THE PARTIES. ATTEMPTS TO "EMASCULATE" AT STATE WOULD LEAD TO "UNJUST" TREATIES. ALGERIA, HE SAID, APPRECIATED THE WORK OF THE ILC.

THE REPRESENTATIVE OF ALGERIA, SPEAKING ON ARTICLE 56, ASKED WHY SOME DELEGATIONS WANTED TO LIMIT THE SCOPE OF THE ARTICLE. A BROAD APPROACH, HE ADDED, WOULD FAVOUR INCREASED CONFIDENCE AMONG STATES.

HE AGREED THAT THE PRINCIPLE OF JUS COGENS EXISTED AND STATED THAT AFRICA WOULD SEEK TO INVALIDATE TREATIES THAT HAD BEEN IMPOSED ON IT BY FORMER "COLONIAL" POWERS.

THE CONCEPT OF A FUNDAMENTAL CHANGE IN CIRCUMSTANCE (REBUS SIC STANTIBUS) WAS A REALISTIC ONE, HE CONTINUED.

EDUARDO JIMENEZ DE ARECHAGA, CHAIRMAN OF THE ILC, IN ENDING HIS PARTICIPATION IN THE COMMITTEE THIS SESSION, SAID THE VIEWS THAT HAD BEEN OFFERED IN THE COMMITTEE DURING THE PAST THREE WEEKS WOULD BE "MOST USEFUL" IN FURTHERING THE WORK OF THE ILC. HE EXPRESSED HIS GRATITUDE TO THE COMMITTEE.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA) ANNOUNCED THAT TWO MEETINGS WERE SCHEDULED FOR MONDAY, ALTHOUGH THE JOURNAL HAD LISTED ONLY ONE. THIS CHANGE WAS NEEDED TO COMPLETE THE FIRST ITEM ON THE COMMITTEES AGENDA AS SOON AS POSSIBLE.

THE MEETING ADJOURNED AT 12:55 P.M. UNTIL 3:00 P.M. THIS AFTERNOON.

JD-JA-JB 410P 11 OCT 63

File on 20-3-1-6

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PRESS RELEASE GA/L/1009
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 788TH MEETING (AM)
UNITED NATIONS, N.Y.

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THE SIXTH (LEGAL) COMMITTEE THIS MORNING CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION.

AY BYATEENESRESENTATIVES OF CHILE, BULGARIA, IRAQ, ARGENTINA, AUSTRALIA AND POLAND.

THE REPORT (DOC.A/5509) DEALSPRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS MOST RECENT SESSION, HELD AT GENEVA, FROM MAY TO JULY 1963, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

THE COMMITTEE HAS BEFORE IT A SEVEN-POWER DRAFT RESOLUTION (DOC.A/C.6/L.529 AND CORR.1), WHICH WOULD, IN PART, RECOMMEND THAT T ORK ON THE LAW OF TREATIES.

E.KTM DADZIE (GHANA), WHO HAD BEEN UNABLE TO TTEND PREVIOUS MEETINGS OF THE COMMITTEE DURING THIS SESSION, TODAY TOOK HIS SEAT AS VICE-CHAIRMAN OF THE COMMITTEE.

SANTIAGO BENADAVA (CHILE) SAID HIS DELEGATION ATTACHED THE "GREATEST IMPORTANCE" TO THE WORK OF THE ILC ON THE LAW OF TREATIES. HE OBSERVED THAT SOME SECTIONS OF THE DRAFT ARTICLES WERE NOT YET AN INTEGRAL PART OF INTERNATIONAL LAW, AND SUGGESTED THAT ARTICLES OF A PROCEDURAL NATURE BE DRAFTED WITH THE "GREATEST PRECISION".

THE REPRESENTATIVE OF CHILE WENT ON TO SAY THAT THERE WERE "GRAVE DEFICIENCIES" IN THE SPANISH TEXT OF THE ILC REPORT, AND HE AGREED WITH THE COMMISSION THAT DELAYS IN THE DISTRIBUTION OF DOCUMENTS SHOULD BE CORRECTED.

HIS DELEGATION, HE SAID, WOULD SUPPORT THE DRAFT RESOLUTION.

ANGUEL ANGUELOV (BULGARIA) STATED THAT WITH THE EMERGENCE OF STATES FROM THE "COLONIAL YOKE", THE LAW OF TREATIES HAD TO CORRESPOND TO THEI DIVERSE NEEDS AND TO THE REQUIREMENTS OF PEACEFUL C EVIEW, WORK ON T "MOST IMPORTANT".

MORE

DISCUSSING THE TEXTS OF THE ARTICLES THEMSELVES, MR. ANGUELOV OBSERVED THAT THE PRINCIPLE OF JUS COGENS -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF INTERNATIONAL LAW (ARTICLE 37) -- INTRODUCED A NEW MOTIVE FOR TERMINATING A TREATY. AGREEING WITH THIS PRINCIPLE, HE ADDED THAT IT WAS CONTRARY TO OLD DOCTRINE.

ARTICLE36, WHICH WOULD VOID A TREATY PROCURED BY THE THREAT OR USE OF FORCE, HAD ALSO ABANDONED TRADITIONAL THEORY, HE SAID. FURTHER EFFORTS WERE REQUIRED, HE DECLARED, TO EXTEND THESE TO THE NEED TO PROHIBIT AND CONDEMN "INEQUITABLE" TREATIES, WHICH CONFLICT WITH THE REQUIREMENTS OF EQUAL SOVEREIGNTY OF STATES.

HIS DELEGATION, HE CONCLUDED, WOULD SUPPORT THE DRAFT RESOLUTION AND WOULD VOTE IN FAVOUR OF IT.

M.K. YASEEN (IRAQ), SPEAKING OF THE LAW OF TREATIES, SAID THE CODIFICATION OF THESE LAWS CONTINUED TO ENRICH INTERNATIONAL ORDER. HIS DELEGATION, HE SAID, HAD BEEN "VERY HAPPY" WITH THE TEXTS AS A WHOLE. HOWEVER, HE WENT ON, ARTICLE 36, DEALING WITH COERCION, WAS NOT ADEQUATE.

IF IT WERE INTERPRETED, HE OBSERVED, THAT ONLY THE THREAT OR USE OF "PHYSICAL" FORCE INVALIDATED TREATIES, THEN INTERNATIONAL AGREEMENTS IMPOSED ON STATES BY ECONOMIC AND POLITICAL PRESSURE WOULD REMAIN IN EFFECT. IN HIS VIEW, COERCION, WHETHER BY THE USE OF FORCE OR BY ECONOMIC MEANS, SHOULD VOID A TREATY.

THE LATTER TYPE OF TREATY, HE ADDED, WAS MORE TO BE FEARED THESE DAYS THAN THE FORMER. THE REPRESENTATIVE OF IRAQ HOPED THAT THE ILC WOULD RECONSIDER ARTICLE 36 IN THIS LIGHT.

ON THE PRINCIPLE OF JUS COGENS, MR. YASSEN SAID THAT ARTICLE 37 HAD STRESSED AN "OBVIOUS TRUTH". IT GAVE RISE TO A COMPLEX PROBLEM, HOWEVER. IT WAS DIFFICULT TO RECONCILE THIS PRINCIPLE TO CURRENT PRACTICE, HE OBSERVED.

MR. YASSEN THEN TERMED THE DOCTRINE OF REBUS SIC STANTIBUS -- WHICH RECOGNIZES THE EFFECT ON TREATIES OF A "FUNDAMENTAL CHANGE OF CIRCUMSTANCES" (ARTICLE 44) -- THE ENFANT TERRIBLE OF INTERNATIONAL LAW. IF ACCEPTED, HE SAID, IT WOULD HELP AVOID EXTRAJURIDICAL SOLUTIONS TO TREATY DISPUTES. HOWEVER, IT HAD TO BE PRECISELY DEFINED FOR IT MIGHT GIVE RISE TO INTERNATIONAL CONTROVERSY.

CONCLUDING, THE REPRESENTATIVE OF IRAQ INDICATED HIS DELEGATIONS INTENTION TO SUPPORT THE DRAFT RESOLUTION.

MORE

HE ASKED THE COMMITTEE TO APPROVE THE WORK PROGRAMME OF THE ILC FOR 1964, AND HE SAID THAT AUSTRALIA WOULD SUPPORT THE DRAFT RESOLUTION.

E.WYZNER (POLAND), DISCUSSION ARTICLE 36, SAID THAT HE AGREED WITH THE REPRESENTATIVE OF IRAQ THAT IT SHOULD HAVE WIDER APPLICATION. HOWEVER, HE SAID, THE VOIDING OF TREATIES CONCLUDED BY FORCE MARKED AN IMPORTANT STEP FORWARD, AS COMPARED TO PAST PRACTICES. AFTICLE 36 MEANT, IN HIS VIEW, THAT STATES COULD BE DEFENDED ON THE BASIS OF OBJECTIOE NORMS OF INTERNATIONAL LAW.

TURNING TO ARTICLE 37, THE REPRESENTATIVE OF POLAND SAID THAT THE CONCEPT OF JUS COGENS WAS NOT RELATIVELY NEW, ALTHOUGH THE OPPOSTE HAD BEEN SUGGESTED IN THE COMMITTEE.

HE THEN SAID THAT PARAGRAPH 2 OF ARTICLE 40 RAISED SERIOUS DOUBTS AS TO THE ADVISABILITY OF ITS INCLUSION IN THE LAW OF TREATIES. THIS PARAGRAPH PROVIDES FOR THE TERMINATION OF MULTLATERAL TREATIES BY THE AGREEMENT OF ALL THE PARTIES AND THE CONSENT OF TWO-THIRDS OF THE SIGNATORIES, UNLESS OTHERWISE PRESCRIBED IN THE TREATY OR AFTER THE EXPIRY OF A NUMBER OF YEARS STILL UNDETERMINED.

MR. WYZNER SAID THAT PARAGRAPH 2 COULD DE FACTO CREATE A SITUATION WHERE STATES NOT PARTIES TO A TREATY WOULD BE IN A PRIVILEGED POSITION OVER STATES BOUND BY THE AGREEMENT.

ON ARTICLE 50, CONCERNING WITHDRAWAL FROM A TREATY, MR. WYZNER SAID THAT WITHDRAWAL -- PARTICULARLY FROM A BILATERAL TREATY -- COULD BE USED AS A MEANS OF ECONOMIC PRESSURE BY ONE PARTY OVER ANOTHER. THIS ARTICLE, HE SUGGESTED, SHOULD BE LIMITED AND LINKED WITH THE ASPECT OF CONSENT.

POLAND, HE DECLARED, WOULD SUPPORT THE DRAFT RESOLUTION.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), NOTED THAT 22 SPEAKERS ON THIS ITEM STILL REMAINED TO BE HEARD. IN ADDITION, HE SAID, FIVE SPEAKERS HAD ASKED TO BE INCLUDED AFTER THE LIST HAD BEEN CLOSED. THE COMMITTEE DECIDED TO INCLUDE THE ADDITIONAL FIVE.

THE MEETING ADJOURNED AT 12:20 P.M. UNTIL 10:30 A.M., TOMORROW, 11 OCTOBER.

JB 350P 10 OCT 63

TURNING TO THE SECTION OF THE REPORT DEALING WITH THE RESPONSIBILITY OF STATES, MR. IANESCU STATED THAT SUCH RESPONSIBILITY WENT BEYOND THE TREATMENT OF FOREIGNERS. TO REDRESS DAMAGES CAUSED BY A STATE, HE SAID, "CERTAIN SANCTIONS ARE JUSTIFIABLE". THIS INCLUDED NOT ONLY PENAL SANCTIONS, HE CONTINUED; COLLECTIVE SANCTIONS TO REPRESS ACTS OF AGGRESSION MIGHT BE NECESSARY, AS PROVIDED FOR IN ARTICLES 39 TO 44 IN THE CHARTER OF THE UNITED NATIONS. HE CALLED ON THE ILC TO "ARRIVE AT GENERAL PRINCIPLES ON STATE RESPONSIBILITY".

THE REPRESENTATIVE OF ROMANIA ALSO DISCUSSED THE PART OF THE REPORT DEALING WITH SUCCESSION OF STATES AND GOVERNMENTS. IN THIS CONNEXION, HE SAID, TREATIES PREVIOUSLY CONCLUDED BY "COLONIAL STATES" COULD NOT PREJUDICE THE INDEPENDENCE OF A NEWLY EMERGING STATE, WHICH SHOULD BE BOUND ONLY BY "THOSE TREATIES IT IS WILLING TO ACCEPT".

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ADJOURNED THE MEETING AT 12:05 P.M. UNTIL TOMORROW, FRIDAY, 4 OCTOBER, AT 10:30 A.M.

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PRESS RELEASE GA/L/1008
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 787TH MEETING (AM)
UNITED NATIONS, N.Y.

DEBATE ON INTERNATIONAL LAW COMMISSION REPORT CONTINUES IN SIXTH COMMITTEE

THE REPRESENTATIVES OFFRANCE, USSR, CZECHOSLOVAKIA AND IRAN THIS MORNING MADE STATEMENTS BEFORE THE SIXTH (LEGAL) COMMITTEE, WHICH IN CONSIDERING THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION.

THE REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES, OF WHICH THE FIRST 29 DRAFT ARTICLES WERE ADOPTED LAST YEAR BY THE ILC. AT ITS MOST RECENT SESSION, HELD AT GENEVA, MAY TO JULY 1963, THE COMMISSION APPROVED A FURTHER 25 DRAFT ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES. A SEVEN-POWER DRAFT RESOLUTION (DOC. A/C.6/L.529 AND CORR.1), WHICH WOULD, IN PART, RECOMMEND THAT THE ILC CONTINUE ITS WORK ON THE LAW OF TREATIES, WAS SUBMITTED 7 OCTOBER TO THE COMMITTEE.

PHILIPPE MONOD (FRANCE) STATED THAT HE WAS NOT, AT THIS TIME, PREPARED TO COMMENT IN DETAIL ON THE LAW OF TREATIES. HOWEVER, HE SAID HE COUND A "CARTESIAN LIGHT" IN THE WAY THE ARTICLES HAD BEEN DRAFTED.

COMMENTING ON THE PHRASEOLOGY OF ARTICLE 33, HE SAID THE ILC HAD RIGHTLY POINTED OUT THE DIFFICULTIES IN RECONCILING THE ENGLISH WORD "FRAUD" AND THE FRENCH WORD "DOL". THIS WAS, HE ADDED, NOT A MATTER OF LANGUAGE BUT ONE OF CONCEPT.

HE SAID HE WAS "THANKFUL" THAT WHILE THE ILC HAD NOT BEEN IN FULL AGREEMENT, THE DRAFT ARTICLES WERE NOT THE "FRUITS OF COMPOMISE".

THE REPRESENTATIVE OF FRANCE WENT ON TO SAY THAT THE CODIFICATION OF INTERNATIONAL LAW HAD CERTAIN LIMITATIONS. TIME AND EXPERIENCE AND THE HISTORY OF INTERPRETATIONS WERE NEEDED. HE SPOKE SIMILARLY OF THE PRINCIPLE OF JUS COGENS -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF INTERNATIONAL LAW "ARTICLE 37) -- SAYING THAT JURISPRUDENCE AND PRACTICE HAD TO COMPLETE THE CODIFICATION.

TURNING TO ARTICLE 44, HE TATED THAT THE DOCTRINE OF REBUS SIC STANTIBUS, RECOGNIZING THE EFFECT ON TREATIES OF A "FUNDAMENTAL CHANGE OF CIRCUMSTANCES", WHICH FORMERLY HAD AN "UNSAVOURY REPUTATION", NOW APPEARED FOR THE FIRST TIME WITH "DIGNITY" IN A DRAFT TEXT THAT MAY ONE DAY BE BROUGHT INNTO LAW -- WHETHER ONE AGREED WITH THIS PRINCIPLE OR NOT, HE ADDED.

MORE

FOR RAISING THE ISSUE. THE REPRESENTATIVE OF FRANCE SUGGESTED THAT THE DRAFT, IN ITS FINAL FORM, COULD BE IMPROVED IF IT WERE PRUNED AND SIMPLIFIED. HE SAID HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION.

PLATON D. MOROZOV (USSR) SAID THAT HIS DELEGATION HAD EXPRESSED THE DESIRE THAT THE PROGRESSIVE TENDENCY REFLECTED IN THE WORK OF THE ILC SHOULD BE STRENGTHENED. THE SOVIET UNIONS POLICY REGARDING INTERNATIONAL LAW WAS BADED ON THE PRINCIPLE OF "STRICT RESPECT" FOR TREATIES, HE SAID. WITHOUT INTERNATIONAL LAW THERE COULD BE NO CONFIDENCE AMONG STATES, HE ADDED, AND WITHOUT CONFIDENCE THERE COULD NOT BE PEACEFUL CO-EXISTENCE.

ON AETICLE 36, WHICH WOULD VOID A TREATY PROCURED BY THE THREAT OR USE OF FORCE, THE REPRESENTATIVE OF THE USSR SAID THAT "17853 RIGHTLY", SUCH A TREATY HAD NO JURIDICAL VALUE. THE STRENGTHENING OF PEACE AND SECURITY, HE WENT ON, AND THE PROMOTION OF CO-OPERATION AMONG STATES REQUIRED THE OBSERVANCE OF ARTICLE 36.

HIS DELEGATION, HE SAID, ALSO WANTED TO STRESS THE IMPORTANCE OF ARTICLE 37 AND THE PRINCIPLE OF JUS COGENS.

AS A RESULT OF THE DOING AWAY WITH "COLONIALISM", HE CONTINUED, MANY NEW STATES HAD EMERGED WITH TREATIES IMPOSED UPON THEM BY THE THREAT OF FORCE. THESE EXISTED AS INEQUITABLE ECONOMIC AND MILITARY AGREEMENTS. UNFORTUNATELY, HE SAID, THERE WERE TODAY TREATIES THAT GUARANTEED THE CONTINUANCE OF "FOREIGN MONOPOLIES". THIS UNDERMINED THE EQUALITY OF STATES AND IMPEDED THE ATTAINMENT OF PEACE. THE REFUSAL TO PARTICIPATE IN SUCH TREATIES WOULD FURTHER THE INDEPENDENCE OF STATES, HE DECLARED.

ON THE QUESTION OF RESPONSIBILITY OF STATES, COVERED IN THE ILC REPORT, MR. MOROZOV SAID THAT SERIOUS VIOLATIONS HAD OCCURRED IN THIS AREA, SUCH AS THE LOSS BY STATES OF THE RIGHT TO CONTROL THEIR OWN RESOURCES. A BROADER APPROACH BY THE ILC TO THIS QUESTION WAS NEEDED, HE SAID.

ON THE SUCCESSION OF STATES AND GOVERNMENTS, IT WAS HIS VIEW THAT THE YOUNG STATES OF AFRICA AND ASIA WERE "VERY CONSCIOUS" OF THE KINDS OF LAWS THAT HAD BEEN "IMPOSED UPON THEM" BY THE FORMER "COLONIAL" POWERS. THESE STATES WANTED TO DEVELOP THEIR COUNTRY INDEPENDENTLY, AND THE SOVIET UNION, ACCORDINGLY, ATTACHED "GREAT IMPORTANCE" TO THIS QUESTION.

THE SOVIET UNION, HE CONCLUDED, SUPPORTED THE DRAFT RESOLUTION AND WOULD VOTE IN FAVOUR OF IT.

MORE

V. PECHOTA (CZECHOSLOVAKIA) SAID THE WORK F THE ILC ON THE CODIICATION OF INTERNATIONI LAW HAD NEVER BEEN MORE URGENT. THE DRAFT ARTICLES, AS A WHOLE, HE SAID, WERE ACCEPTABLE TO HIS DELEGATION.

COMMENTING ON ARTICLE 31 -- PROVISIONS OF INTERNAL LAW REGARDING COMPETENCE OF A STATE TO ENTER INTO TREATIES -- HE SAID HE SHARED THE VIEW THAT THE TEXT OF THE ARTICLE HAD BEEN A BALANCED COMPROMISE BETWEEN TWO SCHOOLS OF THOUGHT.

HE "NOTED WITH APPRECIATION" THAT IN ARTICLES 36 AND 37 ON THE INVALIDITY OF TREATIES PROCURED BY FORCE AND THE EXISTENCE OF PEREMPTORY NORMS, THE ILC HAD "STOOD ON THE SIDE OF JUSTICE".

THE MEMORIES OF THE "IGNOMINIOUS" MUNICH PACT STILL REMAINED IN THE MINDS OF THE PEOPLE OF CZECHOSLOVAKIA, HE SAID. THE MUNICH AGREEMENT WAS A SYMBOL TO CZECHS OF ARBITRARINESS AND LAWLESSNESS, HE DECLARED.

MR. PECHOTA SAID THAT THE ACCEPTANCE OF THE PRINCIPLE OF JUS COGENS WAS A ZREMARKABLE STEP" IN THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW. ARTICLES 36 AND 37 EXTENDED ALSO TO "UNEQUAL" TREATIES, IN HIS OPINION. THESE, HE SAID, WERE TREATIES WHOSE EXISTENCE WERE INTOLERABLE FROM THE POINT OF VIEW OF SELF-DETERMINATION OF STATES. THEY CONSTITUTED A THREAT TO PEACE AND SECURITY.

INTERNATIONAL LAW, HE WENT ON, SHOULD OFFER GUARANTEES AGAINST "UNEQUAL" TREATIES.

HE TERMED THE PRINCIPLE OF REBUS SIC STANTIBUS A "SOUND" ONE AND A "SAFETY VALVE" FOR TREATY LAWS.

THE REPRESENTATIVE OF CZECHOSLOVAKIA SAID HIS DELEGATION WOULD SUPPORT THE DRAFT RESOLUTION.

MOHAMMAD ALI HEDAYATI (IRAN), SPEAKING ON THE QUESTION OF STATE RESPONSIBILITY, SAID IT APPEARED THAT THE SUB-COMMITTEE REPORTING ON THIS MATTER HAD COVERED ONLY DAMAGES CAUSED TO ALIENS AND RESPONSIBILITIES CONCERNING THE NATIONALIZATION OF PROPERTY. ANOTHER IMPORTANT MATTER, HE SAID, WAS THE QUESTION OF WHO WOULD PAY INDEMNITIES FOR DAMAGE ON FOREIGN TERRITORIES BY NUCLEAR EXPERIMENTS.

CONTINUING, HE ASKED WHY THE SUB-COMMITTEE HAD NOT DEALT WITH THE RESPONSIBILITY OF STATES WITH REGARD TO SUCH INTERNATIONAL CRIMES AS A WAR OF AGGRESSION. THE PROBLEMS OF INTERNATIONAL CRIMES AGAINST PEACE AND AGAINST HUMANITY SHOULD BE STUDIED, HE SAID.

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OFFERING HIS OBSERVATIONS OF THE DRAFT ARTICLES OF THE LAW OF TREATIES, THE REPRESENTATIVE OF IRAN SAID THAT THE TERM "MANIFEST" IN ARTICLE 31 NEEDED CLARIFICATION. LEGISLATIVE TERMS HAD TO BE CONCRETE, HE STATED.

ON ARTICLE 44, HE SAID THAT THE TEXT SHOULD NOTE THAT THE BREAKING OF DIPLOMATIC RELATIONS DID NOT AFFECT TREATY OBLIGATIONS.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ADJOURNED THE MEETING AT 12:20 P.M., AFTER NOTING THAT THERE WERE 27 SPEAKERS ON HIS LIST FOR THE REMAINDER OF THE WEEK. HE AGAIN INDICATED HIS DESIRE TO MOVE ON, IF POSSIBLE, TO THE NEXT ITEM ON THE COMMITTEES AGENDA ON MONDAY. THE COMMITTEE WILL RECONVENE TOMORROW, 10 OCTOBER, AT 10:30 A.M.

JA&JB 450P 9 OCT 63

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PRESS RELEASE GA/L/1004
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 783RD MEETING (AM)
UNITED NATIONS, N..6.

SIXTH COMMITTEE DEBATE ON ILC REPORT CONTINUES

STATEMENTS BY THE REPRESENTATIVES OF INDIA, COLOMBIA, CYPRUS AND ROMANIA WERE HEARD THIS MORNING AS THE SIXTH (LEGAL) COMMITTEE CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (IOC) ON THE WORK OF ITS FIFTEENTH SESSION.

THE REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES. THE ILC LAST YEAR PROVISIONALLY ADOPTED THE FIRST 29 ARTICLES OF THE LAW OF TREATIES. AT ITS MOST RECENT SESSION, HELD AT GENEVA, MAY TO JULY 1963, IT APPROVED PROVISIONALLY A FURTHER 25 ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

SHANKARRAO SHANTARAM MORE (INDIA) STATED THAT THE EMERGENCE OF NEW STATES ON THE INTERNATIONAL SCENE AND THE "RAPID DISINTEGRATION OF COLONILAISM" MADE IT NECESSARY THAT THE LAW OF TREATIES BE FRAMED WITH "SPEED AND DISPATCH". THE ILC HAD REALIZED THIS URGENCY, HE SAID. "SPEED, HOWEVER, DOES NOT MEAN HASTE".

COMMENTING ON THE TESTS OF INDIVIDUAL DRAFT ARTICLES IN THE REPORT, HE SAID THAT IN ARTICLE 39 -- ON TREATIES CONTAINING NO PROVISION REGARDING THEIR TERMINATION -- IT MAY BE DIFFICULT TO DETERMINE WHICH TREATIES ARE BINDING.

ARTICLE 40, HE WENT ON TO SAY, GRANTED "UNNECESSARY PRIVILEGES" TO A STATE WHICH DREW UP A TREATY BUT DID NOT SIGN IT. THIS ARTICLE CONCERNS THE TERMINATION OR SUSPENSION OF TREATIES BY AGREEMENT. PARAGRAPH 2 STATES, IN PART: "THE TERMINATION OF A MULTILATERAL TREATY ... SHALL REQUIRE, IN ADDITION TO THE AGREEMENT OF ALL THE PARTIES, THE CONSENT OF NOT LESS THAN TWO-THIRDS OF ALL THE STATES WHICH DREW UP THE TREAT ..."

DIEGO URIBE (COLOMBIA ASSERTED THAT "IMPORTANT PROGRESS" HAD BEEN MADE BY THE ILC IN DRAFTING THE PART OF THE LAW OF TREATIES WHICH WOULD INVALIDATE TREATIES CONCLUDED BY THREAT OR USE OF FORCE.

UNDER ARTICLE 33, ON "FRAUD", MR. URIBE BELIEVED IT WOULD BE ADVISABLE TO DEFINE THE WORD "FRAUD" WITHIN THE TEXT OF THE ARTICLE ITSELF, SO AS TO AVOID FUTURE DIFFERENT INTERPRETATIONS.

MORE

ON ARTICLE 39, THE REPRESENTATIVE OF COLOMBIA SAID THAT TERMINATION WAS VALID ONLY IN ITS EXPLICIT FORM. WITHOUT SUCH A CLAUSE, HE SAID, "INDEFINITE DURATION" WAS TO BE PRESUMED.

THE DOCTRINE OF REBUS SIC STANTIBUS, WHICH RECOGNIZES THE EFFECT ON TREATIES OF A "FUNDAMENTAL CHANGE OF CIRCUMSTANCES" (ARTICLE 44), WAS NOT ACCEPTED IN INTERNATIONAL LAW, HE SAID. TO INTRODUCE THIS PRINCIPLE WAS TO INTRODUCE INSTABILITY.

A.J. JACOVIDES (CYPRUS) SAID HIS DELEGATION AGREED WITH ARTICLE 31. THIS WOULD NOT INVALIDATE A TREATY ENTERED INTO BY A STATE, ALTHOUGH IT HAD NOT COMPLIED WITH ITS OWN INTERNAL LAW, UNLESS THE VIOLATION WAS "MANIFEST".

MR. JACOVIDES SAID IT WOULD, IN FACT, NOT BE DESIRABLE TO ADMIT ANY EXCEPTION. FROM A LEGAL STANDPOINT, HE SAID, "MANIFEST" PRESENTED DIFFICULTIES. ON WHAT JURIDICAL BASIS, HE ASKED, IS AN INTERNAL LAW MANIFEST OR NON-MANIFEST?

HE SAID HIS DELEGATION AGREED WITH ARTICLE 36 ON THE INVALIDITY OF TREATIES CONCLUDED BY THE USE OF THREAT OF FORCE. ARTICLE 2, PARAGRAPH 4 OF THE CHARTER OF THE UNITED NATIONS "CLEARLY ESTABLISHES" THIS PRINCIPLE. SIMILARLY, MR. JACOVIDES ADDED, HIS DELEGATION "WARMLY" WELCOMED THE WORDING OF ARTICLE 37 -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF INTERNATIONAL LAW (JUS COGENS). VIEWS AGAINST THE PRINCIPLE OF JUS COGENS, HE SAID, "MUST BE DISCARDED". CITING, AS AN EXAMPLE OF A VIOLATION OF "PEREMPTORY NORMS" IN MUNICIPAL LAW, THE INVALIDITY OF AGREEMENT TO COMMIT A CRIME, HE SAID SUCH TREATIES MUST BE "TOTALLY INVALID". STATES WERE NOT "COMPETENT TO DEROGATE PEREMPTORY NORMS", HE DECLARED.

COMMENTING ON ARTICLE 39, THE REPRESENTATIVE OF CYPRUS SAID DENUNCIATION OR WITHDRAWAL WAS, CONTRARY TO SOME VIEWS, PERMISSIBLE UNDER CERTAIN CIRCUMSTANCES. IN TREATIES OF ALLIANCE, A RIGHT OF WITHDRAWAL SHOULD BE IMPLIED.

ON THE DOCTRINE OF REBUS SIC STANTIBUS, MR. JACOVIDES SAID IT PROVIDED AN "ESSENTIAL SAFETY VALVE" FOR THE LAW OF TREATIES.

TRAIAN IONASCU (ROMANIA) SAID ARTICLE 31 RAISED A "GREAT DIFFICULTY". A STATE COULD NOT BE BOUND IN A TREATY BY SOMEONE NOT REPRESENTING IT. HOWEVER, ANOTHER STATE DID NOT HAVE THE RIGHT TO VERIFY REPRESENTATION. OBJECTIVE CRITERIA WERE NEEDED, HE SAID.

HIS DELEGATION AGREED WITH ARTICLES 36 AND 37, WHICH "WILL ENFORCE RESPECT FOR INTERNATIONAL LEGALITY".

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PRESS RELEASE GA/L/1006
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 785TH MEETING (AM)
UNITED NATIONS, N.Y.

SIX-POWER RESOLUTION ON LAW COMMISSION REPORT INTRODUCED IN SIXTH COMMITTEE

A DRAFT RESOLUTION COVERING THE SIXTH (LEGAL) COMMITTEES FIRST ITEM ON ITS AGENDA, REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION, WAS INTRODUCED THIS MORNING AT THE COMMITTEES MEETING.

STATEMENTS WERE MADE BY THE REPRESENTATIVES OF GUATEMALA, CEYLON AND INDONESIA, WHO ARE CO-SPONSORS, WITH CANADA, COLOMBIA, CYPRUS AND INDIA, OF THE RESOLUTION (DOC. A/C.6/L.529).

THE ILC REPORT (DOC. A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES. THE FIRST 29 ARTICLES WERE PROVISIONALLY ADOPTED LAST YEAR BY THE COMMISSION. AT ITS MOST RECENT SESSION, HELD AT GENEVA, MAY TO JULY 1963, IT APPROVED PROVISIONALLY A FURTHER 25 ARTICLES. THESE COVER THE INVALIDITY AND TERMINATION OF TREATIES.

ROBERTO HERRERA (GUATEMALA) DISCUSSED THE DRAFT RESOLUTION, WHICH WOULD, IN PART, RECOMMEND THAT THE ILC CONTINUE ITS WORK ON THE LAW OF TREATIES, THE RESPONSIBILITY OF STATES AND THE SUCCESSION OF STATES AND GOVERNMENTS.

TURNING TO THE SUBSTANCE OF THE ILC REPORT ON THE INVALIDITY AND TERMINATION OF TREATIES, HE SAID GUATEMALA WELCOMED THE PROVISIONS IN THE DRAFT ACCEPTING THE PRINCIPLE OF JUS COGENS -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF INTERNATIONAL LAW (ARTICLE 37). HIS DELEGATION, HE SAID, APPROVED ALSO OF ARTICLE 36, WHICH WOULD VOID A TREATY CONCLUDED BY THE THREAT OR USE OF FORCE.

E.R.S.R. COOMERASWAMY (CEYLON) SAID HE WAS SPEAKING IN HIS CAPACITY AS A CO-SPONSOR OF THE DRAFT RESOLUTION. HE INFORMED THE COMMITTEE THAT THE REPRESENTATIVE OF CANADA, ALSO A CO-SPONSOR, HAD "POINTED OUT" TO HIM A "SLIGHT ERROR" IN THE DRAFT, WHICH REQUIRED THE INSERTION OF THE WORDS "AND ITS WORK ON" BETWEEN THE WORD "TREATIES" AND "STATE" IN THE THIRD PREAMBULAR PARAGRAPH OF THE RESOLUTION.

MISS E.H. LAURENS (INDONESIA) SAID THE ILC WORK ON THE LAW OF TREATIES WAS "A VALUABLE PIECE OF WORK." HER DELEGATION WELCOMED THE CONCLUSION THAT TREATIES

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ARE INVALID IF PROCURED BY THE THREAT OR USE OF FORCE (ARTICLE 36). THIS WAS A "FAR-REACHING STEP", SHE SAID, TOWARRD THE ELIMINATION OF "UNEQUAL" TREATIES.

HOWEVER, SHE CONTINUED, THE ILC SEEMED NOT TO HAVE TOUCHED ON THE SITUATION WHERE THE THREAT OR USE OF FORCE HAD BEEN MADE BY A THIRD STATE, NOT A PARTY TO A TREATY AND "SEEMINGLY NOT DIRECTLY INVOLVED". THIS WAS A SITUATION, THE REPRESENTATIVE OF INDONESIA DECLARED, WHICH, "UNHAPPILY IS NOT PURELY THEORETICAL". IT REQUIRED, IN HER OPINION, CAREFUL ATTENTION. SHE HOPED THAT ARTICLE 36 WOULD ALSO COVER THE THREAT TO "STRANGLE THE ECONOMY" OF A COUNTRY.

AS FOR ARTICLE 37 AND THE DOCTRINE OF JUS COGENS, SHE SAID HER DELEGATION AGREED WITH THAT PRINCIPLE, AND EXPRESSED THE HOPE THAT IT WOULD BE MORE WIDELY PRACTISED.

ON THE QUESTION OF SUCCESSION OF STATES AND GOVERNMENTS, SHE HOPED THAT THE ILC WOULD GIVE SPECIAL ATTENTION TO THE "PROCESS OF DECOLONIZATION".

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), ANNOUNCED THAT THE LIST OF SPEAKERS ON THE ILC REPORT WOULD BE CLOSED AT 1:00 P.M. TOMORROW, 8 OCTOBER. THE MEETING WAS ADJOURNED AT 11:15 A.M. UNTIL TOMORROW AT 10:30 A.M.

JA 215P 7 OCT 63

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PRESS RELEASE GA/L/1006
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 785TH MEETING (AM)
UNITED NATIONS, N.Y.

SIX-POWER RESOLUTION ON LAW COMMISSION REPORT
INTRODUCED IN SIXTH COMMITTEE

A DRAFT RESOLUTION COVERING THE SIXTH (LEGAL) COMMITTEES FIRST ITEM ON ITS AGENDA, REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION, WAS INTRODUCED THIS MORNING AT THE COMMITTEES MEETING.

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JA 215P 7 OCT 63

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20-3-1-6 Seen by Mr. Cadieux

PRESS RELEASE GA/L/1003
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 782ND MEETING (AM)
UNITED NATIONS, N.Y.

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LEGAL COMMITTEE CONTINUES DEBATE ON INTERNATIONAL LAW COMMISSION REPORT

THE SIXTH (LEGAL) COMMITTEE THIS MORNING CONTINUED ITS CONSIDERATION OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) ON THE WORK OF ITS FIFTEENTH SESSION.

STATEMENTS ON THE REPORT WERE MADE BY THE REPRESENTATIVES OF EL SALVADOR AND YUGOSLAVIA.

THE REPORT (DOC.A/5509) DEALS PRIMARILY WITH THE DRAFTING OF THE LAW OF TREATIES. THE ILC LAST YEAR PROVISIONALLY ADOPTED THE FIRST 29 ARTICLES OF THE LAW OF TREATIES. AT ITS MOST RECENT SESSION, HELD AT GENEVA, 6 MAY TO 12 JULY 1963, IT APPROVED PROVISIONALLY A FURTHER 25 ARTICLES. THESE DEAL WITH THE INVALIDITY AND TERMINATION OF TREATIES.

RICARDO GALLARDO (EL SALVADOR), DISCUSSING THE TEXTS OF INDIVIDUAL ARTICLES, SAID THAT THE SPANISH TRANSLATION "SLIGHTLY DISTORTS" THE REPORT FROM A JURIDICAL STANDPOINT. HE SUGGESTED CERTAIN WORDS IN THE SPANISH TEXT BE REPLACED WITH OTHERS.

COMMENTING ON ARTICLE 31, WHICH WOULD NOT INVALIDATE A TREATY ENTERED INTO BY A STATE, ALTHOUGH IT HAD NOT COMPLIED WITH ITS OWN INTERNAL LAW, UNLESS THE VIOLATION WAS "MANIFEST", MR. GALLARDO SAID IT WAS "WORTHY OF THE GREATEST PRAISE" AND THAT IT ADVANCED THE "WHOLE OF THE SCIENCE OF INTERNATIONAL PUBLIC LAW".

ON THE QUESTION OF "FRAUD" (ARTICLE33), THE REPRESENTATIVE OF EL SALVADOR SAID THAT FRAUD MAY BE COMMITTED BY A THIRD STATE, NOT A PARTY TO A TREATY, AND THAT THIS EVENT WAS NOT COVERED BY THE DRAFT. PERHAPS, HE SAID, SPECIFIC REFERENCE TO THIS WOULD BE ADVISABLE.

UNDER ARTICLE 47, WHICH BEGINS: "LOSS OF A RIGHT TO ALLEGE THE NULLITY OF A TREATY...", HE ASSERTED THAT THE WORD "LOSS" HAD NO SPECIFIC LEGAL MEANING.

CONTINUING HIS COMMENTARY ON THIS ARTICLE, HE SAID THAT FOR THE FIRST TIME "BAD FAITH" HAD BEEN ACCEPTED AS CAUSE FOR INVALIDATION. THIS IMPLIED, HE SAID, THAT "IGNORANCE" WAS CONSIDERED "GOOD FAITH".

ARTICLE 52 -- ON THE LEGAL CONSEQUENCES OF THE NULLITY OF A TREATY -- REFERS TO ACTS PERFORMED IN "GOOD FAITH". MR. GALLARDO STATED THAT IT WAS NOT UP TO A STATE TO PROVE "GOOD FAITH". IT SHOULD BE THE BURDEN OF THE OTHER PARTY, HE SAID, TO PROVE "BAD FAITH".

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BORISLAV BLAGOJEVIC (YUGOSLAVIA) SAID THE WORK OF THE ILC, IN CODIFYING INTERNATIONAL LAW, HAD BECOME "MORE IMPORTANT" BECAUSE "THE IMPROVEMENT OF INTERNATIONAL RELATIONS SEEMS TO BE AN ESTABLISHED FACT". THIS COULD NOW BE EXPRESSED IN THE FIELD OF LAW, HE SAID. INTERNATIONAL CO-OPERATION AND INSURING THE "GUARANTEE OF PEACEFUL CO-EXISTENCE" COULD BE REINFORCED.

TURNING TO THE ILC REPORT, MR. BLAGOJEVIC OBSERVED THAT IT WAS "IMPORTANT THAT FUTURE TREATIES SHOULD BE DRAFTED TO RALLY THE SUPPORT OF MOST STATES -- IF NOT ALL STATES". THE ILC HAD SHOWN THIS "KIND OF THINKING", HE SAID.

ON THE LAW OF TREATIES, THE REPRESENTATIVE OF YUGOSLAVIA SAID THE PROBLEM OF COMPETENCE, UNDER ARTICLE 31, HAD TO BE SOLVED. THE PROBLEM "HANGS LIKE A SWORD OF DAMOCLES OVER INTERNATIONAL LAW".

A TREATY CAN BE VALID ONLY IF BOTH THE INTERNAL LAWS OF THE STATES AND INTERNATIONAL LAWS ARE OBSERVED, HE DECLARED. TREATIES CONCLUDED CONTRARY TO INTERNAL LAW WOULD NOT BE BINDING, IN HIS VIEW.

COMMENTING ON THE PRINCIPLE OF JUS COGENS (ARTICLE 37) -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF INTERNATIONAL LAW -- MR. BLAGOJEVIC ASSERTED THAT SPECIAL STRESS SHOULD BE LAID ON THIS POINT, WHICH WAS "EMBODIED IN THE VERY EXISTENCE OF THE UNITED NATIONS".

IT WAS IMPORTANT TO NOTE, TOO, HE SAID, THAT THE INVALIDITY OF TREATIES CONCLUDED B THE THREAT OR USE OF FORCE WAS RECOGNIZED IN INTERNATIONAL LAW. "A STATE MAY NOT BE LED TO COMMIT AN ACT CONTRARY TO ITS OWN INTERESTS", HE CONTINUED.

ARTICLES 39 TO 44, HE WENT ON TO SAY, PLACED TREATIES WITHIN THE "FRAMEWORK OF TIME AND SPACE AND HISTORICAL CHANGE". THIS CONCEPT WAS WORTHY OF THE COMMITTEES SUPPORT. THE ILC HAD DONE A "GREAT AND IMPORTANT TASK", HE CONCLUDED.

THE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), BEFORE ADJOURNING THE MEETING, SAID HE HAD RECEIVED NEWS OF THE DEATH OF A FORMER MEMBER OF THE SIXTH COMMITTEE, JACQUES PATEY OF FRANCE, AND HE PAID HIS RESPECTS ON BEHALF OF THE COMMITTEE.

THE COMMITTEE ADJOURNED AT 11:40AM. IT WILL RECONVENE TOMORROW, 3 OCTOBER, AT 10:30AM WITH COLOMBIA AND INDIA LISTED TO SPEAK.

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TO EXTERNAL 1343 OPIMMED

REF OURTEL 1342 OCT3

18TH UNGA:SIXTH CTTEE-ILC REPORT-PROPOSED STATEMENT

WE PROPOSE TO MAKE STATEMENT ALONG FOLLOWING LINES MON OCT7 UNLESS YOU HAVE OBJECTIONS.

2.WE HAVE NO RPT NO COMMENTS AT THIS POINT ON SUBSTANCE OF DRAFT LAW OF TREATIES.WRITTEN COMMENTS WILL BE MADE IN DUE COURSE BY CGN GOVT.TRIBUTE TO WORK DONE BY ILC AND TO ITS PROGRESSIVE APPROACH WHILE NOT RPT NOT LOSING SIGHT OF LEGAL CHARACTER OF ITS TASK.REF WAS MADE BY OTHER SPEAKERS TO EVENTUAL CONVENING OF CONFERENCE ON SUBJECT.WHILE,IN OUR VIEW,BETTER APPRECIATION OF THIS WILL BE POSSIBLE WHEN THIRD PART OF DRAFT CODE COMPLETED, WE BELIEVE IN IMPORTANCE OF ALLOWING SUFFICIENT TIME FOR FULLEST DISCUSSION OF DRAFT CODE AS WHOLE BY SIXTH CTTEE.

3.NON-RESORT TO FORCE AND JUS COGENS IN GENERAL,AS RAISED BY DRAFT ARTS 36,37 AND 45,BRING IN NOTION OF INTERNATIONAL PUBLIC ORDER.THUS IN ITS CODIFICATION WORK UN IS COMING ACROSS AGAIN IN VIVID FASHION TO FUNDAMENTAL POSTULATES AND PRINCIPLES CONTAINED IN CHARTER.BY DIFFERENT ROUTE SIXTH CTTEE HAS RETURNED TO STUDY OF THESE,AFTER AN INTERVAL.RULE OF LAW IS SEEN AGAIN NO RPT NO LONGER AS IDEAL BUT AS NECESSITY.NEW LOOK IS THUS TO BE TAKEN AT CONTENTS OF JUS COGENS UNDER THE CHARTER,AT SUCH LIMITATIONS OF SOVEREIGNTY AS IT MIGHT IMPLY AND AT PROCEDURES TO PERMIT ITS CONCRETE APPLICATION.REFER TO CONCEPT OF INTERDEPENDENCE AS EXPRESSED LATELY IN ADDISABABA CHARTER.

4.APPROVE ILC DECISION IN STUDY OF SUCCESSION OF STATES,TO PUT ACCENT ON ITS RELATIONSHIP TO LAW OF TREATIES.NOTE PROGRESS ON OTHER ITEMS AND STRESS RESPECT FOR WIDE DISCRETION TI ILC IN GOING ABOUT ITS WORK.RE PLAN OF WORK SUBMITTED BY RAPPORTEUR ON INTER-

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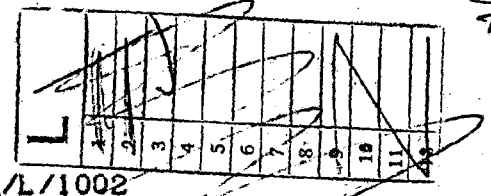
GOVERNMENTAL ORGANIZATIONS:NOTE ORIGINAL LEGAL PERSONALITY OF THESE AS EVOLVED IN FIELDS OF INTERNATIONAL COOPERATION AND PEACEKEEPING OPERATIONS AND DEFINED BY ICJ.

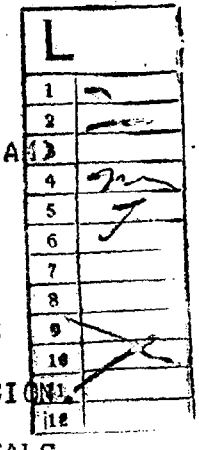
5.ILC HAS FOUND IT NECESSARY,IN ORDER NOT RPT NOT TO DELAY FURTHER LAW OF TREATIES WHILE MTG OTHER CURRENT COMMITMENTS,TO HOLD WINTER MTG.WHILE IT WILL BE UP TO FIFTH CTTEE TO DECIDE ON MAKING FUNDS AVAILABLE,WE CONSIDER THAT,IN CIRCUMSTANCES,ILC HAD NO RPT NO ALTERNATIVE AS LONGER SUMMER SESSION WOULD NOT RPT NOT BE PRACTICABLE SOLUTION.

6.COOPERATION WITH OTHER BODIES.ILC REPORT FAILS TO STATE CLEARLY WHAT IS PROBLEM.IF WE MAY UNDERSTAND THIS TO REFER TO CIRCULATION OF DOCUS BY ILC TO OTHER UN BODIES AND ORGANIZATIONS IN CONSULTATIVE STATUS,WITHIN MEANING OF ART 26 OF ILA STATUTE,WE CAN ONLY NOTE THAT REQUIREMENTS OF EFFICIENCY AND ECONOMY UNDERLINED IN VARIOUS GA RESLNS CALL INEVITABLY FOR KEEPING THIS WITHIN MANAGEABLE PROPORTIONS.

7.WE RESERVE RIGHT TO MAKE SEPARATE STATEMENT ON CHAPTER III OF REPORT,NAMELY QUESTION OF EXTENDED PARTICIPATION IN LEAGUE OF NATIONS CONVENTIONS,A SEPARATE AGENDA ITEM.

8.WE ARE COSPONSORING(WITH UK AND OTHERS)CEYLON DRAFT RESLN APPROVING REPORT AND COMMENDING WORK OF ILC.°°°°





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PRESS RELEASE GA/L/1002
EIGHTEENTH GENERAL ASSEMBLY - SIXTH COMMITTEE, 781ST MEETING (AM)
UNITED NATITNS, N.Y.

SIXTH COMMITTEE CONTINUES CONSIDERATION
OF ILC REPORT

THE REPRESENTATIVE OF THE NETHERLANDS WAS HEARD THIS MORNING AS THE SIXTH (LEGAL) COMMITTEE CONTINUED ITS CONSIDERATION OF THE OF THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS FIFTEENTH SESSION.

THE REPORT OF THE ILC (DOC. A/5509) IS THE FIRST ITEM ON THE COMMITTEES AGENDA FOR THE CURRENT GENERAL ASSEMBLY SESSION. IT DEALS PRIMAR

LAST YEAR, THE ILC PROVISIONALLY ADOPTED THE FIRST 21 ARTICLES OF THE LAW OF TREATIES. AT ITS MOST RECENT SESSION, HELD AT GENEVA, 6 MAY TO

THESE DEAL WITH INVALIDITY AND TERMINATION OF TREATIES.

A.J.P. TAMMES (NETHERLANDS) DISCUSSED SOME OF THESE ARTICLES.

UNDER ARTICLE 31, WHICH DEALS WITH THE INTERNAL LAWS OF STATES REGARDING THEIR CTMPETENCE TO ENTER INTO TREATIES, HE SAID THE "CONFLICT BET

HE SAID THERE WERE DIVERGENCIES OF VIEWS BETWEEN THE REPORT OF THE SPECIAL RAPPORTEUR (DOC. A/CN.4/156) AND THE TEXT OF ARTICLE 31. HIS GOVERNMENT MADE THE "OFFICIAL OBSERVATION", THE REPRESENTATIVE OF THE NETHERLANDS WENT ON TO SAY, WHICH EMBRACES THE PRINCIPLES OF JUS COGENS -- THE INVALIDITY OF TREATIES CONFLICTING WITH "PEREMPTORY NORMS" OF TENERAL INTERNATIONAL LAW.

JUS COGENS, MR. TAMMES SAID, "DOES NOT BELONG TO CLASSICAL INTERNATITNAL LAW". IT IS "ALREADY BINDING" ON THE 111 MEMBER STATES OF THE UNITED NATIONS.

THE MUNICH AGREEMENT, WHICH, HE NOTED, WAS SIGNED 25 YEARS AGO TODAY, WAS A "RARE EXAMPLE" OF A TREATY LATER CONSIDERED AGAINST INTERNATIONAL LAW, MR. TAMMES SAID.

THIS AGREEMENT, SIGNED BY GERMANY, ITALY, UNITED KINGEOM AND FRANCE, PROVIDED FOR THE TRANSFER OF THE SUDETEN GERMAN AREA OF CZECHOSLOVAKIA TO GERMANY.

MORE

WHILE HE DID NOT BELIEVE ARTICLE 37 TO BE REDUNCANT, MR. TAMMES ASSERTED THAT THE PRINCIPLE OF JUS COGENS HAD ALREADY BEEN REALIZED IN ARTICLE 103 OF THE CHARTER OF THE UNITED NATIONS.

THE ARTICLE STATES THAT THE OBLIGATIONS OF MEMBER STATES UNDER THE CHARTER PREVAIL OVER ANY INTERNATIONAL AGREEMENT THAT MIGHT CONFLICT WITH SUCH OBLIGATION.

YHE CHAIRMAN, JOSE MARIA RUDA (ARGENTINA), SAID THAT THERE WERE NO SPEAKERS SCHEDULED FO

EITHER TODAY OR TOMORROW. HE CANCELLED THE MEETING SCHEDULED FOR TOMORROW. THE COMMITTEE WILL RECONVENE ON WEDNESDAY, 2 OCTOBER.

JA 230P 30 SEPT 63

TRANSMITTAL SLIP

Re: I.L.C. Codification of treaties project

TO: THE PERMANENT MISSION OF CANADA TO THE EUROPEAN OFFICE OF THE UNITED NATIONS, GENEVA.

FROM: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA.

Security: UNCLASSIFIED

Date: September 30, 1963

Air or Surface:

No. of enclosures: 1

The documents described below are for your information.

Despatching Authority: Legal/M.D.Copithorne/ts

20-3-1-6
9 | -

Copies	Description	Also referred to:
1	Book entitled "International Conventions and Third States" - Sent at Mr. Cadieux's request in preparation for 1964 Session of I.L.C. on the Law of Treaties.	

Ext. 250 (Rev. 10/51) *(Instruction on Reverse Side)*

INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.

2. This form should *NOT* be used to cover documents requiring action.

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DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Mr. Cadieux

(through Mr. Wershof)

FROM: Legal Division

REFERENCE:

Security RESTRICTED

Date September 27, 1963.

File No. 5475-AX-7-40

SUBJECT: Canada's Observations on the I.L.C.'s Draft Articles on the Law of Treaties.

The deadline for observations from states on the first series of the I.L.C.'s draft articles on the law of treaties is now upon us (October 1). We attach our comments on various articles and should be grateful for a decision as to which of them should be mentioned in our observations. Alternatively, you may prefer to pursue some of them yourself when the Commission gives further consideration to this first series. We also attach a copy of the draft articles, and your report on the 1962 Session of the Commission.

2. Our general conclusion is that there is very little for us to comment about in the draft articles. The task of codifying the law of treaties is not one in which national interests play a major role except insofar as the I.L.C. project is being used by the Communist Bloc members to advance national objectives. Canada's interest is that the law of treaties should, as far as possible, be certain as well as readily discernable. The I.L.C.'s project has provided on the one hand, an opportunity to compile a most useful synthesis of existing law and practice, and on the other an opportunity to develop the law along progressive lines to reflect the changed needs of post war diplomatic intercourse. With the learned guidance of its special rapporteur, the Commission is fulfilling these objectives, and it seems inappropriate for states to enter into doctrinal disputes with the Commission unless national interests are involved. We are therefore of the view that our observations might be kept to a minimum.

M. Cadieux instructions are endorsed on the enclosure

Sept 27

H. Courtney Kirkton

Legal Division

CIRCULATION

Ext. 326A (6/56)

29.9.14 (U.S.)

RESTRICTED

September 26, 1963.

The form of the project - Code or Convention?

In the early stages of the Commission's study of the law of treaties, the special rapporteur submitted reports which envisaged that the Commission's work would take the form of a Convention. When Sir Gerald Fitzmaurice become rapporteur, he framed his drafts in the form of an expository code. However, at the time the Commission elected his successor Sir Humphrey Waldock in 1961, the form was changed again, and the objective declared to be the preparation of articles to serve as the basis for a convention. The arguments in favour of a code as stated by the Commission in 1959, were that it seemed inappropriate that a code on the law of treaties should itself take the form of a treaty, and secondly that much of the law relating to treaties was not especially suitable for framing in conventional form, being enunciations of principles and abstract rules. The use of a code furthermore, would permit the inclusion of declaratory and explanatory material. The arguments in favour of a convention were that an expository code however well formulated, could not in the nature of things be so effective as a convention for consolidation the law, and secondly that the use of a convention would give the new states the opportunity to participate directly in the formulation of the law if they so wished.

The present draft is in the form of a multilateral convention and it is for decision whether Canada wishes to comment on the form in its observations on the first series of draft articles. While Governments have not been specifically asked for their observations on the question of form, it would seem appropriate if we feel strongly about it, to volunteer them at this stage so that

they might be taken into account in the course of the Commission's final review of the draft articles. It is unlikely that the issue has yet been settled and some states took the opportunity of the 6th Committee debate on the I.L.C. report in 1962 to express regret that the Commission had reverted to the convention form. Also in 1962, the New Zealand delegation was instructed to discuss with friendly delegations:

(1) the New Zealand Department's suspicions that the tendency of the Commission to embody its work in conventions represented a concession to those Afro-Asian states (Ghana) which were reluctant to accept the prihciple that they were bound by rules of international law established before their inception; and

(2) its doubts upon the impact on international law of a convention on the law of treaties which was subject to many reservations and restrictions.

With regard to the first point, it is of course desirable to resist any trend on the part the newer states to disassociate themselves from the established rules of international law. On the other hand, we doubt the wisdom of relying too heavily on such a negative posture and feel that where feasible a constructive effort should be made not only to codify existing practice (which does not in any event usually have the stature of rules of customary law) but also to formulate rules that are generally acceptable to as many states as possible. With regard to the second comment, we doubt whether this Convention should be considered in quite the same light as an ordinary treaty creating legal rights and obligations. Whatever its form, we feel that the impact of I.L.C.'s work in this field will be as an exposition on the subject rather than as a binding legal instrument. We agree however, that should reservations be admitted to the convention, it may become a

complex task to keep track of various national procedures.

There would not appear to be any direct Canadian interest involved in this discussion. As the subject matter is clearly within the ambit of the royal prerogative, provincial interests are not involved. It is therefore suggested that no comments need be submitted by the Canada on this question. Do you agree? yes.

Federal States

One of the few articles of the draft in which Canada might be said to have an direct interest is Article 3(2) which provides that "In a Federal State, the capacity of the member states of a federal union to conclude treaties depends on the federal constitution". This article was the subject of considerable debate and revision, and was only adopted by a vote of 9 to 7 with 3 abstentions. The chief criticism of the article in its amended form was that it would involve the Commission in the consideration of a separate topic, namely, subjects of international law (and inevitably the cold war dispute over the recognition of states). I doubt whether we have any quarrel with the Article as it stands although I would prefer the words "constituent units" to "member states of a federal union" as the latter bears possibly controversial connotations for Canada. Should we suggest this change? no .

Full Powers

In the commentary on Article 4(6) it is stated "The Commission will be glad eventually to have information from governments as to their practice in regard to these forms of full powers". The first form referred to is a general full power conferring on a Foreign Minister or sometimes a permanent representative at the headquarters of an international organization, the authority to sign treaties on behalf of the state. The second form is a full power issued ad hoc for the execution of a particular

instrument. It is believed that Canada has never issued general full powers although in Britain the Foreign Secretary traditionally holds such powers. In any event, the question of issuing general full powers to a Foreign Minister looses much its significence in the light of Article 4(1) which states that Heads of State, Heads of Government and Foreign Ministers are not required to furnish evidence of their authority to negotiate, draw up, authenticate or sign a treaty on behalf of their state. This presumed authority does not extend to heads of diplomatic missions, however, and in another context, it has recently been suggested that the Department might give consideration to the issuance of general full powers to our permanent representative in Geneva in view of the large number of international instruments for which he is required to produce full powers prior to signature. The Canadian position would seem to be that while this country has not issued general full powers in the past, it sees certain advantages in this practice and might decide to do so in the future. Would you agree to a reply along these lines? yes

Definition of Treaty

The draft (Article 1(1)(a)) defines a treaty as "any international agreement ... governed by international law". In so far as this statement means that the agreement is one recognized by international law and that certain standards of international law are therefore applicable to it, this statement is unobjectionable. But if, as has been suggested, this statement means that an international agreement must apply international law standards, it goes too far for it is now established that the parties to an international agreement may choose the law they wish to apply and that domestic law is one of the choices open to them. Should we comment on this point? This was done advisedly & the above formulation does not prevent parties from choosing the law they wish. Our points covered. JC

... 5

Participation in Treaties

Article 8 concerning participation in treaties was among the most controversial articles discussed by the I.L.C. in 1962. The main issue was whether every state should have the right to participate or whether participation should be a matter for the parties to decide. The issue has immediate political implications for should states acquire the right to participate in international agreements, the communist countries unrecognized by the West are likely to exercise such a right and might thus achieve a significent step in their struggle for international acceptance. The Commission established a category of treaties it styled "general multilateral treaties" which "concern /ed/ general norms of international law or deal /t/ with matters of general interest to states as a whole". Soviet Bloc and certain Afro-Asian members argued that it was for the general good that all states should become parties to this type of treaty. Certain Western members argued that the Commission should not set aside so fundamental a principle of treaty law as the freedom of contracting states to determine by the clauses of the treaty itself, the states which might become a party to it. The Commission was also reminded that current practice with regard to treaties concluded under the auspices of the United Nations, as well as many other multilateral treaties, was for them to be open to members of the U.N., the specialized agencies, parties to the Statute of the I.C.J. and any other state invited by the General Assembly. Under this formula, doubtful cases were decided by the General Assembly or the competent organ of some other organization of world wide membership. In this way, the Secretary General or other depositary was relieved of making delicate and frequently contraversial political appreciations more appropriate to a political organ. In the end, it was decided by a vote of 12 to 5, that where a general multilateral treaty was silent concerning participation, every state shall have the rig

to become a party thereto.

It is difficult to appreciate the full significence of this decision until it is seen what proportion of treaties comes within the newly established category of general multilateral treaties i.e. those concerning general norms of international law or matters of general interest to states as a whole. However, the majority of present treaties are not silent on the question of participation and accordingly would fall outside the scope of this Article. Its practical significence is therefore limited. In any event, this rule would presumably not apply retroactively but only to treaties concluded in the future. Should it be desired to limit the exercise of this new right, interested states could seek to ensure that every multilateral treaty contained a participation clause.

It may be, furthermore, that Canada should not take the lead in resisting all participation in international agreements by the non recognized Bloc countries but rather, should weigh the desirability of encouraging these states to bind themselves to observe the international rules of civilized conduct. Such a point of view seems to have been adopted by western states, notably Canada and the United States, with regard to participation by the D.D.R. in the Nuclear Test Ban Treaty. Prior to this treaty, however, Canada from time to time found itself a party to the same treaties as states which it does not recognize (e.g. the 1949 Geneva Conventions and the 1962 Laos Protocol). The legal position in such cases is quite clear; in the absence of an unequivocal expression of intention to the contrary, no recognition is implied in the participation by a non recognizing State in a multilateral treaty to which an nonrecognized State is a party.

In its observations, Canada might note the fundamental principle that contracting parties should

be free to determine for themselves the extent to which they are prepared to enter into relations with other states, the current practice with regard to treaties concluded under the auspices of the United Nations, and conclude with an observation that what the Commission is doing is to establish a counter presumption in a limited and very clearly defined type of case, i.e. where the contracting parties to certain types of treaties have not expressed themselves on the question of participation. Do you agree? yes. If the rule has no retroactive effect.

Revision of Participation Clauses

Article 9 of the I.L.C. draft provides that participation clauses in treaties may be revised either by a two-thirds majority of the states which drew up the treaty or by decision of the competent organ of an international organization. The traditional rule of customary international law required unanimous agreement among the contracting states to amend a treaty. However, today there appears to be no support in contemporary international practice for the theory that a treaty which purports to revise an earlier agreement without the consent of all the parties is void. The I.L.C. article is a logical outcome of this development for in securing the agreement of two thirds of the parties to revise the participation clauses, the treaty is in fact being amended by agreement among the parties. Do you agree that no observations are necessary on this Article? yes

Reservations

Time has now run out on the traditional approach that reservations must be unanimously accepted by the contracting parties. In its draft articles (18, 19 and 20) the Commission, on the recommendation of the rapporteur, brushed aside arguments favouring the collegiate rule and came down firmly in favour of the so-called flexible approach under which the onus is on contracting parties to object within a

given period if they feel a reservation is inadmissable. This rule is to apply only where the terms of the instrument do not prohibit reservations, and or where the reservation is not incompatible with the object and purpose of the treaty. Although this development is open to the familiar criticisms that compatibility with the object and purpose of the convention is too subjective a test for application to multilateral conventions generally, and that the integrity of the treaty text should not be undermined by the too ready admission of reservations, the Commission expressed the view 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, may be the one most suited to the immediate needs of the international community. This liberal approach to the use of reservations is clearly in the interests of countries such as Canada which for constitutional or other reasons, are frequently obliged to enter reservations.

However, the question arises whether the compatibility with object and purpose test is meant to be the only basis on which a state may <u>object</u> to a reservation, or the only basis on which a state may <u>make</u> a reservation. One proposition may not be the obverse of the other. If stated in the latter manner, it would seem to be still open to contracting states to object to a reservation on other grounds. Such a possibility is implied in the International Court's Answer I in the Genocide Case; "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 the state cannot be regarded as being

a party to the Convention". This is perhaps an abstruse argument for the tenor of the Articles and the commentary suggests that the Commission's intention was to make incompatibility with the object and purpose of the treaty the only grounds on which an objection could be taken to a reservation. It might be desirable nevertheless, to have this intention stated unequivocably in order to remove any basis for such an argument. If you agree, do you wish this point to made in our observations or would you prefer to raise it in the Commission yourself? yes.

Entry into Force

Article 24 accords recognition to the practice of provisional entry into force of a treaty pending a specified act, at which time it is to come definitively into force. While there is no doubt that this procedure does occur from time to time (eg. the Canada-Soviet Trade Agreement) and that it is an expedient method for allowing the legislature to approve the instrument without holding up its coming into force, Legal Division has generally frowned on the practice on the grounds that the precise legal status of the rights and obligations during the period the treaty is provisionally in force is so uncertain as to raise doubts whether the treaty has any validity until it has come definitively into force. It is unlikely, however, that legal theory can stand in the way of the general acceptance of this practice which is clearly a useful procedure to meet a practical need. If you agree, no comments need be made on this point. I agree.

"A small group of states"

Articles 9(2) and 20(3) contain the expression "a small group of states" which the Commission admits to be regrettably vague. The Commission however felt that it was a sufficient general description in the context of the articles concerned. This point has already been commented on in the 6th Committee. Theoretically, the objection is well taken but in

practice there is unlikely to be ambiguity as to whether a treaty falls with the group of those concluded between "a small group of states". Perhaps the rapporteur's term "plurilateral" should be reintroduced to take the place of this expression. Do you agree that no comment need be made on this point? d'accord

Presumption of a States Consent

In two articles, the Commission proposes that silence should constitute a presumption of consent after the expiry of a given period. (Article 9(3) (b) Consent to the opening of a treaty to the participation of additional states; Article 19(3) Acceptance of a reservations). A spirited debate arose on this point in the 6th Committee last year in which some Latin American delegates pointed out that the opening of participation clauses constituted in effect an agreement to amend an agreement, and that an exercise of treaty making power could not be inferred from a state's silence. In our opinion, this theoretical objection to the formula of presumed consent is perhaps of less concern than the very real difficulty at present of eliciting any expression of opinion from states which results frequently in delays and often in complete frustration of treaty action. However, New Zealand has pointed out that this presumed consent formula may have implications in the field of recognition. If a non-recognized state enters a reservation, the non recognizing contracting states will be faced with the problem that if they ignore the action as is the general practice now, they will be presumed to have consented to the reservation which will be binding upon them should they subsequently recognize the state entering the reservation. If they wish to object to the reservation on its merits, they risk jeopardizing their position on recognition and would perhaps be obliged to enter an objection to the effect that they do not recognize the reserving state but if they did, they woul

object. This is an awkward expedient and I think we might suggest to the Commission that silence should not be presumed to operate as an expression of consent on the part of a non recognizing state. Do you agree? yes

Obligations prior to entry into force

It has become an accepted rule that states which have signed an instrument subject to ratification are under an obligation to refrain from acts calculated to frustrate the treaty. The Commission now proposes (Article 17) to extend this rule to states which have taken any part in the drafting process. It is doubtful however, whether states which although participating in the negotiations, have from the beginning expressed the strongest reservations about a treaty and which have not signed it, should placed under such constraint. Should we comment on this? yes

Instruments of Ratification, etc.

Paragraph 7 of the Commentary for Article 4 states that instruments of ratification, accession, acceptance and approval "are normally signed by Heads of state though in modern practice this is sometimes done by Heads of Government or by Foreign Ministers". This does not accurately reflect Canadian practice for as you know the Secretary of State for External Affairs usually executes such instruments. Do you agree that we should draw Canadian practice to the Commission's attention and suggest no that the wording be changed to "are normally signed by Heads of State, Heads of Government or Foreign Ministers"?

yes, but the point is covered by the present formulation.

ties and to undertake a continuous evaluation of programs and their impact. To assist this process, the Administrative Committee on Coordination (consisting of the Secretary-General and the executive heads of all the specialized agencies) will submit to the Council in 1964 a functional classification of the activities of all agencies and proposals to improve evaluation methods. The Council's own Special Committee on Coordination will continue its study of priorities and make recommendations. The Council also decided that its President and Vice-Presidents and the Chairman of the Coordination Committee should meet the Administrative Committee on Coordination with a view to promoting closer relations.

The Council reviewed the work of the regional economic commissions, which are making so great a contribution to the development decade and to the decentralization of United Nations operations. It approved their work programs for the following year. On the recommendation of the Economic Commission for Asia and the Far East, the Council decided to add Western Samoa to the membership and to make Australia and New Zealand full regional members. In the case of the Economic Commission for Africa, there were some difficult membership issues to be settled. The United Kingdom, France and Spain, with their agreement, were designated associate members. Portugal, which did not wish to accept associate membership, was expelled from the Commission, and the Council decided that South Africa should not take part in the work of the Commission until the Council, on the recommendation of the Commission, finds that conditions for constructive cooperation have been restored by a change in its racial policy. (These two resolutions were adopted by a relatively small number of positive votes, there being several abstentions.)

At its concluding meeting, the Council adopted a resolution continuing the Council's studies of the economic and social consequences of disarmament, which assumed additional significance in view of the hope that the Moscow agreement on a ban of certain nuclear weapons tests might be the prelude to more substantial progress toward an agreement on disarmament. The Council also adopted a resolution of sympathy with and assistance for the victims of the Skopje earthquake, a unanimous expression of human solidarity in the face of national disaster.

the fifteenth session of the
International Law Commission

by EDUARDO JIMÉNEZ DE ARÉCHAGA,
of Uruguay,
Chairman of the Commission

Dr. Eduardo Jiménez de Aréchaga is Professor of International Law at the University of Montevideo and Associate of the Institute of International Law. He has published several books on international law, among them "Derecho Constitucional de las Naciones Unidas," Madrid, 1958, and "Curso de Derecho Internacional Público," Volume I, Montevideo, 1959, and Volume II, Montevideo, 1961.

At its fifteenth session the International Law Commission considered the second report submitted by the Special Rapporteur on the Law of Treaties, Sir Humphrey Waldock. This report dealt with "Invalidity and Termination of Treaties."

The consideration of this report involved the discussion of various questions of high theoretical and practical interest, some of which will be referred to in the present review. On all of them the Commission reached agreed conclusions, as shown by the fact that the final vote approving as a whole the 25 articles on "Invalidity and Termination of Treaties" was a unanimous one.

Invalidity of Treaties by Fraud, Error and Coercion

The Commission draft determines, in accordance with the peaceful opinion of writers, that if a state has been induced to enter into a treaty by the fraudulent conduct of another state, by an error relating to facts which were an essential basis of its consent or by coercion employed against its representatives, it may invoke such fraud, error or coercion as invalidating the treaty or that part of the treaty affected by such vice of consent.

As to coercion, the traditional doctrine of international law was that it invalidated the consent only when it was employed against the agents or representatives of the state, but not when it was exercised against the state as such. This was a consequence of the traditional tolerance of the use of force in the international system prior to the Covenant of the League of Nations.

The Commission considered that the clear-cut prohibition of the threat or use of force in Article 2 (4) of the Charter of the United Nations as a rule of general international law of universal application required a bold revision of the traditional doctrine. It reached the unanimous conclusion that the invalidity of a treaty procured by the threat or use of force in violation of the principles of the Charter of the United Nations is a principle which is *lex-lata* in the international law of today.

"Jus cogens"

The prevailing doctrine of international law was of the idea that, while domestic law generally includes a great number of peremptory rules the application of which cannot be excluded by agreement between the parties, "in international law almost complete freedom of contract prevails." (Brierly, "The Law of Nations," fifth edition, page 58.)

The Commission, however, reached the conclusion that there are in contemporary international law certain rules of *jus cogens*, that is to say, certain basic principles or fundamental

rules of international public order from which states are not permitted to "contract out." A clear instance of such a rule is the prohibition of the use or threat of force in Article 2 (4) of the Charter of the United Nations: a treaty of alliance between two or more states in order to start a war in violation of the principles of the Charter would be void. Another instance would be a treaty contemplating or conniving in the commission of act, such as trade on slaves, piracy or genocide, in the suppression of which every state is called upon to cooperate.

In the light of this evolution, the Commission recognized that in codifying the law of treaties it had to take the position that today there are certain rules and principles from which states are not competent to derogate by agreement among themselves. However, the Commission did not attempt to codify the existing rules of *jus cogens* because it might find itself engaged in a prolonged study of matters which really belong to branches of international law other than the law of treaties.

The Commission, therefore, confined itself to provide, in article 37, that "a treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted," and, in article 45, that "a treaty becomes void and terminates when a new peremptory norm of general international law of the kind referred to in article 37 is established and the treaty conflicts with that norm."

Unconstitutional Treaties

One of the most debated questions in the literature of international law, although it is perhaps of more academic than practical interest, is that of whether constitutional limitations on the competence to enter into treaties affect the validity of a treaty under international law. There are writers who favor what has been called the "constitutional" school of thought, considering that the treaty entered into in violation of the constitutional provisions is not valid, and those of an "internationalist" approach, who take the opposite view.

On the proposal of the Special Rapporteur, the Commission adopted what may be described as a practical and somewhat intermediate approach on this question, closer perhaps to the international than to the constitutional school of thought.

The answer was found in linking the provision on this question (article 31) to that of last year's draft concerning the authority to sign, ratify or accede to a treaty (article 4 of Part I). By the latter provision, a representative of a state shall be required to furnish evidence of his authority to sign, ratify or accede to a treaty, with the exception that heads of state, heads of government and foreign ministers are exempted from such a requirement.

Article 31 provides that when the consent of a state to be bound by a treaty has been expressed by a representative who is considered under the provisions of article 4 of Part I to be furnished with the necessary authority, the fact that a provision of the internal law of the state regarding competence to enter into treaties has not been complied with shall not invalidate the consent expressed by the state's representative.

This provision seems to be entirely justified so far as it goes. It would be contrary to elementary rules of respect among states to allow the other party or parties, or the depositary of a multilateral treaty, to "pierce the facade of the accredited agent of the state" and question its capacity to perform the act for which it presents evidence of authority. This applies also, even with more force, to heads of state, heads of government or foreign ministers, who, because of their constitutional position, are deemed to possess such authority *ex proprio vigore*. If that is so, it would not seem fair then to allow a state to invoke later a constitutional defect as invalidating the treaty, after the other parties have legitimately relied on the ostensible authority possessed or presented, and have assumed that the treaty was in order.

On the other hand, it results *a contrario* from article 31 of Part II and article 4 of Part I that a state may be justified in invoking the violation of its constitutional provisions as a ground for invalidating the treaty, when its agent, even if he possessed authority, did not furnish evidence of it, despite having the obligation of doing so under article 4 of Part I.

Another concession to the constitutional approach is when the violation of the internal law is manifest. This would cover cases, 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. The exception seems to be justified because in such a hypothesis the other parties must be deemed to have been aware of the manifest lack of constitutional authority and cannot claim to have relied upon the consent given.

Termination of a Treaty as a Consequence of its Breach

The Commission gave expression in article 42 to the basic rule that a material breach of a bilateral treaty, even if it does not as such put an end to the treaty, gives the other party a right to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

Although this right is clearly based in the maxim *inadimplenti non est adimplendum*, some difficulties arise in the case of multilateral treaties, because the rights and interests of the other complying parties have also to be taken into account.

The Commission provided that in the case of a material breach of a multilateral treaty the other parties may individually suspend, but not terminate, the operation of the treaty in whole or in part, and this "in the relations between itself and the defaulting state." This means that the legitimate rights and interests of the other complying parties must not be affected. Finally, all the parties other than the defaulting state may, acting collectively and by common agreement, terminate the treaty or suspend its operation in whole or in part.

A material breach is defined as an unfounded repudiation of the treaty or the violation of a provision which is essential to the effective execution of any of the objects or purposes of the treaty.

Fundamental Change of Circumstances

At the fifteenth session, the Commission also considered the much debated problem of whether and how a fundamental change of the circumstances existing at the time when a treaty was entered into may provoke its termination. This is commonly spoken on as the *clausula rebus sic stantibus*, although the Commisssion preferred to avoid this expression in order to divorce the draft article from some historic associations of the *clausula*.

In this, as with respect to some other questions, there was serious concern with the risks to the security of treaties which the doctrine may present, since the circumstances of international life are always changing, and it would be all too easy to find some basis for alleging that the changes have rendered the treaty inapplicable.

For these reasons the Commission accepted the doctrine of change of circumstances as an objective rule of law applying only in accordance with closely defined conditions. General

changes of circumstances quite outside the treaty cannot bring the provision into operation. Such changes can be invoked as a ground for terminating the treaty only if their effect is to alter a fact or situation constituting an essential basis of the consent of the parties to the treaty. A change in the circumstances which determined only one of the parties to conclude the treaty is not sufficient; it is necessary that the change has taken place with regard to facts which determined all the parties to conclude the treaty. The change has to be a fundamental one, and its effect must be "to transform in an essential respect the character of the obligations undertaken in the treaty."

The change must also have been unforeseen by the parties. The provision authorizing the termination of a treaty because of a fundamental change of circumstances does not apply to changes "which the parties have foreseen and for the consequences of which they have made provision in the treaty itself."

Implied Right of Denunciation

It is a debated question whether a right of denunication exists with respect to those treaties which do not contain express provision regarding their termination or provide for denunciation or withdrawal. Some authorities take the position that denunciation may take place only when it is provided in the treaty, while others admit that a right of denunciation may be implied under certain conditions in some types of treaties, and more especially in commercial treaties and in treaties of alliance.

The prevailing view in the Commission was that while the omission of any provision in the treaty does not exclude the possibility of implying a right of denunciation, the existence of such a right was not to be implied from the character of the treaty alone. The intention of the parties, which should govern the matter, 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.

In consequence article 39 provides that "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 appears from the character of the treaty and from the circumstances of its conclusion or the statements of the parties that the parties intended to admit the possibility of a denunciation or withdrawal."

Procedure for Invalidating or Terminating a Treaty

A key provision of the draft is the one legislating the procedure to be followed with respect to the application of any of the specified grounds for invalidating or terminating a treaty, such as fraud, error, coercion, rules of *jus cogens*, material breach, fundamental change of circumstances, implied denunciation or any other provided in the articles.

The substantive rights arising on invalidity or termination of treaties are subordinated to the procedure prescribed in article 51, which gives a substantial measure of protection against unilaterial action or arbitrary assertions.

The view adopted is that each of the accepted grounds does not release a state from its treaty obligations or allow it to act as judge in its own cause, but merely gives rise to a right to invoke the ground with respect to the other interested states.

The provision of article 51 states that a party alleging the nullity of a treaty or a ground for terminating, withdrawing or suspending its operation, "shall be bound to notify the other party or parties of its claim." It is only when there are no objections to such a claim or when no reply is received within a specified period (normally three months) that the claimant state may act unilaterally and "take the measure proposed."

If, on the other hand, objection has been entered by any other party as to the invoked ground or as to the facts upon which it is based, then a dispute arises between the claiming and the opposing state.

Some members of the Commission were of the opinion that in such a case the application of the articles should be made subject to the compulsory jurisdiction of the International Court of Justice. However, the opinion which prevailed was that in the present state of international relations, and in view of the lack of support of states to the compulsory jurisdiction of the Court, it would not be realistic to put forward this solution.

Officers of Commission

Eduardo Jiménez de Aréchaga, of Uruguay, Chairman; Milan Bartos, of Yugoslavia, First Vice-Chairman; Senjin Tsuruoka, of Japan, Second Vice-Chairman; and Sir Humphrey Waldock, of the United Kingdom, Rapporteur.

For the[illegible] draft limits itself to indicate t[illegible] parties shall seek a solution of the question through the means indicated in Article 33 of the Charter."

While this provision, especially if read in conjunction with the preceding paragraph, makes it clear that unilateral action or automatic operation of the grounds of invalidity or termination has been excluded, the Commission did not find it possible to carry the procedural provisions beyond the Charter obligations and provisions as to peaceful settlement of disputes, which include the method of "judicial settlement." It is worth mentioning in this connection that Article 36 (3) of the Charter provides that "legal disputes should as a general rule be referred by the parties to the International Court of Justice, in accordance with the provisions of the Statute of the Court."

Other Topics

While the law of treaties continues to be the main topic on the Commission's agenda for 1964, and a third report, on the application and effects of treaties, is to be presented by the learned Special Rapporteur at the 1964 summer session, the Commission also took at its fifteenth session concrete measures to advance the codification of other topics, such as state responsibility, state succession, special diplomatic missions and relations between states and international organizations.

Professor Roberto Ago of Rome was appointed Special Rapporteur on State Responsibility and was asked to give priority to the definition of the general rules governing the international responsibility of the state. Professor Manfred Lachs of Warsaw was appointed Special Rapporteur on State Succession and was asked to give priority to the rules governing state succession on the matter of treaties. Professor Milan Bartos of Belgrade was appointed Special Rapporteur on Special Missions and was asked to present by next January draft articles determining the extent and form of application of the relevant rules of the Vienna Convention on permanent diplomatic missions to *ad hoc* diplomatic missions.

On the question of relations between states and international organizations, the Commission commenced to discuss the first report submitted by the Special Rapporteur, Professor Abdullah El-Erian, of Cairo, concerning the scope of the subject and the priorities to be assigned to the various subheadings comprised under it.

Left by RR Cunningham NZHC Oct. 17/63

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EIGHTEENTH REGULAR SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

Provisional Agenda Item No.71: Question of extended Participation in General Multilateral Treaties concluded under the auspices of the League of Nations [Resolution 1766 (XVII)]

Background Documents:

A/5287 Report of the Sixth Committee.
A/C.6/L.498 Working Paper prepared by the Secretariat giving information about the League of Nations treaties under consideration.
A/CN.4/159 Note by Secretariat
A/CN.4/162 Report by Sir Humphrey Waldock
A/CN.4/163 Report of ILC covering the work of its fifteenth session pp.81-95.

Introduction

The question of extended participation in multilateral treaties concluded in the past and open, by the terms of their participation clauses, to participation by certain categories of States only, was raised in the Sixth Committee at the Seventeenth Session of the General Assembly during the debate on the I.L.C.'s draft articles on the law of treaties.

2. As a result, three delegations (Australia, Ghana and Israel) joined together in introducing a draft resolution designed to achieve the objective of extended participation in these treaties. The draft resolution proposed that the General Assembly should request the Secretary-General to ask the parties to the conventions concerned to state, within a period of twelve months, whether they objected to the opening of those conventions to which they were parties for acceptance by any State Member of the United Nations or member of a specialised agency.

3. It also authorised the Secretary-General to receive in deposit the instruments of acceptance of new States Members of the United Nations or of a specialised agency if the majority of the States parties to those conventions had not objected, within a period of 12 months, to opening the conventions to accession.

4. Finally, the draft resolution recommended that all States parties to the conventions should recognise the legal effects of instruments of acceptance so deposited and communicate to the Secretary-General their consent to participation in the conventions of states so depositing instruments of acceptance.

5. Many representatives expressed doubts regarding the procedure proposed in the draft resolution. It was suggested for example that the drafting of a formal protocol on the opening to accession of the conventions, which would enter into effect when it had been accepted by the number of parties regarded as

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necessary by the protocol itself, would be more in accordance with international practice and the domestic constitutional laws of many States.

6. The relationship between the draft resolution and the question of the succession of States aroused the concern of some representatives. In their view, the determination of the States now parties to the conventions in question involved a problem of the succession of States, since new States had been able to accede to old conventions under agreements made on their behalf by the States which formerly represented them in the international field. They felt that the work of the ILC on State succession might thereby be prejudged.

7. Most representatives considered that a more thorough study was needed of the question. A draft resolution was therefore adopted requesting the ILC to study the problem and to inform the General Assembly of the result of its studies in the report on the work of its 15th Session, and requesting the inclusion of the question on the agenda of the next Session of the General Assembly.

8. On the recommendation of the Sixth Committee, the General Assembly adopted a resolution in these terms (Resolution 1766 (XVII) of 20 November 1962).

Summary of Chapter III of the ILC Report

9. The Commission made it clear that it was examining the question with reference to the twenty-six treaties listed in Part A of the Annex and implied that the five treaties in Part B were now unlikely to come into force. The extent to which any particular treaty had retained its usefulness had not been considered. The Commission pointed out that many of the treaties in Part A might have been overtaken by modern treaties, while others might have lost much of their interest for States with lapse of time. Moreover, the treaties might require changes of substance in order to adapt them to contemporary conditions. The Commission therefore intended to bring this aspect of the question to the attention of the General Assembly and to suggest that a process of review should be initiated.

10. The Commission observed that only five of the treaties concerned appeared to have been designed to be closed treaties. The other twenty-one treaties were clearly intended to be open to more general participation. It was only the dissolution of the League of Nations which had the effect of turning them into closed treaties.

11. The arrangements between the League of Nations and the United Nations for the transfer of certain functions, activities and assets from the former to the latter included functions and powers belonging to the League under international agreements. In resolution 24(1) A of 12 February 1946 the General Assembly declared the willingness of the United Nations "to accept the custody of the instruments and to charge the Secretary of the United Nations with the task of performing for the parties, the functions, pertaining to a secretariat, formerly entrusted to the League of Nations". The report points out that, purely secretarial though the functions of the Secretariat of the

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League may have been as depository of the treaties, it was invested with these functions by the parties to each treaty, not by the League itself, for the appointment of the League Secretariat as depository was effected by a provision of the "final clauses" of each treaty. The transfer of the depository functions from the League Secretariat to the United Nations Secretariat was therefore a modification of the final clauses of the treaties in question. Admittedly the League Assembly had directed its Secretary-General to transfer to the Secretariat of the United Nations all the texts of the League treaties for safe custody and performance of the functions previously performed by the League Secretariat. But although this transfer was assented to by those Members of the United Nations which were also parties to the particular treaties, the General Assembly did not seek to obtain the agreement of all the parties to the various treaties. It simply assumed the functions of the depository by resolution 24(1) A and charged the Secretariat with the task of carrying them out. No objection was raised by any party to the treaties.

12. The Commission then turned to the problems involved in the procedure of the three-power resolution (see introductory section) and the Protocol of Amendment. The proposed resolution required the Secretary-General to ask the parties to the various conventions to indicate within a period of twelve months whether they objected to the opening of those conventions to which they were parties; the Secretary-General's authority to receive the instruments of acceptance from additional States would arise only if the majority of the parties to a convention raised no objection. In other words the identification of the parties to the treaties would be necessary. Similarly, if the procedure of an amending protocol were to be used, there would again be a need to identify the parties because a stated number or proportion of the parties to each League treaty would require to become parties to the amending protocol in order to bring the latter into force. The precise legal position of a new State whose territory was formerly under the sovereignty of a State party or signatory to a League treaty was a question which involved an examination of such principles of international law as might govern the succession of States to treaty rights and obligations. If a certain view was taken of those principles participation in the League treaties under discussion might be open to a considerable number of new states without any special action being taken to open the treaties to them. But some points of difficulty might have to be decided before it could be seen how far the problem was capable of being solved through principles of succession. In many of the League treaties, for example, a substnatial proportion of the signatories had not ratified and the point arose as to the position of a new State whose predecessor in the territory was a signatory but not a party to the treaty. The Commission indicated that it had only just begun its study of succession to treaties and that, owing to the difficulties involved, the principles governing this branch of international law would not provide either a speedy or a complete solution to the problem under consideration.

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13. The Commission therefore considered that the procedure of the three-power resolution and the Protocol of Amendment both had the disadvantage of importing problems of succession requiring the identification of the parties to the treaties.

14. A further disadvantage in each case was that the modification of the participation clauses would operate only as between those parties to the treaties which had given their formal consent to it in the manner required by the resolution or protocol. In other words, either method would provide an incomplete solution to the problem because there were likely to be parties from which formal consent was not forthcoming and which would not therefore be bound by the modification of the participation clauses.

15. Neither procedure was likely to supply a quick solution. In the case of a protocol there would no doubt be some delay before the number of signatories or acceptances necessary to bring the required amending provision into force were obtained. Similarly, the three-power resolution envisaged a period of twelve months before the Secretary-General was to be allowed to receive instruments of acceptance from states wishing to accede to the treaties, and there would be a further delay before parties communicated to the Secretary-General their consent to the participation of the states concerned in the treaties.

16. The Commission then considered the possibility of an alternative solution based on administrative action by the General Assembly. It stressed that a participation clause was one of the "final clauses" and was, in principle, on the same footing as a clause appointing a depository. Admittedly, it differed from a depository clause in that it affected the scope of operation of the treaty and therefore the substantive obligations of the parties. But it was still a final clause, and one which furnished the basis upon which the constitutional process of ratification, acceptance and approval by individual states took place. In twenty-one of the twenty-six treaties being considered, the participation clauses were so formulated as to make the treaty open to participation by anymember of the League and any other states to which the League communicated a copy of the treaty. In the case of these twenty-one treaties any state which became party thereby gave its consent to the admission to the treaty not only of League members but of any further state at the decision of the Council of the League. Therefore any constitutional objection to the use of a less formal procedure for modifying the participation clause seemed to be of less force in the case of these treaties. The very fact that the remaining five treaties in Part A of the Annex (Nos. 11, 13, 14, 16 and 18) were originally designed as closed treaties suggested that they might not be of great interest to states today.

17. The special form of the participation clauses of the twenty-one treaties suggested that the problem might be solved on the basis that it involved a simple adaptation to the changeover from the League to the United Nations. The case might not be identical with that of the transfer of the depository functions from the League to the United Nations in that the participation clauses touched the scope of

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operation of the treaties, But in essence what was involved was an adaptation of the participation clauses to the changeover from the League to the United Nations. Therefore the General Assembly by virtue of the arrangements made in 1946 for the transfer of powers and functions from the League to the United Nations, would be entitled to designate an organ of the United Nations to act in place of the Council of the League, and to authorise that organ to exercise the powers of the League Council in regard to participation in the treaties concerned. The resolution of the General Assembly designating an organ of the United Nations to fulfil the League Council's functions under the treaties could;

(a) recall the recommendation of the League Assembly that members of the League should facilitate in every way the assumption by the United Nations of functions and powers entrusted to the League under international agreements of a technical and non-political character;

(b) recite that by the resolution those members of the United Nations which are parties to the League treaties in question give their consent to the assumption by the designated organ of the functions hitherto exercised by the League Council under the treaties in question; and

(c) request the Secretary-General, as depository of the treaties, to communicate the terms of the resolution to any party to the treaties not a member of the United Nations.

16. In its conclusion the ILC made five points:

(a) The method of amending protocol and three-power resolution had both advantages and disadvantages. The Commission did not feel called upon to express a preference for one or the other.

(b) The topic of state succession was a complicating element in the procedures of amending protocol and three-power resolution but it did not necessarily preclude the use of these procedures or prejudge the work of the Commission.

(c) However in the light of the arrangements made upon the dissolution of the League and the assumption by the United Nations of some of the powers in relation to League treaties, the General Assembly appeared to be entitled to take administrative action to designate an organ of the United Nations to assume the powers which, under the participation clauses of the treaties, were formerly exercised by the League Council. This would provide a simpler, speedier procedure and would avoid some of the difficulties attached to the other methods.

(d) The treaties should be examined to see how many of them hold any interest for states today. Subject to the outcome of this examination, the Commission considered that extended participation in the treaties was desirable.

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(e) The treaties should also be examined with a view to determining what action might be necessary to adapt them to contemporary conditions.

General Comments

The ILC is no doubt correct in recommending a further examination of the twenty-six treaties concerned, to ascertain how many of them are still of interest to states. The resultof such an examination may well throw more light on what would be the most suitable procedure for opening the treaties and may even show, although this is unlikely, that opening of the treaties is not warranted at all by the small degree of interest they now command. Most probably the study would reveal that, while the majority of the treaties no longer hold any interest for states, a few are still of sufficient importance to make their opening desirable.

The treaties could at the same time be examined, as the ILC suggests, to determine what action may be necessary to adapt them to contemporary conditions. There is no point in opening treaties which are then found to be of little value because some of their substantive provisions are out-of-date and unworkable. In cases where modernisation may be necessary it would be preferable for this to be considered in conjunction with the problem of opening the treaties.

Subject to the outcome of this examination, the ILC appears to have found a satisfactory alternative to the procedure of the Protocol of Amendment or the three-power resolution for overcoming the problem of opening up the treaties under discussion. Although it might technically be more correct to open all the treaties concerned by means of an amending protocol, the advantages inherent in the ILC's alternative - speed and simplicity - are considerable. It must also be remembered that twenty-one out of the twenty-six treaties were never intended by the original parties to be closed, so that one would therefore expect no objection to be raised by the parties to their opening. Furthermore, it is likely that only a few of the treaties are of interest today and the use of a complicated, lengthy procedure for opening them therefore seems scarcely worthwhile if a simpler method can satisfy the legal requirements.

Instructions

(1) The delegation should support any measure designed to promote an examination of the treaties to ascertain how many of them are still of interest to States.

(2) The delegation should support any measure designed to promote an examination of the treaties to determine what action may be necessary to adapt them to contemporary conditions.

(3) If it is decided to proceed with the opening of the treaties without the further examination mentioned in (1) and (2), the delegation should support a resolution

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embodying the ILC's alternative solution. The procedure should limit participation to States members of the United Nations or of a specialised agency, or alternatively to the States mentioned above, together with any non-member State to which an invitation is addressed by the General Assembly. (Limitation of participation is, of course, very important. The procedure recommended by the Commission would give the Secretary-General the discretionary power formerly exerciseable by the League Council, of extending an invitation to participate in these treaties to any State, whether a member of the United Nations or not. This places in the hands of the Secretary-General the responsibility of determining what constitutes a state, a decision which is frequently political rather than legal and involves problems of recognition. It is therefore necessary for participation to be limited to states members of the United Nations or of a Specialised agency, or, if wider participation is required, to ensure that the issue of invitations to non-member states is under the control of the General assembly and not the Secretary-General).

Department of External Affairs,
WELLINGTON

27 September 1963

ANNEX

LIST OF MULTILATERAL AGREEMENTS CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS IN RESPECT OF WHICH THE SECRETARY-GENERAL OF THE UNITED NATIONS ACTS AS DEPOSITORY AND WHICH ARE NOT OPEN TO NEW STATES BY VIRTUE OF THEIR TERMS OR OF THE DEMISE OF THE LEAGUE

A. Agreements which have entered into force

1. Convention concerning the Use of Broadcasting in the Cause of Peace

Geneva, 23 September 1936

N.Z. is a party

2. Declaration regarding the Teaching of History

Geneva, 2 October 1937

N.Z. is not a party

3. Protocol relating to a Certain Case of Statelessness

The Hague, 12 April 1930

N.Z. is not a party

4. Convention on Certain Questions relating to the Conflict of Nationality Laws

The Hague, 12 April 1930

N.Z. is not a party

5. Protocol relating to Military Obligations in Certain Cases of Double Nationality

The Hague, 12 April 1930

N.Z. is not a party

6. Convention for the Suppression of Counterfeiting Currency, and Protocol

Geneva, 20 April 1929

N.Z. is not a party

7. Optional Protocol concerning the Suppression of Counterfeiting Currency

Geneva, 20 April 1929

N.Z. is not a party

8. Convention and Statute on the Freedom of Transit

Barcelona, 20 April 1921

N.Z. is a party

* 9. Convention and Statute on the Regime of Navigable Waterways of International Concern

Barcelona, 20 April 1921

N.Z. is a party

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10. Additional Protocol to the Convention on the Regime of Navigable Waterways of International Concern

Barcelona, 20 April 1921

N.Z. is a party

11. Convention regarding the Measurement of Vessels employed in Inland Navigation, and Protocol of Signature

Paris, 27 November 1925

N.Z. Is not a party

* 12. Convention and Statute on the International Regime of Maritime Ports, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

13. Agreement concerning Maritime Signals

Lisbon, 23 October 1930

N.Z. is not a party

14. Agreement concerning Manned Lightships not on their Stations

Lisbon, 23 October 1938

N.Z. is not a party

* 15. Convention and Statute on the International Regime of Railways, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

16. Agreement between Customs Authorities in order to Facilitate the Procedure in the case of Undischarged or Lost Triptychs

Geneva, 28 March 1931

N.Z. is not a party

17. Convention on the Taxation of Foreign Motor Vehicles, with Protocol-Annex

Geneva, 30 March 1931

N.Z. is not a party

18. Agreement concerning the Preparation of a Transit Card

Geneva, 14 June 1929

N.Z. is not a party

19. Convention relating to the Transmission in Transit of Electric Power, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

20. Convention relating to the Development of Hydraulic Power affecting more than one State, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

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21. Convention relating to the Simplification of Customs Formalities and Protocol

Geneva, 3 November 1923

N.Z. is a party

22. International Agreement relating to the Exportation of Bones

Geneva, 11 July 1928

N.Z. is not a party

23. International Agreement relating to the Exportation of Hides and Skins

Geneva, 11 July 1928

N.Z. is not a party

24. Convention for the Campaign against Contagious Diseases of Animals, with Declaration attached

Geneva, 26 February 1935

N.Z. is not a party

25. Convention concerning the Transit of Animals, Meat and Other Products of Animal Origin, with Annex

Geneva, 20 February 1935

N.Z. is not a party

26. Convention concerning the Export and Import of Animal Products (other than Meat, Meat Preparations, Fresh Animal Products, Milk and Milk Products), with Annex

Geneva, 20 February 1935

N.Z. is not a party

B. Agreements which have not yet entered into force

1. Convention for the Prevention and Punishment of Terrorism

Geneva, 16 November 1937

2. Special Protocol concerning Statelessness

The Hague, 12 April 1930

3. Convention on the Registration of Inland Navigation Vessels, Rights in Rem over such Vessels and other Cognate Questions, with Protocol-Annex

Geneva, 9 December 1930

4. Convention on Administrative Measures for Attesting the Right of Inland Navigation Vessels to a Flag, with Protocol-Annex

Geneva, 9 December 1930

5. Agreement for a Uniform System of Maritime Buoyage, and Rules annexed thereto

Geneva, 13 May 1936

New Zealand has not taken any steps to support these treaties.

Note: Only those treaties marked with an asterisk seem to have achieved a wide measure of support.

RESTRICTED

September 26, 1963.

The form of the project - Code or Convention?

In the early stages of the Commission's study of the law of treaties, the special rapporteur submitted reports which envisaged that the Commission's work would take the form of a Convention. When Sir Gerald Fitzmaurice become rapporteur, he framed his drafts in the form of an expository code. However, at the time the Commission elected his successor Sir Humphrey Waldock in 1961, the form was changed again, and the objective declared to be the preparation of articles to serve as the basis for a convention. The arguments in favour of a code as stated by the Commission in 1959, were that it seemed inappropriate that a code on the law of treaties should itself take the form of a treaty, and secondly that much of the law relating to treaties was not especially suitable for framing in conventional form, being enunciations of principles and abstract rules. The use of a code furthermore, would permit the inclusion of declaratory and explanatory material. The arguments in favour of a convention were that an expository code however well formulated, could not in the nature of things be so effective as a convention for consolidation the law, and secondly that the use of a convention would give the new states the opportunity to participate directly in the formulation of the law if they so wished.

The present draft is in the form of a multilateral convention and it is for decision whether Canada wishes to comment on the form in its observations on the first series of draft articles. While Governments have not been specifically asked for their observations on the question of form, it would seem appropriate if we feel strongly about it, to volunteer them at this stage so that

they might be taken into account in the course of the Commission's final review of the draft articles. It is unlikely that the issue has yet been settled and some states took the opportunity of the 6th Committee debate on the I.L.C. report in 1962 to express regret that the Commission had reverted to the convention form. Also in 1962, the New Zealand delegation was instructed to discuss with friendly delegations:

(1) the New Zealand Department's suspicions that the tendency of the Commission to embody its work in conventions represented a concession to those Afro-Asian states (Ghana) which were reluctant to accept the prihciple that they were bound by rules of international law established before their inception; and

(2) its doubts upon the impact on international law of a convention on the law of treaties which was subject to many reservations and restrictions.

With regard to the first point, it is of course desirable to resist any trend on the part the newer states to disassociate themselves from the established rules of international law. On the other hand, we doubt the wisdom of relying too heavily on such a negative posture and feel that where feasible a constructive effort should be made not only to codify existing practice (which does not in any event usually have the stature of rules of customary law) but also to formulate rules that are generally acceptable to as many states as possible. With regard to the second comment, we doubt whether this Convention should be considered in quite the same light as an ordinary treaty creating legal rights and obligations. Whatever its form, we feel that the impact of I.L.C.'s work in this field will be as an exposition on the subject rather than as a binding legal instrument. We agree however, that should reservations be admitted to the convention, it may become a

complex task to keep track of various national procedures.

There would not appear to be any direct Canadian interest involved in this discussion. As the subject matter is clearly within the ambit of the royal prerogative, provincial interests are not involved. It is therefore suggested that no comments need be submitted by the Canada on this question. Do you agree?

Federal States

One of the few articles of the draft in which Canada might be said to have an direct interest is Article 3(2) which provides that "In a Federal State, the capacity of the member states of a federal union to conclude treaties depends on the federal constitution". This article was the subject of considerable debate and revision, and was only adopted by a vote of 9 to 7 with 3 abstentions. The chief criticism of the article in its amended form was that it would involve the Commission in the consideration of a separate topic, namely, subjects of international law (and inevitably the cold war dispute over the recognition of states). I doubt whether we have any quarrel with the Article as it stands although I would prefer the words "constituent units" to "member states of a federal union" as the latter bears possibly controversial connotations for Canada. Should we suggest this change?

Full Powers

In the commentary on Article 4(6) it is stated "The Commission will be glad eventually to have information from governments as to their practice in regard to these forms of full powers". The first form referred to is a general full power conferring on a Foreign Minister or sometimes a permanent representative at the headquarters of an international organization, the authority to sign treaties on behalf of the state. The second form is a full power issued ad hoc for the execution of a particular

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instrument. It is believed that Canada has never issued general full powers although in Britain the Foreign Secretary traditionally holds such powers. In any event, the question of issuing general full powers to a Foreign Minister looses much its significence in the light of Article 4(1) which states that Heads of State, Heads of Government and Foreign Ministers are not required to furnish evidence of their authority to negotiate, draw up, authenticate or sign a treaty on behalf of their state. This presumed authority does not extend to heads of diplomatic missions, however, and in another context, it has recently been suggested that the Department might give consideration to the issuance of general full powers to our permanent representative in Geneva in view of the large number of international instruments for which he is required to produce full powers prior to signature. The Canadian position would seem to be that while this country has not issued general full powers in the past, it sees certain advantages in this practice and might decide to do so in the future. Would you agree to a reply along these lines?

Definition of Treaty

The draft (Article 1(1)(a)) defines a treaty as "any international agreement ... governed by international law". In so far as this statement means that the agreement is one recognized by international law and that certain standards of international law are therefore applicable to it, this statement is unobjectionable. But if, as has been suggested, this statement means that an international agreement must apply international law standards, it goes too far for it is now established that the parties to an international agreement may choose the law they wish to apply and that domestic law is one of the choices open to them. Should we comment on this point?

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Participation in Treaties

Article 8 concerning participation in treaties was among the most controversial articles discussed by the I.L.C. in 1962. The main issue was whether every state should have the right to participate or whether participation should be a matter for the parties to decide. The issue has immediate political implications for should states acquire the right to participate in international agreements, the communist countries unrecognized by the West are likely to exercise such a right and might thus achieve a significent step in their struggle for international acceptance. The Commission established a category of treaties it styled "general multilateral treaties" which "concern /ed/ general norms of international law or deal /t/ with matters of general interest to states as a whole". Soviet Bloc and certain Afro-Asian members argued that it was for the general good that all states should become parties to this type of treaty. Certain Western members argued that the Commission should not set aside so fundamental a principle of treaty law as the freedom of contracting states to determine by the clauses of the treaty itself, the states which might become a party to it. The Commission was also reminded that current practice with regard to treaties concluded under the auspices of the United Nations, as well as many other multilateral treaties, was for them to be open to members of the U.N., the specialized agencies, parties to the Statute of the I.C.J. and any other state invited by the General Assembly. Under this formula, doubtful cases were decided by the General Assembly or the competent organ of some other organization of world wide membership. In this way, the Secretary General or other depositary was relieved of making delicate and frequently contraversial political appreciations more appropriate to a political organ. In the end, it was decided by a vote of 12 to 5, that where a general multilateral treaty was silent concerning participation, every state shall have the rig...

to become a party thereto.

It is difficult to appreciate the full significence of this decision until it is seen what proportion of treaties comes within the newly established category of general multilateral treaties i.e. those concerning general norms of international law or matters of general interest to states as a whole. However, the majority of present treaties are not silent on the question of participation and accordingly would fall outside the scope of this Article. Its practical significence is therefore limited. In any event, this rule would presumably not apply retroactively but only to treaties concluded in the future. Should it be desired to limit the exercise of this new right, interested states could seek to ensure that every multilateral treaty contained a participation clause.

It may be, furthermore, that Canada should not take the lead in resisting all participation in international agreements by the non recognized Bloc countries but rather, should weigh the desirability of encouraging these states to bind themselves to observe the international rules of civilized conduct. Such a point of view seems to have been adopted by western states, notably Canada and the United States, with regard to participation by the D.D.R. in the Nuclear Test Ban Treaty. Prior to this treaty, however, Canada from time to time found itself a party to the same treaties as states which it does not recognize (e.g. the 1949 Geneva Conventions and the 1962 Laos Protocol). The legal position in such cases is quite clear; in the absence of an unequivocal expression of intention to the contrary, no recognition is implied in the participation by a non recognizing State in a multilateral treaty to which an nonrecognized State is a party.

In its observations, Canada might note the fundamental principle that contracting parties should

be free to determine for themselves the extent to which they are prepared to enter into relations with other states, the current practice with regard to treaties concluded under the auspices of the United Nations, and conclude with an observation that what the Commission is doing is to establish a counter presumption in a limited and very clearly defined type of case, i.e. where the contracting parties to certain types of treaties have not expressed themselves on the question of participation. Do you agree?

Revision of Participation Clauses

Article 9 of the I.L.C. draft provides that participation clauses in treaties may be revised either by a two-thirds majority of the states which drew up the treaty or by decision of the competent organ of an international organization. The traditional rule of customary international law required unanimous agreement among the contracting states to amend a treaty. However, today there appears to be no support in contemporary international practice for the theory that a treaty which purports to revise an earlier agreement without the consent of all the parties is void. The I.L.C. article is a logical outcome of this development for in securing the agreement of two thirds of the parties to revise the participation clauses, the treaty is in fact being amended by agreement among the parties. Do you agree that no observations are necessary on this Article?

Reservations

Time has now run out on the traditional approach that reservations must be unanimously accepted by the contracting parties. In its draft articles (18, 19 and 20) the Commission, on the recommendation of the rapporteur, brushed aside arguments favouring the collegiate rule and came down firmly in favour of the so-called flexible approach under which the onus is on contracting parties to object within a

given period if they feel a reservation is inadmissable. This rule is to apply only where the terms of the instrument do not prohibit reservations, and where the reservation is not incompatible with the object and purpose of the treaty. Although this development is open to the familiar criticisms that compatibility with the object and purpose of the convention is too subjective a test for application to multilateral conventions generally, and that the integrity of the treaty text should not be undermined by the too ready admission of reservations, the Commission expressed the view 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, may be the one most suited to the immediate needs of the international community. This liberal approach to the use of reservations is clearly in the interests of countries such as Canada which for constitutional or other reasons, are frequently obliged to enter reservations.

However, the question arises whether the compatibility with object and purpose test is meant to be the only basis on which a state may <u>object</u> to a reservation, or the only basis on which a state may <u>make</u> a reservation. One proposition may not be the obverse of the other. If stated in the latter manner, it would seem to be still open to contracting states to object to a reservation on other grounds. Such a possibility is implied in the International Court's Answer I in the Genocide Case; "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 the state cannot be regarded as being

a party to the Convention". This is perhaps an abstruse argument for the tenor of the Articles and the commentary suggests that the Commission's intention was to make incompatibility with the object and purpose of the treaty the only grounds on which an objection could be taken to a reservation. It might be desirable nevertheless, to have this intention stated unequivocably in order to remove any basis for such an argument. If you agree, do you wish this point to made in our observations or would you prefer to raise it in the Commission yourself?

Entry into Force

Article 24 accords recognition to the practice of provisional entry into force of a treaty pending a specified act, at which time it is to come definitively into force. While there is no doubt that this procedure does occur from time to time (eg. the Canada-Soviet Trade Agreement) and that it is an expedient method for allowing the legislature to approve the instrument without holding up its coming into force, Legal Division has generally frowned on the practice on the grounds that the precise legal status of the rights and obligations during the period the treaty is provisionally in force is so uncertain as to raise doubts whether the treaty has any validity until it has come definitively into force. It is unlikely, however, that legal theory can stand in the way of the general acceptance of this practice which is clearly a useful procedure to meet a practical need. If you agree, no comments need be made on this point.

"A small group of states"

Articles 9(2) and 20(3) contain the expression "a small group of states" which the Commission admits to be regrettably vague. The Commission however felt that it was a sufficient general description in the context of the articles concerned. This point has already been commented on in the 6th Committee. Theoretically, the objection is well taken but in

practice there is unlikely to be ambiguity as to whether a treaty falls with the group of those concluded between "a small group of states". Perhaps the rapporteur's term "plurilateral" should be reintroduced to take the place of this expression. Do you agree that no comment need be made on this point?

Presumption of a States Consent

In two articles, the Commission proposes that silence should constitute a presumption of consent after the expiry of a given period. (Article 9(3) (b) Consent to the opening of a treaty to the participation of additional states; Article 19(3) Acceptance of a reservations). A spirited debate arose on this point in the 6th Committee last year in which some Latin American delegates pointed out that the opening of participation clauses constituted in effect an agreement to amend an agreement, and that an exercise of treaty making power could not be inferred from a state's silence. In our opinion, this theoretical objection to the formula of presumed consent is perhaps of less concern than the very real difficulty at present of eliciting any expression of opinion from states which results frequently in delays and often in complete frustration of treaty action. However, New Zealand has pointed out that this presumed consent formula may have implications in the field of recognition. If a non-recognized state enters a reservation, the non recognizing contracting states will be faced with the problem that if they ignore the action as is the general practice now, they will be presumed to have consented to the reservation which will be binding upon them should they subsequently recognize the state entering the reservation. If they wish to object to the reservation on its merits, they risk jeopardizing their position on recognition and would perhaps be obliged to enter an objection to the effect that they do not recognize the reserving state but if they did, they would

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object. This is an awkward expedient and I think we might suggest to the Commission that silence should not be presumed to operate as an expression of consent on the part of a non recognizing state. Do you agree?

Obligations prior to entry into force

It has become an accepted rule that states which have signed an instrument subject to ratification are under an obligation to refrain from acts calculated to frustrate the treaty. The Commission now proposes (Article 17) to extend this rule to states which have taken any part in the drafting process. It is doubtful however, whether states which although participating in the negotiations, have from the beginning expressed the strongest reservations about a treaty and which have not signed it, should placed under such constraint. Should we comment on this?

Instruments of Ratification, etc.

Paragraph 7 of the Commentary for Article 4 states that instruments of ratification, accession, acceptance and approval "are normally signed by Heads of state though in modern practice this is sometimes done by Heads of Government or by Foreign Ministers". This does not accurately reflect Canadian practice for as you know the Secretary of State for External Affairs usually executes such instruments. Do you agree that we should draw Canadian practice to the Commission's attention and suggest that the wording be changed to "are normally signed by Heads of State, Heads of Government or Foreign Ministers"?

20-3-1-6

Legal Div

CONFIDENTIAL

EIGHTEENTH REGULAR SESSION OF THE GENERAL ASSEMBLY
OF THE UNITED NATIONS

Provisional Agenda Item No.71: Question of extended Participation in General Multilateral Treaties concluded under the auspices of the League of Nations [Resolution 1766 (XVII)]

Background Documents:

A/5287 Report of the Sixth Committee.
A/C.6/L.498 Working Paper prepared by the Secretariat giving information about the League of Nations treaties under consideration.
A/CN.4/159 Note by Secretariat
A/CN.4/162 Report by Sir Humphrey Waldock
A/CN.4/163 Report of ILC covering the work of its fifteenth session pp.81-95.

Introduction

The question of extended participation in multilateral treaties concluded in the past and open, by the terms of their participation clauses, to participation by certain categories of States only, was raised in the Sixth Committee at the Seventeenth Session of the General Assembly during the debate on the I.L.C.'s draft articles on the law of treaties.

2. As a result, three delegations (Australia, Ghana and Israel) joined together in introducing a draft resolution designed to achieve the objective of extended participation in these treaties. The draft resolution proposed that the General Assembly should request the Secretary-General to ask the parties to the conventions concerned to state, within a period of twelve months, whether they objected to the opening of those conventions to which they were parties for acceptance by any State Member of the United Nations or member of a specialised agency.

3. It also authorised the Secretary-General to receive in deposit the instruments of acceptance of new States Members of the United Nations or of a specialised agency if the majority of the States parties to those conventions had not objected, within a period of 12 months, to opening the conventions to accession.

4. Finally, the draft resolution recommended that all States parties to the conventions should recognise the legal effects of instruments of acceptance so deposited and communicate to the Secretary-General their consent to participation in the conventions of states so depositing instruments of acceptance.

5. Many representatives expressed doubts regarding the procedure proposed in the draft resolution. It was suggested for example that the drafting of a formal protocol on the opening to accession of the conventions, which would enter into effect when it had been accepted by the number of parties regarded as

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necessary by the protocol itself, would be more in accordance with international practice and the domestic constitutional laws of many States.

6. The relationship between the draft resolution and the question of the succession of States aroused the concern of some representatives. In their view, the determination of the States now parties to the conventions in question involved a problem of the succession of States, since new States had been able to accede to old conventions under agreements made on their behalf by the States which formerly represented them in the international field. They felt that the work of the ILC on State succession might thereby be prejudged.

7. Most representatives considered that a more thorough study was needed of the question. A draft resolution was therefore adopted requesting the ILC to study the problem and to inform the General Assembly of the result of its studies in the report on the work of its 15th Session, and requesting the inclusion of the question on the agenda of the next Session of the General Assembly.

8. On the recommendation of the Sixth Committee, the General Assembly adopted a resolution in these terms (Resolution 1766 (XVII) of 20 November 1962).

Summary of Chapter III of the ILC Report

9. The Commission made it clear that it was examining the question with reference to the twenty-six treaties listed in Part A of the Annex and implied that the five treaties in Part B were now unlikely to come into force. The extent to which any particular treaty had retained its usefulness had not been considered. The Commission pointed out that many of the treaties in Part A might have been overtaken by modern treaties, while others might have lost much of their interest for States with lapse of time. Moreover, the treaties might require changes of substance in order to adapt them to contemporary conditions. The Commission therefore intended to bring this aspect of the question to the attention of the General Assembly and to suggest that a process of review should be initiated.

10. The Commission observed that only five of the treaties concerned appeared to have been designed to be closed treaties. The other twenty-one treaties were clearly intended to be open to more general participation. It was only the dissolution of the League of Nations which had the effect of turning them into closed treaties.

11. The arrangements between the League of Nations and the United Nations for the transfer of certain functions, activities and assets from the former to the latter included functions and powers belonging to the League under international agreements. In resolution 24(1) A of 12 February 1946 the General Assembly declared the willingness of the United Nations "to accept the custody of the instruments and to charge the Secretary of the United Nations with the task of performing for the parties, the functions, pertaining to a secretariat, formerly entrusted to the League of Nations". The report points out that, purely secretarial though the functions of the Secretariat of the

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League may have been as depository of the treaties, it was invested with these functions by the parties to each treaty, not by the League itself, for the appointment of the League Secretariat as depository was effected by a provision of the "final clauses" of each treaty. The transfer of the depository functions from the League Secretariat to the United Nations Secretariat was therefore a modification of the final clauses of the treaties in question. Admittedly the League Assembly had directed its Secretary-General to transfer to the Secretariat of the United Nations all the texts of the League treaties for safe custody and performance of the functions previously performed by the League Secretariat. But although this transfer was assented to by those Members of the United Nations which were also parties to the particular treaties, the General Assembly did not seek to obtain the agreement of all the parties to the various treaties. It simply assumed the functions of the depository by resolution 24(1) A and charged the Secretariat with the task of carrying them out. No objection was raised by any party to the treaties.

12. The Commission then turned to the problems involved in the procedure of the three-power resolution (see introductory section) and the Protocol of Amendment. The proposed resolution required the Secretary-General to ask the parties to the various conventions to indicate within a period of twelve months whether they objected to the opening of those conventions to which they were parties; the Secretary-General's authority to receive the instruments of acceptance from additional States would arise only if the majority of the parties to a convention raised no objection. In other words the identification of the parties to the treaties would be necessary. Similarly, if the procedure of an amending protocol were to be used, there would again be a need to identify the parties because a stated number or proportion of the parties to each League treaty would require to become parties to the amending protocol in order to bring the latter into force. The precise legal position of a new State whose territory was formerly under the sovereignty of a State party or signatory to a League treaty was a question which involved an examination of such principles of international law as might govern the succession of States to treaty rights and obligations. If a certain view was taken of those principles participation in the League treaties under discussion might be open to a considerable number of new states without any special action being taken to open the treaties to them. But some points of difficulty might have to be decided before it could be seen how far the problem was capable of being solved through principles of succession. In many of the League treaties, for example, a substnatial proportion of the signatories had not ratified and the point arose as to the position of a new State whose predecessor in the territory was a signatory but not a party to the treaty. The Commission indicated that it had only just begun its study of succession to treaties and that, owing to the difficulties involved, the principles governing this branch of international law would not provide either a speedy or a complete solution to the problem under consideration.

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13. The Commission therefore considered that the procedure of the three-power resolution and the Protocol of Amendment both had the disadvantage of importing problems of succession requiring the identification of the parties to the treaties.

14. A further disadvantage in each case was that the modification of the participation clauses would operate only as between those parties to the treaties which had given their formal consent to it in the manner required by the resolution or protocol. In other words, either method would provide an incomplete solution to the problem because there were likely to be parties from which formal consent was not forthcoming and which would not therefore be bound by the modification of the participation clauses.

15. Neither procedure was likely to supply a quick solution. In the case of a protocol there would no doubt be some delay before the number of signatories or acceptances necessary to bring the required amending provision into force were obtained. Similarly, the three-power resolution envisaged a period of twelve months before the Secretary-General was to be allowed to receive instruments of acceptance from states wishing to accede to the treaties, and there would be a further delay before parties communicated to the Secretary-General their consent to the participation of the states concerned in the treaties.

16. The Commission then considered the possibility of an alternative solution based on administrative action by the General Assembly. It stressed that a participation clause was one of the "final clauses" and was, in principle, on the same footing as a clause appointing a depository. Admittedly, it differed from a depository clause in that it affected the scope of operation of the treaty and therefore the substantive obligations of the parties. But it was still a final clause, and one which furnished the basis upon which the constitutional process of ratification, acceptance and approval by individual states took place. In twenty-one of the twenty-six treaties being considered, the participation clauses were so formulated as to make the treaty open to participation by any member of the League and any other states to which the League communicated a copy of the treaty. In the case of these twenty-one treaties any state which became party thereby gave its consent to the admission to the treaty not only of League members but of any further state at the decision of the Council of the League. Therefore any constitutional objection to the use of a less formal procedure for modifying the participation clause seemed to be of less force in the case of these treaties. The very fact that the remaining five treaties in Part A of the Annex (Nos. 11, 13, 14, 16 and 18) were originally designed as closed treaties suggested that they might not be of great interest to states today.

17. The special form of the participation clauses of the twenty-one treaties suggested that the problem might be solved on the basis that it involved a simple adaptation to the changeover from the League to the United Nations. The case might not be identical with that of the transfer of the depository functions from the League to the United Nations in that the participation clauses touched the scope of

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operation of the treaties, But in essence what was involved was an adaptation of the participation clauses to the changeover from the League to the United Nations. Therefore the General Assembly by virtue of the arrangements made in 1946 for the transfer of powers and functions from the League to the United Nations, would be entitled to designate an organ of the United Nations to act in place of the Council of the League, and to authorise that organ to exercise the powers of the League Council in regard to participation in the treaties concerned. The resolution of the General Assembly designating an organ of the United Nations to fulfil the League Council's functions under the treaties could;

(a) recall the recommendation of the League Assembly that members of the League should facilitate in every way the assumption by the United Nations of functions and powers entrusted to the League under international agreements of a technical and non-political character;

(b) recite that by the resolution those members of the United Nations which are parties to the League treaties in question give their consent to the assumption by the designated organ of the functions hitherto exercised by the League Council under the treaties in question; and

(c) request the Secretary-General, as depository of the treaties, to communicate the terms of the resolution to any party to the treaties not a member of the United Nations.

16. In its conclusion the ILC made five points:

(a) The method of amending protocol and three-power resolution had both advantages and disadvantages. The Commission did not feel called upon to express a preference for one or the other.

(b) The topic of state succession was a complicating element in the procedures of amending protocol and three-power resolution but it did not necessarily preclude the use of these procedures or prejudge the work of the Commission.

(c) However in the light of the arrangements made upon the dissolution of the League and the assumption by the United Nations of some of the powers in relation to League treaties, the General Assembly appeared to be entitled to take administrative action to designate an organ of the United Nations to assume the powers which, under the participation clauses of the treaties, were formerly exercised by the League Council. This would provide a simpler, speedier procedure and would avoid some of the difficulties attached to the other methods.

(d) The treaties should be examined to see how many of them hold any interest for states today. Subject to the outcome of this examination, the Commission considered that extended participation in the treaties was desirable.

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P.A. Item No.71

(e) The treaties should also be examined with a view to determining what action might be necessary to adapt them to contemporary conditions.

General Comments

The ILC is no doubt correct in recommending a further examination of the twenty-six treaties concerned, to ascertain how many of them are still of interest to states. The resultof such an examination may well throw more light on what would be the most suitable procedure for opening the treaties and may even show, although this is unlikely, that opening of the treaties is not warranted at all by the small degree of interest they now command. Most probably the study would reveal that, while the majority of the treaties no longer hold any interest for states, a few are still of sufficient importance to make their opening desirable.

The treaties could at the same time be examined, as the ILC suggests, to determine what action may be necessary to adapt them to contemporary conditions. There is no point in opening treaties which are then found to be of little value because some of their substantive provisions are out-of-date and unworkable. In cases where modernisation may be necessary it would be preferable for this to be considered in conjunction with the problem of opening the treaties.

Subject to the outcome of this examination, the ILC appears to have found a satisfactory alternative to the procedure of the Protocol of Amendment or the three-power resolution for overcoming the problem of opening up the treaties under discussion. Although it might technically be more correct to open all the treaties concerned by means of an amending protocol, the advantages inherent in the ILC's alternative - speed and simplicity - are considerable. It must also be remembered that twenty-one out of the twenty-six treaties were never intended by the original parties to be closed, so that one would therefore expect no objection to be raised by the parties to their opening. Furthermore, it is likely that only a few of the treaties are of interest today and the use of a complicated, lengthy procedure for opening them therefore seems scarcely worthwhile if a simpler method can satisfy the legal requirements.

Instructions

(1) The delegation should support any measure designed to promote an examination of the treaties to ascertain how many of them are still of interest to States.

(2) The delegation should support any measure designed to promote an examination of the treaties to determine what action may be necessary to adapt them to contemporary conditions.

(3) If it is decided to proceed with the opening of the treaties without the further examination mentioned in (1) and (2), the delegation should support a resolution

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embodying the ILC's alternative solution. The procedure should limit participation to States members of the United Nations or of a specialised agency, or alternatively to the States mentioned above, together with any non-member State to which an invitation is addressed by the General Assembly. (Limitation of participation is, of course, very important. The procedure recommended by the Commission would give the Secretary-General the discretionary power formerly exerciseable by the League Council, of extending an invitation to participate in these treaties to any State, whether a member of the United Nations or not. This places in the hands of the Secretary-General the responsibility of determining what constitutes a state, a decision which is frequently political rather than legal and involves problems of recognition. It is therefore necessary for participation to be limited to states members of the United Nations or of a specialised agency, or, if wider participation is required, to ensure that the issue of invitations to non-member states is under the control of the General assembly and not the Secretary-General).

Department of External Affairs,
WELLINGTON

27 September 1963

ANNEX

LIST OF MULTILATERAL AGREEMENTS CONCLUDED UNDER THE AUSPICES OF THE LEAGUE OF NATIONS IN RESPECT OF WHICH THE SECRETARY-GENERAL OF THE UNITED NATIONS ACTS AS DEPOSITORY AND WHICH ARE NOT OPEN TO NEW STATES BY VIRTUE OF THEIR TERMS OR OF THE DEMISE OF THE LEAGUE

A. Agreements which have entered into force

1. Convention concerning the Use of Broadcasting in the Cause of Peace

Geneva, 23 September 1936

N.Z. is a party

2. Declaration regarding the Teaching of History

Geneva, 2 October 1937

N.Z. is not a party

3. Protocol relating to a Certain Case of Statelessness

The Hague, 12 April 1930

N.Z. is not a party

4. Convention on Certain Questions relating to the Conflict of Nationality Laws

The Hague, 12 April 1930

N.Z. is not a party

5. Protocol relating to Military Obligations in Certain Cases of Double Nationality

The Hague, 12 April 1930

N.Z. is not a party

6. Convention for the Suppression of Counterfeiting Currency, and Protocol

Geneva, 20 April 1929

N.Z. is not a party

7. Optional Protocol concerning the Suppression of Counterfeiting Currency

Geneva, 20 April 1929

N.Z. is not a party

8. Convention and Statute on the Freedom of Transit

Barcelona, 20 April 1921

N.Z. is a party

* 9. Convention and Statute on the Regime of Navigable Waterways of International Concern

Barcelona, 20 April 1921

N.Z. is a party

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10. Additional Protocol to the Convention on the Regime of Navigable Waterways of International Concern

Barcelona, 20 April 1921

N.Z. is a party

11. Convention regarding the Measurement of Vessels employed in Inland Navigation, and Protocol of Signature

Paris, 27 November 1925

N.Z. Is not a party

* 12. Convention and Statute on the International Regime of Maritime Ports, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

13. Agreement concerning Maritime Signals

Lisbon, 23 October 1930

N.Z. is not a party

14. Agreement concerning Manned Lightships not on their Stations

Lisbon, 23 October 1938

N.Z. is not a party

* 15. Convention and Statute on the International Regime of Railways, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

16. Agreement between Customs Authorities in order to Facilitate the Procedure in the case of Undischarged or Lost Triptychs

Geneva, 28 March 1931

N.Z. is not a party

17. Convention on the Taxation of Foreign Motor Vehicles, with Protocol-Annex

Geneva, 30 March 1931

N.Z. is not a party

18. Agreement concerning the Preparation of a Transit Card

Geneva, 14 June 1929

N.Z. is not a party

19. Convention relating to the Transmission in Transit of Electric Power, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

20. Convention relating to the Development of Hydraulic Power affecting more than one State, and Protocol of Signature

Geneva, 9 December 1923

N.Z. is a party

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21. Convention relating to the Simplification of Customs Formalities and Protocol

Geneva, 3 November 1923

N.Z. is a party

22. International Agreement relating to the Exportation of Bones

Geneva, 11 July 1928

N.Z. is not a party

23. International Agreement relating to the Exportation of Hides and Skins

Geneva, 11 July 1928

N.Z. is not a party

24. Convention for the Campaign against Contagious Diseases of Animals, with Declaration attached

Geneva, 26 February 1935

N.Z. is not a party

25. Convention concerning the Transit of Animals, Meat and Other Products of Animal Origin, with Annex

Geneva, 20 February 1935

N.Z. is not a party

26. Convention concerning the Export and Import of Animal Products (other than Meat, Meat Preparations, Fresh Animal Products, Milk and Milk Products), with Annex

Geneva, 20 February 1935

N.Z. is not a party

B. Agreements which have not yet entered into force

1. Convention for the Prevention and Punishment of Terrorism

Geneva, 16 November 1937

2. Special Protocol concerning Statelessness

The Hague, 12 April 1930

3. Convention on the Registration of Inland Navigation Vessels, Rights in Rem over such Vessels and other Cognate Questions, with Protocol-Annex

Geneva, 9 December 1930

4. Convention on Administrative Measures for Attesting the Right of Inland Navigation Vessels to a Flag, with Protocol-Annex

Geneva, 9 December 1930

5. Agreement for a Uniform System of Maritime Buoyage, and Rules annexed thereto

Geneva, 13 May 1936

New Zealand has not taken any steps to support these treaties.

Note: Only those treaties marked with an asterisk seem to have achieved a wide measure of support.

Legal/M.D.Copithorne/ts.

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U.N. Division

CONFIDENTIAL

September 6,1963.

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Legal Division

Commentaries for 15th UNGA - Item 70 and 71.

We are enclosing in triplicate

___ a commentary on Item 71(and a partial one on

___ Item 70)* both of which have been cleared by Mr. Cadieux.

P. CHARPENTIER

Legal Division

~~Latin American~~
~~A. & M.E.~~
~~Commonwealth~~
~~European Div.~~

* retained in Legal Division for completion
P.C.

EIGHTEENTH SESSION

SIXTH COMMITTEE

PROVISIONAL AGENDA CONFIDENTIAL

ITEM 70

Report of the International Law Commission on its Fifteenth Session

Background Documents

A/CN.4/163

Report by Mr. M. Cadieux on work of I.L.C.'s Fifteenth Session

1. The Law of Treaties

In accordance with previously established priorities, the Commission devoted most of its time at the 15th Session to the law of treaties. This year the Commission provisionally adopted the second third of its draft articles on this subject. In accordance with the Commission's plan of work, this group of articles dealing with the invalidity and termination of treaties, will now be referred to governments for observations and will then be reconsidered by the Commission in the light of the observations. The draft articles drawn up last year, which dealt with the conclusion, entry into force and registration of treaties, are now before governments for observations. When the 6th Committee considered the report of the Commission of its work last year, several contentious treaty questions were raised by Soviet bloc and uncommitted countries. These were resisted by Western states on their merits and more particularly, on the grounds that it was premature to discuss the work of the Commission in this field until comments from governments had been received and considered by the Commission. Two resolutions were introduced reflecting these points of view and a compromise wording eventually recommended that the Commission "continue the work of codification and progressive development of the law of treaties, taking into account the views expressed

at the seventeenth Session of the General Assembly and the comments which may be submitted by Governments, in order that the law of treaties may be placed upon the widest and more secure foundations" (Resolution 1765 (XVII) (a)).

Instructions

In view of the generally more harmonious proceedings in the Commission this year, it is not expected that any attempt will be made to carry over the Commission's discussions to the 6th Committee at this Session. Should this not be the case however, substantive discussion in the Committee on the Commission's work on the law of treaties should be resisted on the grounds that such consideration is premature until the Commission has received observations of governments and submitted its final report. Should a particular question of treaty law be raised, instructions should be sought as to the position to be adopted.

EIGHTEENTH SESSION

SIXTH COMMITTEE

PROVISIONAL AGENDA CONFIDENTIAL

ITEM 71

Extended Participation in General Multilateral treaties concluded under the auspices of the League of Nations

Background Documents
(see Item 70)

In its commentary on the first series of draft articles on the law of treaties, the International Law Commission drew attention to the problem of accession of new states "to general multilateral treaties concluded in the past, whose participation clauses were limited to specific categories of states". In the 6th Committee at the 17th Session, a resolution was introduced which in summary, authorized the Secretary General to receive instruments of acceptance to such treaties, if a majority of parties to any given treaty had not objected to it being opened, from any member state of the United Nations or of a specialized agency. It also recommended that the parties recognize the legal effect of such instruments of acceptance. Certain reservations to this procedure were expressed in the Committee, primarily on the grounds that what was involved was an amendment of the treaties and that for reasons of international and constitutional law, consent to such an act could not be given informally, tacitly, or by mere failure to object. Some representatives therefore suggested another procedure, used on a number of previous occasions, of drawing up protocols of amendment. The Committee then decided to refer the matter to the Commission for study and report.

The Commission concluded from its study of the question that both procedures, i.e. that set out in the draft resolution and the protocol of amendment, had advantages and disadvantages, and the Commission did not feel called upon to express a preference between them from the point of

view of domestic law. The Commission noted however, that in 21 of the 26 treaties concerned, (participation in the other 5 was limited to states invited to the conferences which drew up the treaties) the participation clauses were so formulated as to open the treaty to participation by any member of the League, and any additional states to which the Council of the League transmitted a copy of the treaty for that purpose. As a third alternative, the Commission accordingly suggested that, in the light of the arrangements made on the occasion of the dissolution of the League and the assumption by the United Nations of some of its functions and powers in relation to treaties concluded under the auspices of the League, the General Assembly could designate the Secretary-General to assume the powers which under the participation clauses of the treaties in question were formerly exercisable by the Council of the League. This proposal, the Commission felt, would provide "a simplified and expeditious procedure for achieving the object of extending the participation in general multilateral treaties concluded under the auspices of the League". The Commission also suggested that many of the treaties in question might no longer hold any interest for states. It further suggested that the General Assembly should initiate an examination of the treaties in question with a view to determining what action might be necessary to adapt them to contemporary conditions.

The procedure recommended by the Commission would give the Secretary General the discretionary power formerly exercisable by the League Council, of extending an invitation to participate in these treaties to any state, i.e. whether or not it was a member of the United Nations. This places in the hands of the Secretary-General the responsibility of determining what constitutes a state, a decision that is more frequently political than legal. A preferable formula when it is desired not to limit participation to members of the United Nations or the specialized agencies, is to give the General Assembly the power to invite other states to become members.

Instructions

The delegation should support a resolution incorporating the alternative procedure recommended by the Commission. It is desirable that the procedure limit participation as is customary in United Nations conventions, to

states which are members of the United Nations or one of the specialized agencies. An acceptable variation for broader participation is those states mentioned above, together with any non member state to which an invitation is addressed by the General Assembly.

Extract from General Assembly Official Records: Seventeenth Session (1962) Supplement No. 9 (A/5209).

Being Chapter II of the Report of the International Law Commission covering the work of its Fourteenth Session on the Law of Treaties, April 24 - June 29, 1962

Chapter II

LAW OF TREATIES

I. Introduction

A. Summary of the Commission's proceedings[8]

11. At its first session in 1949, the International Law Commission placed the "Law of treaties" amongst the topics listed in paragraphs 15 and 16 of its report for that year as being suitable for codification and appointed Mr. J. L. Brierly as Special Rapporteur for the subject.

12. At its second session in 1950, the Commission devoted its 49th to 53rd meetings to a preliminary discussion of Mr. J. L. Brierly's first report[4] which like his other reports envisaged the Commission's work on the law of treaties taking the form of a draft convention, and also had available to it replies of Governments to a questionnaire addressed to them under article 19, paragraph 2, of its Statute.[5] The Commission's report for that session contained *inter alia* the following observation:

> "A majority of the Commission were also in favour of including in its study agreements to which international organizations are parties. There was general agreement that, while the treaty-making power of certain organizations is clear, the determination of the other organizations which possess capacity for making treaties would need further consideration." (Paragraphs 161-162 of the report.)

13. At its third session in 1951, the Commission had before it two reports from Mr. Brierly,[6] one a continuation of the Commission's general work on the law of treaties and the other a special report on "reservations to multilateral conventions" called for by the General Assembly at the same time as it had requested an advisory opinion from the International Court of Justice on the particular problem of reservations to the Genocide Convention.[7] As to the Commission's opinions and recommendations on the special subject of reservations to multilateral conventions, there is no need to summarize them here, since this is done later in the present report in the commentary which follows articles 18, 19 and 20.[8] At its third session of the Commission, Mr. Brierly presented a second report on the law of treaties which was discussed in the course of eight meetings. The Commission took a further decision at that session concerning the question of international organizations already mentioned in its report for 1950. It adopted "the suggestion put forward the previous year by Mr. Hudson, and supported by other members of the Commission, that it should leave aside, for the moment, the question of the capacity of international organizations to make treaties, that it should draft the articles with reference to States only and that it should examine later whether they could be applied to international organizations as they stood or whether they required modifications."[9]

14. At its fourth session in 1952, the Commission had before it a "third report on the law of treaties",[10] prepared by Mr. Brierly, who, however, had meanwhile resigned his membership of the Commission. In the absence of its author the Commission did not think it expedient to discuss that report, and it confined itself to electing Mr. H. Lauterpacht to succeed Mr. Brierly as Special Rapporteur.

15. At its fifth session in 1953, the Commission received a report from Mr. Lauterpacht containing draft articles and commentaries on a number of topics in the law of treaties but, owing to its other commitments, was unable to take up the report at that session. It therefore instructed Mr. Lauterpacht to continue his work and present a further report. At its sixth session in 1954, the Commission duly received Mr. H. Lauterpacht's second report but was again unable to take up the subject. Meanwhile Mr. (by then Sir Hersch) Lauterpacht had resigned from the Commission on his election as judge of the International Court of Justice, and at its seventh session in 1955 the Commission elected Sir Gerald Fitzmaurice as Special Rapporteur in his place.

16. At the next five sessions of the Commission, from 1956 to 1960, Sir Gerald Fitzmaurice presented five separate and comprehensive reports on the law of treaties, covering respectively: (*a*) the framing, conclusion and entry into force of treaties,[11] (*b*) the termination of treaties,[12] (*c*) essential and substantial validity of treaties,[13] (*d*) effects of treaties as between the parties (operation, execution and enforcement)[14] and (*e*) treaties and third States.[15] Although taking full account of the reports of his predecessors, Sir Gerald Fitzmaurice began preparing his drafts on the law of treaties *de novo* and framed them in the form of an expository code than of a convention. During this period the Commission's time was largely taken up with its work on the law of the sea and on diplomatic and consular intercourse and immunities, so that, apart from a brief discussion of certain general questions of treaty law at the 368th-370th meetings of its 1956 session, it

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[8] This summary is based upon paragraphs 8-11 in chapter II of the Commission's report to the General Assembly in 1959 (A/4169): *Yearbook of the International Law Commission, 1959* (United Nations publication, Sales No.: 59.V.1), vol. II, pp. 88-89.

[4] *Yearbook of the International Law Commission, 1950* (United Nations publication, Sales No.: 57.V.3), vol. II, p. 223.

[5] *Ibid.*, p. 196.

[6] *Yearbook of the International Law Commission, 1951* (United Nations publication, Sales No.: 57.V.6), vol. II, pp. 1 and 70.

[7] *I.C.J. Reports 1951*, p. 15.

[8] See para. 23 below.

[9] *Yearbook of the International Law Commission, 1951* (United Nations publication, Sales No.: 57.V.6), vol. I, p. 136.

[10] *Yearbook of the International Law Commission, 1952* (United Nations publication, Sales No.: 58.V.5), vol. II, p. 50.

[11] *Yearbook of the International Law Commission, 1956* (United Nations publication, Sales No.: 56.V.3), vol. II, p. 104.

[12] *Yearbook of the International Law Commission, 1957* (United Nations publication, Sales No.: 57.V.5), vol. II, p. 16.

[13] *Yearbook of the International Law Commission, 1958* (United Nations publication, Sales No.: 58.V.1), vol. II, p. 20.

[14] *Yearbook of the International Law Commission, 1959* (United Nations publication, Sales No.: 59.V.1), vol. II, p. 37.

[15] Yearbook of the International Law Commission, 1960 (United Nations publication, Sales No.: 60.V.1), vol. II, p. 69.

was only able to concentrate upon the law of treaties at its eleventh session in 1959. At that session it devoted some twenty-six meetings[16] to a discussion of Sir Gerald Fitzmaurice's first report on the framing, conclusion and entry into force of treaties, and provisionally adopted the texts of fourteen articles, together with their commentaries. However, the time available was not sufficient to enable the Commission to complete its series of draft articles on this part of the law of treaties.[17] In its report for 1959 the Commission stated that, without prejudice to any eventual decision to be taken by the Commission it had not so far envisaged its work on the law of treaties as taking the form of one or more international conventions but rather as "a code of a general character". The arguments in favour of a "code" were stated to be two-fold:

> "First, it seems inappropriate that a code on the law of treaties should itself take the form of a treaty; or rather, it seems more appropriate that it should have an independent basis. In the second place, much of the law relating to treaties is not especially suitable for framing in conventional form. It consists of enunciations of principals and abstract rules, most easily stated in the form of a code; and this also has the advantage of rendering permissible the inclusion of a certain amount of declaratory and explanatory material in the body of the code, in a way that would not be possible if this had to be confined to a strict statement of obligation. Such material has considerable utility in making clear, on the face of the code itself, the legal concepts or reasoning on which the various provisions are based."[18]

Mention was also made of possible difficulties that might arise if the law of treaties were to be embodied in a multilateral convention and then some States did not become parties to it or, having become parties to it, subsequently denounced it. On the other hand, it recognized that these difficulties arise whenever a convention is drawn up embodying rules of customary law. Finally, it underlined that, if it were decided to cast the code in the form of a multilateral convention, considerable drafting changes, and possibly the omission of some material, would almost certainly be required.

17. The twelfth session, in 1960, was almost entirely taken up with consular intercourse and immunities and *ad hoc* diplomacy, so that no further progress was made with the law of treaties during that session. Sir Gerald Fitzmaurice then had himself to retire from the Commission on his election as judge of the International Court of Justice, and at the thirteenth session, in 1961, the Commission elected Sir Humphrey Waldock to succeed him as Special Rapporteur for the law of treaties. At the same time the Commission took the following general decisions as to its work on the law of treaties:

> "(i) That its aim would be to prepare draft articles on the law of treaties intended to serve as the basis for a convention;
>
> "(ii) That the Special Rapporteur should be requested to re-examine the work previously done in this field by the Commission and its Special Rapporteurs;
>
> "(iii) That the Special Rapporteur should begin with the question of the conclusion of treaties and then proceed with the remainder of the subject, if possible covering the whole subject in two years."[19]

By the first of these decisions the Commission changed the scheme of its work on the law of treaties from a mere expository statement of the law to the preparation of draft articles capable of serving as a basis for a multilateral convention. In doing so, it had two considerations principally in mind. First, an expository code, however well formulated, cannot in the nature of things be so effective as a convention for consolidating the law; and the consolidation of the law of treaties is of particular importance at the present time when so many new States have recently become members of the international community. Secondly, the codification of the law of treaties through a multilateral convention would give all the new States the opportunity to participate directly in the formulation of the law if they so wished; and their participation in the work of codification appears to the Commission to be extremely desirable in order that the law of treaties may be placed upon the widest and most secure foundations.

18. At the present session of the Commission the Special Rapporteur submitted a report (A/CN.4/144 and Add.1) on the conclusion, entry into force and registration of treaties which was considered by the Commission at its 636th-672nd meetings. The Commission adopted a provisional draft of articles upon these topics, which is reproduced in the present chapter together with commentaries upon the articles. Its plan is to prepare a draft of a further group of articles at its next session covering the validity and duration of treaties and a draft of a yet further group of articles at the subsequent session covering the application and effects of treaties. Whether all the drafts should be amalgamated to form a single draft convention or whether the codification of the law of treaties should be dealt with in a series of related conventions is a question which can be left over for decision when all the drafts are complete. Provisionally, and for the purpose of facilitating the work of drafting, the Commission is adopting the same method as in the case of the law of the sea—of preparing a series of self-contained though closely related group of draft articles.

19. In accordance with articles 16 and 21 of its Statute, the Commission decided to transmit its draft concerning the conclusion, entry into force and registration of treaties, through the Secretary-General, to Governments for their observations.

B. The scope of the present group of draft articles

20. The present group of draft articles covers the broad topic of the "conclusion" of treaties. "Entry into force" has been regarded as naturally associated with, if not actually part of, "conclusion", while the subject of "registration of treaties" has been added as belonging essentially to the procedure of treaty-making and as being closely linked in point of time to entry into force.[20] Articles providing for the correction of errors discovered in the texts of treaties after their authentication have been included, as well as articles concerning the appointment and functions of a depositary. The de-

[16] 480th-496th, 500th-504th and 519th-522nd meetings.

[17] Chapter II of the Commission's report for 1959 contains articles 1-10 and 14-17 of a proposed chapter of a comprehensive code on the law of treaties.

[18] *Yearbook of the International Law Commission, 1956* (United Nations publication, Sales No.: 56.V.3), vol. II, p. 107.

[19] *Official Records of the General Assembly, Sixteenth Session, Supplement No. 9* (A/4843), para. 39.

[20] Article 102 of the Charter requires treaties to be registered "as soon as possible," while the regulations adopted by the General Assembly on 14 December 1946 provide that they shall not be registered until they have entered into force; see article 1, paragraph 2, of the regulations, *United Nations Treaty Series*, vol. I, p. XX.

positary State or international organization, plays so essential a part in the working of the procedural clauses of a multilateral treaty that reference to the functions of a depositary is almost inevitable in articles codifying the law concerning the conclusion of treaties. The Commission notes, moreover, that the General Assembly itself, in its resolution 1452 B (XIV) of 7 December 1959 concerning reservations to multilateral conventions, emphasized the need for the practice of depositary States and organizations to be taken into account by the Commission in its work on the law of treaties. The articles (articles 28 and 29) prepared by the Commission concerning the functions of a depositary will, however, be re-examined since the information concerning the practice of depositary States and organizations called for in the above-mentioned resolution is not yet available.

21. The Commission again considered the question of including provisions concerning the treaties of international organizations in the draft articles on the conclusion of treaties. The Special Rapporteur had prepared, for submission to the Commission at a later stage in the session, a final chapter on treaty-making by international organizations. He suggested that this chapter should specify the extent to which the articles concerning States apply to international organizations and formulate the particular rules peculiar to organizations. The Commission, however, reaffirmed its decisions of 1951[21] and 1959[22] to defer examination of the treaties entered into by international organizations until it had made further progress with its draft on treaties concluded by States. At the same time the Commission recognized that international organizations may possess a certain capacity to enter into international agreements and that these agreements fall within the scope of the law of treaties. Accordingly, while confining the specific provisions of the present draft to the treaties of States, the Commission has made it plain in the commentaries attached to articles 1 and 3 of the present draft articles that it considers the international agreements to which organizations are parties to fall within the scope of the law of treaties.

22. The draft articles have provisionally been arranged in five sections covering: (i) general provisions, (ii) the conclusion of treaties by States, (iii) reservations, (iv) the entry into force and registration of treaties and (v) the correction of errors and the functions of depositaries. In preparing the draft articles, the Commission has sought to codify the modern rules of international law concerning the conclusion of treaties and the articles formulated by the Commission contained elements of progressive development, as well as of codification of the law.

23. The text of draft articles 1 to 29 and the commentaries, as adopted by the Commission on the proposal of the Special Rapporteur, are reproduced below:

II. Draft articles on the law of treaties

Part I

CONCLUSION, ENTRY INTO FORCE AND REGISTRATION OF TREATIES

SECTION 1: GENERAL PROVISIONS

Article 1
Definitions

1. For the purposes of the present articles, the following expressions shall have the meanings hereunder assigned to them:

(*a*) "Treaty" means any international agreement in written form, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (treaty, convention, protocol, covenant, charter, statute, act, declaration, concordat, exchange of notes, agreed minute, memorandum of agreement, *modus vivendi* or any other appellation), concluded between two or more States or other subjects of international law and governed by international law.

(*b*) "Treaty in simplified form" means a treaty concluded by exchange of notes, exchange of letters, agreed minute, memorandum of agreement, joint declaration or other instrument concluded by any similar procedure.

(*c*) "General multilateral treaty" means a multilateral treaty which concerns general norms of international law or deals with matters of general interest to States as a whole.

(*d*) "Signature", Ratification", "Accession", "Acceptance" and "Approval" mean in each case the act so named whereby a State establishes on the international plane its consent to be bound by a treaty. Signature however also means according to the context an act whereby a State authenticates the text of a treaty without establishing its consent to be bound.

(*e*) "Full powers" means a formal instrument issued by the competent authority of a State authorizing a given person to represent the State either for the purpose of carrying out all the acts necessary for concluding a treaty or for the particular purpose of negotiating or signing a treaty or of executing an instrument relating to a treaty.

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

(*g*) "Depositary" means the State or international organization entrusted with the functions of custodian of the text of the treaty and of all instruments relating to the treaty.

2. Nothing contained in the present articles shall affect in any way the characterization or classification of international agreements under the internal law of any State.

Commentary

(1) The definitions, as the introductory words of the paragraph indicate, are intended only to state the meanings with which the terms in question 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. 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 nor usually subject to ratification, 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

[21] *Yearbook of the International Law Commission, 1951* (United Nations publication, Sales No.: 57.V.6), vol. I, p. 136.
[22] *Yearbook of the International Law Commission, 1959* (United Nations publication, Sales No.: 59.V.1), vol. II, pp. 89 and 96.

of treaties. A general convention on the law of treaties must cover all such agreements, whether embodied in one instrument or in two or more related instruments, and whether the instrument is "formal" or "informal." The question whether, for the purpose of describing all such instruments and the law relating to them, the expression "treaties" and "law of treaties" should be employed, rather than "international agreements" and "law of 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) In the first place, the treaty in simplified form, far from being at all exceptional, is very common. The number of such agreements, whether embodied in a single instrument or in two or more related instruments, is now very large and moreover their use is steadily increasing.[23]

(4) 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 field of form, and 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.[24] 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 the field of form pure and simple, and of the method of conclusion and entry into force, there may be certain differences between such agreements and formal agreements. At the most, such a situation might make it desirable, in that particular field and in the section of the convention dealing with it, to institute certain differences of treatment between different forms of international agreements.

(5) Thirdly, even in the case of single formal agreements, an extraordinarily rich and 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" and "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 minutes", may be more common than others.[25] 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.

(6) 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.[26]

(7) 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 Courts 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" 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 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.

(8) The term "treaty", as used in the draft article covers only international agreements made between "two or more States or other subjects of international law". The phrase "other subjects of international law" is designed to provide for treaties concluded by: (*a*) international organizations, (*b*) the Holy See which enters into treaties on the same basis as States, and (*c*) other international entities, such as insurgents which may in some circumstances enter into treaties. The phrase is not intended to include individuals or corporations created under national law, for they do not possess capacity to enter into treaties nor to enter into agreements governed by public international law.[27]

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[23] See first report by Sir Hersch Lauterpacht, *Yearbook of the International Law Commission, 1953* (United Nations publication, Sales No.: 59.V.4), vol. II, pp. 101-106.

[24] See on this subject the commentaries to Sir Gerald Fitzmaurice's second report (*Yearbook of the International Law Commission, 1957* (United Nations publication, Sales No.: 57.V.5), vol. II, p. 16, paras. 115, 120, 125-128 and 165-168); his third report (*Yearbook of the International Law Commission, 1958* (United Nations publication, Sales No.: 58.V.1), vol. II, p. 20, paras. 90-93).

[25] In his article "The Names and Scope of Treaties" (*American Journal of International Law*, 51 (1957), No. 3, p. 574), Mr. Denis P. Myers considers no less than thirty-eight different appellations; see also the list given in Sir Hersch Lauterpacht's first report (*Yearbook 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."

[26] Lord McNair, Law of Treaties (1961) p. 22; Rousseau, *Principes généraux du droit international public*, p. 132 *et seq.* See also the opinion of Louis Renault as long ago as 1869: ". . . . every agreement arrived at between . . . States, in whatever way it is recorded (treaty, convention, protocol, mutual declaration, exchange of unilateral declaration)." (translation) *Introduction à l'étude du droit international*, pp. 33-34.

[27] As to this point and the general question of the capacity of subjects of international law to enter into treaties; see further the commentary to article 3.

(9) The phrase "governed by international law" serves to distinguish between international agreements regulated by public international law and those which, although concluded between two States, are regulated by the national law of one of the parties (or by some other national law system chosen by the parties).

(10) The use of the term "treaty" in the draft articles is confined to international agreements expressed in writing. This is not to deny the legal force of oral agreements under international law or 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 considers 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 related instruments. The obvious examples are exchanges of notes and exchanges of letters. Another is the case of agreements concluded by means of "declarations" made separately but related to each other either directly or through a connecting instrument. The definition, by the phrase "whether embodied in a single instrument or two or more related instruments", brings these forms of international agreement within the term "treaty" as well as all those embodied in a single instrument.

(11) *"Treaty in simplified form".* As already indicated in paragraph 4 of the present commentary, the law of treaties for the most part applies in the same manner to formal treaties and treaties in simplified form but in the sphere of conclusion and entry into force some differences may be found to exist. In point of fact, formal and informal treaties are so often employed for precisely the same kind of transaction that the number of cases where it can be said with truth that different principles apply to formal and informal treaties are extremely few. Nevertheless, in one or two instances a distinction needs to be drawn between treaties in simplified form and other treaties (e.g., articles 4 and 10). The distinction is not altogether easy to express owing to the great variety in the use of treaty forms and the somewhat indiscriminate nomenclature of treaties. In general, treaties in simplified form identify themselves by the absence of one or more of the characteristics of the formal treaty. But it would be difficult to base the distinction infallibly upon the absence or presence of any one of these characteristics. Ratification, for example, though not usually required for treaties in simplified form is by no means unknown. Nevertheless, the treaty forms falling under the rubric "treaties in simplified form" do in most cases identify themselves by their simplified procedure. The Commission has, therefore, defined this form of treaty by reference to its simplified procedure and by mentioning typical examples.

(12) *General multilateral treaty.* Multiplication of the number of States participating in the drawing up of a treaty may raise problems in regard to the procedure for the adoption, signing and authentication of the treaty and in regard to the admission of additional parties, the acceptance of reservations, entry into force and other matters. The problem is also posed whether different rules may, perhaps, apply to treaties drawn up by a limited number of States and those drawn up by a large number or between those to which only a limited group of States may become parties and those to which all or a very large number of States may become parties. The Commission, having given close attention to these problems, found that for most purposes the relevant distinction is between treaties drawn up at a conference convened by the States themselves and those drawn up in an international organization or at a conference convened by an international organization. But in one or two cases the Commission found it neecssary to have regard also to other criteria. One of these cases was the procedure for admitting additional States to participation in a multilateral treaty. Here, the Commission found that the relevant distinction is between "general multilateral treaties" and other multilateral treaties. Accordingly, it became necessary to define a "general multilateral treaty" and the Commission took as the basis of its definition the general character of the treaty from the point of view of the provisions of the treaty being a matter of general concern to the international community as a whole.

(13) *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.

(14) The remaining definitions do not require comment, as they are sufficiently explained in the relevant articles and commentaries.

(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 quite 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 2

Scope of the present articles

1. Except to the extent that the particular context may otherwise require, the present articles shall apply to every treaty as defined in article 1, paragraph 1 (*a*).

2. The fact that the present articles do not apply to international agreements not in written form shall not be understood as affecting the legal force that such agreements possess under international law.

Commentary

(1) Paragraph 1 of this article has to be read in conjunction with the definition of treaty in article 1, from which it appears that the draft articles apply to every international agreement in written form concluded between two or more subjects of international law and

tween their State and the State to which they are credited.

(*b*) The same rule applies in the case of the Heads of a permanent mission to an international organization in regard to treaties drawn up under the auspices of the organization in question or between their State and the organization to which they are accredited.

3. Any other representative of a State shall be required to furnish evidence, in the form of written credentials, of his authority to negotiate, draw up and authenticate a treaty on behalf of his State.

4. (*a*) Subject to the provisions of paragraph 1 above, a representative of a State shall be required to furnish evidence of his authority to sign (whether in full or *ad referendum*) a treaty on behalf of his State by producing an instrument of full powers.

(*b*) However, in the case of treaties in simplified form, it shall not be necessary for a representative to produce an instrument of full powers, unless called for by the other negotiating State.

5. In the event of an instrument of ratification, accession, approval or acceptance being signed by a representative of the State other than the Head of State, Head of Government or Foreign Minister, that representative shall be required to furnish evidence of his authority.

6. (*a*) The instrument of full powers, where required, may either be one restricted to the performance of the particular act in question or a grant of full powers which covers the performance of that act.

(*b*) In case of delay in the transmission of the instrument of full powers, a letter or telegram evidencing the grant of full powers sent by the competent authority of the State concerned or by the head of its diplomatic mission in the country where the treaty is negotiated shall be provisionally accepted, subject to the production in due course of an instrument of full powers, executed in proper form.

(*c*) The same rule applies to a letter or telegram sent by the Head of a permanent mission to an international organization with reference to a treaty of the kind mentioned in paragraph 2 (*b*) above.

Commentary

(1) Authority to represent the State in doing any of the acts by which treaties are negotiated and concluded is a matter to be decided by each State in accordance with its own internal laws and usages. However, other States have a legitimate interest in the matter to the extent of being entitled to reassure themselves that a representative with whom they are dealing has authority from his State to carry out the transaction in question. In some cases, the very position of the representative in the State gives this assurance; where this is not so, there is normally a right to call for evidence of authority of the person concerned to act in the particular transaction on behalf of his State. The present article seeks to specify the cases when, according to modern practice, no evidence of authority is required and those when a representative either must produce evidence of his authority or is liable to do so if called upon.

(2) Heads of State, Heads of Government and Foreign Ministers are considered in virtue of their offices and functions to possess an authority to act for their States in negotiating, drawing up, authenticating or signing a treaty. In the case of Foreign Ministers this was expressly recognized by the Permanent Court of International Justice in the *Eastern Greenland Case*[30] in connexion with the "Ihlen Declaration." Accordingly, paragraph 1 lays down that no evidence is required of the authority of these officers of State for the purposes mentioned.

(3) Similarly, in accordance with accepted practice, paragraph 2 provides that the Head of a diplomatic mission is to be considered to have authority to negotiate, draw up and authenticate a treaty between his State and the State to which he is accredited. Thus, article 3 (*c*) of the Vienna Convention on Diplomatic Privileges and Immunities provides that "the functions of a diplomatic mission consist, *inter alia,* in . . . negotiating with the Government of the receiving State". However, the assumption does not extend in the case of the Head of a diplomatic mission to signing a treaty with *binding effect*; in carrying out that act he is governed by the rule in paragraph 4 of the present article. The practice of establishing permanent missions at the headquarters of certain international organizations to represent the State and to invest the permanent representatives with powers similar to those of the Head of a diplomatic mission is now extremely common. The Commission therefore considers that the rule in paragraph 3 should also apply to such permanent representatives to international organizations.

(4) Paragraph 3 lays down the general rule that representatives other than those already mentioned are under an obligation to produce evidence, in the form of written credentials, of their authority to negotiate, draw up and authenticate a treaty, even if this requirement may sometimes be overlooked or waived.

(5) As already indicated in regard to the Head of a diplomatic mission, authority to negotiate, draw up and authenticate is distinct from authority to sign. While authority to sign, if possessed by the representative at the stage of negotiation, may reasonably be held to imply authority to negotiate, the reverse is not true; and in the case of treaties not in simplified form a further authority specifically empowering him to sign is necessary before signature can be affixed. The practice of Governments in regard to treaties of which the Secretary-General of the United Nations is depositary indicates that no distinction is made for this purpose between signature and signature *ad referendum,* and the rule has accordingly been so stated in paragraph 4 (*a*) of the article.

(6) In the case of treaties in simplified form, the production of an instrument of full powers is not usually insisted upon in practice. As it is possible to imagine circumstances in which the other State might wish to assure itself of a representative's power to sign an exchange of notes or other treaty in simplified form, the Commission has proposed a rule in paragraph 4 (*b*) which dispenses with the production of full powers, "unless called for by the other negotiating State".

(7) Instruments of ratification, accession, acceptance and approval are normally signed by Heads of State, though in modern practice this is sometimes done by Heads of Government or by Foreign Ministers. In these cases, evidence of authority to sign the instrument is not required. However, in rare cases—usually because of special urgency to deposit the instrument—the Head of

[30] P.C.I.J., Series A/B,53, p. 71.

governed by international law: The words "except to the ex' 't that a particular context may otherwise require" pr. ce the statement as to the scope of the present articles simply as a recognition of the fact that some of their provisions are, either by their express terms or by their inherent nature, only applicable to certain kinds of treaties.

(2) As already stated in paragraph 10 of the commentary to article 1, the restriction of the draft articles to agreements in written form does not mean that the Commission considers oral international agreements to be without legal force. Accordingly, in order to remove any possibility of misunderstanding, paragraph 2 of the present article, without entering further into the matter, expressly preserves such legal force as oral agreements possess under international law.

Article 3

Capacity to conclude treaties

1. Capacity to conclude treaties under international law is possessed by States and by other subjects of international law.

2. In a federal State, the capacity of the member states of a federal union to conclude treaties depends on the federal constitution.

3. In the case of international organizations, capacity to conclude treaties depends on the constitution of the organization concerned.

Commentary

(1) Some members of the Commission were doubtful about the 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 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 is 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. The Commission, while holding that it would not be appropriate to enter into all the detailed problems of capacity which may arise, decided to include the present article setting out three broad provisions concerning capacity to conclude treaties.

(2) Paragraph 1 lays down the general principle that treaty-making capacity is possessed by States and by other subjects of international law. The term "State" is used here with the same meaning as in the Charter of the United Nations, the Statute of the Court, the Geneva Convention on the Law of the Sea and the Vienna Convention on Diplomatic Intercourse and Immunities; i.e., it means a State for the purposes of international law. The phrase "other subjects of international law" is primarily intended to cover international organizations, to remove any doubt about the Holy See and to leave room for more special cases such as an insurgent community to which a measure of recognition has been accorded.

(3) Paragraph 2[28] 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 the federation. Agreements between two member states or a federal State have a certain similarity to international treaties and in some instances certain principles of treaty law have been applied to them by analogy. However, those agreements operate within the legal régime of the constitution of the federal State, and to bring them expressly within the terms of the present articles would be to risk a conflict between international and domestic law. Paragraph 2, therefore, is concerned only with treaties made by the federal Government itself, or 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. A question 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 has to be sought in the provisions of the federal constitution.

(4) Paragraph 3 states that the treaty-making capacity of an international organization depends on its constitution. The term "constitution" has been chosen deliberately in preference to "constituent instrument." For the treaty-making capacity of an international organization does not depend exclusively on the terms of the constituent instrument of the organization but also on the decisions and rules of its competent organs. Comparatively few constituent treaties of international organizations contain provisions concerning the conclusion of treaties by the organization; nevertheless, the great majority of organizations have considered themselves competent to enter into treaties for the purpose of furthering the aims of the organization. Even when, as in the case of the Charter, the constituent treaty has contained express provisions concerning the making of certain treaties, they have not been considered to exhaust the treaty-making powers of the organization. In this connexion, it is only necessary to recall the dictum of the International Court in its opinion on *Reparation for Injuries Suffered in the Service of he United Nations*.[29] "Under international law, the organization must be deemed to have those powers which, though not expressly provided for in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties." Accordingly, important although the provisions of the constituent treaty of an organization may be in determining the proper limits of its treaty-making activity, it is the constitution as a whole—the consituent treaty together with the rules in force in the organization—that determine the capacity of an international organization to conclude treaties.

SECTION II: CONCLUSION OF TREATIES BY STATES

Article 4

Authority to negotiate, draw up, authenticate, sign, ratify, accede to, approve or accept a treaty

1. Heads of State, Heads of Government and Foreign Ministers are not required to furnish any evidence of their authority to negotiate, draw up, authenticate or sign a treaty on behalf of their State.

2. (*a*) Heads of a diplomatic mission are not required to furnish evidence of their authority to negotiate, draw up and authenticate a treaty be-

[28] For the reasons given by him in the summary records of the 658th and 666th meetings, Mr. Briggs does not accept the provisions of paragraph 2 of article 3.

[29] *I.C.J. Reports 1949*, p. 182.

a mission or a permanent representative to an organization may be instructed to sign and deposit such an instrument; in these cases, according to the practice of the Secretary-General, full powers are demanded and produced. It is these cases for which paragraph 5 seeks to provide.

(8) Paragraph 6 deals with the form of full powers and with cases where less formal evidence may provisionally be accepted in lieu of full powers. Normally, full powers are issued *ad hoc* for the execution of the particular act in question, but there does not appear to be any reason why full powers should not be couched in a wider form provided that they leave no doubt as to the scope of the powers which they confer. Some countries, it is understood, may adopt the practice of issuing to certain Ministers, as part of their normal commissions, wide full powers which, without mentioning any particular treaty, confer on the Minister authority to sign treaties or categories of treaties on behalf of the State. In addition, some permanent representatives at the headquarters of international organizations, that are the depositaries of multilateral treaties, are clothed by their States with such wide full powers, either included in their credentials or contained in a separate instrument. The Commission will be glad eventually to have information from Governments as to their practice in regard to these forms of full powers. In the meanwhile, it seems justifiable tentatively to insert in paragraph 6 (*a*) a provision allowing full powers framed to cover all treaties or specific categories of treaty.

(9) Paragraphs 6 (*b*) and (*c*) recognize a practice of comparatively recent development which is of considerable utility and should serve to render initialling and signature *ad referendum* unnecessary save in exceptional circumstances. A letter or telegram is, in case of urgency, accepted as provisional evidence of authority, subject to the production in due course of full powers executed in proper form.

Article 5

Negotiation and drawing up of a treaty

A treaty is drawn up by a process of negotiation which may take place either through the diplomatic or some other agreed channel, or at meetings of representatives or at an international conference. In the case of treaties negotiated under the auspices of an international organization, the treaty may be drawn up either at an international conference or in some organ of the organization itself.

Commentary

The Commission, although it recognized the contents of this article to be more descriptive than normative, decided to include it, since the process of drawing up the text is an essential preliminary to the legal act of the adoption of the text dealt with in the next article. Article 5, in short, provides a logical connecting link between article 4 and article 6.

Article 6

Adoption of the text of a treaty

The adoption of the text of a treaty takes place:

(*a*) In the case of a treaty drawn up at an international conference convened by the States concerned or by an international organization, by the vote of two-thirds of the States participating in the conference, unless by the same majority they shall decide to adopt another voting rule;

(*b*) In the case of a treaty drawn up within an organization, by the voting rule applicable in the competent organ of the organization in question;

(*c*) In other cases, by the mutual agreement of the States participating in the negotiations.

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 is 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 very few States. But for other multilateral treaties a different 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) Sub-paragraph (*a*) of the present article deals with the case of treaties drawn up at international conferences and the main questions for the Commission were: (i) whether a distinction should be drawn between conferences convened by an international organization, and (ii) the principles upon which the voting rule should be determined.

(4) As to the first question, when the General Assembly convenes a conference, the practice of the Secretariat of the United Nations is, after consultation with the groups and interests mainly concerned, to prepare provisional or draft rules of procedure for the conference, including a suggested voting rule, for adoption by the conference itself.[31] 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) As to the second question, the rule proposed in

[31] Cf. General Assembly resolution 479(V) of 12 December 1950, "Rules for the calling of non-governmental conferences by the Economic and Social Council".

sub-paragraph (*a*) 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 by 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 appears to the Commission to be extremely desirable to 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 sub-paragraph (*a*) 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 texts of multilateral treaties is now so frequent.

(6) Sub-paragraph (*b*) deals with the case of treaties, like the Genocide Convention or the Convention on the Political Rights of Women, which are drawn up actually 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.

(7) There remain bilateral treaties and a residue of multilateral treaties concluded between a small group of States otherwise than at an international conference. For all these treaties unanimity remains the rule.

Article 7

Authentication of the text

1. Unless another procedure has been prescribed in the text or otherwise agreed upon by States participating in the adoption of the text of the treaty, authentication of the text may take place in any of the following ways:

(*a*) Initialling of the text by the representatives of the States concerned;

(*b*) Incorporation of the text in the final act of the Conference in which it was adopted;

(*c*) Incorporation of the text in a resolution of an international organization in which it was adopted or in any other form employed in the organization concerned.

2. In addition, signature of the text, whether a full signature or signature *ad referendum*, shall automatically constitute an authentication of the text of a proposed treaty, if the text has not been previously authenticated in another form under the provisions of paragraph 1 above.

3. On authentication in accordance with the foregoing provisions of the present article, the text shall become the definitive text of the treaty.

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. Whether the States concerned will eventually become bound by this treaty is of course another matter, and remains quite open. But they must have, as the basis for their decision on this question a final text not susceptible of alteration. Authentication is the process by which this final text is established, and it consists in some act or procedure which certifies the text as the correct and authentic text.

(2) Previous drafts on the law of treaties have not recognized authentication as a distinct part of the treaty-making process. The reason appears to be that until comparatively recently signature was the normal method of authenticating a text, and that signature always has another and more important function. For it is also either a first step towards ratification, acceptance or approval of the treaty, or an expression of the States consent to be bound by it. The authenticating function of signature is consequently masked by being merged in its other function.[32] In recent years, however, other methods of authenticating texts of treaties on behalf of all or most of the negotiating-parties have been devised. Examples are the incorporation of unsigned texts of projected treaties in final acts of diplomatic conferences, the procedure of the International Labour Organisation under which the signatures of the President of the International Labour Conference and of the Director-General of the International Labour Office authenticate the texts of labour 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 render it desirable to deal separately in the draft articles with authentication as a distinct procedural step in the conclusion of a treaty.

(3) Paragraph 1 of the article sets out the methods of authentication other than signature, and paragraph 2 covers signature as an act of authentication. Signature has been dealt with separately because it only operates as an authenticating act, if the treaty has not already been authenticated in one of the ways mentioned in paragraph 1.

(4) Paragraph 3 states the legal effect of authentication as an act which renders the text definitive. This means that, after authentication, any change in the wording of the text would have to be brought out by an agreed correction of the authenticated text (see articles 26 and 27).

Article 8

Participation in a treaty

1. In the case of a general multilateral treaty, every State may become a party to the treaty un-

[32] See *Yearbook of the International Law Commission, 1950* (United Nations publication, Sales No.: 57.V.3), vol. II, pp. 233-234.

le[illegible]it is otherwise provided by the terms of the treaty itself or by the established rules of an international organization.

2. In all other cases, every State may become a party to the treaty:

(*a*) Which took part in the adoption of its text, or

(*b*) To which the treaty is expressly made open by its terms, or

(*c*) Which although it did not participate in the adoption of the text was invited to attend the conference at which the treaty was drawn up, unless the treaty otherwise provides.

Article 9

The opening of a treaty to the participation of additional States

1. A multilateral treaty may be opened to the participation of States other than those to which it was originally open:

(*a*) In the case of a treaty drawn up at an international conference convened by the States concerned, by the subsequent consent of two-thirds of the States which drew up the treaty, provided that, if the treaty is already in force and . . . years have elapsed since the date of its adoption, the consent only of two-thirds of the parties to the treaty shall be necessary;

(*b*) In the case of a treaty drawn up either in an international organization or at an international conference convened by an international organization, by a decision of the competent organ of the organization in question, adopted in accordance with the applicable voting rule of such organ.

2. Participation in a treaty concluded between a small group of States may be opened to States other than those mentioned in article 8 by the subsequent agreement of all the States which adopted the treaty, provided that, if the treaty is already in force and . . . years have elapsed since the date of its adoption, the agreement only of the parties to the treaties shall be necessary.

3. (*a*) When the depositary of a treaty receives a formal request from a State desiring to be admitted to participation in the treaty under the provisions of paragraphs 1 and 2 above, the depositary:

(i) In a case falling under paragraph 1 (*a*) and paragraph 2, shall communicate the request to the States whose consent to such participation is specified in paragraph 1 (*a*) as being material;

(ii) In a case falling under paragraph 1 (*b*), shall bring the request, as soon as possible, before the competent organ of the organization in question.

(*b*) The consent of a State to which a request has been communicated under paragraph 3 (*a*) (i) above shall be presumed after the expiry of twelve months from the date of the communication, if it has not notified the depositary of its objection to the request.

4. When a State is admitted to participation in a treaty under the provisions of the present article notwithstanding the objection of one or more States, an objecting State may, if it thinks fit, notify the State in question that the treaty shall not come into force between the two States.

Commentary

(1) Articles 8 and 9 define the States to which it is open to become a party to a treaty. Article 8[33] covers what may be termed original participation in a treaty; that is, it defines the States who may become a party as from the date of the adoption of the text of the treaty. Article 9 lays down the conditions under which participation in treaties may be extended to additional States by decisions subsequent to the adoption of the text.

(2) The Commission gave particular attention to the problem of participation in general multilateral treaties which it considered to be of special importance in this connexion. It was unanimous in thinking that these treaties because of their special character should, in principle, be open to participation on as wide a basis as possible. Some members of the Commission considered that as these treaties are intended to be universal in their application they should be open to participation by every State. They took the view that it is for the general good that all States should become parties to such treaties, and that in a world community of States, no State should be excluded from participation in treaties of this character. They did not think that the principle of the freedom of States to determine for themselves the extent to which they are prepared to enter into treaty relations with other States was any obstacle to the Commission formulating a rule under which general multilateral treaties would be open to participation by every State. For it not infrequently happens already that States find themselves parties to the same treaties and members of the same international organization as States with which they have no diplomatic relations or do not even recognize.

(3) Other members of the Commission did not feel justified in setting aside, even in the case of general multilateral treaties, so fundamental a principle of treaty law as the freedom of the contracting States to determine, by the clauses of the treaty itself, the States which may become a party to it. On the other hand, it was considered by many members that the special character of general multilateral treaties justifies, in those cases where the treaty does not specify the categories of States to which it is to be open, a presumption that every State may become a party to it. They recognized that the general multilateral treaties of recent years, such as the Geneva Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations had not been made open to all States but to specified, if very wide, categories of States. Nevertheless, they considered that on grounds of principle and as a measure of progressive development of international law, the Commission should propose to Governments the rule which appears in paragraph 1 of article 8. These members also expressed the view that the problem of participation in general multilateral treaties should be kept entirely distinct from the problem of recognition of States.

(4) Another group of members, while fully sharing the view that general multilateral treaties should, in principle, be open to all States, did not think that the Commission would be justified in including such a presumption as to the intention of the contracting States, having regard to the clear indication of a contrary intention on

[33] For the reasons given by him in the summary records of the 648th (paras. 10-22) and 667th meetings, Mr. Briggs does not accept the provisions of article 8.

the part of States in recent practice, and especially in United Nations practice. For it had become common form general multilateral treaties drawn up under the auspices of the United Nations and the specialized agencies, as well as in a number of other treaties, to insert a clause opening them to all members of the United Nations and the specialized agencies, to all parties to the Statute of the International Court of Justice and to any other State invited by the General Assembly. This formula, they considered, opens the treaty to an exceedingly wide list of States and, in effect, only excludes controversial cases. These members did not think that the Commission's proposals ought to go beyond this practice which hinges upon the decision in doubtful cases being taken by the General Assembly or by the competent organ of some other organization of world-wide membership. Accordingly, they advocated confining article 8 to the provisions set out in paragraph 2 and leaving the case of general multilateral treaties to be covered by paragraph 1 of article 9. The effect of the latter paragraph in regard to the large body of treaties concluded under the auspices of international organizations is to put the decision in the hands of the competent organ of the organization concerned, as under existing practice, and in other cases to make it subject to a two-thirds vote of the States concerned. These members considered that a rule putting the decision in doubtful cases in the hands of the General Assembly, or of the competent organ of some other organization or of a two-thirds majority of the interested State was also extremely desirable from the point of view of the depositary. Otherwise the Secretary-General or any other depositary would have to choose between accepting every signature, accession, etc. from any group claiming to be a State or to make delicate and perhaps controversial political appreciations more appropriate to the General Assembly or some other political organ.

(5) The view that, where a general multilateral treaty is silent concerning the States to which it is open every State must be presumed to have a right to become a party to the treaty, prevailed in the Commission, and the rule is so stated in article 8, paragraph 1.

(6) There still remains, however, the problem of general multilateral treaties which specify the categories of States to which they are open and thereby exclude the principle in article 8, paragraph 1. These treaties the Commission has sought to cover in article 9, paragraph 1, which provides for them to be made open to additional States, either by a two-thirds majority of the States which drew up the treaty, or by the decision of the competent organ of an international organization. The formula "by a two-thirds majority of the States which drew up the treaty" is, of course, based on the fact that, as mentioned in the commentary on article 6, the adoption of a treaty in modern practice takes place in the great majority of cases by a two-thirds majority. In other words, the proposal is that the treaty should be made open to additional States by the same majority as will normally have been applied in adopting the participation clause of the treaty. But, where the treaty has been drawn up either within an organization or at a conference convened by an organization, the proposal is that the decision should rest with its competent organ. The Commission considered that these provisions are suitable also for the case of multilateral treaties which, though not of a general character, have been concluded between a considerable number of States. Accordingly, article 10, paragraph 1, applies to these treaties as well as to general multilateral treaties.

(7) Paragraph 2 of article 9 is therefore limited to treaties concluded between a small group of States and for these treaties it is thought that the unanimity rule should be retained.

(8) Paragraph 3 indicates the procedures for dealing with requests for admission to treaties under the two preceding paragraphs.

(9) Paragraph 4 gives effect to the right of a State to decide whether or not it will enter into treaty relations with another State.

(10) Finally, the Commission gave particular attention to the problem of the accession of new States to general multilateral treaties, concluded in the past, whose participation clauses were limited to specific categories of States. New States may very well wish to become parties to some of these treaties and, if so, it is clearly desirable that legally they should be in a position to do so. There are, however, certain difficulties in the way of achieving this result easily through the provisions of the present draft articles. One is that, in the nature of things, there is bound to be some delay before these draft articles, assuming that ultimately a convention results from them, could become effective. Another is that a convention only binds the parties to it, and unless all the surviving parties to the older multilateral treaties in question became actual parties to the new convention on the conclusion of treaties, there might be doubt about the effectiveness of the convention to create a right of accession to the old treaties. The Commission, therefore, suggests that consideration should be given to the possibility of solving this problem more expeditiously by other procedures. It seems to be established that the opening of a treaty to accession by additional States, while it requires the consent of the States entitled to a voice in the matter, does not necessitate the negotiation of a fresh treaty amending or supplementing the earlier one. One possibility would be for administrative action to be taken through the depositaries of the individual treaties to obtain the necessary consents of the States concerned in each treaty; indeed, it is known that action of this kind has been taken in some cases. Another expedient that might be considered is whether action to obtain the necessary consents might be taken in the form of a resolution of the General Assembly by which each Member State agreed that a specified list of multilateral treaties of a universal character should be opened to accession by new States. It is true that there might be a few non-member States whose consent might also be necessary, but it should not be impossible to devise a means of obtaining the assent of these States to the terms of the resolution.

Article 10

Signature and initialling of the treaty

1. Where the treaty has not been signed at the conclusion of the negotiations or of the conference at which the text was adopted, the States participating in the adoption of the text may provide either in the treaty itself or in a separate agreement:

(*a*) That signature shall take place on a subsequent occasion; or

(*b*) That the treaty shall remain open for signature at a specified place either indefinitely or until a certain date.

2. (*a*) The treaty may be signed unconditionally; or it may be signed *ad referendum* to the competent authorities of the State concerned, in

which case the signature is subject to confirmation.

, Signature *ad referendum*, if and so long as it has not been confirmed, shall operate only as an act authenticating the text of the treaty.

(*c*) Signature *ad referendum*, when confirmed, shall have the same effect as if it had been a full signature made on the date when, and at the place where, the signature *ad referendum* was affixed to the treaty.

3. (*a*) The treaty, instead of being signed, may be initialled, in which event the initialling shall operate only as an authentication of the text. A further separate act of signature is required to constitute the State concerned a signatory of the treaty.

(*b*) When initialling is followed by the subsequent signature of the treaty, the date of the signature, not that of the initialling, shall be the date upon which the State concerned shall become a signatory of the treaty.

Commentary

(1) The antithesis in paragraph 1 of the present article is between the treaty that remains open for signature until a certain date—or else indefinitely—and the treaty that does not. Most treaties, in particular bilateral treaties and treaties negotiated between a small group of States, do not remain open for signature. They are signed either immediately on the conclusion of the negotiation, or on some later date especially appointed for the purpose. In either case, States intending to sign must do so on the occasion of the signature, and cannot do so thereafter. They may of course still be able to become parties to the treaty by some other means, e.g. accession or acceptance.

(2) In the case of treaties negotiated at international conferences, there is a growing tendency to include a clause leaving them open for signature until a certain date (usually six months after the conclusion of the conference). In theory, there is no reason why such treaties should not remain open for signature indefinitely, and cases of this are on record.[34] However, the more general practice is to leave multilateral treaties open for signature for a specific period and this practice has considerable advantages. The closing stages of international conferences are apt to be hurried. Often the Governments are not in possession of the final text, which may only have been completed at the last moment. For that reason, many representatives do not sign the treaty in its final form. Yet, even if the treaty makes it possible to become a party by accession, many Governments would prefer to do so by signature and ratification. It is also desirable to take account of the fact that Governments which are not sure of being able eventually to ratify, accept or approve a treaty may nevertheless wish for an opportunity of giving that measure of support to the treaty which signature implies. These preoccupations can most easily be met by leaving the treaty open for signature at the seat of the "headquarters" Government or international organization.

[34] Article 14 of the Convention on treaties, adopted at Havana on 18 February 1928, provides as follows: "The present Convention shall be ratified by the signatory States and shall remain open for signature and for ratification by the States represented at the Conference and which have not been able to sign it". This Convention, together with seven further Conventions adopted at the Sixth Conference of American States held at Havana, merely state that the Convention shall remain open for signature and ratification, without specifying any time-limit.

(3) Paragraphs 2 and 3 deal with signature *ad referendum* and initialling. Signature *ad referendum*, as indicated in paragraph 2, is not full signature, but it will rank as one if subsequently confirmed by the Government on whose behalf it was made. Initialling is not normally the equivalent of signature and operates in most cases as an act authenticating the text. The principal differences between initialling and signature *ad referendum* are:

(*a*) Whereas signature *ad referendum* is basically both an authenticating act (where the text has not otherwise been authenticated already) and a provisional signature of the treatty, initialling is and always remains an authenticating act only, which is incapable of being transformed into full signature by mere confirmation; and

(*b*) Whereas confirmation of a signature *ad referendum* has retroactive effect causing the State to rank as a signatory from the date of the signature *ad referendum*, a signature subsequent to initialling has no retroactive effect and the State concerned becomes a signatory only from the date of the subsequent act of signature.

(4) There may also be a certain difference in the occasions on which these two procedures are employed. Initialling is employed for various purposes. One is to authenticate a text at a certain stage of the negotiations, pending further consideration by the Governments concerned. It may also be employed by a representative who has authority to negotiate, but is not in possession of (and is not at the moment able to obtain) an actual authority to sign.[35] Sometimes it may be resorted to by a representative who, for whatever reasons, is acting on his own initiative and without instructions, but who nevertheless considers that he should authenticate the text. Signature *ad referendum* may also be resorted to in some of these cases, but at the present time is probably employed mainly on actual governmental instructions in cases where the Government wishes to perform some act in relation to the text, but is unwilling to be committed to giving it even the provisional support that a full signature would imply.

Article 11

Legal effects of a signature

1. In addition to authenticating the text of the treaty in the circumstances mentioned in article 7, paragraph 2, the signature of a treaty shall have the effects stated in the following paragraphs.

2. Where the treaty is subject to ratification, acceptance or approval, signature does not establish the consent of the signatory State to be bound by the treaty. However, the signature:

(*a*) Shall qualify the signatory State to proceed to the ratification, acceptance or approval of the treaty in conformity with its provisions; and

(*b*) Shall confirm or, as the case may be, bring into operation the obligation in article 17, paragraph 1.

3. Where the treaty is not subject to ratification, acceptance or approval, signature shall:

(*a*) Establish the consent of the signatory State to be bound by the treaty; and

[35] Today, when a telegraphic authority, pending the arriving of written full powers, would usually be accepted (see article 4 above, and the commentary thereto), the need for recourse to initialling on this ground ought only to arise infrequently.

(*b*) If the treaty is not yet in force, shall bring into operation the obligation in article 17, paragraph ...

Commentary

(1) Paragraph 1 recalls, for the sake of completeness, the rule that, if the text has not already been authenticated in one of the ways mentioned in article 7, paragraph 1, signature will automatically constitute an authentication of the text by the signatory State.

(2) Paragraph 2 deals with the cases where the signature does not constitute a final expression of the State's consent to be bound by the treaty but requires a further act of ratification, acceptance or approval to have that effect. This may happen either because the treaty itself provides for signature plus ratification (or acceptance or approval) or because the signature of the particular State is expressed to be subject to ratification (or acceptance or approval). The primary effect of the signature in these cases is to establish the right of the signatory State to become a party to the treaty by subsequently completing the necessary act of ratification or, as the case may be, acceptance or approval of the treaty; and paragraph 2 (*a*) so provides.

(3) Paragraph 2 (*b*) concerns the obligation which attaches to a State which has signed a treaty "subject to ratification, acceptance or approval" even though it has not yet established its consent to be bound by the treaty. This obligation is set out in article 17, paragraph 1, where it is provided that such a State is "under an obligation of good faith, unless and until it shall have signified that it does not intend to become a party to the treaty, to refrain from acts calculated to frustrate the objects of the treaty, if and when it should come into force". In most cases, a signatory State will already be under this obligation by reason of having taken part in the negotiations, drawing up or adoption of the treaty; but, when a treaty is made open to signature by States which did not take part in the negotiations, drawing up or adoption of the treaty, they will come under the same obligation if they sign "subject to ratification, acceptance or approval".

(4) There is also some authority for the proposition that a State which signs a treaty "subject to ratification, acceptance or approval" comes under a certain, if somewhat intangible, obligation of good faith subsequently to give consideration to the ratification, acceptance or approval of the treaty. The precise extent of the supposed obligation is not clear. That there is no actual obligation to ratify under modern customary law is certain, but it has been suggested[36] that signature "implies an obligation to be fulfilled in good faith to submit the instrument to the proper constitutional authorities for examination with the view to ratification or rejection". This formulation, logical and attractive though it may be, appears to go beyond any obligation that is recognized in State practice. For here are many examples of treaties that have been signed and never submitted afterwards to the constitutional organ of the State competent to authorize the ratification of treaties, without any suggestion being made that it involved a breach of an international obligation. Governments, if political or economic difficulties present themselves, undoubtedly hold themselves free to refrain from submitting the treaty to parliament or to whatever other body is competent to authorize ratification. The Commission felt that the most that could be said on the point was that the Government of a signatory State might be under some kind of obligation to examine in good faith whether it should become a party to the treaty. The Commission hesitated to include such a rule in the draft articles. The position is, of course, different if the treaty itself, or the rules in force in an international organization, place signatory States under some form of obligation to submit the question of the ratification, acceptance or approval of the treaty to their respective constitutional authorities. In those cases, there is an express obligation flowing from the particular treaty or the particular rules of the organization in question (e.g. the International Labour Organisation).

(5) Paragraph 3 deals with cases where the treaty is not subject to ratification, acceptance or approval. Signature then suffices by itself to establish the States consent to be bound by the treaty and the rule is so formulated in sub-paragraph (*a*). If the treaty is already in force (or is brought into force by the signature) it goes without saying that the signatory State becomes subject to the provisions of the treaty. But even if the conditions for the entry into force of the treaty have not yet been fulfilled, the signatory State is subject *a fortiori* to an obligation of good faith to refrain from acts calculated to frustrate the objects of the treaty, and subparagraph (*b*) so provides.

Article 12

Ratification

1. Treaties in principle require ratification unless they fall within one of the exceptions provided for in paragraph 2 below.

2. A treaty shall be presumed not to be subject to ratification by a signatory State where:

(*a*) The treaty itself provides that it shall come into force upon signature;

(*b*) The credentials, full powers or other instrument issued to the representative of the State in question authorize him by his signature alone to establish the consent of the State to be bound by the treaty, without ratification;

(*c*) The intention to dispense with ratification clearly appears from statements made in the course of the negotiations or from other circumstances evidencing such an intention;

(*d*) The treaty is one in simplified form

3. However, even in cases falling under paragraphs 2 (*a*) and 2 (*d*) above, ratification is necessary where:

(*a*) The treaty itself expressly contemplates that it shall be subject to ratification by the signatory States;

(*b*) The intention that the treaty shall be subject to ratification clearly appears from statements made in the course of the negotiations or from other circumstances evidencing such an intenton;

(*c*) The representative of the State in question has expressly signed "subject to ratification" or his credentials, full powers or other instrument duly exhibited by him to the representatives of the other negotiating States expressly limit the author-

[36] See first report of Sir Hersch Lauterpacht, *Yearbook of the International Law Commission, 1953* (United Nations publication, Sales No.: 59.V.4), vol. II, pp. 108-112. See also first report of Sir Gerald Fitzmaurice, *Yearbook of the International Law Commission, 1956* (United Nations publication, Sales No.: 56.V.3), vol. II, pp. 112-113 and 121-122.

ity conferred upon him to signing "subject to ratificat' ".

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 1 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.[37]

(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, as previous rapporteurs on the law of treaties have pointed out.[38] 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 it 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. This does not necessarily mean that there is no need to formulate a rule for the small residuum of cases in which the parties have left the question open. For it is one of the purposes of codification to provide for such cases where the question is not regulated by the parties, and only if a clear presumptive rule is laid down will the parties themselves know in future whether or not an express provision is necessary to give effect to their intentions. 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 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 Commission considered whether it should refrain from formulating any general rule and simply state the law by reference to the intentions of the parties or whether it should formulate a general rule to apply in cases where the treaty is silent upon the question of ratification. Some members were not in favour of stating that a treaty is to be presumed to be subject to ratification unless the contrary is indicated. They thought that in modern practice there is no specific rule concerning the need for ratification and that it is always a question of ascertaining what the parties intended. In favour of this view is the fact that in modern practice a great many treaties are concluded in simplified form and that a large percentage of the total number of treaties enter into force without ratification. The view which prevailed in the Commission, however, was that the numerical statistics may be a little misleading in that many treaties in simplified form deal with comparatively unimportant matters, and that weight should be given to the constitutional requirements for the exercise of the treaty-making power which exist in many States with respect to more important matters. The Commission felt that a general rule excluding the need for ratification unless a contrary intention was expressed would not be acceptable to these States, whereas the opposite rule would not cause the same difficulty to States without such constitutional requirements. On the other hand, there was general agreement that there is no presumption in favour of ratification being necessary in the case of treaties in simplified form.

(6) Taking account of the different considerations, the Commission decided that a general rule should be stated and that this should be a rule requiring ratification unless the case falls within one of a number of recognized exceptions; paragraph 1 of the article accordingly so provides.

(7) Paragraph 2 sets out four cases in which the general rule does not in principle apply. In the first three cases an intention to set aside the rule is to be found either in the treaty itself, the documents ex-

[37] See, for example, Crandall, *Treaties, their Making and Enforcement*, para. 3; Fauchille, *Traité de droit international public*, tome I, part III, p. 317; Oppenheim, *International Law*, vol. I, para. 512; *Harvard Research Draft*, A.J.I.L., vol. 29, Special Supplement, p. 756.

[38] See reports of Sir Hersch Lauterpacht, *Yearbook of the International Law Commission, 1953* (United Nations publication, Sales No.: 59.V.4), vol. II, p. 112; and *Ibid., 1954* (Sales No. 59.V.7), vol. II, p. 127; and first report of Sir Gerald Fitzmaurice, *Yearbook of the International Law Commission, 1956* (United Nations publication, Sales No.: 56.V.3), vol. II, p. 123.

press[ed] the powers of the representatives or in the circu[m]stances of the negotiations. In the fourth case, it is to be implied from the choice by the parties of an instrument in simplified form. This implication, as already indicated, is justified by the fact that the great majority of these forms of treaty in fact enter into force today without ratification.

(8) On the other hand, the intention to set aside the need for ratification which is found in paragraphs 2 (*a*) and 2 (*d*) are presumptions from, in the one case, the fact that the treaty is expressed to come into force upon signature and, in the other, the use of a simplified form. These presumptions, strong though they are, must give way in face of a clear expression of contrary intention, and paragraph 3 accordingly makes provision for the cases where such a contrary intention appears. It may not be very often that a treaty expressed to come into force upon signature is made subject to ratification; but this does sometimes happen in practice when a treaty, which is subject to ratification, is expressed to come into force provisionally upon signature.

Article 13
Accession

A state may become a party to a treaty by accession in conformity with the provisions of articles 8 and 9 when:

(*a*) It has not signed the treaty and either the treaty specifies accession as the procedure to be used by such a State for becoming a party; or

(*b*) The treaty has become open to accession by the State in question under the provisions of article 9.

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 under the conditions set out in article 9.

(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.[39] 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.

> "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."[40]

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 15 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".[41] As to the actual practice today, the Secretary-General has stated that he takes a position similar to that taken by the Secretariat of the League of Nations. He considers the 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".[42] 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 its specifically in those articles.

Article 14
Acceptance or approval

A State may become a party to a treaty by acceptance or by approval in conformity with the provisions of articles 8 and 9 when:

(*a*) The treaty provides that it shall be open to signature subject to acceptance or approval and the State in question has so signed the treaty; or

(*b*) The treaty provides that it shall be open to participation by simple acceptance or approval without prior signature.

Commentary

(1) Acceptance has become established in treaty practice during the past twenty years as a new proce-

[39] See *Harvard Research Draft*, p. 822; Sir Gerald Fitzmaurice's first report on the law of treaties, *Yearbook of the International Law Commission, 1956*, vol. II, p. 125-26, and Professor Brierly's second report, *Yearbook of the International Law Commission, 1951*, vol. II, p. 73.

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

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

[42] *Summary of the practice of the Secretary-General as depositary of multilateral agreements* (ST/LEG/7), para. 48.

dur[illegible]or 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 very like "signature subject to ratification". Similarly, if a treaty is made open to "acceptance" without prior signature, the process is very 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.[43] Accordingly, the same name is found in connection with two different procedures; but there can be no doubt that today "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. The first of these forms is covered in sub-paragraph (*a*) of article 14 and the second in sub-paragraph (*b*).

(2) To say that on the international plane the procedure of "acceptance", on the one hand, and the procedures of ratification and accession, on the other, differ primarily in the terminology used in the treaty is not to deny the existence of any differences in the use of "acceptance" and the other two procedures. "Signature subject to acceptance" was introduced into treaty-practice principally in order to provide a simplified form of "ratification" or "accession" which would allow the Government a further opportunity to examine the treaty without necessarily involving it in a submission of the treaty to the State's constitutional procedure for obtaining parliamentary sanction for concluding the treaty. 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" or "accession."

(3) 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.[44] 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.

Article 15

The procedure of ratification, accession, acceptance and approval

1. (*a*) Ratification, accession, acceptance or approval shall be carried out by means of a written instrument.

(*b*) Unless the treaty itself expressly contemplates that the participating States may elect to become bound by a part or parts only of the treaty, the instrument must apply to the treaty as a whole.

(*c*) If a treaty offers to the participating States a choice between two differing texts, the instrument of ratification must indicate to which text it refers.

2. If the treaty itself lays down the procedure by which an instrument of ratification, accession, acceptance or approval is to be communicated, the instrument becomes operative on compliance with that procedure. If no procedure has been specified in the treaty or otherwise agreed by the signatory States, the instrument shall become operative:

(*a*) In the case of a treaty for which there is no depositary, upon the formal communication of the instrument to the other party or parties, and in the case of a bilateral treaty normally by means of an exchange of the instrument in question, duly certified by the representatives of the States carrying out the exchange;

(*b*) In other cases, upon deposit of the instrument with the depositary of the treaty.

3. When an instrument of ratification, accession, acceptance or approval is deposited with a depositary in accordance with paragraph 2 (*b*) above, the State in question shall be given an acknowledgement of the deposit of its instrument, and the other signatory States shall be notified promptly both of the fact of such deposit and the terms of the instrument.

Commentary

(1) Ratification, accession, acceptance and approval, being acts which commit the State to become a party to the treaty, must be carried out by a formal instrument. The actual form of the instrument is, however, a matter which is governed by the internal law and practice of each State and paragraph 1 (*a*) merely provides that it must be in writing.

(2) Occasionally, treaties are found which 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, accession, acceptance or approval is admissible. But in the absence of such a provision, the established rule is that laid down in paragraph 1 (*b*); 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 18, it is inadmissible to subscribe only to selected parts of the treaty.

(3) Paragraph 1 (*c*) takes account of a practice which is not very common but which is sometimes found in treaties concluded under the auspices of certain international organizations, e.g. the International Labour Organisation. The treaty offers to each State a choice between two different texts of the treaty.

(4) Paragraph 2 concerns the act by which an instrument of ratification, accession etc. is rendered legally effective on the international plane; namely, by its delivery—its communication—to the other States concerned. Normally, the procedure for accomplishing this is laid down in the treaty itself and paragraph 2 recognizes that fact. It goes on, however, to make provision for cases where the treaty is silent as to the procedure and

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

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

specifies for such cases the procedures most commonly f[illegible]d in modern practice. A query might be raised w[illegible]ther in cases where there is a depositary the date upon which the instrument becomes effective is the date of deposit or the date when notice of the instrument actually reaches the other States concerned. The Commission considered that, by using a depositary as their agent for accepting the deposit of instruments relating to the treaty, the States which drew up the treaty give their consent to the act of deposit being regarded as the act which renders the instrument effective. Accordingly, the date of deposit has to be regarded as the effective date, even if this means that in some cases there may be a small time-lag before the other States become aware that the treaty is in force between them and the State depositing the instrument. In this connexion reference may be made to the decision of the International Court of Justice, in the *Right of Passage Case*[45] concerning the moment at which declarations under the optional clause take effect.

(5) Paragraph 3 does not call for any comment.

Article 16

Legal effects of ratification, accession, acceptance and approval

The communication of an instrument of ratification, accession, acceptance or approval in conformity with the provisions of article 13:

(*a*) Establishes the consent of the ratifying, acceding, accepting or approving State to be bound by the treaty; and

(*b*) If the treaty is not yet in force, brings into operation the applicable provisions of article 17, paragraph 2.

Commentary

(1) The essential legal effect of the exchange or deposit of instruments of ratification, accession, acceptance or approval is to establish the consent of the State concerned to be bound by the treaty. It commits the State to becoming a party to the treaty. Whether it also has the effect of bringing the treaty into force for the State exchanging or depositing the instrument depends upon the conditions under which the treaty is to enter into force, a matter which is dealt with in articles 24 and 25.

(2) A further effect, if the exchange or deposit of the instrument does not bring the treaty into force at once, is to place the State concerned under the obligation of good faith set out in article 17. This, in general terms, is an obligation, pending the entry into force of the treaty, to refrain from acts calculated to frustrate its objects.

(3) The Commission considered whether it should include in this article a provision expressly declaring that, unless the treaty otherwise states, ratification has no retroactive effects. Formerly, when ratification was regarded as a confirmation of the authority to sign, it was generally said to operate retrospectively and to make the treaty effective as from signature. This view continued to be echoed by writers and by some municipal courts, even after the institution of ratification had undergone the fundamental change which has already been described in the commentary to article 12 above. But the theory of the retroactive operation of ratification is now universally rejected and the Commission decided that it would be sufficient to mention the point in this commentary and to draw attention to article 23, paragraph 4. This paragraph, by providing that the rights and obligations of a treaty "become effective for each party from the date when the treaty comes into force with respect to that party", excludes the doctrine of the retroactive operation of ratification.

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

Article 17

The rights and obligations of States prior to the entry into force of the treaty

1. A State which takes part in the negotiation, drawing up or adoption of a treaty, or which has signed a treaty subject to ratification, acceptance or approval, is under an obligation of good faith, unless and until it shall have signified that it does not intend to become a party to the treaty, to refrain from acts calculated to frustrate the objects of the treaty, if and when it should come into force.

2. Pending the entry into force of a treaty and *provided that such entry into force is not unduly* delayed, the same obligation shall apply to the State which, by signature, ratification, accession, acceptance or approval, has established its consent to be bound by the treaty.

Commentary

(1) Reference has already been made to the provisions of this article in the commentaries to articles 10 and 16. That an obligation of good faith to refrain from acts calculated to frustrate objects of the treaty attaches to a State which has signed a treaty subject to ratification appears to be generally accepted. Certainly, in the *Polish Upper Silesia Case*,[46] 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.[47] The Commission considers that this obligation begins when a State takes part in the negotiation of a treaty or in the drawing up or adoption of its text. *A fortiori*, it attaches 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 1 of the article covers the cases where the State has not yet established its consent to be bound by the treaty. In those cases the obligation of good faith continues until either the State signifies that it does not intend to become a party or it establishes its consent to be bound by the treaty, when it falls under paragraph 2 of the article.

(3) Paragraph 2 deals with the cases where the State has committed itself to be bound by the treaty and then the obligation continues until either the treaty comes into force or its entry into force has been unduly delayed.

Section III. Reservations

Article 18

Formulation of reservations

1. A State may, when signing, ratifying, acced-

[46] *P.C.W. Series A*, No. 7, p. 30.

[47] See also *McNair Law of Treaties* (1961) pp. 199-205; Fauchille, *Traité de droit international public* (1926), tome I, part III, p. 320; *Bin Cheng General Principles of Law*, pp. 109-111; *Megalidis v. Turkey* (1927-1928) Annual Digest of International Law Cases, Case No. 272.

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 during the past twelve years and has been considered by the General Assembly itself on more than one occasion,[49] as well as by the International Court of Justice in its opinion concerning the Genocide Convention.[50] Divergent views have been expressed both in the Court 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".[51] 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."[52] 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 convention, 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.[53] 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 satisfac-

[49] Notably in 1951 in connexion with reservations to the Genocide Convention and in 1959 concerning the Indian "reservation" to the I.M.C.O. Convention.

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

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

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

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

to, accepting or approving a treaty, formulate a reservation unless:

(*a*) The making of reservations is prohibited by the terms of the treaty or by the established rules of an international organization; or

(*b*) The treaty expressly prohibits the making of reservations to specified provisions of the treaty and the reservation in question relates to one of the said provisions; or

(*c*) The treaty expressly authorizes the making of a specified category of reservations, in which case the formulation of reservations falling outside the authorized category is by implication excluded; or

(*d*) In the case where the treaty is silent concerning the making of reservations, the reservation is incompatible with the object and purpose of the treaty.

2. (*a*) Reservations, which must be in writing, may be formulated:

(i) Upon the occasion of the adoption of the text of the treaty, either on the face of the treaty itself or in the final act of the conference at which the treaty was adopted, or in some other instrument drawn up in connexion with the adoption of the treaty;

(ii) Upon signing the treaty at a subsequent date; or

(iii) Upon the occasion of the exchange or deposit of instruments of ratification, accession, acceptance or approval, either in the instrument itself or in a *procès-verbal* or other instrument accompanying it.

(*b*) A reservation formulated upon the occasion of the adoption of the text of a treaty or upon signing a treaty subject to ratification, acceptance or approval shall only be effective if the reserving State, when carrying out the act establishing its own consent to be bound by the treaty, confirms formally its intention to maintain its reservation.

3. A reservation formulated subsequently to the adoption of the text of the treaty must be communicated:

(*a*) In the case of a treaty for which there is no depositary, to every other State party to the treaty or to which it is open to become a party to the treaty; and

(*b*) In other cases, to the depositary which shall transmit the text of the reservation to every such State.

Article 19

Acceptance of and objection to reservations

1. Acceptance of a reservation not provided for by the treaty itself may be expressed or implied.

2. A reservation may be accepted expressly:

(*a*) In any appropriate formal manner on the occasion of the adoption or signature of a treaty, or of the exchange or deposit of instruments of ratification, accession, acceptance or approval; or

(*b*) By a formal notification of the acceptance of the reservation addressed to the depositary of the treaty or, if there is no depositary, to the reserving State and every other State entitled to become a party to the treaty.

3. A reservation shall be regarded as having been accepted by a State if it shall have raised no objection to the reservation during a period of twelve months after it received formal notice of the reservation.

4. An objection by a State which has not yet established its own consent to be bound by the treaty shall have no effect if after the expiry of two years from the date when it gave formal notice of its objection it has still not established its consent to be bound by the treaty.

5. An objection to a reservation shall be formulated in writing and shall be notified:

(*a*) In the case of a treaty for which there is no depositary, to the reserving State and to every other State party to the treaty or to which it is open to become a party; and

(*b*) In other cases, to the depositary.

Article 20

The effect of reservations

(*a*) A reservation expressly or impliedly permitted by the terms of the treaty does not require any further acceptance.

(*b*) Where the treaty is silent in regard to the making of reservations, the provisions of paragraphs 2 to 4 below shall apply.

2. Except in cases falling under paragraphs 3 and 4 below and unless the treaty otherwise provides:

(*a*) Acceptance of a reservation by any State to which it is open to become a party to the treaty constitutes the reserving State a party to the treaty in relation to such State, as soon as the treaty is in force;

(*b*) An objection to a reservation by a State which considers it to be incompatible with the object and purpose of the treaty precludes the entry into force of the treaty as between the objecting and the reserving State, unless a contrary intention shall have been expressed by the objecting State.

3. Except in a case falling under paragraph 4 below, the effect of a reservation to a treaty, which has been concluded between a small group of States, shall be conditional upon its acceptance by all the States concerned unless:

(*a*) The treaty otherwise provides; or

(*b*) The States are members of an international organization which applies a different rule to treaties concluded under its auspices.

4. Where the treaty is the constituent instrument of an international organization and objection has been taken to a reservation, the effect of the reservation shall be determined by decision of the competent organ of the organization in question, unless the treaty otherwise provides.

Commentary

Introduction

(1) Articles 18, 19 and 20[48] have to be read together

[48] For the reasons given by him in the summary records of the 637th, 651st, 652nd, 656th and 667th meetings, Mr. Briggs does not accept the provisions of article 20.

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 modification 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 an agent 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 such 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 ten 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."[54]

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 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 I.M.C.O. 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 the present session, 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 "compatability 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. Where the treaty is a constituent instrument of an international organization, the Commission was agreed that the question is one for determination by its competent organ. It was

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

also 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. Accordingly the problem essentially concerns multilateral treaties which are not constituent instruments of international organizations and 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 very few States. The reservation might be one which other States consider to undermine the basis of the treaty or a clause embodying a compromise to obtain that the States concerned had all sacrificed part of their interests. 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 other members of the Commission, however, did not share this view, especially with respect to general multilateral treaties. These members, 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 could easily be exaggerated. 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 minimal; 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".[55] 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 today the number of the negotiating States may not be far short of one hundred States with very diverse cultural, economic and political conditions, it seems legitimate 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 multilateral treaties. It may not unreasonably be thought that the failure of negotiating States to take the necessary steps to become parties to multilateral treaties at all is 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 free admission of reserving States as parties to them. There may also perhaps be some justification for the view 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 these members of the Commission is that, in any event, the essential interests of individual States are in large measuse safeguard 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 c

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

ion 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 concluded 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 multilateral treaties not of a general character between a considerable number of States and general multilateral treaties. The rules proposed by the Commission therefore cover all multilateral treaties except those concluded between a small number of States for which the unanimity rule is retained.

Commentary to article 18

(15) This article deals with the conditions under which a State may formulate a reservation. Paragraph 1 sets out the general principle that the formulation of reservations is permitted except in four cases. The first three are cases in which the reservation is expressly or impliedly prohibited by the treaty itself. The fourth case, mentioned under (*d*), is where the treaty is silent in regard to reservation but the particular reservation is incompatible with the object and purpose of the treaty. Paragraph 1 (*d*), in short, adopts the Court's criterion as a general rule governing the formulation of reservations not provided for in the treaty. Paragraph 1 (*d*) has to be read in conjunction with article 20 which deals with the effect of a reservation formulated in cases where the treaty contains no provisions concerning reservations.

(16) Paragraph 2 deals with the modalities of formulating reservations and only requires two comments. The first relates to paragraph 2 (*a*) (i) which concerns reservations formulated at the time of the adoption of the text of the treaty, that is, at the conclusion of the negotiations. A statement of reservation is sometimes made during the negotiation and duly recorded in the *procès-verbaux*. Such embryo reservations have sometimes been relied upon afterwards as amounting to formal reservations. It seems essential, however, that the State concerned should formally reiterate the statement in some manner in order that its intention actually to formulate a reservation should be clear. Accordingly, a statement during the negotiations expressing a reservation has not been included in paragraph 2 as one of the methods of formulating a reservation. The second comment relates to an analogous point in paragraph 2 (*b*), where it is expressly provided that a reservation formulated upon the adoption of the text or upon a signature, subject to ratification, acceptance or approval must, if it is to be effective, be formally maintained when the State establishes its consent to be bound.

(17) Paragraph 3 provides for the communication of the reservation to the other interested States.

Commentary to article 19

(18) Paragraphs 1, 2 and 5 of this article do not appear to require comment.

(19) Paragraph 3 deals with implied consent to a reservation. 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,[56] while other conventions achieve the same result by limiting the right of objection to a period of three months.[57] Again, in 1959, the Inter-American Council of Jurists[58] 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.

(20) It has to be admitted that there may be a certain degree of rigidity in a rule under which tacit consent will be presumed after the lapse of a fixed period. Nevertheless, it seems undesirable that a State, by refraining from making any comment upon a reservation, should be enabled more or less indefinitely to maintain an equivocal attitude as to the relations between itself and the reserving State under a multilateral treaty. The risk would be that a State which had kept silent in regard to another State's reservation would only take a clear position in the matter after a dispute had arisen between it and the reserving State. Seeing that in a number of treaties States had found it possible to accept periods as short as three or six months, the question may be asked why it has been considered necessary to propose a period of twelve months in the present draft. But there are, it is thought, good reasons for proposing the adoption of the longer period. First, it is one thing to agree upon a short period for the purposes of a particular treaty whose contents are known, another to agree upon it as a general rule applicable to every treaty which does not lay down a rule on the point.

(21) Paragraph 4 proposes, *de lege ferenda*, a rule under which an objection to a reservation will lapse if the objecting State does not, within two years after lodging its objection, establish its own consent to be bound. The application of the rule would be of particular importance in connexion with treaties concluded between a small group of States where the objection of one State suffices to exclude a reserving State from becoming a party to the treaty. But it is thought that, in general, an objection should lapse if the objecting State does not itself

[56] 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).

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

[58] Final Act of the Fourth Meeting of the Inter-American Council of Jurists, p. 29.

become bound within a reasonable period. The Commission hesitated as to the length of the period and has proposed two years, pending the comments by Governments upon the point.

Commentary to article 20

(20) Paragraph 1 requires no comment. Paragraph 2, in conjunction with article 18, paragraph 1 (*d*), contains the essence of the Commission's proposals concerning reservations to multilateral treaties which are silent upon the question of reservations. Article 18, paragraph 1 (*d*), it may be recalled, permits the formulation of reservations in such cases provided that they are not incompatible with the object and purpose of the treaty. The criterion of "compatibility with the object and purpose of the treaty, as pointed out in the introduction to these three articles, is to some extent a matter of subjective appreciation and yet, in the absence of a tribunal or organ with standing competence, the only means of applying it in most cases will be through the individual State's acceptance or rejection of the reservation. This necessarily means that there may be divergent interpretations of the compatibility of a particular reservation with the object and purpose of a given treaty. But such a result seems to the Commission to be almost inevitable in the circumstances and the only question is what are to be the effects of the determinations made by individual States.

(23) Paragraph 2 (*a*) provides that acceptance of a reservation is conclusive as to the effectiveness of the reservation as between the accepting and the reserving State. Paragraph 2 (*b*) equally provides that an objection operates only as between the objecting and the reserving State and precludes the treaty coming into force between them, unless the objecting State should express a contrary intention. These are the two basic rules of the "flexible" system. They may certainly have the result that a reserving State may be a party to the treaty with regard to State X, but not to State Y, although States X and Y are mutually bound by the treaty. But in the case of a general multilateral treaty or of a treaty concluded between a considerable number of States, this result appears to the Commission not to be as unsatisfactory as allowing State Y, by its objection, to prevent the treaty from coming into force between the reserving State and State X, which has accepted the reservation.

(24) Paragraph 3, as foreshadowed in the introduction to the commentary of these three articles, excludes treaties between a small group of States from the operation of the "flexible" system and applies the rule of unanimity. In treaties between small groups, consultation is easier concerning the acceptability of a reservation, while the considerations in favour of maintaining the integrity of the convention may be more compelling than in the case of general multilateral treaties or other treaties between large groups of States. The Commission appreciated that the expression "a small group of States" lacks precision, but felt that it was a sufficient general description by which it would be possible to distinguish most treaties falling outside the "flexible" system.

(25) Paragraph 4 states the rule, also foreshadowed in the introduction to the commentary of these three articles, whereby an objection to a reservation to the constituent instrument of an international organization is to be determined by the competent organ of the organization in question. 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".[59] 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.

Article 21

The application of reservations

1. A reservation established in accordance with the provisions of article 20 operates:

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

(*b*) Reciprocally to entitle any other State party to the treaty to claim the same modification of the provisions of the treaty in its relations with the reserving State.

2. A reservation operates only in the relations between the other parties to the treaty which have accepted the reservation and the reserving State; it does not affect in any way the rights or obligations of the other parties to the treaty *inter se*.

Commentary

This article sets out the rules concerning the legal effects of a reservation, which has been established under the provisions of articles 18, 19 and 20, 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 application of the treaty for both of them in their mutual relations to the extent of the reserved provisions, but has no effect on the application of the treaty to the other parties to the treaty, *inter se*, since they have not accepted it as a term of the treaty in their mutual relations.

Article 22

The withdrawal of reservations

1. 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. Such withdrawal takes effect when notice of it has been received by the other States concerned.

2. Upon withdrawal of a reservation the provisions of article 21 cease to apply.

Commentary

(1) It has sometimes been contended 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 régime between the two States which cannot be changed without the agreement of both. The Commission, however, con-

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

lers that the preferable rule is that the reserving State should in all cases be authorized, if it is willing to do so, to bring its position into full conformity with the provisions of the treaty as adopted.

(2) Another point in this article perhaps calling for comment is the provision concerning the time at which the withdrawal of a reservation is to take effect. Since a reservation is a modification from the treaty made at the instance of the reserving State, the Commission considers 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 held responsible for a breach of a term of the treaty, to which the reservation relates, committed in ignorance of the withdrawal of the reservation.

SECTION IV. ENTRY INTO FORCE AND REGISTRATION

Article 23

Entry into force of treaties

1. A treaty enters into force in such manner and on such date as the treaty itself may prescribe.

2. (*a*) Where a treaty, without specifying the date upon which it is to come into force, fixes a date by which ratification, acceptance, or approval is to take place, it shall come into force upon that date if the exchange or deposit of the instruments in question shall have taken place.

(*b*) The small rule applies *mutatis mutandis* where a treaty, which is not subject to ratification, acceptance or approval, fixes a date by which signature is to take place.

(*c*) However, where the treaty specifies that its entry into force is conditional upon a given number, or a given category, of States having signed, ratified, acceded to, accepted or approved the treaty and this has not yet occurred, the treaty shall not come into force until the condition shall have been fulfilled.

3. In other cases, where a treaty does not specify the date of its entry into force, the date shall be determined by agreement between the States which took part in the adoption of the text.

4. The rights and obligations contained in a treaty become effective for each party as from the date when the treaty enters into force with respect to that party, unless the treaty expressly provides otherwise.

Commentary

(1) Paragraph 1 concerns the case where the treaty itself provides for the manner and date of its entry into force. Paragraph 2 covers the case where the treaty does not do so specifically, but does fix a date by which the acts establishing consent to be bound are to take place. In that case, it seems to be accepted that the treaty is to be presumed to have been intended to come into force upon that date, provided that the necessary instruments of ratification, acceptance etc. have been exchanged or deposited or the necessary signatures have been affixed to the treaty. On the other hand, if the treaty also specifies that a certain number of States must have signed, ratified etc. before it enters into force, this condition must of course also have been fulfilled.

(2) The Commission considered whether other provisions in a treaty might be said to raise presumptions as to the date of its entry into force, but it concluded that it should not try to fill in all the gaps which the drafting of treaties might leave in regard to its entry into force. To do this would be to go too far into the interpretation of the intention of the parties in particular treaties. Moreover, it considered that in the event of a treaty failing to give a clear indication as to the date, it was a matter for agreement between the parties, and paragraph 3 so provides.

(3) Paragraph 4 lays down what is believed to be an undisputed rule of modern treaty law, namely, that a treaty becomes effective for each party on the date when it enters into force with respect to that party. The rule in this paragraph therefore excludes the idea that ratification may have retroactive effect to the date of signature. It requires a clear provision in the treaty itself to give the treaty retroactive effect, as it does also to suspend its effectiveness until a future date.

Article 24

Provisional entry into force

A treaty may prescribe that, pending its entry into force by the exchange or deposit of instruments of ratification, accession, acceptance or approval, it shall come into force provisionally, in whole or in part, on a given date or on the fulfilment of specified requirements. In that case the treaty shall come into force as prescribed and shall continue in force on a provisional basis until either the treaty shall have entered into force definitively or the States concerned shall have agreed to terminate the provisional application of the treaty.

Commentary

(1) This article recognizes a practice which occurs with some frequency today 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 provide 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) Clearly, the "provisional" application of the treaty will terminate upon the treaty being duly ratified or approved in accordance with the terms of the treaty or upon it becoming clear that the treaty is not going to be ratified or approved by one of the parties. It may sometimes happen that the event is delayed and that the States concerned agree to put an end to the provisional application of the treaty, if not to annul the treaty itself.

Article 25

The registration and publication of treaties

1. The registration and publication of treaties entered into by Members of the United Nations shall be governed by the provisions of Article 102 of the Charter of the United Nations.

2. Treaties entered into by any party to the present articles, not a Member of the United Nations, shall as soon as possible be registered with

the Secretariat of the United Nations and published by it.

3. The procedure for the registration and publication of treaties shall be governed by the regulations in force for the application of Article 102 of the Charter.

Commentary

(1) This article recalls, in paragraph 1, the obligation of Members of the United Nations under Article 102 of the Charter to register treaties entered into by them.

(2) Paragraph 2 also places an obligation on States, not Members of the United Nations, to register treaties entered into by them. Although the Charter obligation is limited to Member States, many non-member States have in practice "registered" their treaties habitually with the Secretariat of the United Nations. Under article 10 of the General Assembly's regulations governing the registration of treaties (see next paragraph), the term given to such "registration" by non-members is "filing and recording", but in substance it is a form of voluntary registration. The Commission considers that it would be appropriate that States becoming a party to a convention on the conclusion of treaties should undertake a positive obligation to register their treaties. Whether this should then continue to be termed "filing" rather than registration in United Nations regulation of the General Assembly 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 applied to non-members; since it is a matter which touches the procedures of organs of the United Nations it also 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 Commission also 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 resolution 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 22 by reference to them in general terms. At the same time, as these regulations can only be found in two separate volumes of the United Nations Treaty Series or in the original resolutions of the Assembly, the Commission thought that it might be useful to attach them as an annex to the present report.

SECTION V. CORRECTION OF ERRORS AND THE FUNCTIONS OF DEPOSITARIES

Article 26

The correction of errors in the texts of treaties for which there is no depositary

1. Where an error is discovered in the text of a treaty for which there is no depositary after the text has been authenticated, the interested States shall by mutual agreement correct the error either:

(*a*) Ey having the appropriate correction made in the text of the treaty and causing the correction to be initialled in the margin by representatives duly authorized for that purpose;

(*b*) By executing a separate protocol, a *procès-verbal*, an exchange of notes of similar instrument, setting out the error in the text of the treaty and the corrections which the parties have agreed to make; or

(*c*) By executing a corrected text of the whole treaty by the same procedure as was employed for the erroneous text.

2. The provisions of paragraph 1 above shall also apply where there are two or more authentic texts of a treaty which are not concordant and where it is proposed to correct the wording of one of the texts.

3. Whenever the text of a treaty has been corrected under paragraphs 1 and 2 above, the corrected text shall replace the original text as from the date the latter was adopted, unless the parties shall otherwise determine.

4. Notice of any correction to the text of a treaty made under the provisions of this article shall be communicated to the Secretariat of the Unted Nations.

Commentary

(1) Errors and inconsistencies are not uncommonly found in the text of treaties and it seems desirable to include provisions in the draft articles concerning methods of rectifying them. The present article deals with the situation where an error is discovered in a treaty for which there is no depositary, and also with the situation where there are two or more authentic texts of such a treaty and they are discovered not to be concordant. In these cases the correction of the error or inconsistencies would seem to be essentially a matter for agreement between the signatories to the treaty. There is a certain amount of evidence of the practice in the matter[60] and the provisions of the present article are based on that evidence and on information available to members of the Commission.

(2) The correction of errors in the text is dealt with in paragraph 1. The errors in question may be due either to typographical mistakes 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 the States concerned are not agreed as to the text being erroneous, there cannot, of course, be any question of a unilateral correction of the text. In that case, there is a dispute and it becomes a problem of "mistake" which belongs to another branch of the law of treaties. It is only when the States are agreed as to the existence of the error that the matter is one simply of correction of errors falling under the present article. The normal techniques used for correcting error appear to be those in paragraphs 1 (*a*) and 1 (*b*). Only in the extreme case of a whole series of errors would there be any occasion for starting afresh with a new text as contemplated in paragraph 1 (*c*); since, however, one such instance is given in Hackworth, that United States Liberia Extradition Treaty of 1937, the Commission has included a provision allowing for the substitution of a completely new text.

(3) The same techniques appear to be appropriate for the rectification of discordant texts where there are two or more authentic texts in different languages. Thus, a number of precedents concern the rectification

[60] *Hackworth's Digest of International Law*, vol. 5, pp. 93-101.

discordant passages in one of two authentic texts.[61]

(4) Since what is involved is merely the correction or rectification of an already accepted text, it seems clear that, unless the parties otherwise agree, the corrected or rectified text should be deemed to operate from the date when the original text came into force. Whether such a correction or rectification falls under the terms of article 2 of the General Assembly's regulations concerning the registration and publication of treaties and international agreements, when it takes the form merely of an alteration made to the text itself, is perhaps open to question.[62] But it would clearly be in accordance with the spirit of that article that a correction to a treaty should be registered with the Secretary-General and this has therefore been provided for in paragraph 3 (*b*) of the present article.

(5) The procedure for correction of errors is also applicable to the correction of a lack of concordance in different language versions of the authentic text, where such lack of concordance is merely the result of errors made before the adoption of the authentic text. The Commission noted that the question may also arise of correcting not the authentic text itself 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 States concerned to modify the translation by mutual agreement without any special formality. Accordingly, the Commission thought it sufficient to mention the point in the present commentary.

Article 27

The correction of errors in the texts of treaties for which there is a depositary

1. (*a*) Where an error is discovered in the text of a treaty for which there is a depositary, after the text has been authenticated, the depositary shall bring the error to the attention of all the States which participated in the adoption of the text and to the attention of any other States which may subsequently have signed or accepted the treaty, and shall inform them that it is proposed to correct the error if within a specified time limit no objection shall have been raised to the making of the correcton.

(*b*) If on the expiry of the specified time limit no objection has been raised to the correction of the text, the depositary shall make the correction in the text of the treaty, initialling the correction in the margin, and shall draw up and execute a *procès-verbal* of the rectification of the text and transmit a copy of the *procès-verbal* to each of the States which are or may become parties to the treaty.

2. Where an error is discovered in a certified copy of a treaty, the depositary shall draw up and execute a *procès-verbal* specifying both the error and the correct version of the text, and shall transmit a copy of the *procès-verbal* to all the States mentioned in paragraph 1 (*b*) above.

3. The provisions of paragraph 1 above shall likewise apply where two or more authentic texts of a treaty are not concordant and a proposal is made that the wording of one of the texts should be corrected.

4. If an objection is raised to a proposal to correct a text under the provisions of paragraphs 1 or 3 above, the depository shall notify the objection to all the States concerned, together with any other replies received in response to the notifications mentioned in paragraphs 1 and 3. However, if the treaty is one drawn up either within an international organization or at a conference convened by an international organization, the depositary shall also refer the proposal to correct the text and the objection to such proposal to the competent organ of the organization concerned.

5. Whenever the text of a treaty has been corrected under the preceding paragraphs of the present article, the corrected text shall replace the faulty text as from the date on which the latter text was adopted, unless the States concerned shall otherwise decide.

6. Notice of any correction to the text of a treaty made under the provisions of this article shall be communicated to the Secretariat of the United Nations.

Commentary

(1) This article covers the same problems as article 26, but in 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 the States and it is only natural that the techniques used should hinge upon the depositary. In formulating the provisions set out in the article, the Commission has based itself upon the information contained in the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements*.[63]

(2) The technique employed is for the depositary to notify all the States that took part in the adoption of the treaty or have subsequently signed or accepted it 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 agent for 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 notifications should be sent to all the interested 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.

(3) A further point that may call for comment is, perhaps, the mention in paragraph 4 of the reference of a difference concerning the correction of a text to the

[61] See, for example, the Commercial Treaty of 1938 between the United States and Norway and the Naturalisation Convention of 1907 between the United States and Peru, in *Hackworth, op.cit.*, pp. 93 and 96.

[62] 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".

[63] See pp. 8-10, 12, 19-20, 39 (footnote), and annexes 1 and 2.

competent organ of the international organization concerned, where the treaty was either drawn up in the organization or at a conference convened by it. This provision is inspired by the precedent of the rectification of the Chinese text of the Genocide Convention mentioned on page 10 of the *Summary of Practice*.

(4) Paragraphs 4 and 5 of the commentary to article 26 also apply to the present article.

Article 28

The depositary of multilateral treaties

1. Where a multilateral treaty fails to designate a depositary of the treaty, and unless the States which adopted it shall have otherwise determined, the depositary shall be:

(*a*) In the case of a treaty drawn up within an international organization or at an international conference convened by an international organization, the competent organ of that international organization;

(*b*) In the case of a treaty drawn up at a conference convened by the States concerned, the State on whose territory the conference is convened.

2. In the event of a depositary declining, failing or ceasing to take up its functions, the negotiating States shall consult together concerning the nomination of another depositary.

Commentary

(1) A multilateral treaty normally designates a particular State or international organization as depositary. However, if the States concerned should fail to nominate a depositary in the treaty itself, paragraph 1 of this article provides either for an international organization or for the "host" State of the conference at which the treaty was drawn up to act as depositary. The actual provisions of paragraph 1 reflect existing practice in the designation of depositaries in multilateral treaties.

(2) Cases may possibly occur where a depositary declines, fails or ceases to act, and cases of the last type are known to have occurred. Accordingly, the Commission thought it prudent to cover this possibility in paragraph 2 of the present article.

Article 29

The functions of a depositary

1. A depositary exercises the functions of custodian of the authentic text and of all instruments relating to the treaty on behalf of all States parties to the treaty or to which it is open to become parties. A depositary is therefore under an obligation to act impartially in the performance of these functions.

2. In addition to any functions expressly provided for in the treaty, and unless the treaty otherwise provides, a depositary has the functions set out in paragraphs 3 to 8 below.

3. The depositary shall have the duty:

(*a*) To prepare any further texts in such additional language as may be required either under the terms of the treaty or the rules in force in an international organization;

(*b*) To prepare certified copies of the original text or texts and transmit such copies to the States mentioned in paragraph 1 above;

(*c*) To receive in deposit all instruments and ratifications relating to the treaty and to execute a *procès-verbal* of any signature of the treaty or of the deposit of any instrument relating to the treaty;

(*d*) To furnish to the State concerned an acknowledgment in writing of the receipt of any instrument or notification relating to the treaty and promptly to inform the other States mentioned in paragraph 1 of the receipt of such instrument or notification.

4. On a signature of the treaty or on the deposit of an instrument of ratification, accession, acceptance or approval, the depositary shall have the duty of examining whether the signature or instrument is in conformity with the provisions of the treaty in question, as well as with the provisions of the present articles relating to signature and to the execution and deposit of such instruments.

5. On a reservation having been formulated, the depositary shall have the duty:

(*a*) To examine whether the formulation of the reservation is in conformity with the provisions of the treaty and of the present articles relating to the formulation of reservations, and, if need be, to communicate on the point with the State which formulated the reservations;

(*b*) To communicate the text of any reservation and any notifications of its acceptance or objection to the interested States as prescribed in articles 18 and 19.

6. On receiving a request from a State desiring to accede to a treaty under the provisions of article 9, the depositary shall as soon as possible carry out the duties mentioned in paragraph 3 of that article.

7. Where a treaty is to come into force upon its signature by a specified number of States or upon the deposit of a specified number of instruments of ratification, acceptance or accession or upon some uncertain event, the depositary shall have the duty:

(*a*) Promptly to inform all the States mentioned in paragraph 1 above when, in the opinion of the depositary, the conditions laid down in the treaty for its entry into force have been fulfilled;

(*b*) To draw up a *procès-verbal* of the entry into force of the treaty, if the provisions of the treaty so require.

8. In the event of any difference arising between a State and the depositary as to the performance of these functions or as to the application of the provisions of the treaty concerning signature, the execution or deposit of instruments, reservations, ratifications or any such matters, the depositary shall, if the State concerned or the depositary itself deems it necessary, bring the question to the attention of the other interested States or of the competent organ of the organization concerned.

Commentary

(1) The depositary of a treaty plays a significant role in what is really the administration of the procedural clauses of the treaty, and a number of the func-

ns of a depositary have already been mentioned in connexion with preceding provisions of the present articles. It is thought convenient, however, to collect together in a single article the main functions of a depositary relating to the conclusion and entry into force of treaties and that is the purpose of article 28. In drafting its provisions the Commission has naturally paid particular attention to the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements.*

(2) Paragraph 1 states the general principles that a depositary, whether a State or an international organization, acts on behalf of all the parties to the treaty as their delegate to hold the authentic text of the treaty and to receive and communicate all instruments and notifications relating to the treaty. In this capacity, the depositary must be impartial and perform its functions with objectivity. On the other hand, the fact that a State is a depositary does not disqualify it from exercising the normal rights of a State which is a party to a treaty, or took part in the adoption of its text, in regard to the procedural clauses of the treaty. In that capacity it may express its own policies, but it must carry out its duties as depositary with impartiality and objectivity.

(3) Paragraph 2 of the article requires no comment. Paragraph 3 deals with the functions of the depositary in relation to the original text of the treaty, and as to all instruments and notifications relating to the treaty. Paragraph 4 makes it clear that the depositary has a certain duty to examine whether any signatures or instruments are in due form.

(4) Paragraph 5 recalls the duties of depositary under article 18 concerning reservations. Here again it is made clear that the depositary has a certain duty to examine whether a reservation has been formulated in conformity with the provisions of the treaty. On the other hand, it is not the function of a depositary to adjudicate upon the validity of a reservation. If a 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 8 of the present article.

(5) Paragraph 6 recalls the duties placed upon a depositary in the event of a State applying to become a party to a treaty under article 9.

(6) Paragraph 7 deals with the depositary's duty to notify the interested States of the coming into force of the treaty, when the conditions for its entry into force have been fulfilled. The question whether the required number of signatures or of instruments of ratification, accession, etc. 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 8 of the present article. Accordingly, paragraph 7 does not go beyond requiring the depositary to inform the interested States of the date when, in its opinion, the conditions for the entry into force of the treaty have been fulfilled.

(7) Paragraph 8 lays down the general principle that, in the event of any difference arising between the depositary and another State, the duty of the depositary is to consult all the other interested States. Since the depositary is not invested with competence to make final determinations on matters arising out of the performance of its functions, the matter must be referred to all the States interested in the treaty. If the State concerned or the depositary itself deems it necessary, they may bring the question to the attention of the other interested States. The rule has been formulated in that way because there might be cases where the State having a difference with a depositary might prefer not to insist upon the matter being referred to the other States.

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FM CANDELNY SEP25/63 CONFD

TO EXTERNAL 1263 PRIORITY

REF OURTEL 1205 SEP18

UNGA SIXTH CTTEE

SIXTH CTTEE HELD ORGANIZATION MTG YESTERDAY AND WILL BEGIN SUBSTANTIVE WORK TOMORROW. WITH RUDA OF ARGENTINA AS CHAIRMAN, DADZIE OF GHANA WAS ELECTED VICE CHAIRMAN AND ZABIGAILO OF UKRAINE AS RAPPORTEUR.

2. AGENDA WAS ADOPTED WITHOUT DEBATE IN THE ORDER OF PRIORITY INDICATED IN OUR REFTEL. IT WAS DECIDED IN PRINCIPLE TO DEVOTE ONLY ELEVEN MTGS TO COVER BOTH THE ILC REPORT AND PARTICIPATION IN LEAGUE OF NATIONS TREATIES. THIRTY-FIVE MTGS COMPARED TO 24 LAST YEAR ARE THEN TO BE SPENT ON FRIENDLY RELATIONS DEBATE TO START TENTATIVELY OCT14 AND LAST UNTIL END OF NOV WITH 8 LAST MTGS ASSIGNED TO TECHNICAL ASSISTANCE.

3. ONLY INTERVENTION WAS BY SOVIET DEL MOROZOV WHO STRESSED IMPORTANCE OF FRIENDLY RELATIONS ITEM(HE DID NOT RPT NOT USE TERM QUOTE COEXISTENCE UNQUOTE)CONCERNING WHICH HE STATED THAT SOVIET DEL HOPED THIS TIME BOTH FOR DISCUSSION IN DEPTH AND QUOTE DECISIONS UNQUOTE. EXTRA MTGS DURING PERIOD ALLOCATED, HE SAID, MIGHT BE NEEDED.

4. IMPRESSION OF FIRENDLY DELS IS THAT CTTEE IS IN FOR POLITICO-LEGAL DEBATE ALTHOUGH SOVIETS SEEM PREPARED TO RESPECT PRIORITIES LAID OUT LAST YEAR. GENERAL ATTITUDE AT THIS STAGE IS ONE OF WAIT AND SEE.

5. AS FOR FIRST ITEM, SHORTER PERIOD ASSIGNED TO DISCUSSION OF ILC REPORT WILL MILITATE AGAINST PREMATURE DISCUSSION OF ITS TECHNICAL PARTS ALTHOUGH THIS, OF COURSE, CANNOT RPT NOT BE ENTIRELY RULED OUT. ADMIN PARTS AND PARTICULARLY PACE OF COMMISSION WORK MAY WELL, ON THE OTHER HAND, BE FEATURE OF GENERAL

...2

DEBATE. IN CONVERSATION WITH US , CTTEE SECRETARY LIANG REFERRED TO FACT THAT ILC DECISION ON ONE OR MORE WINTER MTGS HAD BEEN TAKEN PRIOR TO PUBLICATION OF THE AUSTERITY REPORT OF THE ADVISORY CTTEE ON ADMIN AND BUDGETARY MATTERS(A/5507) PARAS 52-74 OF WHICH ADVOCATE RETRENCHMENT IN PROGRAMME OF CONFERENCES AND MTGS. HE WONDERED WHAT STAND CDA WOULD TAKE IN BOTH SIXTH AND FIFTH CTTEES.

6. MORE GENERALLY, STATE OF FEELING IN SIXTH CTTEE ON QUESTION OF ILC WORK MIGHT WELL AFFECT STAND ON ANY SUGGESTION LATER ON TO FARM OUT FRIENDLY RELATIONS ITEM TO SOME AD HOC BODY. WHILE WE ARE INCLINED TO DOUBT THAT LATTER SUGGESTION WOULD PROVE POPULAR AS IT WOULD BRAND SIXTH CTTEE WITH STERILITY, WE FEEL THAT WE SHOULD TAKE PULSE OF CTTEE DURING FIRST FOUR OR FIVE MTGS BEFORE MAKING OUR STATEMENT ON FIRST ITEM.

20-3-1-6
91-f

Mr. Cadieux

(through Mr. Wershof)

Legal Division

RESTRICTED

September 27, 1963.

File

Canada's Observations on the I.L.C.'s Draft Articles on the Law of Treaties.

The deadline for observations from states on the first series of the I.L.C.'s draft articles on the law of treaties is now upon us (October 1). We attach our comments on various articles and should be grateful for a decision as to which of them should be mentioned in our observations. Alternatively, you may prefer to pursue some of them yourself when the Commission gives further consideration to this first series. We also attach a copy of the draft articles, and your report on the 1962 Session of the Commission.

2. Our general conclusion is that there is very little for us to comment about in the draft articles. The task of codifying the law of treaties is not one in which national interests play a major role except insofar as the I.L.C. project is being used by the Communist Bloc members to advance national objectives. Canada's interest is that the law of treaties should, as far as possible, be certain as well as readily discernable. The I.L.C.'s project has provided on the one hand, an opportunity to compile a most useful synthesis of existing law and practice, and on the other an opportunity to develop the law along progressive lines to reflect the changed needs of post war diplomatic intercourse. With the learned guidance of its special rapporteur, the Commission is fulfilling these objectives, and it seems inappropriate for states to enter into doctrinal disputes with the Commission unless national interests are involved. We are therefore of the view that our observations might be kept to a minimum.

H. COURTNEY KINGSTONE

Legal Division