

Vol 3

Department of External Affairs

CLASSIFIED

File No. 20-3-1-6

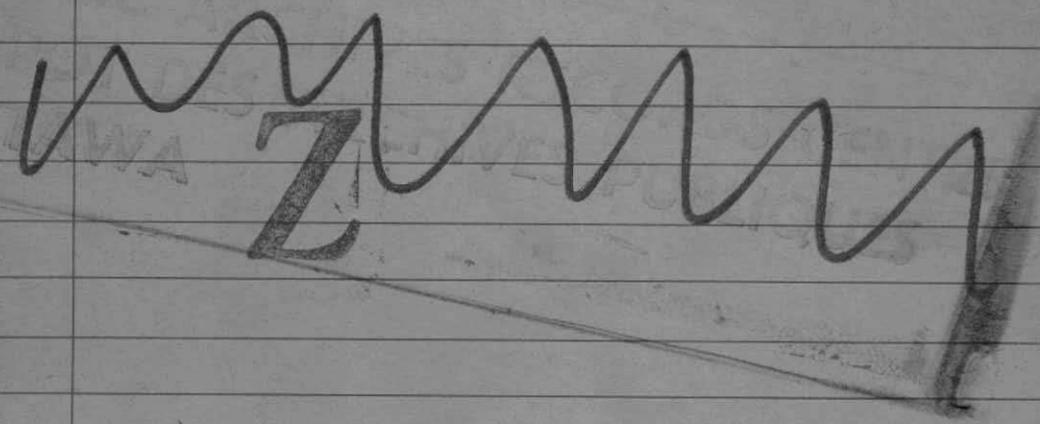
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Subject: POLITICAL AFFAIRS -
TREATIES & AGREEMENTS -
TREATY MAKING POWERS -
LAW OF TREATIES -
I.L.C. CODIFICATION PROJECT

Vol. 3
From July 5 66
To Dec 28 67

REPLACES FILE 5475-AX-8-40

References to Related Files

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PUBLIC RECORDS ORDER

P.C. 1965 - 1749 - AUTHORITY

PUB. LIVES APPROVALS

NOS 60/001 & 69/063

RETENTION PERIOD AND DISPOSITION

10/10/2A-8D
AND THEN TRANSFER TO P.A.C.
FOR SELECTIVE RETENTION

DIVISIONAL SYMBOL



J.S.

File No. 20-3-1-6

CURRICULUM VITAE OF PROFESSOR ROBERTO AGO
=====

Born at Vigevano (Pavia), in 1907.

Studies at the university of Naples:
Doctor of Law (1929).
Doctor in Political Sciences (1930).

ACADEMIC AND PUBLIC ACTIVITIES:

Lecturer in International Law at the universities of Cagliari (1930-1931) and of Messina (1931-1934).
Professor of International Law at the University of Catania (1934-1935) and of Genoa (1935-1938).
Professor of International Law at the State University of Milan and Director of the Institute of International Law at the University of Milan (1938-1956).
Professor of International Law at the University of Rome (since 1956).
Barrister, Supreme Court of Italy.

Member of the Council of the "contenzioso diplomatico" of the Italian Ministry of Foreign Affairs.
Member of the Preparatory Commission for the Italian Constituent Assembly and co-rapporteur of the Commission's Draft concerning International Law in the Constitution (1946-1947).

Member of the Curatorium of the Hague Academy of International Law.

Lectures at the Hague Academy of International Law (in 1936: "General Rules of Conflict of Laws"; in 1939: "International Tort" and in 1955: "Legal Science and International Law").
Lectures at the Institut Universitaire des Hautes Etudes Internationales in Geneva (in 1947: "International Legal Order and the Problem of Peace"; in 1948: "Principles of International Legal System"; in 1960: "Codification of International Law" and in 1966: "Jus cogens in the Drafted Codification of the Law of Treaties").
Lectures at the European College in Bruges (in 1952: "International Tort").
Lectures during the Summer Course of the University of Valladolid in Vitoria (in 1953: "International Liability for Tort").

Lectures at the University of Paris:

- At the Institut des hautes études internationales (in 1958: "The problem of the foundation of International Law").
- At the Faculty of Laws and Economics (in 1966: "The U.N. and the Codification of International Law").

Lectures at the Institut universitaire d'études européennes in Turin (in 1953, 1954, 1955, 1956, 1957 and 1958: "International Organization").

Lectures during the U.N. Seminar during the Sessions of the International Law Commission (1965, 1966 and 1967).

Various lectures in International Law in Academic and Scientific Institutions in Brussels, Copenhagen, Paris, Toulouse, Nice, London, Cambridge, Oxford, Athens, Salonika, Rome, Milan, Turin, Florence, Naples, Padova, Vicenza, Perugia, Tokyo, Kyoto, Oslo, Lisbon, Coimbra, Madrid, Stockholm, Geneva, San Francisco.

Doctor honoris causa of the Universities of Nancy, (1963) and Nice (1967).

Titular Member of the Institute of International Law.

Honorary Member of the Indian Society of International Law.

Member of the Italian Institute of International Law, of the Greek Institute of International and Foreign Law, of the American Academy of Political and Social Sciences, of the International Academy of Political Sciences, of the French Arbitration Committee.

Member of the Governing Body and the Executive Committee of the International Institute of Social Studies.

Member of the Editorial Committee of the "Rivista di Diritto Internazionale" (since 1936) and co-Director of this publication since 1953.

Director of the Legal Periodical "Comunicazioni e Studi" of the Institute of International Law of the University of Milan (since 1942).

Director of the Quarterly "La comunità internazionale" (since 1946).
Co-Director of the Rivista di diritto industriale" (since 1952) and of "Archivio Giuridico" since 1952.

President of the Italian Society for International Organization (since 1963) and, since the foundation of the Society in 1954, Secretary General and Vice-president).

President of the Executive Committee of the World Federation of United Nations Associations (in 1951 and 1952); First Vice-president of this Federation (from 1953 to 1956); President from 1957 to 1960 and since then Honorary President.

INTERNATIONAL ACTIVITIES

In International Organizations

Member of the International Law Commission (elected in November 1956 and again in November 1961 by the U.N. General Assembly).
President of the Commission (1964-1965).

Member of the Committee of Five Jurists appointed by the Council of Europe to establish a draft for a European Constitution (1952).

Legal Consultant of the International Refugee Organization (from 1948 to 1951) and of the Intergovernmental Committee on European Migration (CIME) in Geneva (since 1952).

Member of the National Committee for UNESCO and Member of the Italian Delegation to the UNESCO Conferences in 1950, 1951 and 1952.

Member of the Italian Delegation to the Rome Conference for European Community 1953.

Head of the Italian Delegation at the U.N. Geneva Conferences on the Law of the Sea (in 1958 and 1960) and at the U.N. Vienna Conference on Diplomatic Relations (1961).

Member and subsequently Head of the Italian Government Delegation to the International Labour Conference (from 1946 to 1951 and since 1954).

Alternate Representative (since 1948) and subsequently Representative (since 1954) of the Italian Government on the Governing Body of I.L.O.

President of the Committee on Regulation and Application of Conventions and Recommendations of the Governing Body of I.L.O. (from 1950 to 1954).

Chairman of the Committee to consider improvement of methods of working for the International Labour Conference (1958-1963).

Chairman of the Government Group of the Governing Body of I.L.O. (since 1959).

Chairman of the Freedom of Association Committee of I.L.O. (since 1961).

Member of the Board of the International Center for Professional and Technical Training of I.L.O. in Turin (since 1965).

Chairman of the Governing Body of I.L.O. (in 1954, 1955 and in 1967-1968).

In International Jurisdictions.

Counsel for the Italian Government and various other Governments in cases before the Permanent Court of International Justice, the International Court of Justice and other International Arbitration Tribunals or International Conciliations Commissions, as well as in other international disputes.

Member of the Permanent Court of Arbitration.

Member of the Permanent Arbitral Commission between Switzerland and the Netherlands (since 1948).

Member of the Permanent Conciliation Commission between Italy and Switzerland (since 1956).

Member of the Permanent Arbitration Commission between Switzerland and the C.E.R.N. (since 1957).

Member of an Inquiry and Conciliation Commission between France and Morocco (1957).

Member of the Permanent Arbitral Commission between France and Sweden (since 1958).

President of the Arbitration Tribunal between France and the Saar (1954-1956).

President of the Arbitration Tribunal between France and the Federal Republic of Germany provided for by the Treaty for the Settlement of the Saar question (since 1957).

Ad hoc Judge at the International Court of Justice in the Honduras Nicaragua case (1959-1960).

President of the Arbitral Tribunal between France and the United States for the question of the interpretation of the Aerial Agreement of 1946 (in 1963).

President of the Permanent Conciliation Committee between Chile and Poland (since 1964).

President of the Permanent Conciliation Commission between Uruguay and Sweden (since 1967).

PUBLICATIONS

- Conflitti di leggi regionali diverse nella Repubblica Cecoslovacca, "Studi economico-giuridici della Università di Cagliari", 1931, pp. 1-35
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- Le organizzazioni internazionali e le loro funzioni nel campo dell'attività interna degli Stati, "Studi in onore di G.M. De Francesco", I, Milano, Giuffrè, 1956, pp. 3-23; e "Temì", 1955, n. 6, pp. 3-16.
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Sur l'interprétation de l'Article 24 de la Convention de Berne sur la protection de la propriété littéraire et artistique. Paris, 1967, pp. 1-30.

La transformation de la société des Etats et la codification du Droit international (Sous presse).

TO: MR. STANFORD
FROM REGISTRY
SEP 21 1967
FILE CHARGED OUT
TO: MR. STANFORD



AMBASCIATA D'ITALIA
OTTAWA

file Mr. Stanford

20-3-1-6
28/1/4

3107

J-6

*cc U.N. Dis.
Pennis 7/4
Rome
Vienna
Mr. Sottile
Mr. Bulla
return
26/9/67 25/9*

The Embassy of Italy present their compliments to the Department of External Affairs and have the honour to refer to the International Conference on the Law of Treaties which, in accordance with the Resolution adopted on December 5th, 1966, by the General Assembly of the United Nations, will convene in Vienna, Austria, in two sessions during the two year period 1968-69.

The very fact that the Conference in question will take place in Vienna would imply that the Presidency of same be attributed to an Austrian jurist who, in this case, was to be Prof. Verosta.

However, as Prof. Verosta has indicated from the very beginning that he would not accept such Presidency, the Italian Government informed the United Nations' Secretary of its intention to submit the candidacy of Prof. Robert Ago, present member of the International Law Commission of the United Nations and formerly (1964-65) President of same. Prof. Ago's curriculum vitae is ----- enclosed herewith.

In connection with the above, the Embassy of Italy, upon instructions received from their Central Authorities, ask the assistance of the Department of External Affairs in order that the candidacy of Prof. Ago may be supported by the Canadian Government.

The Embassy of Italy avail themselves of this opportunity to renew to the Department of External Affairs the assurance of their highest consideration.

Ottawa, September 19th 1967.



3107

The Embassy of Italy present their compliments to the Department of External Affairs and have the honour to refer to the International Conference on the Law of Treaties which, in accordance with the Resolution adopted on December 5th, 1966, by the General Assembly of the United Nations, will convene in Vienna, Austria, in two sessions during the two year period 1968-69.

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The Embassy of Italy avail themselves of this opportunity to renew to the Department of External Affairs the assurance of their highest consideration.

Ottawa, September 19th 1967.



Mr. Stanfield on return
JH

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

file 20-3-1-6
JH 14/12

TO
A Memorandum
Legal Division

SECURITY
Sécurité Confidential

FROM
De Personnel Services Division

DATE September 19, 1967.

REFERENCE
Référence Your memorandum of September 14, 1967.

NUMBER
Numéro

SUBJECT
Sujet Estimates 1968-69 - Contract Employment

FILE	DOSSIER
OTTAWA 3-4-3-7-3	3-4-3-7-4
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

Finance Division

Thank you for your comprehensive memorandum under reference on which we should like to comment as follows:-

- a) It seems to us that the proposed expenditures in relation to the Legal Sub-Committee on Outer Space and the United Nations Conference on the Law of Treaties should be charged to the Conference Vote rather than to Professional Services since both Professors Vlasic and Lawford will probably act as advisers to our Delegation; this, we think, should include preparatory studies as well as consultations immediately following the Conference. A similar procedure was followed this year with regard to Professor Vlasic.
- b) Costs regarding the possible attendance of Professor Lawford at the Second Session of the Conference on the Law of the Treaties would also have to be included as a charge against the Conference Vote if there is a possibility that the meeting may be held before March 31, 1969.
- c) We shall submit your estimate of \$20,000 for a study of the St. Pierre and Miquelon dispute although it would be helpful, in view of the large amount involved, to have a more precise idea as to whether the services of an authority on international law will in effect be required during next fiscal year. Your additional verbal comments on this project would be of assistance (2-1276).

*Called Miss
Stephenson Sept. 21
OK JH*

-2-

- d) We are writing to you separately with regard to the study of Human Rights; we should however welcome your confirmation that this project is to be undertaken during the current fiscal year.


Personnel Services Division

Legal/D.M.Miller/bmc

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
A J. A. Beesley

FROM
De D. M. Miller

REFERENCE
Référence Your memorandum of Sept. 15 of
the same subject.

SUBJECT
Sujet Twenty-second UNGA: Sixth Committee

*File 20-3-1-6
J/M/12*

SECURITY RESTRICTED
Sécurité

DATE September 18, 1967

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

Mr. Lapointe
Mr. Stanford
Miss Booth

Mr. Robertson reported that the sixth committee will probably commence the 26th of September with the following number of meetings allotted to each item in the tentative order set out below:

One meeting - Organization

Twelve meetings - Report of the International Law Commission on the Work of its Nineteenth Session

Twelve meetings - Law of Treaties

Twenty-two meetings - Friendly Relations

Six meetings - Question of methods of fact-finding

Five meetings - Draft declaration on Territorial Asylum

Three meetings - Program of Assistance in Teaching in International Law.

2. Mr. Gotlieb mentioned he would be unable to attend the sixth committee until October 2 and would then spend two weeks in New York. Mr. Robertson said the sixth committee planned to have five or six meetings and would terminate on December 8 or 9. He warned that this schedule, however, might be upset if either the Maltese item^{or} or item number 61 on war criminals (resulting from ECOSOC Resolution of June 6) were already assigned to the sixth committee.

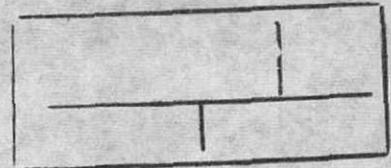
D. M. MILLER

D. M. Miller

c.c. Ottawa

*file 20-3-10
Miss/12*

TO: MISS/BOOTH
FROM REGISTRY
SEP 19 1967
FILE CHARGED OUT
TO:



The Permanent Mission of Canada to the United Nations presents its compliments to the Permanent Mission of Italy to the United Nations and has the honour to refer to that Mission's circular note 959 of September 8, 1967, including the curriculum vitae of Professor Ago, a candidate for the Presidency of the International Conference of Plenipotentiaries on the Law of Treaties.

Professor Ago's curriculum vitae has been forwarded to the appropriate authorities in Canada for their consideration.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Permanent Mission of Italy, the assurances of its highest consideration.

New York, September 15, 1967

REC.

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SEP 12 11 28 AM '67
PERMANENT MISSION OF ITALY
TO THE UNITED NATIONS

MISSION OF CANADA				
1	2	3	4	5
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11	12	13	14	15
27-4				

959

The Permanent Mission of Italy to the United Nations presents its compliments to the Permanent Missions to the United Nations and, following Note 856 of 10 August 1967 concerning the decision of the Italian Government to present the candidature of Professor Ago for the Presidency of the International Conference of Plenipotentiaries on the Law of Treaties, has the honour to transmit herewith enclosed the curriculum vitae of Professor Ago.

The Permanent Mission of Italy avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.

Fz.
New York, 8 September 1967

CURRICULUM VITAE OF PROFESSOR ROBERTO AGO

Born at Vigevano (Pavia) in 1907.

Studies at the University of Naples:

Doctor of Law (1929)

Doctor in Political Sciences (1930)

Academic and Public Activities:

Lecturer in International Law at the Universities of Cagliari (1930-31) and Messina (1931-34).

Professor of International Law at the University of Catania (1934-35) and of Genoa (1935-38).

Professor of International Law at the State University of Milan and Director of the Institute of International Law at the University of Milan (1938-1956).

Professor of International Law at the University of Rome (since 1956).

Barrister, Supreme Court of Italy.

Member of the Council of the "contenzioso diplomatico" of the Italian Ministry of Foreign Affairs.

Member of the Preparatory Commission for the Italian Constituent Assembly and co-rapporteur of the Commission's Draft concerning International Law in the Constitution (1946-1947).

Member of the Curatorium of the Hague Academy of International Law.

Lectures at the Hague Academy of International Law (in 1936: "General Rules of Conflict of Laws"; in 1939: "International Tort" and in 1955: "Legal Science and International Law").

Lectures at the Institut Universitaire des Hautes Etudes Internationales in Geneva (in 1947: "International Legal Order and the Problem of Peace"; in 1948: "Principles of International Legal System"; in 1960: "Codification of International Law" and in 1966: "Jus cogens in the Drafted Codification of the Law of Treaties").

Lectures at the European College in Bruges (in 1952: "International Tort").

Lectures during the Summer Course of the University of Valladolid in Victoria (in 1953: "International Liability for Tort").

Lectures at the University of Paris:

- At the Institut des hautes études internationales (in 1958: "The problem of the foundation of International Law");

- At the Faculty of Law and Economics (in 1966: "The U.N. and the Codification of International Law").

Lectures at the Institut universitaire d'études européennes in Turin (in 1953, 1954, 1955, 1956, 1957 and 1958: "International Organization").

./.

Lectures during the U.N. Seminar during the Sessions of the International Law Commission (1965, 1966 and 1967).

Various lectures in International Law in Academic and Scientific Institutions in Brussels, Copenhagen, Paris, Toulouse, Nice, London, Cambridge, Oxford, Athens, Salonika, Rome, Milan, Turin, Florence, Naples, Padova, Vicenza, Perugia, Tokyo, Kyoto, Oslo, Lisbon, Coimbra, Madrid, Stockholm, Geneva, San Francisco.

Doctor honoris causa of the Universities of Nancy (1963) and Nice (1967).

Titular Member of the Institute of International Law.

Honorary Member of the Indian Society of International Law.

Member of the Italian Institute of International Law, of the Greek Institute of International and Foreign Law, of the American Academy of Political and Social Sciences, of the International Academy of Political Sciences, of the French Arbitration Committee.

Member of the Governing Body and the Executive Committee of the International Institute of Social Studies.

Member of the Editorial Committee of the "Rivista di Diritto Internazionale" (since 1936) and co-Director of this publication since 1953.

Director of the Legal Periodical "Comunicazioni e Studi" of the Institute of International Law of the University of Milan (since 1942).

Director of the Quarterly "La comunità internazionale" (since 1946).

Co-Director of "the Rivista di diritto industriale" (since 1952) and of "Archivio Giuridico" since 1952.

President of the Italian Society for International Organization (since 1963) and, since the foundation of the Society in 1954, Secretary General and Vice-president).

President of the Executive Committee of the World Federation of U.N. Associations (in 1951 and 1952); First Vice-president of this Federation (from 1953 to 1956); President from 1957 to 1960 and since then Honorary President.

International Activities:

In International Organizations:

Member of the International Law Commission (elected in November 1956 and again in November 1961 by the U.N. General Assembly). President of the Commission (1964-1965).

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Member of the National Committee for UNESCO and Member of the Italian Delegation to the UNESCO Conferences in 1950, 1951 and 1952.

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Chairman of the Governing Body of I.L.O. (in 1954,-1955 and in 1967-1968).

In International Jurisdictions:

Counsel for the Italian Government and various other Governments in cases before the Permanent Court of International Justice, the International Court of Justice and other International Arbitration Tribunals or International Conciliations Commissions, as well as in other international disputes.

Member of the Permanent Court of Arbitration.

Member of the Permanent Arbitral Commission between Switzerland and the Netherlands (since 1948).

Member of the Permanent Conciliation Commission between Italy and Switzerland (since 1956).

Member of the Permanent Arbitration Commission between Switzerland and the C.E.R.N. (since 1957).

Member of an Inquiry and Conciliation Commission between France and Morocco (1957).

Member of the Permanent Arbitral Commission between France and Sweden (since 1958).

. / .

President of the Arbitration Tribunal between France and the Saar (1954-1956).

President of the Arbitration Tribunal between France and the Federal Republic of Germany provided for by the Treaty for the Settlement of the Saar question (since 1957).

Ad hoc Judge at the International Court of Justice in the Honduras Nicaragua case (1959-1960).

President of the Arbitral Tribunal between France and the United States for the question of the interpretation of the Aerial Agreement of 1946 (in 1963).

President of the Permanent Conciliation Committee between Chile and Poland (since 1964).

President of the Permanent Conciliation Commission between Uruguay and Sweden (since 1967).

PUBLICATIONS

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20-3-1-6
28 ✓

Ottawa, September 14, 1967.

PERSONAL

Dear Max,

Sorry not to have written to you earlier about the Treaties Conference to be held in Vienna.

My understanding is that the expectations are that the Sixth Committee will agree this year that the Conference be held in March and April of 1968. There are, however, some reports that some of the smaller countries would like to postpone it because of lack of time for preparation. It is doubtful, however, whether they would succeed in doing so. The actual dates which the Secretariat has in mind are March 24 to May 26.

I had a preliminary word with Marcel about appointment of the head of this delegation. I mentioned to him that you would be glad to undertake this task if he and the Minister wished you to do so. The Under-Secretary commented that at the moment it is a little early to make a recommendation to the Minister. He added, however, that he will certainly bear in mind your interest and, unless there are unexpected developments, will do his best to meet your wishes.

I hope that you and Miriam are enjoying Copenhagen. We envy you very much such a delightful post. Sondra and I extend our very best wishes to you and Miriam.

Yours sincerely,

A. E. GOTLIEB
A.E. Gotlieb

M.H. Wershof, Esq.,
Ambassador,
Canadian Embassy,
Copenhagen, Denmark.

14.9.13(us)



Personal

Copenhagen, Aug 7

Dear Allan,

I hope that all goes well with you, your family and colleagues. We are settling in and expect to be happy here.

Do you know yet whether the Law of Treaties Conference will be held next spring - in Vienna? dates?

Obviously you cannot commit SSSEA, but do you think that USSEA and you will wish me to be the principal delegate. I would be very glad to undertake this, but will understand if SSSEA - or USSEA - wish to send someone else.

Although it is some months away, I would be glad to receive your prophesies.
Yours,
Herbert

File
Div.
Diary
EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À U. N. Division

SECURITY CONFIDENTIAL
Sécurité

FROM
De Legal Division

DATE September 15, 1967

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet Twenty-Second Session UNGA -
Commentary on Law of Treaties

FILE	DOSSIER
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ENCLOSURES
Annexes

DISTRIBUTION

Please find attached the original plus two copies of
the commentary on Provisional Agenda Item 87 on the "Law of
Treaties".

D. M. MILLER

Legal Division

TWENTY SECOND SESSION
SIXTH COMMITTEE
PROVISIONAL AGENDA
ITEM 87

CHAPTER VI
CONFIDENTIAL

LAW OF TREATIES

Background References

G.A.O.R. (XXI) Supp. No 9 (A/6309/Rev. 1)

G.A. A/C6/371 of 20 September 1966. (Memorandum by the Secretary General on Procedural and Organizational Problems Involved in a Possible Diplomatic Conference on the Law of Treaties).

General Assembly Resolution 2/66(XXI) of 5 December, 1966 G.A. (XXII A/C6/376 of May 11, 1967 (Guide to the I.L.C. Draft Articles).

G.A. A/6827 of 31 August, 1967. (Comments by States on I.L.C. Draft).

Introduction

In July 1966 the International Law Commission concluded its work, first undertaken in 1949, of preparing draft articles on the Law of Treaties. The report of the I.L.C., the text of the draft articles and commentary thereon, and comments by governments on earlier versions of the draft articles are contained in G.A.O.R. (XXI) Supp. 9 (A/6309/Rev. 1).

At its Twenty-First Session the General Assembly, by resolution 2166(XXI) of 5 December, 1966, decided to convene an international conference in two sessions, to be held in 1968 and 1969, in order to prepare an international convention on the law of treaties. This conference is to use the I.L.C. final draft as its basic working document.

Issues Facing the Session

In reply to a request from the Secretary General, a few governments and international organizations have submitted written comments on the I.L.C. draft. A number of governments, possibly including Canada, will wish to comment in the Sixth Committee on substantive issues raised by the I.L.C. draft, but no attempt will be made to reach agreement on these issues during the U.N. Session. Negotiation on the questions of substance will be left to the proposed international conference.

- 2 -

The substantive questions to be decided at the present Session in respect of this item will therefore be confined to fixing the date and place of the first session of the proposed conference. The Government of Austria has offered Vienna as the site of the conference and the Secretariat has indicated the dates March 24 to May 26, 1968 as possibly the only period during which it would be able to provide the necessary services to the conference.

Likely Courses of Action and Attitudes of Interested Parties

Comments have not been received from Governments on the proposed venue and dates for the first session of the conference. Although it is anticipated that the Austrian invitation and the Secretariat proposal on dates will meet with general acceptance, it is possible that one or a few states may seek to have the first session postponed until 1969.

On the substantive issues raised by the I.L.C. draft, the Soviet Union and its European allies are expected to devote considerable time to the argument that the proposed international convention on the law of treaties should contain a provision that general multilateral treaties should be open to accession by all states. This is a recurring East-West issue, raised in the drafting of virtually all general international agreements in which the Eastern European governments participate, and is designed to obtain indirectly diplomatic recognition for entities calling themselves states but which are not recognized as such by a great many countries.

Instructions

The proposed site, Vienna, and the proposed dates, March 24 to May 26, 1968 are acceptable to Canada. The Canadian Delegation should oppose any attempt to postpone the first session of the conference beyond mid 1968 on the ground that postponement would dissipate a great deal of the impetus which has built up in recent years in connection with this codification project and which led to the preparation of the present I.L.C. draft.

In the event it is decided that Canada should make a statement on the substantive questions raised by the draft text, appropriate reference should be made to the Canadian support for the formula of opening general multilateral treaties for accession by all states members of the U.N. or of one of its Specialized Agencies and those States invited to accede by the parties to the treaty.

... 3

- 3 -

In the event the question of Chairmanship of the Conference is raised, and assuming the Austrian invitation to hold the conference in Vienna is accepted, the Canadian Delegation should support the general practice for conferences of this kind whereby the host country provides the Chairman.

EXTERNAL AFFAIRS



AFFAIRES ÉTRANGÈRES SEP 29 1967

FILE CHARGED OUT

TO:

TO À Sous-Secrétaire d'Etat aux Affaires extérieures, Ottawa

SECURITY Sécurité Sans cote

FROM De Ambassade du Canada, Rome

DATE 11 septembre 1967

REFERENCE Référence

NUMBER Numéro 586

SUBJECT Sujet Conférence internationale du Droit des Traités

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ENCLOSURES Annexes

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Vienne

~~Relier à Division~~

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EWS/PC

21-ix

Yone Sept 25, 67
J.E. J.

Dans une Note Verbale reçue aujourd'hui du Ministère italien des Affaires étrangères, celui-ci nous informe de la candidature du professeur Roberto Ago à la présidence de la Conférence internationale du Droit des Traités qui aura lieu en deux sessions à Vienne dans le courant des années 1968 et 1969. Ainsi que le Ministère nous en a fait la demande, nous portons cette candidature à votre attention. Le Ministère espère que le Gouvernement canadien voudra bien donner son appui à la candidature du professeur Ago.

2. Nous avons répondu au Ministère par un simple accusé de réception en lui promettant de le tenir au courant de votre réaction en temps utile.

3. Vous trouverez en annexe, à titre de renseignement, la biographie du professeur Ago telle que préparée à votre intention, en langue anglaise, par le Ministère italien des Affaires étrangères.

L'Ambassade,

Jean...

PC

RECEIVED

EXTERNAL AFFAIRS



SEP 19 1967

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TO A Sous-Secrétaire d'Etat aux Affaires
antérieures, Ottawa

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FROM Do Ambassade du Canada, Rome

DATE

11 septembre 1967

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SUBJECT Sujet Conférence internationale du Droit des Traités

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ENCLOSURES
Annexes

1

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Vienne

*Referer
à Division Juridique
21-18*

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L'Ambassade,

Jean...

900

CURRICULUM VITAE OF PROFESSOR ROBERTO AGO
=====

Born at Vigevano (Pavia), in 1907.

Studies at the university of Naples:
Doctor of Law (1929).
Doctor in Political Sciences (1930).

ACADEMIC AND PUBLIC ACTIVITIES:

Lecturer in International Law at the universities of Cagliari (1930-1931) and of Messina (1931-1934).
Professor of International Law at the University of Catania (1934-1935) and of Genoa (1935-1938).
Professor of International Law at the State University of Milan and Director of the Institute of International Law at the University of Milan (1938-1956).
Professor of International Law at the University of Rome (since 1956).
Barrister, Supreme Court of Italy.

Member of the Council of the "contenzioso diplomatico" of the Italian Ministry of Foreign Affairs.
Member of the Preparatory Commission for the Italian Constituent Assembly and co-rapporteur of the Commission's Draft concerning International Law in the Constitution (1946-1947).

Member of the Curatorium of the Hague Academy of International Law.

Lectures at the Hague Academy of International Law (in 1936: "General Rules of Conflict of Laws"; in 1939: "International Tort" and in 1955: "Legal Science and International Law").
Lectures at the Institut Universitaire des Hautes Etudes Internationales in Geneva (in 1947: "International Legal Order and the Problem of Peace"; in 1948: "Principles of International Legal System"; in 1960: "Codification of International Law" and in 1966: "Jus cogens in the Drafted Codification of the Law of Treaties").
Lectures at the European College in Bruges (in 1952: "International Tort").
Lectures during the Summer Course of the University of Valladolid in Vitoria (in 1953: "International Liability for Tort").

Ministero degli Affari Esteri

NOTA VERBALE

123/1214

Il Ministero degli Affari Esteri presenta i suoi complimenti all'Ambasciata...**del. Canada**... ed ha l'onore di informare che il Governo italiano intende presentare la candidatura del Prof. Roberto AGO alla Presidenza della Conferenza Internazionale sul Diritto dei Trattati che si svolgerà in due sessioni a Vienna nel corso del biennio 1968-1969.

Il Ministero degli Affari Esteri, mentre allega il curriculum vitae del Prof. Roberto Ago, prega l'Ambasciata...**del.. Canada**... di voler informare di quanto precede il suo Governo e confida che esso vorrà concedere il proprio appoggio alla elezione del candidato italiano.

Il Ministero degli Affari Esteri si avvale di questa occasione per rinnovare all'Ambasciata...**del. Canada**... i sensi della sua più alta considerazione.

Roma, 1° Settembre 1967

All. uno



ALL'AMBASCIATA DEL CANADA

R O M A

Lectures at the University of Paris:

- At the Institut des hautes études internationales (in 1958: "The problem of the foundation of International Law").
- At the Faculty of Laws and Economics (in 1966: "The U.N. and the Codification of International Law").

Lectures at the Institut universitaire d'études européennes in Turin (in 1953, 1954, 1955, 1956, 1957 and 1958: "International Organization").

Lectures during the U.N. Seminar during the Sessions of the International Law Commission (1965, 1966 and 1967).

Various lectures in International Law in Academic and Scientific Institutions in Brussels, Copenhagen, Paris, Toulouse, Nice, London, Cambridge, Oxford, Athens, Salonika, Rome, Milan, Turin, Florence, Naples, Padova, Vicenza, Perugia, Tokyo, Kyoto, Oslo, Lisbon, Coimbra, Madrid, Stockholm, Geneva, San Francisco.

Doctor honoris causa of the Universities of Nancy, (1963) and Nice (1967).

Titular Member of the Institute of International Law.

Honorary Member of the Indian Society of International Law.

Member of the Italian Institute of International Law, of the Greek Institute of International and Foreign Law, of the American Academy of Political and Social Sciences, of the International Academy of Political Sciences, of the French Arbitration Committee. Member of the Governing Body and the Executive Committee of the International Institute of Social Studies.

Member of the Editorial Committee of the "Rivista di Diritto Internazionale" (since 1936) and co-Director of this publication since 1953.

Director of the Legal Periodical "Comunicazioni e Studi" of the Institute of International Law of the University of Milan (since 1942).

Director of the Quarterly "La comunità internazionale" (since 1946). Co-Director of the Rivista di diritto industriale" (since 1952) and of "Archivio Giuridico" since 1952.

President of the Italian Society for International Organization (since 1963) and, since the foundation of the Society in 1954, Secretary General and Vice-president).

President of the Executive Committee of the World Federation of United Nations Associations (in 1951 and 1952); First Vice-president of this Federation (from 1953 to 1956); President from 1957 to 1960 and since then Honorary President.

INTERNATIONAL ACTIVITIES

In International Organizations

Member of the International Law Commission (elected in November 1956 and again in November 1961 by the U.N. General Assembly).
President of the Commission (1964-1965).

Member of the Committee of Five Jurists appointed by the Council of Europe to establish a draft for a European Constitution (1952).

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Member of the Permanent Conciliation Commission between Italy and Switzerland (since 1956).

Member of the Permanent Arbitration Commission between Switzerland and the C.E.R.N. (since 1957).

Member of an Enquiry and Conciliation Commission between France and Morocco (1957).

Member of the Permanent Arbitral Commission between France and Sweden (since 1958).

President of the Arbitration Tribunal between France and the Saar (1954-1956).

President of the Arbitration Tribunal between France and the Federal Republic of Germany provided for by the Treaty for the Settlement of the Saar question (since 1957).

Ad hoc Judge at the International Court of Justice in the Honduras Nicaragua case (1959-1960).

President of the Arbitral Tribunal between France and the United States for the question of the interpretation of the Aerial Agreement of 1946 (in 1963).

President of the Permanent Conciliation Committee between Chile and Poland (since 1964).

President of the Permanent Conciliation Commission between Uruguay and Sweden (since 1967).

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"Studi economico-giuridici della Università di Cagliari", 1931,
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"Annuario di diritto comparato", 1936, pp. 160-168.

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Le délit international, "Recueil des Cours de l'Académie de Droit International de La Haye", 1939, II, pp. 415-554.

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L'eccidio delle Fosse Ardeatine alla luce del diritto internazionale di guerra, "Rivista di diritto penale", 1949, pp. 216-235.

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Scienza giuridica e diritto internazionale, I vol., Milano, Giuffrè, 1950, pp. 1-108 (nuova ed. in preparazione : è anche in preparazione un'edizione in lingua spagnola).

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Osservazioni sul problema della revisione dello Statuto delle Nazioni Unite (in collaborazione con il prof. T. Perassi), "La Comunità Internazionale", 1953, pp. 572-577.

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Il Trattato istitutivo della Comunità europea per l'energia atomica (Euratom), "Il diritto dell'energia nucleare", Giuffrè, Milano, 1961, pp. 87-104.

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La transformation de la société des Etats et la codification du Droit international (Sous presse).

Ministero degli Affari Esteri

NOTA VERBALE

123/1214

Il Ministero degli Affari Esteri presenta i suoi complimenti all'Ambasciata..del.Canada..... ed ha l'onore di informare che il Governo italiano intende presentare la candidatura del Prof. Roberto AGO alla Presidenza della Conferenza Internazionale sul Diritto dei Trattati che si svolgerà in due sessioni a Vienna nel corso del biennio 1968-1969.

Il Ministero degli Affari Esteri, mentre allega il curriculum vitae del Prof. Roberto Ago, prega l'Ambasciata...del..Canada..... di voler informare di quanto precede il suo Governo e confida che esso vorrà concedere il proprio appoggio alla elezione del candidato italiano.

Il Ministero degli Affari Esteri si avvale di questa occasione per rinnovare all'Ambasciata..del.Canada..... i sensi della sua più alta considerazione.

Roma, 1° Settembre 1967

All. uno



ALL'AMBASCIATA DEL CANADA

R O M A

CURRICULUM VITAE OF PROFESSOR ROBERTO AGO
=====

Born at Vigevano (Pavia), in 1907.

Studies at the university of Naples:
Doctor of Law (1929).
Doctor in Political Sciences (1930).

ACADEMIC AND PUBLIC ACTIVITIES:

Lecturer in International Law at the universities of Cagliari (1930-1931) and of Messina (1931-1934).
Professor of International Law at the University of Catania (1934-1935) and of Genoa (1935-1938).
Professor of International Law at the State University of Milan and Director of the Institute of International Law at the University of Milan (1938-1956).
Professor of International Law at the University of Rome (since 1956).
Barrister, Supreme Court of Italy.

Member of the Council of the "contenzioso diplomatico" of the Italian Ministry of Foreign Affairs.
Member of the Preparatory Commission for the Italian Constituent Assembly and co-rapporteur of the Commission's Draft concerning International Law in the Constitution (1946-1947).

Member of the Curatorium of the Hague Academy of International Law.

Lectures at the Hague Academy of International Law (in 1936: "General Rules of Conflict of Laws"; in 1939: "International Tort" and in 1955: "Legal Science and International Law").
Lectures at the Institut Universitaire des Hautes Etudes Internationales in Geneva (in 1947: "International Legal Order and the Problem of Peace"; in 1948: "Principles of International Legal System"; in 1960: "Codification of International Law" and in 1966: "Jus cogens in the Drafted Codification of the Law of Treaties").
Lectures at the European College in Bruges (in 1952: "International Tort").
Lectures during the Summer Course of the University of Valladolid in Vitoria (in 1953: "International Liability for Tort").

Lectures at the University of Paris:

- At the Institut des hautes études internationales (in 1958: "The problem of the foundation of International Law").
- At the Faculty of Laws and Economics (in 1966: "The U.N. and the Codification of International Law").

Lectures at the Institut universitaire d'études européennes in Turin (in 1953, 1954, 1955, 1956, 1957 and 1958: "International Organization").

Lectures during the U.N. Seminar during the Sessions of the International Law Commission (1965, 1966 and 1967).

Various lectures in International Law in Academic and Scientific Institutions in Brussels, Copenhagen, Paris, Toulouse, Nice, London, Cambridge, Oxford, Athens, Salonika, Rome, Milan, Turin, Florence, Naples, Padova, Vicenza, Perugia, Tokyo, Kyoto, Oslo, Lisbon, Coimbra, Madrid, Stockholm, Geneva, San Francisco.

Doctor honoris causa of the Universities of Nancy, (1963) and Nice (1967).

Titular Member of the Institute of International Law.

Honorary Member of the Indian Society of International Law.

Member of the Italian Institute of International Law, of the Greek Institute of International and Foreign Law, of the American Academy of Political and Social Sciences, of the International Academy of Political Sciences, of the French Arbitration Committee. Member of the Governing Body and the Executive Committee of the International Institute of Social Studies.

Member of the Editorial Committee of the "Rivista di Diritto Internazionale" (since 1936) and co-Director of this publication since 1953.

Director of the Legal Periodical "Comunicazioni e Studi" of the Institute of International Law of the University of Milan (since 1942).

Director of the Quarterly "La comunità internazionale" (since 1946). Co-Director of the Rivista di diritto industriale" (since 1952) and of "Archivio Giuridico " since 1952.

President of the Italian Society for International Organization (since 1963) and, since the foundation of the Society in 1954, Secretary General and Vice-president).

President of the Executive Committee of the World Federation of United Nations Associations (in 1951 and 1952); First Vice-president of this Federation (from 1953 to 1956); President from 1957 to 1960 and since then Honorary President.

INTERNATIONAL ACTIVITIES

In International Organizations

- Member of the International Law Commission (elected in November 1956 and again in November 1961 by the U.N. General Assembly).
President of the Commission (1964-1965).
- Member of the Committee of Five Jurists appointed by the Council of Europe to establish a draft for a European Constitution (1952).
- Legal Consultant of the International Refugee Organization (from 1948 to 1951) and of the Intergovernmental Committee on European Migration (CIME) in Geneva (since 1952).
- Member of the National Committee for UNESCO and Member of the Italian Delegation to the UNESCO Conferences in 1950, 1951 and 1952.
- Member of the Italian Delegation to the Rome Conference for European Community 1953.
- Head of the Italian Delegation at the U.N. Geneva Conferences on the Law of the Sea (in 1958 and 1960) and at the U.N. Vienna Conference on Diplomatic Relations (1961).
- Member and subsequently Head of the Italian Government Delegation to the International Labour Conference (from 1946 to 1951 and since 1954).
- Alternate Representative (since 1948) and subsequently Representative (since 1954) of the Italian Government on the Governing Body of I.L.O.
- President of the Committee on Regulation and Application of Conventions and Recommendations of the Governing Body of I.L.O. (from 1950 to 1954).
- Chairman of the Committee to consider improvement of methods of working for the International Labour Conference (1958-1963).
- Chairman of the Government Group of the Governing Body of I.L.O. (since 1959).
- Chairman of the Freedom of Association Committee of I.L.O. (since 1961).
- Member of the Board of the International Center for Professional and Technical Training of I.L.O. in Turin (since 1965).
- Chairman of the Governing Body of I.L.O. (in 1954, 1955 and in 1967-1968).

In International Jurisdictions.

Counsel for the Italian Government and various other Governments in cases before the Permanent Court of International Justice, the International Court of Justice and other International Arbitration Tribunals or International Conciliations Commissions, as well as in other international disputes.

Member of the Permanent Court of Arbitration.

Member of the Permanent Arbitral Commission between Switzerland and the Netherlands (since 1948).

Member of the Permanent Conciliation Commission between Italy and Switzerland (since 1956).

Member of the Permanent Arbitration Commission between Switzerland and the C.E.R.N. (since 1957).

Member of an Inquiry and Conciliation Commission between France and Morocco (1957).

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President of the Arbitration Tribunal between France and the Federal Republic of Germany provided for by the Treaty for the Settlement of the Saar question (since 1957).

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President of the Permanent Conciliation Commission between Uruguay and Sweden (since 1967).

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Codice Civile, "Rivista di diritto internazionale", 1931,
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testamento fatto all'estero, "Rivista italiana di diritto
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di obbligazione, di successione), Padova, Cedam, 1932; I vol.
pp. 1-196.
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I vol. Padova, Cedam, 1934, pp. XV-338.
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- Filiazione (Diritto internazionale), "Nuovo Digesto Italiano",
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- Le organizzazioni internazionali e le loro funzioni nel campo dell'attività interna degli Stati, "Studi in onore di G.M. De Francesco", I, Milano, Giuffrè, 1956, pp. 3-23; e "Temi", 1955, n. 6, pp. 3-16.
- Die internationalen Organisationen und ihre Funktionen im inneren Tätigkeitsgebiet der Staaten, "Festschrift für Hans Wehberg". Frankfurt, 1956, pp. 20-38.
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ACTION COPY

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Handwritten notes and signatures:
Goldman (on)
Mr. Bessley
Mr. Simon
Mr. Boulton
Mr. D. ...
Justice Dept
Communit. ...
Sept 1/67

20-3-1-6
28 | 13

FM PERMISNY SEP1/67 RESTR
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PROPOSED UN CONFERENCE ON LAW OF TREATIES
AS FAR AS SECRETARIAT IS CONCERNED ONLY FEASIBLE PERIOD DURING WHICH
FIRST SESSION OF PROPOSED CONFERENCE ON LAW OF TREATIES CAN BE HELD
IS(WITHIN DAY OR SO)FROM MAR24 TO MAY26/68.SECRETARIAT WOULD NOT
RPT NOT BE ABLE TO STAFF CONFERENCE IF IT WERE DECIDED IN SIXTH CTTEE.
THAT IT SHOULD BE HELD AT SOME OTHER TIME.
2.ALTHOUGH DECISION TO HOLD CONFERENCE WHICH IS TO TAKE PLACE IN
VIENA RESTS WITH SIXTH CTTEE STAVROPOULOS PERSONALLY CONSIDERS THAT
CTTEE WILL AGREE WITH SECRETARIATS PROPOSALS ON TIMING.HE HAS RE-
CEIVED INDICATIONS THAT SOME OF QUOTE UNIMPORTANT COUNTRIES UNQUOTE
MAY SEEK TO POSTPONE CONFERENCE FOR FURTHER YEAR ON GROUNDS THAT
THEY HAVE NOT RPT NOT HAD TIME TO DO THEIR HOMEWORK.OF LARGE NATIONS
HEN UNDERSTANDS THAT LEGAL PERS OF INDIAN FOREIGN OFFICE ARE BADLY
OVERWORKED AT PRESENT AND THAT INDIA MAY HAVE REAL DIFFICULTIES IN
COPING WITH CONFERENCE NEXT SPRING.NEVERTHELESS HE BELIEVES THAT WHEN
TIME COMES TO REACH DECISION SIXTH CTTEE WILL DECIDE THAT CONFERENCE
SHOULD TAKE PLACE IN VIENA AT PROPOSED TIME.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À
Mr. J.A. Beesley

FROM
De
J.S. Stanford

REFERENCE
Référence

SUBJECT
Sujet
U.N. Conference on the Law of Treaties
Sixth Committee

SECURITY RESTRICTED
Sécurité

DATE August 25, 1967

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	28

ENCLOSURES
Annexes

DISTRIBUTION

Mr. Miller

Mr. Robertson informs me that he has learned from the U.N. Secretariat that twelve countries and six international agencies have submitted written commentaries on the I.L.C. Draft Convention. These commentaries will be circulated in about three weeks' time. Mr. Stavropoulos, Legal Counsel for the U.N., informed Mr. Robertson that while he had hoped and expected that a considerable amount of substantive discussion of the I.L.C. draft might take place in the Sixth Committee during the forthcoming session of the General Assembly, he now feels that there will probably not be a great deal of discussion in substance, although there is bound to be some such discussion, during the forthcoming session.

2. The dates which the U.N. has tentatively in mind for the first session of the Conference are March 24 to May 26, 1968. Mr. Robertson indicated, however, that there was apparently some possibility of a move developing to postpone the first session of the Conference to 1969. This possibility is apparently in reaction to a French initiative to have Mr. Ago of Italy named Chairman of the Conference. (Mr. Robertson's information on this point was rather vague.)

3. It appears clear from the foregoing that our delegation should be prepared to discuss the I.L.C. draft in substance in the Sixth Committee. My initial reaction to the possibility of a postponement of the first session to 1969 is that we should oppose a postponement on the ground that it would dissipate a great deal of the momentum which has developed in connection with this effort to codify the law of treaties.

J.S. STANFORD

J.S. Stanford

Legal Division/J.S. Stanford/jl

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



Mr. J.A. Beesley

*file 20-3-1-6
JM(18)112*

SECURITY RESTRICTED
Sécurité

DATE August 25, 1967

TO
À

FROM
De

J.S. Stanford

NUMBER
Numéro

REFERENCE
Référence

SUBJECT
Sujet

U.N. Conference on the Law of Treaties
Sixth Committee

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

Mr. Miller

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J.S. Stanford
J.S. Stanford

*Are we submitting
written comments?*

Jagoe

?/

M. J. [unclear] (GR)

*to see o file
JH 7/16*



THE PERMANENT MISSION OF CANADA TO THE UNITED NATIONS
LA MISSION PERMANENTE DU CANADA AUPRÈS DES NATIONS UNIES

cc: Embassy Rome, }
Embassy Vienna, } with incoming Note
Bureau Geneva }
External, Ottawa }

20-3-1-6	
15	—

The Permanent Mission of Canada to the United Nations presents its compliments to the Permanent Mission of Italy to the United Nations and has the honour to refer to that Mission's circular note No. 856 of August 10, 1967, informing other Missions of the decision of the Italian Government to present the candidature of Professor Roberto Ago for the Presidency of the forthcoming International Conference of Plenipotentiaries on the Law of Treaties.

The Permanent Mission of Canada has forwarded this information to the appropriate Canadian Government authorities, from whom it will receive careful consideration.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Permanent Mission of Italy, the assurances of its highest consideration.

G. I.

NEW YORK, August 18, 1967.

TO: Miss Booth
FROM: [unclear]
AUG 20 1967
FILE CHANGED BY
TO:

✓

copies: - Rome, Geneva, Vienna

R

AUG 17 9 41 AM '67

PERMANENT MISSION OF ITALY
TO THE UNITED NATIONS
609 UNITED NATIONS PLAZA
NEW YORK, N. Y. 10017

MISSION OF CANADA				
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
2-5-11C				

856

The Permanent Mission of Italy to the United Nations presents its compliments to the Permanent Missions to the United Nations and with reference to Resolution 2166 (XXI) concerning the "International Conference of Plenipotentiaries on the Law of Treaties" adopted by the General Assembly on 5 December 1966, has the honour to inform the Permanent Missions of the decision of the Italian Government to present the candidature of Prof. Roberto AGO for the Presidency of the above International Conference.

A detailed and up-to-date curriculum vitae of Prof. Ago will soon be forwarded to the Permanent Missions.

The Permanent Mission of Italy avails itself of this opportunity to renew to the Permanent Missions to the United Nations the assurances of its highest consideration.

New York, 10 August 1967

uf

Diary
Div. Diary
File

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO Personnel Services Division

FROM Legal Division

REFERENCE
Référence

SUBJECT Employment on Contract of Professor Hugh Lawford
Sujet of Queens University

SECURITY
Sécurité

DATE August 11, 1967

NUMBER
Numéro

FILE	DOSSIER
OTTAWA 1-1/-1-1-1-LAWFORD	
MISSION 28	

cc. 20-3-1-6

ENCLOSURES
Annexes

DISTRIBUTION

... Attached is a copy of a memorandum of July 11, 1967 bearing a marginal note by the Under-Secretary authorizing the employment on contract of Professor Hugh Lawford of Queen's University, Kingston, to prepare a commentary on the International Law Commission Draft Convention on the law of treaties. This commentary is to be used for the guidance of the Canadian delegation to an international conference to be held in Vienna during the first half of 1968.

2. Preliminary discussions concerning this assignment have taken place between the Legal Adviser and officers of this division on the one hand and Professor Lawford on the other. It is proposed that Professor Lawford be offered a fee of \$1000 for the assignment, plus reasonable and actual travel and living expenses incurred by Professor Lawford in connection with the periodic visits to Ottawa which it is expected he will be required to make in connection with the assignment. Most of the work to be done by Professor Lawford will, we expect, be done at Kingston but it will be necessary for him to come to Ottawa from time to time to consult Departmental files and to discuss progress. It is anticipated that the work would be done over a period of two to three months.

3. We should be grateful if you could take the necessary steps to conclude an agreement with Professor Lawford along the foregoing lines. As far as we are aware Professor Lawford is not at present engaged on any other assignment for the Government.

J. A. BEESLEY

Legal Division

BEST COPY AVAILABLE

Legal D/S/A to file M/s/6

Mr. Beesley
→ [Signature]

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
À Under-Secretary of State for External Affairs, Ottawa

SECURITY
Sécurité

UNCLASSIFIED

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

DATE

August 1, 1967

REFERENCE
Référence

NUMBER
Numéro

581

SUBJECT
Sujet International Conference of Plenipotentiaries on the Law of Treaties

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	28

ENCLOSURES
Annexes

1

DISTRIBUTION

--

We draw your attention to the attached UN Note LE 130(1-3) of 25 July, 1967, in which the Government of Austria informs the Secretary-General of the decision of the Austrian Government to invite the UN to hold both 1968 and 1969 sessions of the "International Conference of Plenipotentiaries on the Law of Treaties" in Vienna.

J. Moffatt

Permanent Mission.

UNITED NATIONS  NATIONS UNIES
NEW YORK

CABLE ADDRESS • UNATIONS NEWYORK • ADRESSE TELEGRAPHIQUE

LE 130(1-3)

REFERENCE

Le Secrétaire général de l'Organisation des Nations Unies présente ses compliments au Secrétaire d'Etat aux affaires extérieures du Canada et a l'honneur d'attirer son attention sur la résolution 2166 (XXI), intitulée "Conférence internationale de plénipotentiaires sur le droit des traités" que l'Assemblée générale a adoptée le 5 décembre 1966.

Aux termes de cette résolution, l'Assemblée :

"...

"2. Décide qu'une conférence internationale de plénipotentiaires sera convoquée pour examiner le droit des traités et pour consacrer le résultat de ses travaux dans une convention internationale et dans tels autres instruments qu'elle jugera appropriés;

"3. Prie le Secrétaire général de convoquer la première session de la conférence au début de 1968 et la deuxième session au début de 1969, à Genève ou en tout autre lieu approprié pour lequel une invitation aura été adressée au Secrétaire général avant la vingt-deuxième session de l'Assemblée générale;

..."

Dans une lettre du 29 juin 1967, le Ministre des affaires étrangères d'Autriche, se référant aux paragraphes 2 et 3 précités de cette résolution, a fait connaître au Secrétaire général que le Gouvernement autrichien avait décidé d'inviter l'Organisation des Nations Unies à tenir à Vienne

UNITED NATIONS  NATIONS UNIES

NEW YORK

CABLE ADDRESS • UNATIONS NEWYORK • ADRESSE TELEGRAPHIQUE

REFERENCE:

LE 130(1-3)

The Secretary-General of the United Nations presents his compliments to the Secretary of State for External Affairs of Canada and has the honour to draw his attention to resolution 2166 (XXI) concerning the "International Conference of Plenipotentiaries on the Law of Treaties" adopted by the General Assembly on 5 December 1966. According to this resolution, the Assembly:

"...

"2. Decides that an international conference of plenipotentiaries shall be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

"3. Requests the Secretary-General to convoke at Geneva or at any other suitable place for which he receives an invitation before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969;

"...

By letter of 29 June 1967, the Minister for Foreign Affairs of Austria, referring to the aforementioned paragraphs 2 and 3 of this resolution, informed the Secretary-General of the decision of the Austrian Government to extend an invitation to the United Nations to hold both the 1968 and 1969 sessions of the conference in Vienna.

The Secretary-General is now considering this invitation and his decision on this matter will be communicated to His Excellency in due course.

25 July 1967

BR

000922

UNITED NATIONS  NATIONS UNIES

- 2 -

les deux sessions de la Conférence, la session de 1968 ainsi que celle de 1969.

Le Secrétaire général étudie actuellement cette invitation et sa décision en la matière sera communiquée à Son Excellence en temps utile.

Le 25 juillet 1967

BK

COPY : COPIÉ

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



MEMORANDUM

TO
À The Under-Secretary *ne*

FROM
De The Legal Adviser

SUBJECT
Sujet I.L.C. Draft Convention of the Law of Treaties

SECURITY
Sécurité

UNCLASSIFIED

DATE

July 28, 1967

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
28	

Mr. Tatters to see.
Mr. Beesley
Stanford
Legal

ENCLOSURES
Annexes

DISTRIBUTION

The Secretary General of the U.N. has requested the comments of governments on the I.L.C. Draft Convention on the Law of Treaties. The purpose of this memorandum is to seek your views on whether Canada should submit such comments. As you know, Canada submitted comments at various stages in the course of the preparation of the I.L.C. draft and there is probably very little, if anything, of substance which we could add to what appears in our contribution to the comments of governments already published by the U.N. at earlier stages of this treaty law exercise. For this reason therefore, you may feel it unnecessary for Canada to file further comments at this time. *Stanford*

2. On the other hand there is at least one Article of the draft which is of particular political significance to Canada. This is Article 5, which deals with the capacity of states to conclude treaties and which provides that "States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down." This Article has already been incorporated into the liturgy of the Quebec Government as constituting recognition by the U.N. of the right of provinces to conclude international treaties. The Article in its present form is open to serious objection in that it fails to take account of the element of recognition by third states of the treaty making power of the member of the federal union (Canada presumably would decline to conclude a treaty with, for instance, the Byelorussian S.S.R., whatever the constitution of the U.S.S.R. may say about that government's power to make treaties). The Article is also objectionable on the ground that it would require outside governments to interpret the internal constitutional law of the federal state, which may not be clear on the question of treaty making powers. It is our view that such interpretation should be the exclusive right of the domestic courts of the federal state having jurisdiction in constitutional matters. *Plus is a good point*

3. If Canada were to submit comments on Article 5 we would presumably wish, for presentational reasons, to include comments on other aspects of the draft as well. This would present little difficulty for there are a number of points, particularly the provisions

28.7.67 (vs)

on termination and the absence of provisions on adjudication, on which comments of a fundamental nature could be made.

4. I should be grateful to know whether you would like Canada to submit comments to the Secretary General. My own recommendation would be to submit a brief commentary outlining in general terms our views on the questions of capacity, termination and adjudication.

Yes. But we will have to clear this

A. E. G.

Legal Adviser

*work with the Minister. And we to
consult provinces in this case!!!*

re

*I think we should
firmly recommend
against this
ALP*

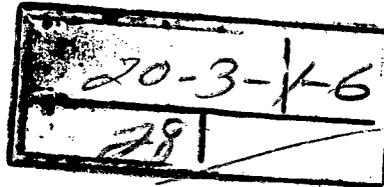
UNITED NATIONS  NATIONS UNIES

NEW YORK

CABLE ADDRESS • UNATIONS NEWYORK • ADRESSE TELEGRAPHIQUE

REFERENCE:

LE 130(1-3)



Mr. Secretary

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"3. Requests the Secretary-General to convoke at Geneva or at any other suitable place for which he receives an invitation before the twenty-second session of the General Assembly, the first session of the conference early in 1968 and the second session early in 1969;

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The Secretary-General is now considering this invitation and his decision on this matter will be communicated to His Excellency in due course.

25 July 1967

BK

UNITED NATIONS  NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

REFERENCE:

LE 130(1-3)

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25 July 1967

BR

000927

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



*file 20-3-1-6
JM
18/12*

TO
À Mr. A.E. Gotlieb,
Legal Adviser.

FROM
De J.S. Stanford

REFERENCE
Référence

SUBJECT
Sujet U.N. Conference on the Law of Treaties

SECURITY
Sécurité CONFIDENTIAL

DATE July 11, 1967

NUMBER
Numéro

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES
Annexes --

DISTRIBUTION --

Attached for your signature is a Memorandum to the Under-Secretary seeking his authority to conclude a contract with Hugh Lawford for the preparation of a draft commentary for the Canadian Delegation to the Conference on the Law of Treaties.

2. Also attached is a letter from the Australian High Commissioner to Ron Robertson seeking our views and giving Australian views on the I.L.C. draft Convention. Ron is away this week and has asked me to enquire whether you wish to see Mr. Bailey yourself or would prefer that Ron see him on his return next week. If you do see Mr. Bailey, it would be helpful to me if I could attend the meeting.

*As I am very
involved, I
suggest you + Ron
see Bailey next
week.*

3. Am I correct in assuming that even if Mr. Lawford is engaged to prepare a draft commentary for the Canadian Delegation to the Conference next spring, I should nevertheless prepare preliminary Canadian observations to be submitted to the U.N. Secretariat for circulation to other Governments? (The Secretariat has asked for these observations by July 1). This document would be a brief summary of observations, similar in form to the Australian draft attached to Mr. Bailey's letter, which I could prepare on the basis of the information we already have on hand in connection with the preparation of the I.L.C. draft.

*This might be
useful but not
indispensable.*

4. You will recall that the British Foreign Office has requested an early exchange of views with us on the draft Convention. I would hope to hold a preliminary discussion with the British when I go to London in connection with the External Aid agreements.

*Pls discuss with
Ron whether we
have much to
say that we
have not
previously said
on I.L.C.
drafts. Most
n.b. as whether
we should comment
(advisory, of course)
on fed-state
capacity to conclude
+ ratify.*

J.S. Stanford
J.S. Stanford

file

Stanford Legal

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

copy with note of USSEA approval sent to Pers. Services Div 13/7. J.M.

TO
À The Under-Secretary of State for External Affairs *re*

SECURITY CONFIDENTIAL
Sécurité

FROM
De The Legal Adviser

DATE July 11, 1967

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet U.N. Conference on the Law of Treaties

FILE	DOSSIER
OTTAWA	
20-3-16	
MISSION	28 /

ENCLOSURES
Annexes

DISTRIBUTION

As you know, an international conference will likely be held early in 1968 to draft a Convention on the Law of Treaties. The working document for this conference will be the draft convention on the law of treaties prepared by the International Law Commission. Your membership on the I.L.C. provided an invaluable opportunity for the Department to study and make suggestions on these articles as they were being formulated in the I.L.C. and, as a result of these studies, we have accumulated a considerable amount of material relating to the I.L.C. draft.

2. The next step to be taken in anticipation of the forthcoming Conference is the preparation of a commentary on the I.L.C. draft Convention for the guidance of the Canadian delegation to conference. In order to obtain an outside approach to the I.L.C. draft and to add to the material which the Department has itself prepared, I should like to suggest that an expert in treaty law from the academic community be retained on contract to prepare a draft commentary on the I.L.C. Convention. The draft prepared by the expert would form the basis for the commentary to be prepared in the Department for the guidance of the Canadian delegation.

3. If you agree with this idea in principle, I think that the most appropriate person to be retained for this task would be Prof. Hugh Lawford of the Faculty of Law at Queen's University. While I realize that Prof. Lawford's relations with the Department have been at times difficult, it is nevertheless true that the Law Faculty at Queens has, under Prof. Lawford's direction, carried on a great deal of research into the subject of treaties and his expertise would almost certainly be a worthwhile contribution to the Canadian participation in the forthcoming conference. We may, in fact, wish to consider including him as a technical adviser on the Canadian delegation to the Conference.

4. The use of Prof. Lawford's services in connection with the forthcoming conference on the law of treaties would, of course, be in accordance with the Department's policy of working, wherever

...2

12.7.11(05)

possible, with the academic community (e.g. the appointment of Prof. Vlastic of the McGill Institute of Air and Space Law to the Canadian delegation to the meeting of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space and the appointment of Prof. Bruce McDonald of Queen's to the Canadian delegation to the Stockholm Conference on Intellectual Property).

5. Personnel Administration Division informs me that, subject to unexpected demands, there would probably be funds available to finance the proposed contract. I should be grateful, therefore, for your approval to negotiate a contract with Prof. Lawford for the preparation of a draft commentary on the convention on the law of treaties.

yes he

A E Gotlieb

A.E. Gotlieb

Jul 13/12



Foreign Office
S.W.1

(UP 7/12)

7 July, 1967.

Dear Allan,

I expect that, like ourselves, you and your colleagues are beginning to consider in some detail the Draft Articles prepared by the International Law Commission on the Law of Treaties in preparation for the Conference which, pursuant to General Assembly Resolution 2166 (XXI), is to open its first Session early in 1968.

As I am sure you will agree, this Conference will be a major event in the codification and development of international law. If it is to be a success, and my Government certainly hope very much that it will be, it is clearly essential that preparations for it should be made with great care by all concerned. In particular, as much progress as possible should be made before the Conference in developing informal consultations with a view to facilitating the achievement of general agreement on a satisfactory draft Convention at the Conference itself.

I am therefore venturing to send to you the attached informal commentary on the Draft Articles prepared by the International Law Commission which has been drawn up on a personal basis by one of the Foreign Office Legal Advisers, and which has served as the working document on which our own detailed consideration of the Draft Articles has been based. I should naturally welcome any comments which it might suggest to you. It would, of course, be particularly helpful to our own preparations if you were able to let me have any similar material which you or your colleagues are preparing.

Yours ever,
Francis

(Francis Vallat)

Mr. A. Gotlieb,
Ministry of External Affairs,
Ottawa.

~~Mr. [unclear] [unclear]~~
CONFIDENTIAL *OR*

[Handwritten signature]
5/10



AUSTRALIAN HIGH COMMISSION,
OTTAWA,
CANADA.

4 July 1967

20-3-1-6
28/1/67

Dear Mr. Robertson,

My colleagues in Canberra are preparing, in response to the request made by the Secretary-General of the United Nations, some comments on the Draft Articles on the Law of Treaties prepared by the International Law Commission. I did some little time back have the advantage of discussing with your Division one or two questions on which Canberra had asked me to seek your views. I am now asked to consult you again with as much expedition as possible on some of the more important issues that seem to arise in respect of the Draft Articles.

I am myself much occupied during the next day or two by a visit to Ottawa of the Chief Justice of Australia. It may therefore be most economical of time, for you as well as for me, if I commence the consultation by setting out a statement of Canberra's tentative views (attached) on a number of these matters. Perhaps later in the week I could seek a definite appointment for discussing the questions raised.

Yours sincerely,

Kenneth Bailey

(Kenneth Bailey),
High Commissioner.

A.W.J. Robertson, Esq.,
Legal Division,
Department of External Affairs,
Daly Building,
OTTAWA.

CONFIDENTIAL

CONFIDENTIAL

Draft Articles on the Law of Treaties

Tentative Views of the Australian
Department of External Affairs

(a) ARTICLE 2: (Definition of "Treaties")

It is considered that the definition should also include a reference to indicate that there is the prior question of whether the parties intend to create legal obligations at all. The definition as presently framed could embrace informal understandings between States which are not intended to give rise to legal rights and whose registration with the United Nations would be superfluous.

(b) ARTICLE 4: (Treaties which are constituent instruments of international organizations or which are adopted within international organizations)

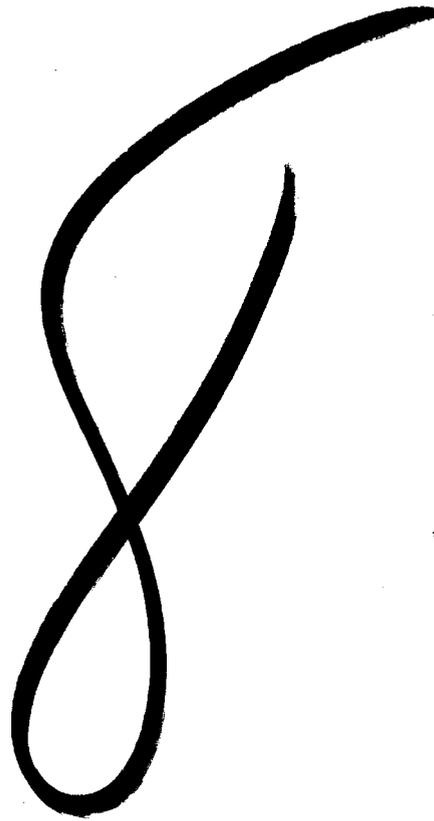
The article seems more general and open-ended than is necessary or desirable for the purpose of dealing with the actual problems that seem to arise - namely questions relating to withdrawal from an international organization and termination and suspension of membership and the application of the rules of procedure of an organization where a treaty is drawn up within that organization.

This feature of the article is a matter of some concern since the operation of the article is to subordinate all the draft articles to the rules of the organization.

(c) ARTICLE 5 (Capacity of States to conclude treaties)

In view of the decision to limit ^{the} articles to treaties between States the whole article now seems unnecessary and should be omitted.

CONFIDENTIAL

A large, thick, black handwritten mark resembling a stylized number 8 or a cursive flourish. The mark is composed of two main strokes: a long, sweeping curve that starts from the upper right and moves towards the center, and a second stroke that loops back from the center, crosses the first stroke, and forms a closed loop at the bottom.

CONFIDENTIAL

If the article is to be retained, paragraph 2 on treaty-making capacity of member states of federal unions seems to be unsatisfactory. Our position would be that such capacity is exceptional and depends upon its "recognition" by the federal constitution in question. The present wording which refers to cases where such capacity is "admitted" by the constitution does not quite meet this position.

(d) ARTICLES 16 - 20 (Reservations)

Australia's attitude in the past has been to favour the "traditional" or "classical" view that the validity of a reservation to a multilateral treaty depends upon the assent of all the parties possessing standing to give that assent (the unanimity rule). We have had to recognize, however, that the unanimity rule has lost ground in recent years and further we have encountered real practical problems in our own treaty relations because of the existing uncertainties and divergencies in this field of the law. We would therefore favour efforts to achieve international agreement on the question, even at the expense of some compromise, provided the new formulation keeps reservations within reasonable bounds. Judged by these criteria, the proposals now made in the draft articles seem a generally acceptable and workable solution, though we are still studying points of detail.

(e) ARTICLE 25 (Application of treaties to entire territory)

The adoption of this article will confirm the recent trend to reject the inclusion in multilateral treaties of special clauses concerning their application to non-metropolitan

CONFIDENTIAL 000935

CONFIDENTIAL

-3-

territories. It is assumed, however, that it would be unrealistic to think that any alteration could be secured in the present draft on this point, because of the association of the issue with "colonialism".

On the basis that we probably must accept a formulation along the lines of the present draft, we think its present language is unsatisfactory since strictly construed it would not cover trust territories nor possibly some kinds of free association. We would prefer to replace the present language by a reference to "all the territories for which a party is internationally responsible". We appreciate that the International Law Commission has in its commentary unfortunately associated the latter term with the so-called "colonial clause".

- (f) ARTICLE 49 (Treaty procured by use or threat of force contrary to the Charter to be void)

It would be illusory to believe that this article would not cause considerable difficulties. Given the usual impossibility of determining authoritatively and conclusively which side was the aggressor in any conflict, the article could have the effect of undermining any treaty which terminated or settled a war or threat of war. It does not seem possible, however, for countries such as Australia which endorsed the Nuremberg Charter to quarrel with the Law Commission's formulation or to fault it as a matter of general principle.

- (g) ARTICLE 50 (Treaties that conflict with a peremptory norm of international law (jus cogens) to be void)

This article raises rather similar considerations to Article 49. As we indicated at the 21st Assembly it seems

CONFIDENTIAL

CONFIDENTIAL

too late now to reject the concept of jus cogens altogether. It seems necessary to concede the existence of such norms and the basic question, for which there seems no easy solution, is how they come into existence, become established and secure recognition as such.

(h) ARTICLE 62 (Any disputes to be settled by the means indicated in Article 33 of the Charter).

The inclusion of articles on the jus cogens, fundamental change of circumstances and on similar matters raises in an acute form the question of what procedures should be laid down for the application and interpretation of these provisions. We would like to think that the international community would be prepared to accept a regime under which States would be obliged to offer some form of arbitration (including judicial arbitration) if negotiations fail to settle any disputes between parties as to the application of Article 49 or 50 or similar articles. Unless such a feature were to be built into the draft articles the end result of ^{the} spelling out in these articles of basic principles relating to the validity of treaties could be to threaten the security of treaties. It seems necessary to realize, however, that any efforts to inject such elements into the present articles would run against present trends and would be likely to fail.

(i) Our understanding of the intended scope of the draft articles is that generally speaking they are to apply according to their tenor to existing treaties in addition to treaties to be executed after any "treaty or treaties" comes into force. The matter is, however, a complex one and the rules contained in Articles 35 - 38

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-5-

on the amendment of treaties and in Article 26 on the application of successive treaties relating to the same subject matter seem to be relevant. This follows from the facts that the draft articles are not limited to a restatement of established principles and contain novel elements by way of development of international law (e.g. on reservations).

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Draft Articles on the Law of Treaties

Tentative Views of the Australian
Department of External Affairs

(a) ARTICLE 2: (Definition of "Treaties")

It is considered that the definition should also include a reference to indicate that there is the prior question of whether the parties intend to create legal obligations at all. The definition as presently framed could embrace informal understandings between States which are not intended to give rise to legal rights and whose registration with the United Nations would be superfluous.

(b) ARTICLE 4: (Treaties which are constituent instruments of international organizations or which are adopted within international organizations)

The article seems more general and open-ended than is necessary or desirable for the purpose of dealing with the actual problems that seem to arise - namely questions relating to withdrawal from an international organization and termination and suspension of membership and the application of the rules of procedure of an organization where a treaty is drawn up within that organization.

This feature of the article is a matter of some concern since the operation of the article is to subordinate all the draft articles to the rules of the organization.

(c) ARTICLE 5 (Capacity of States to conclude treaties)

In view of the decision to limit articles to treaties between States the whole article now seems unnecessary and should be omitted.

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If the article is to be retained, paragraph 2 on treaty-making capacity of member states of federal unions seems to be unsatisfactory. Our position would be that such capacity is exceptional and depends upon its "recognition" by the federal constitution in question. The present wording which refers to cases where such capacity is "admitted" by the constitution does not quite meet this position.

(d) ARTICLES 16 - 20 (Reservations)

Australia's attitude in the past has been to favour the "traditional" or "classical" view that the validity of a reservation to a multilateral treaty depends upon the assent of all the parties possessing standing to give that assent (the unanimity rule). We have had to recognize, however, that the unanimity rule has lost ground in recent years and further we have encountered real practical problems in our own treaty relations because of the existing uncertainties and divergencies in this field of the law. We would therefore favour efforts to achieve international agreement on the question, even at the expense of some compromise, provided the new formulation keeps reservations within reasonable bounds. Judged by these criteria, the proposals now made in the draft articles seem a generally acceptable and workable solution, though we are still studying points of detail.

(e) ARTICLE 25 (Application of treaties to entire territory)

The adoption of this article will confirm the recent trend to reject the inclusion in multilateral treaties of special clauses concerning their application to non-metropolitan

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territories. It is assumed, however, that it would be unrealistic to think that any alteration could be secured in the present draft on this point, because of the association of the issue with "colonialism".

On the basis that we probably must accept a formulation along the lines of the present draft, we think its present language is unsatisfactory since strictly construed it would not cover trust territories nor possibly some kinds of free association. We would prefer to replace the present language by a reference to "all the territories for which a party is internationally responsible". We appreciate that the International Law Commission has in its commentary unfortunately associated the latter term with the so-called "colonial clause".

(f) ARTICLE 49 (Treaty procured by use or threat of force contrary to the Charter to be void)

It would be illusory to believe that this article would not cause considerable difficulties. Given the usual impossibility of determining authoritatively and conclusively which side was the aggressor in any conflict, the article could have the effect of undermining any treaty which terminated or settled a war or threat of war. It does not seem possible, however, for countries such as Australia which endorsed the Nuremberg Charter to quarrel with the Law Commission's formulation or to fault it as a matter of general principle.

(g) ARTICLE 50 (Treaties that conflict with a peremptory norm of international law (jus cogens) to be void)

This article raises rather similar considerations to Article 49. As we indicated at the 21st Assembly it seems

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too late now to reject the concept of jus cogens altogether. It seems necessary to concede the existence of such norms and the basic question, for which there seems no easy solution, is how they come into existence, become established and secure recognition as such.

(h) ARTICLE 62 (Any disputes to be settled by the means indicated in Article 33 of the Charter).

The inclusion of articles on the jus cogens, fundamental change of circumstances and on similar matters raises in an acute form the question of what procedures should be laid down for the application and interpretation of these provisions. We would like to think that the international community would be prepared to accept a regime under which States would be obliged to offer some form of arbitration (including judicial arbitration) if negotiations fail to settle any disputes between parties as to the application of Article 49 or 50 or similar articles. Unless such a feature were to be built into the draft articles the end result of spelling out in these articles of basic principles relating to the validity of treaties could be to threaten the security of treaties. It seems necessary to realize, however, that any efforts to inject such elements into the present articles would run against present trends and would be likely to fail.

(i) Our understanding of the intended scope of the draft articles is that generally speaking they are to apply according to their tenor to existing treaties in addition to treaties to be executed after any "treaty or treaties" comes into force. The matter is, however, a complex one and the rules contained in Articles 35 - 38

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-5-

on the amendment of treaties and in Article 26 on the application of successive treaties relating to the same subject matter seem to be relevant. This follows from the facts that the draft articles are not limited to a restatement of established principles and contain novel elements by way of development of international law (e.g. on reservations).

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MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER	SECURITY
		MAY 15, 1967	20-3-1-6 32 32	SECURITE
TO/A	LDN	NO		PRECEDENCE
		L-490		PRIORITY
INFO				

REF YOURTEL 2256 APR. 27 AND XAO TEL 3020 MAY 15

SUB/SUJ LAW OF TREATIES CONFERENCE

YAO TEL REFERS TO VISIT TO LDN BY J.S. STANFORD OF LEGAL DIVISION DURING WEEK OF MAY 23. STANFORD, WHO HAS JUST ASSUMED DUTIES IN LEGAL DIVISION, WILL BE RESPONSIBLE AT DESK LEVEL FOR PREPARATIONS FOR PROPOSED CONFERENCE, INCLUDING CDN COMMENTARY ON ILC DRAFT. IT WOULD BE HELPFUL IF, WHILE IN LDN, STANFORD COULD CALL ON FO OFFICIALS TO OBTAIN BENEFIT OF THEIR VIEWS ON ILC DRAFT. GRATEFUL IF YOU WOULD ARRANGE APPROPRIATE APPOINTMENT FOR STANFORD, MAKING CLEAR TO BRITISH AUTHORITIES THAT, AS INDICATED IN OURTEL L421 MAY 1, WE HAVE NOT RPT NOT YET BEGUN OUR OWN CONSIDERATION OF ILC DRAFT AND CONSEQUENTLY WILL BE UNABLE TO MAKE USEFUL CONTRIBUTION TO DISCUSSION AT THIS STAGE.

BEST COPY AVAILABLE

DISTRIBUTION LOCAL / LOCALE NO STANDARD DONE IN DIV.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. Stanford/ya	LEGAL	2-7738	SIG..... A.E. GOTLIEB A. E. Gotlieb

Diary
 Div. Diary
 Tel File
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MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAY 1, 1967	20-3-1-6 32	

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TO/A LONDON

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PRECEDENCE

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YCENTAL 2256 OF APR 21/67

SUB/SUJ

LAW OF TREATIES CONFERENCE

WE WOULD BE MOST INTERESTED IN RICHARDSON'S VIEWS WITH
 RESPECT TO DRAFT CONVENTION ON LAW OF TREATIES. WE HAVE NOT YET,
 HOWEVER, BEGUN ANY FURTHER DETAILED CONSIDERATION OF THE PROVISIONS
 OF THE CONVENTION AND ARE UNLIKELY TO BE ABLE TO DO SO UNTIL THIS
 COULD BE DONE. IT WOULD THEN BE NECESSARY TO HAVE AN EXCHANGE OF
 VIEWS WITH BRITAIN ALTHOUGH WE WOULD BE INTERESTED IN RECEIVING A
 COPY OF THEIR PARLIAMINARY DRAFT COMMENTARY.

2. YOU MAY INFORM BARRON THAT, AS LONG AS WE ARE IN A
 POSITION TO MAKE A WORKABLE CONTRIBUTION TO ANY DISCUSSIONS
 OR TO PROVIDE PAYERS OF OUR OWN, WE WOULD BE GLAD TO DO SO.

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NO STANDARD

SEARCH IN DIVISION

CC: G.S. DIV, MR. WERHOFF,
 COMMUNICATIONS DIV.

ORIGINATOR/REDACTEUR

DIVISION

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FM LDN APR27/67 CONFD

TO EXTERL 2256

LAW OF TREATIES CONFERENCE

AT INSTIGATION OF FO AN INTERDEPTL CTTEE HAS BEEN FORMED IN LDN TO EXAMINE DRAFT CONVENTION ON LAW OF TREATIES AND TO PREPARE A COMMENTARY FOR USE OF BRIT DEL TO LAW OF TREATIES CONFERENCE. WE UNDERSTAND THAT TENTATIVE DRAFT COMMENTARY HAS ALREADY BEEN PREPARED BY LEGAL ADVISER IN FO AND THIS DRAFT WILL SERVE AS WORKING PAPER FOR INTERDEPTL CTTEE. SANDERS OF POLITICAL DEPT FO HAS PROMISED TO GIVE US A COPY OF PRELIMINARY DRAFT COMMENTARY FOR YOUR INFO AS SOON AS SUFFICIENT COPIES HAVE BEEN PRINTED. HE SUGGESTED THAT IT WOULD BE USEFUL TO HAVE EXCHANGE OF VIEWS WITH CDN AUTHORITIES ON DRAFT CONVENTION AS SOON AS POSSIBLE. SANDERS ASKED WHETHER YOU HAD BEGUN CONSIDERATION OF PROVISIONS OF DRAFT CONVENTION AND IF SO WHETHER YOU HAVE ANY DRAFT COMMENTARY WHICH COULD BE EXCHANGED WITH FO.

2. SANDERS INDICATED THAT BRITS HAD DISCUSSED PROVISIONS OF DRAFT CONVENTION EARLIER THIS WEEK WITH MEMBER OF FRENCH LEGAL ADVISERS OFFICE WHO HAD VISITED LDN. FO ALSO PLANNED TO DISCUSS DRAFT CONVENTION WITH REPS OF STATE DEPT. HE OBSERVED THAT THREE MAIN ISSUES OF MOST CONCERN TO FO RELATED TO: (A) RESERVATIONS PROVISIONS (B) TERMINATION ARTICLES AND (C) ADJUDICATION QUESTION.

3. GRATEFUL FOR YOUR REACTION TO SANDERS SUGGESTIONS.

BEST COPY AVAILABLE

Legal Division/J.S. Stanford/nb

16 J 29/3

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

file 20-3-1-6

*Que: I think its a good statement
Indropt
Allan
9/2*



TO
À Mr. J.A. Beesley

SECURITY
Sécurité CONFIDENTIAL

FROM
De J.S. Stanford

DATE March 26, 1967

REFERENCE
Référence

NUMBER
Numéro

SUBJECT
Sujet Law of Treaties - Article 5

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

-- Mr. Wershof has asked, and we have agreed, that any statement he is to make in Committee of the Whole on Article 5 be drafted in Ottawa. Attached for your approval is a draft statement for this purpose.

2. Our basic instruction is to support deletion of the Article, but not to lead opposition or appear too negative. The best way of achieving our objective within these limitations would appear to be to put forward an interpretation of the Article likely to arouse opposition to it, more specifically to press our view of the supremacy of the constitution, as interpreted by internal law, as a governing factor in the question of treaty-making capacity of political subdivisions of a federal state. The attached draft has been prepared from this viewpoint, and with the thought that brevity is a virtue if we wish to avoid the impression of attaching undue importance to this Article.

3. I would also propose that the instructions to Wershof be that he make no intervention at all if it appears the Article is likely to be deleted. The attached statement would be made, therefore, only if the ultimate fate of the Article is in doubt and with the hope that at best it will provoke undecided delegations to vote against the Article or, failing deletion, will at least lead to desirable changes in the text.

J.S. Stanford
J.S. Stanford

DRAFT CANADIAN STATEMENT ON ARTICLE 5

Mr. Chairman

This article is ^{in the view of the Canadian delegate} seriously defective, ^{not only} both from a ^{drafting} strictly legal point of view, ^{but} and because it creates ^{serious legal and} political problems by its very ^{existence} existence. ^{As an example of its} At the outset, I should like to refer to the inconsistent use of the word "State" in this Article. "State" is used in Article 1 and in paragraph 1 of the present Article to refer to a fully sovereign international person. But it is used in a quite different sense in paragraph 2 of this Article. Of the two political entities referred to in paragraph 2, it is the federal State, not the ^{is} political subdivision, which is the fully sovereign international person and which is properly called a "State" if that term is to be used in a sense consistent with its use in Article 1 and paragraph 1 of this Article. ^{A better formulation would be, in} instance which ^{is} opened to the ^{concerns} ^{of} ^{federal} ^{states}.

~~(Note: In accordance with (b) (i) of the instructions, we cannot carry this question further to the point of proposing the language we prefer, i.e. "Political subdivisions of a federal State may possess, etc.". However the use of the expressions "political subdivision" and "federal State" in the body of our statement may achieve the desired effect.)~~

To turn now to the substance of the Article, Mr. Chairman, ^{As} a federal State Canada is directly concerned with the effect which this Article will have on the treaty practice of all parties to this Convention. I emphasize "all" parties in order to stress the fact that any rules formulated in this Convention concerning the treaty-making power of political subdivisions of federal States will have their principal consequences ^{only} not for federal states, whose relations with their political ^{is}

The Article proposal reflects several new amendments to Canada view of the intended Law of the people not only, the new way

This is not a merely drafting point. There is a question of substance here, and I think I should make clear. Mr. Chairman, that is the substance of the article as a whole which gives rise to the difficulty

subdivisions will be governed by the internal law of the federal constitution, but for other States who wish to enter into treaty relations with a federal State.

Paragraph 2 of the draft Article provides that the extent, if any, to which a political subdivision may enjoy treaty-making capacity is dependent upon the federal constitution. My delegation wishes to emphasize that the federal constitution is an internal law of the federal State. Its interpretation therefore falls within the exclusive jurisdiction of the internal tribunal of the federal state having jurisdiction in constitutional matters. No sovereign State could accept that an outside body may have the power to interpret its constitution. [insert]

The I.L.C. commentary to Article 43 of the draft articles notes that "any questioning on constitutional grounds of the internal handling of the treaty by another Government would certainly be regarded as an inadmissible interference in its affairs". The same view of a State's constitution which is reflected in that passage applies to the present Article. Outside states cannot purport to interpret a federal State's constitution and it must be clearly understood that this Article ~~does~~ ^{should} not constitute an invitation for them to do so.

From a practical point of view,
The result of this article would be to place States dealing with federal States in a very awkward position, *in many cases* The legal capacity of the political subdivisions of ~~some~~ federal States may be fairly clear in the case of federal states with written constitution, but much less readily ascertainable to outsiders in the case of federal States whose constitutions are unwritten, or partly written and partly unwritten as is the case for Canada. At the present time States wishing to deal with such federal States may deal with the federal government, as representing the fully sovereign

*to order to avoid confusion & uncertainty
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Canadian
State*

international person, and in such dealings may ^{rely} on the rule enunciated in Article 43 that (except for manifest violations) a State may not invoke violations of its internal law as invalidating its obligations under a treaty. But the provisions of the present Article, if they are adopted, would constitute an exception to the rule in Article 43. X
As to treaty-making power, the constitution, as interpreted by the appropriate internal tribunal, is supreme. The result is that a State dealing with a political subdivision of a federal State must of necessity do so at the risk of finding subsequently that the political subdivision did not enjoy the right to conclude the treaty which it attempted to conclude. This is a direct consequence of leaving it to -indeed inviting - outsiders to interpret a federal State's constitution.

All we
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is supported by
German practice
will support
Article 43.
Way this should
come out

It has been pointed out that paragraph 2 of the present Article recognizes a practice which already exists, at least in certain European States. This is undoubtedly so, but as my remarks have indicated, the legal implications of the practice go beyond the scope of the present articles. Specifically, the practice of political subdivisions entering into treaty relationships raises important questions of international personality, State responsibility and recognition which are not clearly spelled out in this article and which cannot be dealt with in the Convention now under discussion. Yet without these provisions we would have a very ^{incomplete} ~~lopsided~~ rule, ~~of~~ embodying only some of the many elements to be considered. ~~It is far safer,~~ if we are ^{as we are} ~~really~~ concerned to ensure that the draft convention contributes to stability of treaty relation between states, ^{it is necessary to ensure that, if ~~there is~~ a rule is proposed, it} ~~to avoid the pitfalls of this article.~~ ^{formulated, it must be clear, accurate}

(Note: ~~Here again we must stop short of a specific proposal because of~~ ^{complete} ~~of~~ ^{It must not} ~~of~~ ^{give rise to} ~~of~~ ^{any uncertainties} ~~of~~ ^{in dealings} ~~of~~ ^{between states} ~~of~~ ⁰⁰⁰⁹⁵⁰ ~~of~~ ^X

X In the circumstances, the simplest and best solution would be to delete the article. Failing this, the article could be made generally acceptable only if amended as proposed by the Australian del.

.../4 ^{as} ~~of~~ ^{uncertainties} ~~of~~ ^{in dealings} ~~of~~ ^{between states} ~~of~~ ⁰⁰⁰⁹⁵⁰ ~~of~~ ^X

- 4 -

(a) in our instructions. The best course, therefore, would appear to be to end at this point, drawing no conclusions but leaving it for delegations to draw the obvious conclusions.)

DRAFT CANADIAN STATEMENT ON ARTICLE 5

Mr. Chairman

At the outset, I should like to refer to the inconsistent use of the word State in this Article. "State" is used in Article 1 and in paragraph 1 of the present Article to refer to a fully sovereign international person. But it is used in a quite different sense in paragraph 2 of this Article. Of the two political entities referred to in paragraph 2, it is the federal State, not the political subdivision, which is the fully sovereign international person and which is properly called a "State" if that term is to be used in a sense consistent with its use in Article 1 and paragraph 1 of this Article.

[Note: In accordance with (b)(i) of the instructions, we cannot carry this question further to the point of proposing the language we prefer, i.e. "Political subdivisions of a federal State may possess, etc.". However the use of the expressions "political subdivision" and "federal State" in the body of our statement may achieve the desired effect.]

To turn now to the substance of the Article, Mr. Chairman, as a federal State Canada is directly concerned with the effect which this Article will have on the treaty practice of all parties to this Convention. I ^{emphasize} ~~stress~~ "all" parties ^{in order to stress the fact} ~~because we must remember~~ that any rules formulated in this Convention concerning the treaty-making power of political subdivisions of federal States will have ^{their} ~~its~~ principal consequences not ~~primarily~~ for federal states, whose relations with their political subdivisions will be governed by the internal law of the federal constitution, but for other States who wish to enter into treaty relations with a federal State.

- 2 -

Paragraph 2 of the draft Article provides that the extent, if any, to which a political subdivision may enjoy treaty-making capacity is dependent upon the federal constitution. My delegation agrees that the federal constitution is at least one of the essential elements which must be incorporated in any provision of these articles which purports to deal with treaty making by political subdivisions of federal States. In expressing this view, however, my delegation wishes to emphasize that the federal constitution is an internal law of the federal State and its interpretation therefore falls within the exclusive jurisdiction of the internal tribunal of the federal state having jurisdiction in constitutional matters. No sovereign State could accept that an outside body may have the power to interpret its constitution.

The I.L.C. commentary to Article 43 of the draft articles notes that "any questioning on constitutional grounds of the internal handling of the treaty by another Government would certainly be regarded as an inadmissible interference in its affairs". The same view of a State's constitution which is reflected in that passage applies to the present Article. Outside states cannot purport to interpret a federal State's constitution and it ~~should~~^{must} be clearly understood that this Article does not constitute an invitation for them to do so.

The result of this situation may be to place States dealing with federal States in a rather awkward position. The position of the political subdivisions of some federal States may have been clarified by practice, but there are also federal States whose constitution may not be clear, particularly to the outsider, concerning the position of political subdivisions with respect to treaty-making power or other attributes of international personality. At the present time States wishing to deal with such federal States may deal with the federal government, as representing the fully sovereign international person, ^{and in such dealings may} relying on the rule enunciated in Article 43 that (except for manifest

- 3 -

violations) a State may not invoke violations of its internal law as invalidating its ^{obligations under} ~~consent to be bound by~~ a treaty. But the provisions of the present Article, if they are adopted, must be considered an exception to the rule in Article 43. As to treaty-making power, the constitution, as interpreted by the appropriate internal tribunal, is supreme. The result is that a State dealing with a political subdivision of a federal State must of necessity do so at the risk of finding subsequently that the political subdivision did not enjoy the right to conclude the treaty which it attempted to conclude.

It has been pointed out that paragraph 2 of the present Article recognizes a practice which already exists, at least in certain European States. This is undoubtedly so, but as my remarks have indicated, the legal implications of the practice go beyond the scope of the present articles. Specifically, the practice of political subdivisions entering ^{into} treaty relationships raises ^{important} questions of international personality, ~~and~~ State responsibility and recognition which are not clearly defined in present law and which will not be dealt with in the Convention now under discussion.

[Note: Here again we must stop short of a specific proposal because of (a) in our instructions. The best course, therefore, would appear to be to end at this point, drawing no conclusions but leaving it for delegations to draw the obvious conclusions.]

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file
Jong*



QUEEN'S UNIVERSITY
KINGSTON, ONTARIO

FACULTY OF LAW

TO: <i>Mr. L. Gottlieb</i>	L
FROM REGISTRY	
MAR 25 1967	
FILE CHANGED OUT	
TO:	

March 10, 1967

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Mr. Allan Gottlieb,
Head of Legal Division,
External Affairs Dept.,
Daly Building,
Ottawa, Ontario.

Dear Allan:

I enclose a copy of the latest report from the
ASIL Treaty Study group.

Do you think you might consider replying to the query
I raised in a recent letter requesting my access to the
documentation concerning Newfoundland's entry into Confederation?

*→ Ron, please speak
to me
about this
copy*

Yours sincerely,

[Signature]
Hugh Lawford,
Professor.

HL/vc
Enclosure

L

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December 1966

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

Study Group on the Draft Articles

on the Law of Treaties

Report on the Meetings Held on October 7-8, 1966

by Egon Schwelb, Rapporteur

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December 1966

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

Study Group on the Draft Articles on the Law of Treaties

Report on the Meetings held on
October 7-8, 1966

By Egon Schwelb, Rapporteur

The Study Group had been furnished a Memorandum on the Termination or Suspension of the Operation of a Treaty as a Consequence of its Breach (Article 57 of the Draft Articles on the Law of Treaties adopted by the International Law Commission on July 18 and 19, 1966) (Memorandum No. 5) and a Memorandum (No. 6) on Fundamental Change of Circumstances (Article 59 of the same Draft Articles).

Article 57

The Group started the examination of the Article by considering the "critique of the main definition" of "material breach of a treaty" as contained in paragraphs 13 and 14 of Memorandum No. 5. The gist of this criticism had been that in the definition of "material breach" in paragraph 3(b) the character of the violated provision and not also the character of the violation itself is made the exclusive criterion. The same comment applies mutatis mutandis to the formulation of the requirement for the applicability of paragraph 2(c).

One participant while, he said, on first sight impressed by the rapporteur's argument pointed out that on close examination he did not agree with it. The Commission intentionally shifted the weight from the adjective qualifying the breach to the nature of the provision. The Commission, he added, had decided not to be involved in the classification of treaties. The object of the provision is the instrument and not the obligation deriving from it. In supporting the Commission's approach he referred to draft Articles 26, 39, 40, 62, and 64. As Article 57 is a basis only for the invocation of the breach, it would become clear in the course of the procedure to be followed under Article 62 that a trivial violation was indeed trivial and not material.

To this the reply was made that if the substantive provision of Article 57 makes it possible to invoke a trivial violation of an important provision as a ground for terminating the

treaty or for suspending its operation the procedural arrangements of Article 62 could not remedy the situation. The majority of those participating in the debate expressed the opinion that the adjective [material] should apply to the breach as well as to the violated provision.

To the point which was also made that there could not be a trivial violation of an international treaty it was replied that there was no legal system in existence which did not provide for a gradation of the fault which might lead to serious consequences, such as terminating or withdrawing from a contract or treaty.

One participant suggested to redraft paragraph 3(b) of Article 57 to read as follows:

"(b) the violation of such a character of a provision essential to the accomplishment of the object or purpose of the treaty as would frustrate or seriously impair that accomplishment."

Most participants expressed themselves in favor of this suggestion.

As an alternative, one speaker suggested that paragraph 3 of Article 57 might be dropped altogether, in which case the term "material breach" used in paragraphs 1 and 2 would not be subject to the extensive interpretation given by the present paragraph 3 and would consequently exclude the invocation of trivial breaches.

One speaker recorded that up to about 20 years ago almost all publicists wrote that any violation of any provision of a treaty permits the termination of the treaty by the other party or parties. He explained that the shift in views has been relatively recent. Another participant maintained that paragraph 3 as drafted did not permit the invocation of trivial breaches of important provisions.

The Group then proceeded to discuss the consequences, if any, of the drafting change introduced in the text of subparagraph 3(b). The earlier text (January, 1966) A/CN.4/184, Article 42, had read: "the violation of a provision essential to the accomplishment of any of the objects or purposes of the treaty," while the text as finally adopted reads "the violation of a provision essential to the accomplishment of the object or purpose of the treaty." The documents indicate that the change had been made only at the stage of adopting the Commission's report to the Gen-

eral Assembly in July, 1966, as shown by the document containing the draft report A/CN.4/L.1161/Add. 3 and also by the fact that in the mimeographed version even of the final report [document A/6309] paragraph 9 of the Commentary on Article 57 still uses the earlier version with the words "the objects or purposes" in the plural.* Several participants expressed the view that the replacement of the plural by the singular was not intended to bring about a change of substance, the Commission's reason for making the change having probably been to bring the terminology into agreement with the terminology used by the International Court of Justice in the Reservations to the Genocide Convention Advisory Opinion where the Court made it a criterion of admissibility whether a reservation was "compatible with the object and purpose of the convention" in the singular [I.C.J. reports 1951, page 29]. Not all members of the Group considered this change, which the Commission had made at the report stage, desirable. One participant emphasized that the change to the singular made the scope narrower and created a measure of artificiality. Another participant believed that it was hard to swallow that a treaty had necessarily only one object and purpose. This was indeed the case in regard to the Genocide Convention which had only one purpose. This, however, he said, "was not a good peg on which to hang the provision." The singular may mislead decision makers. One speaker pointed out that the original wording had been too wide as it referred to the accomplishment of any of the objects and purposes of the treaty.

The Group reverted to the question of the qualification of the breach or of the breached provision respectively. One member insisted that it had been the intention of the Commission to limit the scope of the applicability of the provision and to exclude the invoking of trivial violations even of essential provisions. Another member maintained, however, that the Commission intended to make the character of the provision the governing consideration.

Commenting on paragraph 2(c) and paragraph 8 of the Commentary one speaker expressed the view that the stipulation that a radical change of the position of every party must have occurred was a most rigorous requirement which in his view was appropriate and obvious in cases like the Test Ban Treaty but not in connection

*The printed version, G.A.O.R., 21st session, Supplement No. 9 (A/63091/Rev. 1) which came out after the meetings of the Group were held on October 7-8, 1966, refers in para. 9 of the Commentary on Art. 57 to "object and purpose" in the singular. (Rapporteur)

with other types of settlement. Another participant pointed to the fact that paragraph 2(c) did not provide that the party could invoke the qualified breach as a ground for suspending the operation of the treaty, but it said that the party could suspend the operation of the treaty forthwith. Another member took the view that paragraph 2(c) does not take the situation out of the scope of the application of the procedural clauses of Article 62.

One member suggested that the word "other" might be taken out of the phrase "any other party" in paragraph 2(c).

One speaker pointed to the fact that paragraph 3(b) used the expression "violation," while elsewhere in the Article the term "breach" was employed. He expressed the view that "violation" was a stronger term than "breach," a fact which might have some bearing on the question discussed earlier; namely, that Article 57 used exclusively the character of the provision and not the intensity of the breach as the decisive criterion. To this argument the reply was made that, in United States domestic law at least, the concept of violation included merely technical violations of a provision. The point was made that if violation meant a substantial breach why should not the text say so expressly. At this stage of the discussion there appeared to be a consensus in the Group that the wording of paragraph 3(b) was at least ambiguous and admitted of the interpretation that also a trivial violation of an essential provision could be invoked as a ground for termination or suspension. The amendment for the text of paragraph 3(b) referred to on page 2 above seemed, therefore, desirable and generally acceptable to the members of the Group.

One participant pointed out that the French text of Article 57 used the word "violation" both for the English word "breach" and for the English word "violation." The reply was made that the Article had been drafted in English and then translated into French.

The Study Group then proceeded to a discussion of the problem raised by several members of the International Law Commission and described in paragraphs 27 to 34 on pages 12 to 18 of Memorandum No. 5. The problem arose out of the right of a "party specially affected" to invoke a breach as a ground for suspending the operation of a treaty in the relations between itself and the defaulting state. This right, it was asserted, might endanger general multilateral conventions, in particular those of a humanitarian character. Some participants shared the apprehensions of the members of the International Law Commission concerned in this regard. One participant suggested that paragraph 4 of Article

57 may point the way to a solution of the admittedly grave problem. Is not, he said, a violation of e.g. the European Convention on Human Rights governed by paragraph 4 of Article 57, to the exclusion of paragraph 2(b) or paragraph 2 in general. Are not, he asked, the provisions of that Convention concerning the functions of the European Commission and Court of Human Rights and of the Committee of Ministers "provisions in the treaty applicable in the event of a breach" within the meaning of paragraph 4?

One of the participants stressed that there are very few treaties containing provisions applicable in the event of breach. Another pointed out that questions relating to breach are not necessarily covered by a jurisdiction clause. He referred to the case of the Northern Cameroons* where the issue was discussed whether the judicial settlement clauses involved were or were not applicable to questions of the violation of the treaty and the right of termination. The judgment of the Court does not discuss the problem, but the parties argued it.

The Group discussed in this context the problematic character of compromissory clauses. One speaker put the question as follows: State A breaches the treaty, admits the breach and repudiates the treaty. Can State B use the compromissory clause covering interpretation and application to get a Court decision on the responsibility of State A?

One member of the Group suggested the deletion of paragraph 2(b). Another member replied that a provision on the lines of paragraph 2(b) was essential e.g. for the operation of GATT. One speaker stated that Human Rights Conventions do not create bilateral obligations. Another pointed out, as had been done in paragraphs 26 et seq. of Memorandum No. 5, that while this was certainly the case, there might exist situations under Human Rights Conventions where one party was nevertheless "specially affected" by a material breach with the consequence that it could use Article 2(b) to suspend the operation of the Human Rights Convention in the relations between itself and the defaulting State. In such a case Article 57(2)(b) would, contrary to the spirit and probably also the letter of the Human Rights Convention concerned, make the suspension possible. To a statement that the procedure under Article 62, paragraph 3 might save the situation, the reply was made that the decision maker applying Article 62, paragraph 3 would have to apply the substantive law as contained in Article 57(2)(b).

*I.C.J. Reports 1963, p. 29.

-6-

One of the participants said in this context that Article 57 was concerned with the law of treaties and not with reprisals or retorsion. It deals only with the affect of the breach of a treaty on the treaty qua treaty. This had, he said, a bearing on the problem under discussion because the provisions of Article 55 ("temporary suspension of the operation of a multilateral treaty between certain of the parties only") might be read into Article 57. He referred particularly to the condition of Article 55(b) that it [the suspension] "is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty." One member gave the "certain expenses" controversy around Article 17 of the Charter of the United Nations as an example where article 57(2)(b) could be applied by a Member State "specially affected" by the breach, i.e., by the nonpayment of another Member's financial contributions. In this connection reference was, however, made to Article 4 of the Draft Articles according to which "the application of the present articles to treaties which are constituent instruments of an international organization . . . shall be subject to any relevant rules of the organization." There was no United Nations rule, it was objected, which would apply and which would replace Article 57.

One speaker admitted that while Article 57(2)(b) was probably not retrogressive as to international conventions in general and as to existing customary law, it was retrogressive as to some human rights treaties. It seemed sensible as to usual commercial agreements or agreements like conventions on the service of process. One participant put the question: Suppose that State A says that State B has used force in violation of the Charter and therefore withdraws from the United Nations. Question: Can it do so now, disregarding for the moment the I.L.C. draft? One participant felt that questions relating to the United Nations Charter are excluded from the operation of the draft, while another member read Article 4 as dealing only with the case where there are specific rules on the question.* As a consequence the I.L.C. draft would apply where there is not a relevant rule of the organization in existence. In the discussion reference was made to the general rules of interpretation, particularly Article 27(3)(b) and (c).

*The well-known interpretative commentary on withdrawal from the United Nations proposed by Committee I/2 of the San Francisco Conference and included in the Report of the First Commission to the plenary Conference is considered by some writers (Schwarzenberger, Dehousse) as part of the lex societatis of the United Nations, i.e. a "relevant rule of the organization" within the meaning of draft Article 4. (Rapporteur)

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It was generally agreed that Article 4 permits the I.L.C. draft to apply to international organizations which do not have rules on the question concerned. One member felt, however, that in practice, rules of the organization will be formulated in such cases. In the ensuing discussion the following points were made: Can organizations by their own subsequent practice supplement their own constitutions? Practice by the Secretary-General was not a rule within the meaning of Article 4. The Secretary-General was a principal organ and can, in one speaker's opinion, issue rules. In this regard a difference was to be made e.g. between the depositary functions of the Secretary-General and his functions in connection with the registration of treaties. The depositary functions are not mentioned in the Charter and therefore the will of the parties must prevail. In regard to the registration of treaties the Secretary-General has a limited rule-making power. In this connection one speaker observed that the Secretary-General himself should have made the rules concerning the registration of treaties instead of referring the question to the General Assembly.

Continuing the discussion connected with draft Article 4, one participant asked by what rule a United Nations organ was authorized to make rules on the interpretation of treaties? He gave the example of the Genocide Convention which had been ratified by States, non-Members of the United Nations and the question was: Were these States bound by subsequent United Nations rules? A participant pointed out that the position of Switzerland as a party to the Statute of the International Court of Justice had been affected by the Amendment to the Charter increasing the number of non-permanent members of the Security Council. He also mentioned the problems which have arisen in connection with the withdrawal of South Africa from the International Labour Organization, e.g. in regard to the continuing binding character of international labor conventions to which South Africa was a party. Article 4 was intended to preserve this kind of situation.

The General Assembly, another speaker said, should not have the power to make rules, e.g. in regard to the organs created by the International Convention on the Elimination of All Forms of Racial Discrimination. To the objection that those organs were organs of the States Parties and not subsidiary organs of the United Nations, he replied that the Convention had nevertheless been "adopted within" the United Nations and under the text of Article 4 seems therefore to be subject to any relevant rules of the Organization. One member explained that the phrase "unless the rules otherwise provide" have been taken out of all other provisions of the earlier draft and concentrated in Article 4 [with

the exception of the provisions relating to reservations (Article 17(3)).]

One speaker emphasized that Article 4 was not necessary at all and if a saving clause should be held to be desirable it should read as follows:

"Nothing in this Convention shall derogate from such powers as are vested in international organizations."

One speaker stressed the necessity to exclude the implication that the draft articles in general or Article 4 in particular are conferring additional powers on international organizations. He also put the question whether the term "rules" as used in Article 4 was not used in a wider sense so that it comprised also resolutions, recommendations, etc.

Returning to the text of Article 57 one speaker observed that the Article did not stipulate for the reasonableness of the response to a breach. One participant raised the question discussed earlier: namely, that the phrase "in whole or in part" was contained in paragraph 1 and in paragraph 2(b) of Article 57, but was not spelt out in paragraph 2(a) and paragraph 2(c). One speaker criticized what he called the abdication of the concept of severance in Article 57. Another questioned the wisdom of allowing the injured state "to pick and choose." The phrase "in whole or in part," another speaker explained, must have been put in Article 57 to permit reprisals, i.e. suspending a part of the treaty different from that which had been violated.

The question was also put whether all parties except the wrongdoer can agree to suspend under paragraph 2(a) particularly provisions which had not been breached. Two speakers expressed the view that "the other parties by unanimous agreement" could do this, in spite of the absence of the words "in whole or in part" from the text of paragraph 2(a). The questions were also put whether the wrongdoer could (a) invoke Article 62 and (b) terminate the treaty.

Article 59

With reference to the discussions in the International Law Commission in the course of which two members, namely Mr. Yasseen and Bartoš, had claimed that the role of rebus sic stantibus was a peremptory rule of international law [jus cogens] two participants stressed the fact that the view of these two members of the

establishing a boundary.* One participant replied that there was no reason why the territorial clauses of the Antarctic Treaty should not, under paragraph 2(a), be considered exempted from the operation of Article 59.

It was also said that Article 59 could be compared to the top of an iceberg. There were, the speaker added, two different doctrines of the change of circumstances applying respectively if the intention of the parties is frustrated and if the burdens of the parties have become unequal in the course of time. He pointed out that the I.L.C. had used the word "safety-valve" in regard to Article 59 in paragraph 6 of its commentary on the Article.

Attention was drawn to the fact that the idea of a change "not foreseen" was not identical with the idea of "not provided for." In this context it was also said that a termination clause in spite of providing in a sense for a change of circumstances may in fact be inadequate in the light of a change of circumstances which might eventually occur. One member raised the question of the relationship between Articles 59 and 4 of the I.L.C. draft on the one hand and the provisions of the European Coal and Steel Community Treaty. The European Coal and Steel Community Treaty permits, he said, termination after 50 years.** The questions were, therefore, whether the European Coal and Steel Community was an international organization within the meaning of draft Article 4 and if so, whether Article 4 took the ECSC treaty out of the operation of Article 59. It was suggested by another participant that as the ECSC Treaty does not contain a rule on the effect of fundamental change of circumstances, i.e. a "relevant rule," Article 59 would seem to apply to that Treaty. Another member submitted that even though the application of Article 59 were deemed to be ousted by the 50 years clause of the ECSC Treaty the customary law rule of rebus sic stantibus may be applicable even if Article 59 as such were not.

A speaker felt that Article 59 did not pay sufficient attention to the reasonableness of the invocation of the fundamental

*The provisions of the Antarctic Treaty apply to the area south of 60° South Latitude. (Art. VI of the Antarctic Treaty of December 1, 1959, 54 A.J.I.L. 477 (1960)). (Rapporteur)

**Art. 97 of the Treaty of April 18, 1951; in force July 25, 1952: "The present Treaty is concluded for a period of fifty years from the date of its entry into force." 46 A.J.I.L., Supplement, p. 148 (1952).

-11-

change of circumstances. It was said in reply that Article 23 provided that treaties must be performed in good faith. The concept of good faith included the concept of reasonableness. Attention was drawn to paragraph 5 of the Commentary on Article 23 where the Commission stated that it was strongly of the opinion that a means should be found in the ultimate text of any convention on the law of treaties to emphasize the fundamental nature of the obligation to perform treaties in good faith. The idea of good faith applied throughout international relations but it has a particular importance in the law of treaties and is reiterated in Article 27 in the context of the interpretation of treaties. The Commission has suggested that the principle of pacta sunt servanda (which, as stated, includes the idea of good faith) might suitably be given stress in the Preamble to the convention.

The question was raised whether Article 59 could be interpreted to override arbitration clauses. It was suggested in reply that an arbitration clause would be saved by Article 62, paragraph 4 according to which nothing in the foregoing paragraphs of Article 62 [procedure in cases of invalidity etc.] would affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes. To this the objection was made that in a certain situation the whole treaty plus the arbitration clause may have fallen as a consequence of a change of circumstances. In this regard the argument was mentioned that a provision exempting arbitration clauses from the operation of Article 59 might not be desirable in the present state of international relations.

One speaker emphasized the necessity to prevent the idea from spreading that the rebus sic stantibus rule was a rule of jus cogens. In reply to a reference to the fact that the A.L.I. draft* treated the rule as a problem of interpretation a speaker said that it has never been developed on these lines. It was also said that to treat the rebus sic stantibus rule as a rule of interpretation was very dangerous on policy grounds.

To a suggestion of one speaker that both the rebus sic stantibus provision (Article 59) and the jus cogens provision (Article 50) should be taken out of the draft it was replied that both were firmly implanted in the body of contemporary international law and relations. To this argument the answer was given that what existed

*See paragraphs 33 and 37 of Memorandum No. 6 and the contribution by Lissitzyn referred to in the former.

-12-

in regard to both rules was nothing but discussion and that there were no judicial decisions on them and very little state practice. When it was submitted that there was a large amount of state practice on the question of rebus sic stantibus the answer was that one certainly finds cases where States had invoked the rule, but very few instances where other states explicitly recognized the claim based on the rebus sic stantibus rule. One speaker inquired whether the situation regulated in paragraph 2(b) of Article 59 was not covered by the pacta sunt servanda article (Article 23) so that paragraph 2(b) could be left out of the draft. Another speaker gave a negative answer to this question and emphasized that paragraph 2(b) covered violations of interlocking obligations.

One speaker felt that Article 59 may become the stepping stone for the increased use of the rebus sic stantibus idea. Another replied that the qualification that the change must transform the scope of obligations "radically" presented a very strong safeguard. This was, he said, a high fence to jump over. Several speakers expressed the view that Article 59 required that in applying the article one has to go far beyond the text of a treaty to determine what the parties foresaw.

In connection with the problem raised in paragraphs 22 et seq. of Memorandum No. 6, namely, of the effect of the dropping of the words "and for the consequences of which they have made provisions in the treaty itself" which were contained in the 1963 draft and are not retained in the 1966 draft, a change on which the records throw no light, one speaker said that the change which has occurred does not have substantive consequences. The dropping of these words occurred in the 833rd to 835th meetings of the Commission when the Special Rapporteur accepted Mr. Ago's suggestion that the former paragraph 3 of the Article be incorporated in paragraph 1. The change was made as a matter of logic and was unconnected with the question of whether the rule rebus sic stantibus was a rule of jus cogens.

. . . .

The Study Group also considered a number of administrative questions including questions relating to the use to be made of the memoranda and reports and whether and to what extent they should be made available to outsiders. The Study Group was also informed of suggestions that articles based on the work of the Study Group might be published in the American Journal of International Law and that the question of the law of treaties might be examined at the 1967 annual meeting of the Society.

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[Handwritten signatures]

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO Under-Secretary of State for External
À Affairs, Ottawa

SECURITY
Sécurité

UNCLASSIFIED

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

DATE

Jan. 19, 1967

REFERENCE
Référence

NUMBER
Numéro

705

SUBJECT
Sujet

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ENCLOSURES
Annexes

4

DISTRIBUTION

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We attach copies of Under-Secretary, Legal Counsel Note LE 130(1-2-3) of 18 January, 1967, which refers to Operative paragraph 9 of General Assembly Resolution 2166 (XXI) of 5 December, 1966.

2. Please note that the Secretary-General would appreciate receiving not later than 1 July, 1967, the written comments and observations of the Government of Canada with regard to the text of the final draft articles concerning the law of treaties prepared by the International Law Commission contained in the reports of the Commission on the second part of its seventeenth session and on its eighteenth session (Official Records of the General Assembly, twenty-first session, Supplement No. 9 (A/6309/ Rev.1), Part II, Chapter II).

[Handwritten signature]

Permanent Mission.

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NEW YORK

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REFERENCE:

LE 130(1-2-3)

18 January 1967

Sir,

I am directed by the Secretary-General to invite your attention to General Assembly resolution 2166 (XXI) of 5 December 1966 entitled "International conference of plenipotentiaries on the law of treaties", which in operative paragraph 9

"Invites Member States, the Secretary-General and the Directors-General of those specialized agencies which act as depositaries of treaties to submit, not later than 1 July 1967, their written comments and observations on the final draft articles concerning the law of treaties prepared by the International Law Commission;".

The text of the final draft articles concerning the law of treaties prepared by the International Law Commission is contained in the reports of the Commission on the second part of its seventeenth session and on its eighteenth session (Official Records of the General Assembly, twenty-first session, Supplement No. 9 (A/6309/Rev.1), Part II, Chapter II).

The Secretary-General would therefore appreciate receiving the written comments and observations of your Government on this subject not later than 1 July 1967.

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

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REFERENCE :

LE 130(1-2-3)

18 January 1967

Sir,

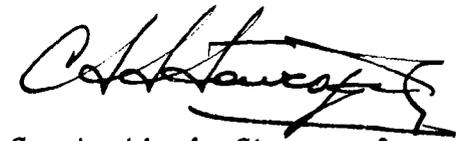
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CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

REFERENCE:

LE 130(1-2-3)

Le 18 janvier 1967

Monsieur le Ministre,

J'ai l'honneur, d'ordre du Secrétaire général, d'attirer votre attention sur la résolution 2166 (XXI), intitulée "Conférence internationale de plénipotentiaires sur le droit des traités", que l'Assemblée générale a adoptée le 5 décembre 1966 et dont le paragraphe 9 est ainsi conçu :

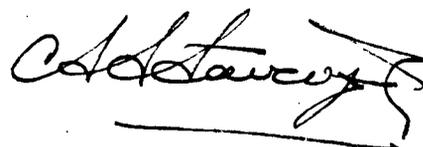
"Invite les Etats Membres, le Secrétaire général et les directeurs généraux des institutions spécialisées qui exercent des fonctions de dépositaires de traités à présenter par écrit, le 1er juillet 1967 au plus tard, leurs observations et leurs commentaires sur le projet d'articles définitif que la Commission du droit international a élaboré sur le droit des traités;" .

Le texte du projet d'articles définitif que la Commission du droit international a élaboré sur le droit des traités figure dans les rapports de la Commission sur la deuxième partie de sa dix-septième session et sur sa dix-huitième session (Documents officiels de l'Assemblée générale, vingt et unième session, Supplément No 9 (A/6309/Rev.1), Deuxième partie, chapitre II).

Le Secrétaire général serait donc obligé à votre Gouvernement de bien vouloir lui communiquer, le 1er juillet 1967 au plus tard, ses observations et commentaires écrits sur la question.

Veillez agréer, Monsieur le Ministre, les assurances de ma très haute considération.

Le Sous-Secrétaire
Conseiller juridique



Constantin A. Stavropoulos

①
Chambers
T. H.

AMERICAN SOCIETY OF INTERNATIONAL LAW

Study Group on the Law of Treaties
New York, February 18, 1967

20-3-16
321

Questions Concerning a Convention on the Law of Treaties

1. Should the United States pursue the adoption of a Convention on the Law of Treaties at the proposed U.N. Conference?
2. Must the I.L.C. draft be accepted as the general basis for agreement if a Convention on Treaties is to be adopted?
3. Are there provisions in the I.L.C. draft which should be considered as unacceptable by the United States?
4. Are there provisions of the I.L.C. draft which would materially impair the possibility of approval by the Senate?
5. Are there omissions from the I.L.C. draft which should be considered as materially affecting its acceptability by the United States?
6. Are there omissions from the I.L.C. draft which would materially affect the possibility of approval by the Senate?
7. How can the Study Group most usefully assist those responsible for preparing United States policy?

20-3-1-6

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TO EXTERNL 2226 PRIORITY

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21ST UNGA: 6TH CTTEE: ITEM 84: ILC REPORTS AND CONFERENCE ON LAW OF TREA-
TIES

AUSTRIAN DEL ANNOUNCED YESTERDAY THAT HIS GOVT WILL INVITE SECGEN TO
HOLD CONFERENCE IN VIENA.

Robert D.
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21 ST UNGA: 6TH CTTEE: ITEM84: ILC REPORTS AND CONFERENCE ON LAW OF
TREATIES

REPORT OF 6TH CTTEE(A/6516) AND DRAFT RESLNS WERE TAKEN UP IN PLENARY
TODAY. SUPPORTERS OF ALL STATES FORMULA PUT DOWN AN AMENDMENT
(A/L.502) TO SUBSTITUTE ALL STATES FORMULA FOR PARA4 OF RESLN AS ADOPT-
ED BY 6TH CTTEE DEALING WITH DIPLO CONFERENCE ON LAW OF TREATIES TO
BE HELD IN 1968. AMENDMENT WAS DEFEATED 48-37-22 AND RESLN AS A WHOLE
WAS ADOPTED 104-0-2(SOMALIA AND TANZANIA). USA AND CDA SPOKE AGAINST
AMENDMENT.

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21ST UNGA:6TH CTTEE:ITEM84:ILC REPORTS AND CONFERENCE ON LAW OF TREATIES

FM WERSHOF

REVISION OF OUR RESLN QUOTED IN REFTEL IS L.596/REV.1.YESTERDAY COSPONSORS AMENDED IT FURTHER IN VIEW OF UNANIMOUS DESIRE OF AFRICAN GROUP THAT CONFERENCE SHOULD HAVE ONE AND NOT RPT NOT TWO CTTEES OF WHOLE.THIS AMENDMENT DELETES REF TO TWO CTTEES IN PARA5 AND CONSEQUENTIALLY DELETES PARA9.IT IS INTENDED BY THESE DELETIONS TO CONCEDE THAT THERE WILL BE ONE CTTEE OF WHOLE.

2.TWO ISSUES REMAINING TO BE DECIDED BY VOTING TUE OCT25 ARE ALL STATES QUESTION AND QUESTION WHETHER CONFERENCE SHOULD BE PLANNED FOR ONE SESSION ONLY OR FOR TWO SESSIONS(ONE IN 1968 AND ONE IN 1969). AS FOR VENUE CTTEE PREFERS GNEVA TO NY BUT WILL LEAVE OPEN POSSIBILITY OF SOME COUNTRY OFFERING TO BE HOST.

3.ON ALL STATES QUESTION WE NOW HAVE TWO AMENDMENTS.PRINCIPAL ONE L.598 WAS QUOTED IN OURTEL2060 OCT18.IN ORDER TO ADD TO CONFUSION COMMUNISTS ALSO TABLED L.601 WHICH WOULD ADD FOLLOWING PARA TO PREAMBLE:QUOTE BEARING IN MIND ITS RESLNS 1665(XVI)1910(XVIII) 2028(XX)2032(XX)AND 2077(XX)WHICH DEALT WITH QUESTIONS CONCERNING CONCLUSION OF VARIOUS INTERNATL AGREEMENTS PARTICIPATION IN SUCH AGREEMENTS AND FULFILMENT OF OBLIGATIONS ARISING FROM THEM AND WHICH WERE ADDRESSED TO ALL STATES UNQUOTE.THESE RESLNS OF PAST CONTAINED EXHORTATIONS ADDRESSED TO QUOTE ALL STATES UNQUOTE TO BEHAVE IN

...2

PAGE TWO 2144 CONFD

CERTAIN WAYS AND HAVE NO RPT NO RELEVANCE TO QUESTION WHETHER SECGEN SHALL INVITE ALL STATES TO A CONFERENCE. ARGUMENT OF COMMUNISTS IS THAT THESE RESLNS PROVE THAT IT IS IN ORDER FOR UNGA TO ADDRESS QUOTE ALL STATES UNQUOTE.

4. WESTERN COUNTRIES ARE HOPEFUL OF DEFEATING L.598 (AND INCIDENTALLY L.601) BY SMALL MAJORITY BUT ANYTHING COULD HAPPEN IN VIEW OF APPEAL THAT SPEECHES ABOUT UNIVERSALITY HAVE FOR DELEGATIONS.

5. CONFIRMING WERSHOF/ROBERTSON TELECON WE INTEND (UNLESS OTHERWISE INSTRUCTED) TO OBSERVE FOLLOWING COURSE IN EVENT OF ALL STATES FORMULA L.598 BEING ADOPTED BY CTTEE. PROVIDED THAT A FEW OTHER WESTERN DELEGATIONS (USA UK ETC) KEEP US COMPANY WE WOULD VOTE AGAINST AND NOT RPT NOT MERELY ABSTAIN ON RESLN L.596 AS A WHOLE AS AMENDED BY L.598. IF HOWEVER WE DID NOT RPT NOT HAVE SUITABLE COMPANY WE WOULD ABSTAIN ON RESLN AS A WHOLE.

6. A COMMUNIST VICTORY ON L.598 WOULD HAVE FAR REACHING IMPLICATIONS AFFECTING RELATIONSHIP OF UN TO COMMUNIST CHINA EAST GERMANY NORTH VIETNAM AND NORTH KOREA. IN VIEW OF SECGEN'S PAST STATEMENTS ON ALL STATES CLAUSES (SEE REPORT OF 1258TH PLENARY MTG OF UNGA NOV 18/63 IN PARTICULAR) IT IS LIKELY THAT HE WOULD TELL UNGA THAT HE CANNOT RPT NOT ACT ON ALL STATES RESLN AND THAT UNGA MUST GIVE HIM A LIST OF STATES COMING WITHIN FORMULA (OTHER THAN THOSE WHICH ARE MEMBERS OF UN OR SPECIALIZED AGENCIES). THIS IN TURN WOULD LEAD TO AN UNPRECEDENTED DEBATE ABOUT LEGAL STATUS OF EAST GERMANY NORTH VIETNAM AND NORTH KOREA.

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PAGE THREE 2144 CONFD

7. IT IS NOT RPT NOT A HAPPY PROSPECT AND WE HOPE THAT IT CAN BE
AVOIDED BY DEFEATING L.598. INCIDENTALLY SAME FIGHT WILL NO RPT NO
DOUBT TAKE PLACE IN 3RD CTTEE WHEN IT REACHES SIGNATURE CLAUSES OF
HUMAN RIGHTS COVENANTS.

MESSAGE

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TO/A CANDELNY

NO PRECEDENCE
L-791 PRIORITY

INFO

REF

SUB/SUJ 21 UNGA: SIXTH COMMITTEE: AGENDA ITEM 84: REPORTS OF
 ILC: RESOLUTION PROPOSING CONFERENCE ON LAW OF TREATIES

FOLLOWING FOR WESHOP FROM ROBERTSON

IN OURTELCON EARLY AFTERNOON FRIDAY OCT 21 WE DISCUSSED
 YOUR INTENTION TO ABSTAIN IN GOOD COMPANY WHEN VOTING ON
 RESOLUTION AS A WHOLE IF IT WERE TO CONTAIN EITHER AN ALL STATES
 CLAUSE OR THE POSSIBLE TANZANIAN FORMULATION. WE AGREED I WOULD
 NOT CALL YOU BACK UNLESS YOUR PROPOSAL WAS NOT RPT NOT ACCEPTABLE.

2. FOR THE RECORD THE UNDER-SECRETARY HAS AGREED WITH YOUR
 VIEWS AND FAVOURS CANADA'S VOTING AGAINST THE RESOLUTION AS A
 WHOLE IN THE CIRCUMSTANCES PREDICATED.

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SIG.....
 A. N. ROBERTSON - jag

LEGAL

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SIG..... A. E. GOTLIEB.....
 A. E. GOTLIEB

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FM CANDELNY OCT20/66 RESTR

TO EXTERNL 2124 PRIORITY

REF OURTELS 2025 OCT14 AND 2060 OCT18

21ST UNGA 6TH CTTEE ITEM84:ILC REPORT AND PROPOSED CONFERENCE ON LAW OF TREATIES

COSPONSORS OF RESLN L596(PARTIAL TEXT IN OURTEL2025)DECIDED TODAY TO PUT IN A REVISION OF PARA4.INVITES STATES MEMBERS OF UN STATES MEMBERS OF SPECIALIZED AGENCIES STATES PARTIES TO STATUTE OF ICJ AND STATES THAT UNGA DECIDES SPECIALLY TO INVITE TO PARTICIPATE IN CONFERENCE.5.INVITES STATES REFERRED TO IN PARA4 ABOVE TO SEND DELS OF SUFFICIENT SIZE TO ENSURE REPRESENTATION IN TWO MAIN CTTEES OF CONFERENCE AND TO INCLUDE AMONG THEIR REPS EXPERTS COMPETENT IN FIELD TO BE CONSIDERED UNQUOTE.REMAINING PARAS WILL BE RENUMBERED ACCORDINGLY.

2.REASON FOR THIS REVISION IS AS FOLLOWS.ORIGINAL PARA4 DEALT WITH TWO SEPARATE MATTERS-(1)DEFINITION OF STATES TO BE INVITED TO CONFERENCE AND(2)PROPOSAL THAT CONFERENCE OPERATE IN TWO MAIN CTTEES OF WHOLE RATHER THAN ONE CTTEE OF WHOLE.USSR AND OTHERS HAD SUBMITTED AMENDMENT L598(QUOTED IN OURTEL2060)WHICH WOULD REPLACE PARA4 BY A SIMPLE ALL-STATES INVITATION FORMULA.WE DOUBT THAT USSR REALLY INTENDED TO OPPOSE THAT PART OF OUR ORIGINAL PARA4 WHICH PROVIDED FOR TWO MAIN CTTEES.BY DIVIDING PARA4 INTO TWO SEPARATE PARAS IT WILL BE EASIER FOR SIXTH CTTEE TO DEAL QUITE SEPARATELY WITH TWO QUESTIONS-QUESTION OF INVITATION FORMULAS AND QUESTION OF ONE VERSUS TWO CTTEES.SOME DELS PREFER TO HAVE ONE CTTEE OF WHOLE RATHER THAN

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PAGE TWO 2124 RESTR

TWO BUT THIS DIFFERENCE OF OPINION IS NOT RPT NOT POLITICAL IN
CHARACTER AND HAS NOTHING TO DO WITH HIGHLY POLITICAL QUESTION OF
ALL-STATES FORMULA.

Roberts

File J



QUEEN'S UNIVERSITY
KINGSTON, ONTARIO

FACULTY OF LAW

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see file packet for
October 20, 1966 *enclosures*

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Mr. Allan Gottlieb, Head
Legal Division
Department of External Affairs
Room 120, Daly Building
OTTAWA, Canada

Dear Allan:

I enclose copies of materials prepared by the
American Society of Law Study Group on the ILC draft
of the Law of Treaties.

I hope these will be of help to you and to Ron
Robertson.

Best personal regards.

Yours sincerely,

[Handwritten signature]

Hugh J. Lawford

HJL/sw
Encl.

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Robertson
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FM CANDELNY OCT13/66

TO EXTERNL 2060 PRIORITY

REF OURTEL2025 OCT14

21ST UNGA 6TH CTTEE ITEM84 ILC REPORT AND PROPOSED CONFERENCE ON
LAW OF TREATIES

RESLV QUOTED IN REFTEL IS L596. FOLLOWING AMENDMENT(L598) HAS BEEN
TABLED BY CZECHOSLOVAKIA POLAND AND USSR. L598 WOULD REPLACE PARA4
OF L596 BY FOLLOWING: QUOTE INVITES ALL STATES TO SEND DELS TO
PARTICIPATE IN WORK OF CONFERENCE UNQUOTE.

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TO EXTERNL 2047 PRIORITY

21ST UNGA: 6TH CTTEE: ITEM 84: REPORTS OF ILC: DRAFT RESLN RELATING TO MATTERS OTHER THAN LAW OF TREATIES CONFERENCE

AT REQUEST OF LEGAL COUNSEL CDA JOINED WITH BRAZIL CHILA INDIA MEXICO NIGERIA AND YUGOSLAVIA IN SPONSORING NONCONTROVERSIAL RESLN W/C. 6/L. 597 OPERATIONAL PARAS OF WHICH READ AS FOLLOWS:

TEXT BEGINS:

1. TAKES NOTE OF REPORT OF INTERNATL LAW COMMISSION ON SECOND PART OF ITS SEVENTEENTH SESSION AND OF CHAPTERS I, III AND IV OF REPORT ON ITS EIGHTEENTH SESSION;

2. EXPRESSES APPRECIATION TO INTERNATL LAW COMMISSION FOR WORK IT HAS ACCOMPLISHED;

3. NOTES WITH APPROVAL PROGRAMME OF WORK FOR 67 PROPOSED BY COMMISSION IN CHAPTER IV OF REPORT ON ITS EIGHTEENTH SESSION;

4. RECOMMENDS THAT INTERNATL LAW COMMISSION SHOULD:

(A) CONTINUE WORK OF CODIFICATION AND PROGRESSIVE DEVELOPMENT OF INTERNATL LAW RELATING TO SPECIFIC ^{IAL} MISSIONS TAKING INTO ACCOUNT VIEWS EXPRESSED AT TWENTYFIRST SESSION OF UNGA AND COMMENTS WHICH MAY BE SUBMITTED BY GOVTS WITH OBJECT OF PRESENTING A FINAL DRAFT ON TOPIC IN REPORT ON WORK OF ITS NINETEENTH SESSION

(B) CONTINUE ITS WORK ON SUCCESSION OF STATES AND GOVTS. STATE RESPONSIBILITY AND RELATIONS BETWEEN STATES AND INTERGOVTL ORGANIZATIONS TAKING INTO ACCOUNT VIEWS AND CONSIDERATIONS REFERRED TO IN

UNGA RESOLN 1765 (XVII) AND 1902 (XVIII):

PAGE TWO 2047

5. EXPRESSES WISH THAT IN CONJUNCTION WITH FUTURE SESSIONS OF INTERNATIONAL LAW COMMISSION OTHER SEMINARS BE ORGANIZED WHICH SHOULD CONTINUE TO ENSURE PARTICIPATION OF A REASONABLE NUMBER OF NATIONALS FROM DEVELOPING COUNTRIES;

6. REQUESTS SEC GEN TO FORWARD TO INTERNATIONAL LAW COMMISSION RECORDS OF DISCUSSIONS AT TWENTYFIRST SESSION OF UNGA ON REPORTS OF COMMISSION.

TEXT TNDS

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Mr. Miller
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PM CANDELNY OCT14/66

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21ST UNGA-6TH CTTEE: ITEMS 4: ILC REPORT AND PROPOSED CONFERENCE ON
LAW OF TREATIES

FOLLOWING IS TEXT OF OPERATIONAL PARAS OF RESLN Tabled TODAY OF
WHICH CDA IS ONE OF SPONSORS: BEGINS:

1. EXPRESSES ITS APPRECIATION TO INTERNATL LAW COMMISSION FOR ITS VALUABLE WORK ON LAW OF TREATIES AND TO SPECIAL RAPORTEURS FOR THEIR CONTRIBUTION TO THIS WORK
2. DECIDES THAT AN INTERNATL CONFERENCE OF PLENIPOTENTIARIES SHALL BE CONVENED TO CONSIDER LAW OF TREATIES AND TO EMBODY RESULTS OF ITS WORK IN AN INTERNATL CONVENTION AND SUCH OTHER INSTRUMENTS AS IT MAY DEEM APPROPRIATE
3. REQUESTS SECCEN TO CONVOKE CONFERENCE EARLY IN 1968 AT(PLACE) AND IF IT IS NECESSARY TO CONVOKE A SECOND SESSION OF CONFERENCE EARLY IN 1969 AT(PLACE)
4. INVITES STATES MEMBERS OF UN STATES MEMBERS OF SPECIALIZED AGENCIES STATES PARTIES TO STATUTE OF INTERNATL COURT OF JUSTICE AND STATES THAT UNGA DECIDES SPECIALLY TO INVITE TO PARTICIPATE IN CONFERENCE TO SEND DELEGATIONS OF SUFFICIENT SIZE TO ENSURE REPRESENTATION IN TWO MAIN CTTEES OF CONFERENCE AND TO INCLUDE AMONG THEIR REPS EXPERTS COMPETENT IN FIELD TO BE CONSIDERED
5. INVITES SPECIALIZED AGENCIES AND INTERESTED INTERGOVTL ORGANIZATIONS TO SEND OBSERVERS TO CONFERENCE
6. REFERS TO CONFERENCE DRAFT ARTICLES IN CHAPTER II OF REPORT OF

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PAGE TWO 2025

INTERNATL LAW COMMISSION COVERING WORK OF ITS EIGHTEENTH SESSION
AS BASIC PROPOSAL FOR ITS CONSIDERATION

7. REQUESTS SEC GEN TO PRESENT TO CONFERENCE ALL RELEVANT DOCUMENTATION
AND RECOMMENDATIONS RELATING TO ITS METHODS OF WORK AND PROCEDURES
AND TO ARRANGE FOR NECESSARY STAFF AND FACILITIES WHICH WILL BE
REQUIRED FOR CONFERENCE INCLUDING SUCH EXPERTS AS MAY BE NECESSARY

8. REQUESTS INTERNATL LAW COMMISSION TO RECOMMEND TO CONFERENCE WHAT
PORTIONS OF DRAFT ARTICLES SHOULD BE REFERRED TO ITS FIRST CTTEE
AND WHAT PORTIONS TO ITS SECOND CTTEE

9. INVITES MEMBER STATES TO SUBMIT THEIR WRITTEN COMMENTS AND
OBSERVATIONS ON FINAL DRAFT ARTICLES CONCERNING LAW OF TREATIES
PREPARED BY INTERNATL LAW COMMISSION NOT RPT NOT LATER THAN
JULI/67 RPT JULI/67

10. REQUESTS SEC GEN TO CIRCULATE SUCH COMMENTS SO AS TO FACILITATE
DISCUSSION OF SUBJECT AT TWENTYSECOND SESSION OF UNGA

11. DECIDES TO INCLUDE AN ITEM ENTITLED QUOTE LAW OF TREATIES UNQUOTE
IN PROVISIONAL AGENDA OF ITS TWENTYSECOND SESSION WITH A VIEW TO
FURTHER DISCUSSION OF DRAFT ARTICLES IN ORDER TO FACILITATE CONCL-
USION OF A CONVENTION ON LAW OF TREATIES AT PLENIPOTENTIARIES
CONFERENCE CONVENED BY PRESENT RESLN. ENDS.

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TO EXTERNL 2020 PRIORITY
REF YOURTEL L765 OCT14

21ST UNGA:6TH CTTEE:ITEM84:ILC REPORT AND PROPOSED CONFERENCE
ON LAW OF TREATIES

THANK YOU FOR AUTHORITY TO SPONSOR RESLN QUOTED IN OURTEL 1978
OCT12.THERE WERE UNEXPECTED DEVELOPMENTS LATE OCT13 AND THIS MORNING
AS RESULT OF WHICH TEXT OF RESLN HAS BEEN MODIFIED.IT WAS TABLED
TODAY BY CDA UK ARGENTINA URUGUAY CHANA AND NIGERIA.OPERATIONAL PARAS
OF RESLN AS TABLED ARE GIVEN IN SEPARATE TEL.AS CHANGES WERE NOT
RPT NOT VITAL WE CONSIDERED IT UNNECESSARY TO SEEK RENEWED AUTHORITY
FROM YOU BEFORE JOINING IN TABLING.

2.LATE YESTERDAY UK WHICH HAD PREVIOUSLY NOT RPT NOT WISHED TO
BE A SPONSOR DECIDED TO BE ONE.AT SAME TIME URUGUAYAN DEL WITHOUT
CONSULTING ANY OTHER DEL TABLED A RESLN(A/C.6/L.595)WHICH CONTAINED
AN ALL-STATES CLAUSE CAME OUT FOR A ONE-STAGE CONFERENCE MADE NO
RPT NO PROVISION FOR A SUBSTANTIVE DEBATE AT 22ND UNGA AND IN GENERAL
WAS BASED ON IGNORANCE OF PRECEDENTS.THIS MORNING UK REPRESENTING
SPONSORS OF RESLN AS DRAFTED BY SECRETARIAT HAD LENGTHY DISCUSSION
WITH URUGUAY DEL(YOURTEL HAD NOT RPT NOT YET ARRIVED AND THEREFORE
WE DID NOT RPT NOT PARTICIPATE).IN END THEY PERSUADED HIM TO WITHDRAW
HIS RESLN IN RETURN FOR US MAKING FOLLOWING CHANGES IN OUR DRAFT:
(1)INSTEAD OF RESLN SAYING DEFINITELY THAT CONFERENCE WILL BE IN
TWO PARTS IT SAYS QUOTE SECGEN TO CONVOKE CONFERENCE EARLY IN 1968
AT(PLACE)AND IF IT IS NECESSARY TO CONVOKE SECOND SESSION OF

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PAGE TWO 2020 CONFD

CONFERENCE EARLY IN 1969 UNQUOTE. THIS IS SLOPPY WORDING AND WE EXPECT LEGAL COUNSEL WILL CRITICIZE IT DURING DEBATE THEREBY PERHAPS BRINGING ABOUT A CLARIFICATION OF WORDING. SECRETARIAT MUST KNOW WHAT TO PLAN FOR. (2) ADD FOLLOWING PHRASE TO OUR INVITATION CLAUSE QUOTE AND STATES THAT UNGA DECIDES SPECIALLY TO INVITE UNQUOTE. THIS IS UNPRECEDENTED AND IRRATIONAL ADDITION TO A UNGA RESLN SETTING UP A CONFERENCE BUT IT DOES NO RPT NO GREAT HARM BECAUSE IT HAS ALWAYS BEEN THEORETICALLY OPEN TO ANY DEL TO MOVE (BY RESLN OR BY AMENDMENT) TO INVITE A SPECIFIC NAMED STATE (NOT RPT NOT OTHERWISE ELIGIBLE) TO A CONFERENCE. USA DEL AGREED THAT WE COULD LIVE WITH THIS FORMULA AND THAT IT IS WORTHWHILE TO PAY THIS PRICE FOR WITHDRAWAL OF A URUGUAYAN RESLN THAT UNCONDITIONALLY INVITED QUOTE ALL STATES UNQUOTE. IT WILL BE PAINFUL ENOUGH TO DEFEAT ALL-STATES PROPOSALS THAT WILL NO RPT NO DOUBT BE OFFERED BY COMMUNIST OR ASIAN DELS WITHOUT HAVING AT SAME TIME TO DEFEAT A URUGUAYAN ALL-STATES RESLN.

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Mr. Parry
Mr. Wershof
Dept. of Justice
Legal Div. (Mr. Miller & Mr. Robertson)

UN69

PRESS RELEASE GA/L/1124
TWENTY-FIRST GENERAL ASSEMBLY - SIXTH COMMITTEE, 910TH MEETING (N)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE CONTINUES WORK ON REPORTS OF G INTERNATIONAL LAW COMMISSION

CONTINUING DISCUSSION OF THE INTERNATIONAL LAW COMMISSION REPORTS ON THE DRAFT ARTICLES OF A LAW OF TREATIES, THE SIXTH COMMITTEE (LEGAL) TODAY HEARD STATEMENTS BY THE REPRESENTATIVES OF UGANDA, BULGARIA, SOVIET UNION, UNITED STATES, CYPRUS AND FRANCE.

F.K. ISINGOMA (UGANDA) SAID THAT, AS A REPRESENTATIVE OF A NEWLY INDEPENDENT STATE, HE ATTACHED GREAT IMPORTANCE TO THE CODIFICATION OF A LAW OF TREATIES, AS TREATIES WERE THE PRIMARY SOURCE OF INTERNATIONAL LAW.

HE HOPED THE INTERNATIONAL LAW COMMISSION (ILC) WOULD PAY DUE ATTENTION TO THE QUESTIONS OF THE MOST-FAVOURLED-NATION CLAUSE AND STATE SUCCESSION -- MATTERS OF GREAT IMPORTANCE TO THE FORMER DEPENDENCIES, WHICH WERE OFTEN OBLIGED TO SIGN TREATIES INTENDED TO BENEFIT THE COLONIAL POWERS AT THE EXPENSE OF THE COLONY, HE SAID. THESE QUESTIONS COULD THEN BE CONSIDERED AT THE PROPOSED CONFERENCE TO ADOPT A CONVENTION ON THE LAW OF TREATIES.

IN VIEW OF THE IMPORTANCE OF THE SUBJECT, UGANDA FAVOURED HOLDING THE CONFERENCE IN TWO STAGES, THE FIRST TO BE HELD IN 1968, AND THE SECOND STAGE A YEAR LATER. THE PRINCIPLES OF UNIVERSALITY AND EQUITABLE GEOGRAPHICAL DISTRIBUTION SHOULD BE FOLLOWED IN CONNEXION WITH THE CONFERENCE, HE SAID.

IN CONCLUSION, HE COMMENDED THE ILC FOR HOLDING AN INTERNATIONAL LAW SEMINAR AND URGED THAT THE NUMBER OF PARTICIPANTS FROM DEVELOPING COUNTRIES BE INCREASED AT FUTURE SEMINARS.

VIEWS OF BULGARIA

ALEXANDER YANKOV (BULGARIA) NOTED WITH SATISFACTION THAT THE BASIS ON WHICH THE DRAFT ARTICLES HAD BEEN WRITTEN WAS THE FUNDAMENTAL CONCEPT OF THE FREE WILL OF PARTIES TO EXPRESS THEIR CONSENT IN CONCLUDING TREATIES. HE PRAISED THE "NEW AND FLEXIBLE" PROVISIONS ON RESERVATIONS AND SUSPENSION OF TREATIES IN CONFLICT WITH PEREMPTORY NORMS OF GENERAL INTERNATIONAL LAW.

MORE

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PAGE 2-- PRESS RELEASE GA/L/1124

THE FUNDAMENTAL PRINCIPLE OF UNIVERSAL ACCESSION OF ALL STATES TO GENERAL MULTILATERAL TREATIES MUST BE EMBODIED IN THE LAW OF TREATIES, HE WENT ON, AND ANY DISCRIMINATION REGARDING THE TREATY-MAKING RIGHT OF ANY STATE WAS CONTRARY TO MODERN RULES OF INTERNATIONAL LAW.

HE REGRETTED THAT IN THE TEXT, THERE WERE NO PROVISIONS RELATING TO SUCCESSION OF STATES AND TO UNEQUAL TREATIES LEFT OVER FROM THE TIME OF COLONIALISM.

THE PRINCIPLE OF GOOD FAITH SHOULD ALWAYS BE APPLIED TO TREATY-MAKING, MR. YANKOV CONTINUED. INFRINGEMENTS OF TREATY OBLIGATIONS LAY AT THE ROOT OF DANGEROUS CONFLICTS WHICH THREATENED THE WORLD TODAY. THE UNITED STATES GOVERNMENT, HE ADDED, HAD PERSISTENTLY VIOLATED ARTICLES 1 AND 2 OF THE UNITED NATIONS CHARTER AND HAD INFRINGED ON THE GENEVA ACCORDS REGARDING VIET-NAM.

PARTICULAR IMPORTANCE MUST BE GIVEN TO UNIVERSAL PARTICIPATION IN THE PROPOSED CONFERENCE, MR. YANKOV SAID. THE KEEN INTEREST OF MANY COUNTRIES OUTSIDE THE MEMBERSHIP OF THE UNITED NATIONS, AS EVIDENCED BY THEIR CONTINUING PARTICIPATION IN NUMEROUS INTERNATIONAL AGREEMENTS, COULD NOT BE NEGLECTED.

HIS DELEGATION PREFERRED A SINGLE CONFERENCE TO BE HELD IN EUROPE, NOT EARLIER THAN THE FIRST QUARTER OF 1968.

INTERVENTION MADE

HECTOR PAYSSÉ KEYES (URUGUAY) INTERVENED TO CLARIFY THE WORDING OF THE ENGLISH TEXT OF A DRAFT RESOLUTION ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION (DOC.A/C.6/L.594) WHICH HE SUBMITTED YESTERDAY. HE ADDED THAT IN THE LIGHT OF AN IMPROVED DRAFT RESOLUTION ON THE DRAFT ARTICLES ON THE LAW OF TREATIES, WHICH WOULD SOON BE INTRODUCED IN THE COMMITTEE, HE WOULD WITHDRAW THE DRAFT RESOLUTION ON THAT SUBJECT (DOC.A/C.6/L.595) WHICH HE INTRODUCED YESTERDAY.

STATEMENT OF SOVIET UNION

O.N. KHLESTOV (SOVIET UNION) SAID THAT, ALTHOUGH IT WOULD BE THE WORK OF THE CONFERENCE TO SHORTEN THE DRAFT ARTICLES AND DELETE THE MERELY DESCRIPTIVE PROVISIONS, IT WAS THE TASK OF THE SIXTH COMMITTEE TO CONSIDER THE FUNDAMENTAL MATTERS RELATING TO THE PREPARATION FOR THE CODIFICATION OF THE LAW OF TREATIES.

MORE

PAGE 3-- PRESS RELEASE GA/L/1124

IN HIS VIEW, THERE WERE TWO TENDENCIES IN MODERN INTERNATIONAL LAW; THE TREND, SUPPORTED BY HIS DELEGATION, TOWARDS STRICT OBSERVANCE OF THE SET PRINCIPLES OF INTERNATIONAL LEGALITY AND JUSTICE; AND THE VIEW HELD BY THE "IMPERIALIST STATES" WHICH UPHELD "VIOLATIONS OF INTERNATIONAL LAW, THE USE OF FORCE, AND THE IMPOSITION OF UNEQUAL TREATIES ON OTHER STATES".

TURNING TO SPECIFIC PROVISIONS IN THE DRAFT ARTICLES, MR. KHLESTOV SUGGESTED THAT THE PROVISIONS DEALING WITH OBLIGATIONS OF STATES TO OBSERVE TREATIES IN GOOD FAITH SHOULD BE STRENGTHENED, SO THAT LEGAL NORMS COULD BE DEVELOPED REGARDING THE STRICT OBSERVANCE OF ALL TREATIES.

THE PRINCIPLE OF THE NULLITY OF TREATIES WHICH WERE IN CONFLICT WITH PEREMPTORY NORMS OF INTERNATIONAL LAW WAS THE "BACK-BONE" OF THE LAW OF TREATIES, HE SAID. TREATIES MUST REFLECT THE NORMS ESTABLISHED IN THE UNITED NATIONS CHARTER.

UNEQUAL AND ONE-SIDED TREATIES CONTRARY TO THE PRINCIPLE OF THE SOVEREIGN EQUALITY OF ALL STATES SHOULD BE NULL AND VOID NO MATTER WHEN THEY WERE CONCLUDED, HE ADDED, AND A NEW SPECIFIC ARTICLE PROVIDING FOR NULLITY OF ANY TREATY CONCLUDED IN VIOLATION OF THE PRINCIPLES OF THE UNITED NATIONS CHARTER SHOULD BE INCLUDED IN THE DRAFT ARTICLES. THE VIEW OF THE "IMPERIALIST STATES" THAT THIS PRINCIPLE DID NOT APPLY TO TREATIES CONCLUDED BEFORE THE CHARTER WAS ADOPTED, WAS NOT COMPATIBLE WITH ARTICLE 103 OF THE CHARTER.

ON THE QUESTION OF PARTICIPATION IN THE PROPOSED CONFERENCE, MR. KHLESTOV ASKED HOW A LAW OF TREATIES, WHICH SHOULD BE OBSERVED BY ALL STATES, COULD BE PREPARED IF CERTAIN STATES WERE EXCLUDED FROM PARTICIPATION IN ITS CODIFICATION. JURISTS SHOULD NOT ALLOW ELEMENTS OF THE COLD WAR TO BE INTRODUCED INTO THE SPHERE OF INTERNATIONAL LAW.

SINCE PARTICIPATION OF STATES IN TREATIES DID NOT NECESSARILY IMPLY RECOGNITION OF THOSE STATES BY OTHER STATES PARTIES TO THE TREATIES, THERE WAS NO JURIDICAL OR LOGICAL BASIS FOR ANY PROPOSAL AGAINST UNIVERSAL PARTICIPATION IN GENERAL MULTILATERAL TREATIES, HE STATED.

THE SOVIET DELEGATION SUPPORTED THE VIEW THAT LEGAL NORMS REGARDING STATES SUCCESSION SHOULD BE DRAFTED IN THE INTERESTS OF THE DEVELOPING COUNTRIES.

HE SUGGESTED THAT GOVERNMENTS PREPARE FOR A CAREFULLY CONSTRUCTED PREPARATORY PHASE OF THE CONFERENCE SO THAT IT COULD BE SHORTER, HELD IN A SINGLE SESSION, AND MEET WITH GREATER SUCCESS. IT SHOULD BE HELD IN EUROPE, HE ADDED.

MORE

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COMMENTS OF UNITED STATES

HARDING F. BANCROFT (UNITED STATES) SAID HIS GOVERNMENT FAVOURED THE HOLDING OF A CONFERENCE IN TWO SESSIONS, THE FIRST TO BE HELD IN THE SPRING OF 1968, AND THE SECOND A YEAR LATER, IN ORDER TO FURTHER ITS PRODUCTIVITY AND ULTIMATE SUCCESS. HE SUGGESTED THAT THE DIVISION OF WORK BE IN TWO MAIN COMMITTEES OF THE WHOLE.

BECAUSE OF COST CONSIDERATIONS, MR. BANCROFT RECOMMENDED THAT THE CONFERENCE NOT BE HELD AWAY FROM UNITED NATIONS HEAD-QUARTERS IN NEW YORK, UNLESS ARRANGEMENTS COULD BE MADE TO ELIMINATE ANY EXTRA EXPENSE TO THE UNITED NATIONS.

HE EXPRESSED HIS DELEGATIONS "STRONG AGREEMENT" WITH THOSE WHO PROPOSED THAT PARTICIPATION IN THE CONFERENCE BE DETERMINED IN ACCORDANCE WITH THE FORMULA ADOPTED FOR PREVIOUS CODIFICATION CONFERENCES.

ALTHOUGH IT WAS IMPORTANT THAT THE GENERAL ASSEMBLY, DURING ITS PRESENT SESSION, RESOLVE THE QUESTIONS OF TIME, PLACE AND ORGANIZATION OF THE CONFERENCE, HE SUGGESTED THAT THE DETERMINATION OF THE RULES OF PROCEDURE BE DECIDED BY THE CONFERENCE ITSELF WHEN IT BEGAN ITS WORK.

VIEWS OF CYPRUS

ANDREAS JACOVIDES (CYPRUS) CALLED THE SYSTEMATIZATION OF THE LAW OF TREATIES BY THE ILC A "REMARKABLE ACHIEVEMENT". THE NEXT STEP WAS FOR STATES, INCLUDING "NEW STATES", TO ADOPT A FINAL CONVENTION.

HE SAID THAT, BY EXCLUDING FROM THE DRAFT ARTICLES TREATIES NOT CONCLUDED BY STATES, THE COMMISSION HAD TAKEN "THE LINE OF LEAST RESISTANCE".

THE ARTICLES REFLECTING THE RULE THAT A TREATY DID NOT CONTRACT RIGHTS AND OBLIGATIONS FOR A THIRD STATE WITHOUT ITS CONSENT, AND THOSE PROVIDING FOR NULLITY OF TREATIES CONTRACTED IN VIOLATION OF PEREMPTORY NORMS OF INTERNATIONAL LAW, HE STATED, WERE IMPORTANT STEPS WHICH SHOULD BE PRESERVED AND STRENGTHENED.

THE PRINCIPLE PROVIDING FOR TERMINATION OF A TREATY AS A RESULT OF FUNDAMENTAL CHANGES IN THE CIRCUMSTANCES UNDER WHICH THE TREATY HAD BEEN CONCLUDED PROVIDED AN "ESSENTIAL SAFETY VALVE", WITHOUT WHICH, HE SAID, AN AGGRIEVED PARTY WOULD HAVE NO ALTERNATIVE BUT TO SEEK RECOURSE OUTSIDE THE LAW.

IN HIS DELEGATIONS VIEW, THE SPRING OF 1968 WOULD BE AN APPROPRIATE TIME FOR HOLDING THE CONFERENCE. MR. JACOVIDES SUGGESTED THAT, MEANWHILE, EVERY EFFORT SHOULD BE MADE TO TRY TO IRON OUT CONFLICTING VIEWS. HE SUGGESTED THAT THE CONFERENCE BE HELD IN GENEVA.

MORE

PAGE 5-- PRESS RELEASE GA/L/1124

STATEMENT OF FRANCE

ROGER JEANNEL (FRANCE) SAID THE DRAFT ARTICLES WERE A SOUND, CONSTRUCTIVE AND VALUABLE ATTEMPT AT CODIFICATION, CAPABLE OF MAKING A PROFOUND CONTRIBUTION TO THE BUILDING OF INTERNATIONAL LAW.

THE FRENCH DELEGATION COULD NOT UNDERSTAND, HOWEVER, WHY THE ARTICLES HAD RESTRICTED THE APPLICATION OF SOME GENERALLY ACCEPTED NORMS OF INTERNATIONAL LAW TO CERTAIN CLAUSES AND CERTAIN TREATIES, HE SAID.

AS THE PRINCIPLES EMBODIED IN THE UNITED NATIONS CHARTER VARIED IN THEIR BINDING FORCE ON STATES, HE DID NOT AGREE WITH THE NOTION THAT THESE PRINCIPLES COULD SERVE AS AN ADEQUATE BASIS FOR A DEFINITION OF "PEREMPTORY NORMS OF INTERNATIONAL LAW". THE QUESTION OF WHETHER A CONVENTION ON THE LAW OF TREATIES COULD BE DRAWN UP IN A "CLASSIC-TYPE CONFERENCE" WAS ESPECIALLY IMPORTANT, SINCE CERTAIN PROVISIONS MIGHT LEAD TO CHANGES IN THE UNITED NATIONS CHARTER. IT WAS ALSO IMPORTANT, HE ADDED, THAT YOUNGER COUNTRIES HAD AMPLE TIME TO STUDY HOW COMPATIBLE THEIR NATIONAL CONSTITUTIONS WOULD BE WITH THE PROPOSED NEW LAW.

TURNING TO THE QUESTION OF STATES RESERVATIONS TO TREATIES, HE SAID THEIR USE SHOULD BE LIMITED. HE NOTED WITH SATISFACTION THAT COMMENTS REGARDING RESERVATIONS IN THE DRAFT ARTICLES CONCERNED MULTILATERAL TREATIES ONLY.

PROVISIONS REGARDING SPECIAL MISSIONS, MR. JEANNEL SAID, SHOULD BE INCLUDED IN A TREATY SEPARATE FROM THE VIENNA CONVENTION ON DIPLOMATIC AND CONSULAR RELATIONS.

IN CONCLUSION, HE SUGGESTED THAT IF A CONFERENCE WERE TO BE HELD, THE DIFFERING VIEWS OF GOVERNMENTS SHOULD BE RECONCILED BY DISCUSSING THE SUBSTANCE OF THE DRAFT ARTICLES NEXT YEAR IN THE SIXTH COMMITTEE, RATHER THAN THROUGH WRITTEN SUBMISSIONS OF GOVERNMENTS VIEWS. THE LATTER PROCESS, HE SAID, WOULD ONLY CRYSTALLIZE DIFFERENCES.

THE COMMITTEE WILL MEET AGAIN AT 3PM MONDAY, 17 OCTOBER, TO CONTINUE ITS DISCUSSION ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION.

-HS1201A 14 OCT 66



SEEN BY THE MINISTER

RESTRICTED

October 13, 1966

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MEMORANDUM FOR THE MINISTER

All also 24-12-7-21st -6th

Proposed Conference on the Law of Treaties

Mr. Wershof has asked for authority to sponsor a Resolution on this subject in the 6th Committee.

2. The 6th Committee is at present considering 21st UNGA Agenda Item 84, the Reports of the International Law Commission. Undoubtedly the single most important aspect of the I.L.C.'s Reports is a recommendation that, since it has now completed its work on the Law of Treaties, the General Assembly "should convene an international conference of plenipotentiaries to study the Commission's draft articles on the Law of Treaties and to conclude a conference on the subject". The Law of Treaties is of such fundamental importance, and the subject is one which has for so long received the attentions of the Commission, that the outcome of any such conference will clearly have a profound effect not only on the Commission itself and on its work thereafter but also on inter-state relationships generally and on further efforts towards the codification and progressive development of international law. If such a conference is to be convened early in 1968 (the date recommended by both the Commission and Secretariat) certain decisions will have to be taken in the 6th Committee this year.

3. At the urging of the Secretariat and various other delegations Canada, after consultation within the W.E.O. group, spoke early in the Debate, with the express intention of pointing out "those matters on which, in the view of the Canadian Delegation, it is important that the 6th Committee and the General Assembly come to a decision this year". The Canadian intervention concluded by noting that, "in indicating what Canada's own preferences would be...it has not been our intention to suggest...that we have strong feelings about the particular alternatives we favour. We do want a conference, and we hope it can be convened early in 1968. But on most of the points of detail...we are quite prepared to go along with the wishes of the majority of this Committee". The Canadian speech would appear to have been well received.



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4. The Secretariat (and also both the U.K. and U.S.A. delegations) has now asked the Canadian Delegation whether Canada (perhaps in company with Mexico and Nigeria) would be prepared to sponsor a draft resolution, which the Secretariat has prepared, aimed at setting up such conference. The operative paragraphs are set out in CANDELINNY telegram No. 1978 of October 12 (copy attached). Authorization to sponsor is required by Mr. Wershof on Friday a.m., October 14, since the debate on this subject is scheduled to close on October 24 and the resolution should therefore be tabled this weekend.

5. The resolution is along the lines suggested in the Canadian speech and favours a two-stage conference, the committee stage of which would be convened in Geneva early in 1968 (to work in two committees of the whole) while the final stage would take place there early in 1969.

6. There are three matters in the draft resolution likely to engender further discussion. First, some of the developing states might prefer, if not a one-stage conference, at least one in which the committee stage be restricted to a single committee of the whole since, though this would necessitate a much longer committee stage, it would perhaps make possible the sending of smaller delegations. (Operative paragraph 4 of draft resolution refers.) Second, the Soviet Bloc will undoubtedly oppose the inclusion of the customary United Nations formula limiting participation in the proposed conference to "states members of the United Nations, states members of the specialized agencies and states parties to the statutes of the International Court of Justice". (Operative paragraph 4 of draft resolution also refers.) They will instead try for an "all states" formulation but they will certainly receive little or no support and the customary formula should easily prevail in the vote. Finally, last year's UNGA Resolution 2116 (XX) recommended that the United Nations should limit major conferences to one per year. This resolution is to be discussed in the 5th Committee later this session further to a report of a special committee on problems of a budgetary nature, under Agenda Item 75. While a conference on Human Rights is already scheduled for the summer of 1968 the Secretariat (and almost all western and other states) believes that the conference on the Law of Treaties should also be held in 1968, especially since no guidelines relating to the implementation of Resolution 2116 (XX) have yet been drawn up. Officials in our Department of Finance do not oppose this.

7. I therefore recommend that the Canadian Delegation be authorized to sponsor the draft resolution to convene a conference on the Law of Treaties. I attach a telegram to the delegation, to this effect, for release, if you agree.

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21ST UNGA:6TH CTTEE:ITEM#4:ILC REPORT AND PROPOSED CONFERENCE ON
LAW OF TREATIES

FOR GOTLIEB LEGAL DIV FM WERSHOF

FOLLOWING ARE OPERATIVE PARAS OF DRAFT RESLN REFERRED TO IN OUR
TELECON TODAY. TEXT BEGINS:

1. EXPRESSES ITS APPRECIATION TO INTERNATL LAW COMMISSION FOR ITS VALUABLE WORK ON LAW OF TREATIES;
2. DECIDES THAT AN INTERNATL CONFERENCE OF PLENIPOTENTIARIES SHALL BE CONVENED TO CONSIDER LAW OF TREATIES AND TO EMBODY RESULTS OF ITS WORK IN AN INTERNATL CONVENTION AND SUCH OTHER INSTRUMENTS AS IT MAY DEEM APPROPRIATE;
3. REQUESTS SEC GEN TO CONVOKE FIRST PART OF CONFERENCE EARLY IN 1968 AT GNEVA AND SECOND PART OF CONFERENCE EARLY IN 1969 ALSO AT GNEVA.
4. INVITES STATES MEMBERS OF UN STATES MEMBERS OF SPECIALIZED AGENCIES AND STATES PARTIES TO STATUTE OF INTERNATL COURT OF JUSTICE TO PARTICIPATE IN CONFERENCE TO SEND DELEGATIONS OF SUFFICIENT SIZE TO ENSURE REPRESENTATION IN TWO MAIN CTTEES OF CONFERENCE TO INCLUDE AMONG THEIR REPS EXPERTS COMPETENT IN FIELD TO BE CONSIDERED AND IN SO FAR AS POSSIBLE TO SEND SAME REPS TO TWO PARTS OF CONFERENCE;
5. INVITES SPECIALIZED AGENCIES AND INTERESTED INTERGOVT ORGANIZATIONS TO SEND OBSERVERS TO CONFERENCE;
6. REFERS TO CONFERENCE DRAFT ARTICLES IN CHAP II OF REPORT OF INTERNATL LAW COMMISSION COVERING WORK OF ITS EIGHTEENTH SESSION TOGETHER WITH RECORDS OF RELEVANT DEBATES IN UNGA AS BASIS FOR ITS

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CONSIDERATION;

7. REQUESTS SEC GEN TO PRESENT TO CONFERENCE ALL RELEVANT DOCUMENTATION AND RECOMMENDATIONS RELATING TO ITS METHODS OF WORK AND PROCEDURES AND TO ARRANGE FOR NECESSARY STAFF AND FACILITIES WHICH WILL BE REQUIRED FOR CONFERENCE INCLUDING ASSISTANCE OF INTERNATL LAW COMMISSIONS SPECIAL RAPPORTEUR ON LAW OF TREATIES AND SUCH OTHER EXPERTS AS IT MAY DEEM NECESSARY;
8. REQUESTS INTERNATL LAW COMMISSION TO RECOMMEND TO CONFERENCE WHAT PORTIONS OF DRAFT ARTICLES SHOULD BE REFERRED TO ITS FIRST CTTEE AND WHAT PORTIONS TO ITS SECOND CTTEE;
9. EXPRESSES HOPE THAT CONFERENCE WILL BE FULLY ATTENDED;
10. CALLS UPON GOVTS OF STATES INVITED TO CONFERENCE TO UTILIZE TIME REMAINING BEFORE OPENING OF CONFERENCE FOR EXCHANGE OF VIEWS ON QUESTIONS INVOLVED IN PROGRESSIVE DEVELOPMENT AND CODIFICATION OF LAW OF TREATIES;
11. INVITES MEMBER STATES TO SUBMIT THEIR WRITTEN COMMENTS AND OBSERVATIONS ON FINAL DRAFT ARTICLES CONCERNING LAW OF TREATIES PREPARED BY INTERNATL LAW COMMISSION NOT RPT NOT LATER THAN JUNI/67;
12. REQUESTS SEC GEN TO CIRCULATE SUCH COMMENTS SO AS TO FACILITATE DISCUSSION OF SUBJECT AT 22ND SESSION OF UNGA;
13. DECIDES TO INCLUDE AN ITEM ENTITLED QUOTE LAW OF TREATIES UNQUOTE IN PROVISIONAL AGENDA OF ITS 22ND SESSION WITH A VIEW TO FURTHER DISCUSSION OF DRAFT ARTICLES IN ORDER TO FACILITATE CONCLUSION OF A CONVENTION ON LAW OF TREATIES AT PLENIPOTENTIARIES CONFERENCE CONVENED BY PRESENT RESLN. TEXT ENDS:

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NOTE TO OUR OFFICE: PLEASE ADVISE
NEW YORK TO BELIEVE FOLLOWING
TELEGRAM TO WASHINGTON AS SOON
AS POSSIBLE FRIDAY OCTOBER 14

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
OCT. 13, 1966	24-12-1-264 6th	
	31	SECRET

FM/DE	EXTERNAL OFFICE	NO	PRECEDENCE
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MONTHS 1978 and 1980 OCTOBER 12/66

SUB/SUJ

21st UNIA - 6TH OTHER; ITEM 84: ILS REPORT AND PROPOSED
CONFERENCE ON LAW OF TREATIES

FOLLOWING FOR WASHINGTON FROM CANADA:

YOU ARE AUTHORIZED TO SPONSOR DRAFT RESOLUTION ON THIS SUBJECT
PREPARED BY SECRETARIAT, EITHER ALONE OR WITH SUCH CO-SPONSORS AS MAY COME
FORWARD.

2. WHILE WE SEE NO REAL CONFLICT BETWEEN THE HOLDING OF SUCH
A CONFERENCE IN 1968 BECAUSE AS WELL AS ONE ON HUMAN RIGHTS AND BECAUSE AND
THE GUIDELINES SET OUT IN RESOLUTION 2236 (XX), CLEARLY 5TH COMMITTEE WILL
ALSO WISH TO CONSIDER THIS MATTER. IN PREPARING TO SPEAK TO THE RESOLUTION
YOU MAY FIND USEFUL IN PRESS RELEASE SO/21/506 AND CA/AD/502 OF OCTOBER 11/66,
WHICH QUOTE COMMENTS BY SECRETARY GENERAL ON BUDGET EXPENDITURES FOR 1967
AND QUOTE, PARTICULARLY PAGE SEVEN, REFERRING TO THE PROVISIONS UNDER SECTIONS
2, 3 and 20 FOR CONFERENCE SERVICES, AND PAGES NINE AND TEN, MENTIONING
FUTURE CONFERENCES IN THE LIGHT OF AGENDA ITEM 75.

3. IN INTRODUCING RESOLUTION YOU SHOULD ALSO STRESS, AS IN PRE-
LIMINARY PARA OF YOUR STATEMENT OF OCTOBER 6, THE FLEXIBILITY OF CANADIAN

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APPROACH ON MOST POINTS OF DETAIL. HOWEVER, WE WOULD CONSIDER IT COUNTER
PRODUCTIVE TO MAKE ANY SPECIFIC REFERENCE TO THE BEGIN QUOTE ALL STATES
END QUOTE QUESTION.

4. WITH REGARD TO ACTUAL TEXT OF DRAFT RESOLUTION, WE QUERY ONLY
JUNE 1ST HEADLINE IN OPERATIVE PARA 11 AND WOULD PREFER THAT A JULY OR
AUGUST HEADLINE BE SUBSTITUTED.

Mr. PARRY
Mr. Wershof
Legal Div. (Mr. Caller & Mr. Robertson)
Dept. of Justice

20-3-1-6

UN62

PRESS RELEASE GA/L/1123
TWENTY-FIRST GENERAL ASSEMBLY
SIXTH COMMITTEE, 909TH MEETING (PM)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE HEARS FIVE STATEMENTS ON REPORTS
OF INTERNATIONAL LAW COMMISSION

THE SIXTH COMMITTEE (LEGAL) THIS AFTERNOON HEARD STATEMENTS BY THE REPRESENTATIVES OF CHINA, ISRAEL, URUGUAY, BOLIVIA AND THE DEMOCRATIC REPUBLIC OF THE CONGO, IN THE CONTINUING DEBATE ON THE REPORTS ON THE WORK OF THE INTERNATIONAL LAW COMMISSION (ILC).

SHELDON S.D. CHENG (CHINA) CALLED THE ACCOMPLISHMENT OF THE INTERNATIONAL LAW COMMISSION IN DRAFTING ARTICLES ON THE LAW OF TREATIES "A GREAT STEP FORWARD" TOWARDS PROGRESSIVE CODIFICATION OF INTERNATIONAL LAW. THE PRINCIPLE THAT NATIONS SHOULD FAITHFULLY CARRY OUT THEIR CONTRACTUAL OBLIGATIONS WAS FUNDAMENTAL, BUT IT SHOULD NOT BE CONSTRUED IN SUCH A WAY AS TO RULE OUT THE POSSIBILITY THAT CERTAIN FUNDAMENTAL CHANGES IN THE CIRCUMSTANCES UNDER WHICH A TREATY HAD BEEN CONCLUDED MIGHT GIVE VALID GROUNDS FOR TERMINATION OF THE OBLIGATIONS IMPOSED ON STATES PARTIES TO THE TREATY.

THE CHINESE DELEGATION WOULD GO ALONG WITH THE MAJORITY VIEW IN THE COMMITTEE AS TO THE DATE AND SITE OF THE PROPOSED DIPLOMATIC CONFERENCE TO DRAW UP A CONVENTION ON THE LAW OF TREATIES, MR. CHENG SAID. HOWEVER, ONLY STATES MEMBERS OF THE UNITED NATIONS AND OF THE SPECIALIZED AGENCIES AND STATES PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE SHOULD BE INVITED TO THE PROPOSED CONFERENCE.

VIEWS OF ISRAEL

SHABTAI ROSENNE (ISRAEL) SAID THAT A CONFERENCE TO CONCLUDE A SINGLE CONVENTION ON THE LAW OF TREATIES IN 1968 WOULD BE EQUAL IN SIGNIFICANCE TO ANY THAT HAD TAKEN PLACE SINCE THE SAN FRANCISCO CONFERENCE ITSELF. HE SUGGESTED THAT GOVERNMENTS AND APPROPRIATE INTERNATIONAL ORGANIZATIONS BE INVITED TO SUBMIT WRITTEN COMMENTS ON THE FINAL TEXT OF THE ARTICLES BY 1 AUGUST 1967.

HE SUPPORTED THE SUGGESTION OF INDIA THAT THE PLANNING AND BUDGETARY ALLOCATIONS BE ON THE BASIS OF A TWO-STAGE CONFERENCE, BUT THAT THE FINAL DECISION

MORE

PAGE 2 - PRESS RELEASE GA/L/1123

AS TO THE NUMBER OF SESSIONS SHOULD BE TAKEN BY THE CONFERENCE ITSELF.

TURNING TO THE SUBSTANCE OF THE DRAFT ARTICLES, MR. ROSENNE SAID THAT THE PROVISION FOR AMENDMENT OF A TREATY BY AGREEMENT BETWEEN THE PARTIES HAD IMPORTANT POLITICAL IMPLICATIONS IN THE LIGHT OF THE CHANGING REQUIREMENTS OF CONTEMPORARY INTERNATIONAL SOCIETY.

CONCERNING OTHER MATTERS, MR. ROSENNE EXPRESSED THE HOPE THAT THE COMMISSION WOULD BE ABLE, WITHIN TWO OR THREE YEARS, TO COMPLETE THE CHAPTER OF CODIFIED INTERNATIONAL LAW DEALING WITH THE TOPIC OF THE DIPLOMATIC RELATIONS OF STATES VIEWED IN THE BROAD SENSE. HOWEVER, HIS DELEGATION DOUBTED WHETHER THE BRANCH OF LAW DEALING WITH STATE RESPONSIBILITY AND SUCCESSION OF STATES AND GOVERNMENTS AND THE TOPIC OF MOST-FAVOURLED-NATION CLAUSES COULD BE SATISFACTORILY CLARIFIED UNTIL AFTER THE CODIFICATION OF THE LAW OF TREATIES HAD BEEN COMPLETED.

MR. ROSENNE SAID THAT, AS A MEMBER OF THE ILC AND IN HIS PERSONAL CAPACITY, HE CONSIDERED THE ILC SEMINARS ON INTERNATIONAL LAW EXTREMELY USEFUL, BOTH FOR THE PARTICIPANTS, AND FOR THE COMMISSION MEMBERS.

VIEWS OF URUGUAY

HECTOR PAYSSE REYES (URUGUAY) INTRODUCED A DRAFT RESOLUTION WHICH WOULD HAVE THE GENERAL ASSEMBLY NOTE WITH SATISFACTION AND FURTHER PROMOTE THE EFFECTIVE WORK DONE BY THE ILC IN ITS CODIFICATION OF INTERNATIONAL LAW, ITS CO-OPERATION WITH OTHER LEGAL BODIES, ITS SEMINARS ON INTERNATIONAL LAW, AND ITS STUDY OF THE QUESTION OF SPECIAL MISSIONS.

TURNING TO THE LAW OF TREATIES, HE PROPOSED THAT TWO ADDITIONAL RESOLUTIONS BE SUBMITTED TO THE ASSEMBLY, ONE CALLING FOR THE HOLDING OF A CONFERENCE, AND THE SECOND SUGGESTING THE PROCEDURAL BASES FOR SUCH A CONFERENCE. IT WAS ESPECIALLY IMPORTANT THAT THE FIRST RESOLUTION STATE THAT THE PURPOSE OF SUCH A MEETING WOULD BE TO "STUDY" THE DRAFT ARTICLES AND TO ADOPT A CONVENTION ON INTERNATIONAL TREATIES. HE ADDED THAT IF SUCH A RESOLUTION WERE ADOPTED, IT WOULD BE INAPPROPRIATE AND "A SOURCE OF CONFUSION" IF THE SIXTH COMMITTEE WERE TO STUDY THE SUBSTANCE OF THE DRAFT ARTICLES AT THIS TIME.

MR. PAYSSE REYES FAVOURED CONVENING THE CONFERENCE IN APRIL 1968, IN GENEVA, AND OPENING IT TO ALL STATES. COMMENTS FROM GOVERNMENTS ON THE DRAFT ARTICLES SHOULD BE RECEIVED BY THE SECRETARY-GENERAL NO LATER THAN EARLY 1967 AND SHOULD BE CIRCULATED SOON AFTERWARDS AMONG ALL GOVERNMENTS CONCERNED. HE SUGGESTED THAT THE CONFERENCE BE HELD IN ONE STAGE; AND THAT ITS WORK BE DIVIDED BETWEEN TWO MAIN COMMITTEES WHICH WOULD WORK FOR A PERIOD OF TEN WEEKS.

MORE

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HE PROPOSED THAT THE COMMITTEE ADOPT THE THREE RESOLUTIONS HE HAD INTRODUCED AND THEN CONSIDER REDUCING THE NUMBER OF MEETINGS IT HAD ORIGINALLY ALLOCATED TO THE ILC REPORTS, SO AS TO HAVE MORE TIME FOR THE NEXT QUESTION ON THE COMMITTEE'S AGENDA, THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM.

VIEWS OF BOLIVIA

MARCELO TERCEROS BANZER (BOLIVIA) FAVOURED THE PROPOSAL THAT THE DRAFT ARTICLES SERVE AS A BASIS FOR "AN INSTRUMENT TO HAVE BINDING FORCE, THAT IS, A CONVENTION", AND THAT A DIPLOMATIC CONFERENCE BE CONVENED TO ADOPT SUCH A CONVENTION ON THE LAW OF TREATIES. HE EXPRESSED REGRET HOWEVER, THAT THE ARTICLE DEALING WITH THE SUCCESSION OF STATES HAD BEEN LIMITED AND HE HOPED AGREEMENT COULD BE REACHED SO AS TO ALLAY THE FEARS OF NEWLY INDEPENDENT STATES ON A MATTER OF SUCH IMPORTANCE TO THEM.

AS TO THE POSSIBILITY OF CONSTITUTIONAL DIFFICULTIES WHICH MIGHT ARISE, AS SUGGESTED BY PANAMA, MR. TERCEROS BANZER SAID HE COULD NOT FORESEE SUCH DIFFICULTIES, AS THE DRAFT ARTICLES SPECIFICALLY STATED THAT THEIR PURPOSE WAS TO LEAVE INTACT INTERNAL LAW, ESPECIALLY AS REGARDS THE RATIFICATION OF TREATIES AND THAT THE USE OF THE TERM "TREATY" THROUGHOUT THE ARTICLES WAS MORE FOR THE SAKE OF CONVENIENCE THAN TO ALTER THE BASIC MEANING ASCRIBED TO THE TERM BY VARIOUS GOVERNMENTS.

THE REFERENCE TO THE THREAT OR USE OF FORCE AS A BASIS FOR NULLITY OF A TREATY, HE DECLARED, SHOULD BE EXPANDED TO INCLUDE ANY EXPRESSION OF FORCE CAPABLE OF PERVERTING THE FREE EXPRESSION OF THE WILL OF STATES.

INTERNATIONAL CO-EXISTENCE TODAY MUST BE BASED ON THE NOTION THAT "TREATIES ARE MEANT TO LIVE, NOT TO DIE", HE SAID.

VIEWS OF DEMOCRATIC REPUBLIC OF THE CONGO

VINCENT MUTUALE (DEMOCRATIC REPUBLIC OF THE CONGO) SAID THAT 1968 WOULD BE THE MOST APPROPRIATE YEAR FOR THE PROPOSED CONFERENCE, AND THAT ITS SUCCESS WOULD DEPEND ON GOOD PREPARATION. THE ESSENTIAL ASPECTS OF PREPARATIONS WERE THE FOLLOWING: COMMENTS OF GOVERNMENTS ON THE DRAFT ARTICLES SHOULD BE RECEIVED AND CIRCULATED BY THE SECRETARIAT DURING THE FIRST QUARTER OF NEXT YEAR; THE SIXTH COMMITTEE SHOULD PREPARE DRAFT RULES OF PROCEDURE TO BE USED BY THE CONFERENCE; AND ALL UNITED NATIONS MEMBER STATES, ALL MEMBER STATES OF THE SPECIALIZED AGENCIES, ALL STATES PARTIES TO THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, AND EXPERTS ON INTERNATIONAL LAW SHOULD BE INVITED TO ATTEND THE CONFERENCE.

MORE

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THE SITE OF THE CONFERENCE, HE SAID, SHOULD MEET THE CRITERIA OF THE LEAST COST AND THE MOST COMPETENT TECHNICAL SERVICES AVAILABLE.

THE NEW RULES SUGGESTED BY THE DRAFT ARTICLES SHOULD BE APPRAISED IN THE LIGHT OF THE INTERESTS OF THE YOUNG COUNTRIES, AS THEY WERE AFFECTED BY CHANGING CIRCUMSTANCES, THE PRINCIPLES OF SELF-DETERMINATION AND THE EQUAL SOVEREIGNTY OF ALL STATES, HE SAID. AS STATES' SUCCESSION, RESPONSIBILITY OF STATES AND MOST-FAVOURLED-NATION TYPE TREATIES WERE NOT ADEQUATELY DEALT WITH IN MODERN JURISPRUDENCE, MR. MUTALE HOPED THESE MATTERS WOULD BE INCLUDED IN THE DRAFT ARTICLES BEFORE THE FINAL CONVENTION WAS ADOPTED.

THE COMMITTEE WILL MEET AGAIN AT 3:00 P.M. TOMORROW, 14 OCTOBER.

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U.N. Div.
Dept. of Finance,
Attn: D.C. Bignell

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Div. Diary
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October 13, 1966

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MEMORANDUM FOR THE MINISTER

Proposed Conference on the Law of Treaties

Mr. Werhof has asked for authority to sponsor a Resolution on this subject in the 6th Committee.

2. The 6th Committee is at present considering 21st UNGA Agenda Item 84, the Reports of the International Law Commission. Undoubtedly the single most important aspect of the I.L.C.'s Reports is a recommendation that, since it has now completed its work on the Law of Treaties, the General Assembly "should convene an international conference of plenipotentiaries to study the Commission's draft articles on the Law of Treaties and to conclude a conference on the subject". The Law of Treaties is of such fundamental importance, and the subject is one which has for so long received the attentions of the Commission, that the outcome of any such conference will clearly have a profound effect not only on the Commission itself and on its work thereafter but also on inter-state relationships generally and on further efforts towards the codification and progressive development of international law. If such a conference is to be convened early in 1968 (the date recommended by both the Commission and Secretariat) certain decisions will have to be taken in the 6th Committee this year.

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7. I therefore recommend that the Canadian Delegation be authorized to sponsor the draft resolution to convene a conference on the Law of Treaties. I attach a telegram to the delegation, to this effect, for release, if you agree.

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M. G.

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21ST UNGA:6TH CTTEE:ITEM84:ILC REPORT AND PROPOSED CONFERENCE ON
LAW OF TREATIES

FOR GOTLIEB LEGAL DIV FM WERSHOF

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CONSIDERATION;

7. REQUESTS SEC GEN TO PRESENT TO CONFERENCE ALL RELEVANT DOCUMENTATION AND RECOMMENDATIONS RELATING TO ITS METHODS OF WORK AND PROCEDURES AND TO ARRANGE FOR NECESSARY STAFF AND FACILITIES WHICH WILL BE REQUIRED FOR CONFERENCE INCLUDING ASSISTANCE OF INTERNATL LAW COMMISSIONS SPECIAL RAPPORTEUR ON LAW OF TREATIES AND SUCH OTHER EXPERTS AS IT MAY DEEM NECESSARY;

8. REQUESTS INTERNATL LAW COMMISSION TO RECOMMEND TO CONFERENCE WHAT PORTIONS OF DRAFT ARTICLES SHOULD BE REFERRED TO ITS FIRST CTTEE AND WHAT PORTIONS TO ITS SECOND CTTEE;

9. EXPRESSES HOPE THAT CONFERENCE WILL BE FULLY ATTENDED;

10. CALLS UPON GOVTS OF STATES INVITED TO CONFERENCE TO UTILIZE TIME REMAINING BEFORE OPENING OF CONFERENCE FOR EXCHANGE OF VIEWS ON QUESTIONS INVOLVED IN PROGRESSIVE DEVELOPMENT AND CODIFICATION OF LAW OF TREATIES;

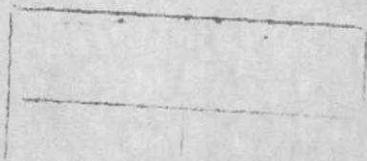
11. INVITES MEMBER STATES TO SUBMIT THEIR WRITTEN COMMENTS AND OBSERVATIONS ON FINAL DRAFT ARTICLES CONCERNING LAW OF TREATIES PREPARED BY INTERNATL LAW COMMISSION NOT RPT NOT LATER THAN JUNI/67;

12. REQUESTS SEC GEN TO CIRCULATE SUCH COMMENTS SO AS TO FACILITATE DISCUSSION OF SUBJECT AT 22ND SESSION OF UNGA;

13. DECIDES TO INCLUDE AN ITEM ENTITLED QUOTE LAW OF TREATIES UNQUOTE IN PROVISIONAL AGENDA OF ITS 22ND SESSION WITH A VIEW TO FURTHER DISCUSSION OF DRAFT ARTICLES IN ORDER TO FACILITATE CONCLUSION OF A CONVENTION ON LAW OF TREATIES AT PLENIPOTENTIARIES CONFERENCE CONVENED BY PRESENT RESLN. TEXT ENDS:

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Copies to Tufano (alt DC Bogard)
U/N Div
AWR
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JL



NOTE TO CONCENTRE:

MR WERSHOF WOULD APPRECIATE IF COPIES 1980 AND 1978 OCT12 COULD BE DELIVERED TO ~~SECRETARY~~ IN LEGAL DIV THIS AFTERNOON IF POSSIBLE.

AW ROBERTSON PLEASE DELIVER SOON AS POSSIBLE AM

24-12-7-2H-6TH
31

cc 20-3-1-6
20-5-2-2

FM CANDELNY OCT12/68 RESTR

TO EXTERNAL 1980 10085

REF DURTTEL 1978 OCT12

21ST UNGA - 5TH CTTEE - ITEM84 - ILC REPORT AND PROPOSED CONFERENCE ON LAW OF TREATIES

FOR GOTLIEF LEGAL DIV FM WERSHOF

CONFIRMING TELECOM STAVROPOULOS ASKED ME WHETHER CDA WOULD SPONSOR (ALONG WITH PERHAPS MEXICO AND NIGERIA IF THEY ARE WILLING) RESLN TO SET UP THIS CONFERENCE. OPERATIVE SECTION OF RESLN DRAFTED BY SECRETARIAT WAS GIVEN IN REFTEL. USA AND UK WOULD BE PLEASED IF CDA WOULD TAKE THIS INITIATIVE.

2. AS ITEM84 MUST BE CONCLUDED BY OCT24 IT IS NECESSARY THAT RESLN BE OFFICIALLY SUBMITTED BY THIS WEEKEND.

3. PROPOSED RESLN IS IN LINE WITH CDN VIEWS. SOME DELS ESPECIALLY FROM SMALLER COUNTRIES ARE UNHAPPY WITH FINANCIAL BURDEN OF PROPOSED DIV OF CONFERENCE INTO TWO TIME STAGES AND WITH PROPOSAL THAT CONFERENCE OPERATE IN TWO CTTEES OF THE WHOLE RATHER THAN ONE CTTEE OF THE WHOLE. THEREFORE RESLN MAY BE CRITICIZED ON THESE POINTS AND CONCLIVABLY MAY BE AMENDED IN COURSE OF DEBATE.

4. COMMUNISTS AND SOME AFRO-ASIAN DELS WILL OF COURSE OPPOSE PARAA OF RESLN LIMITING PARTICIPATION IN CONFERENCE TO STATES MEMBERS OF UN ETC. WE LIKE OTHER WESTERN DELS ARE BOUND TO OPPOSE QUOTE ALL STATES UNQUOTE IDEA IN SUCH A RESLN. AND I AM CONFIDENT THAT WESTERN VIEW WILL PREVAIL IN VOTING.

5. AS A HUMAN RIGHTS CONFERENCE IS PLANNED FOR SUMMER 1968 PROPOSAL TO HOLD LAW OF TREATIES CONFERENCE IN FEB 1968 MAY BE CRITICIZED

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PAGE TWO 1982 CONFD

AS BEING CONTRARY TO PARAS 5 OF RESLN 2115(AX) WHICH SAID QUOTE DECIDES THAT NOT RPT NOT MORE THAN ONE MAJOR SPECIAL CONFERENCE OF UN SHALL BE SCHEDULED IN ANY ONE YEAR UNQUOTE. SECRETARIAT CONSIDERS THAT QUOTED PROVISION IS IMPRACTICAL UNTIL SUCH TIME AS UNGA(1) DEFINES WHAT IS A MAJOR CONFERENCE AND(2) ESTABLISHES MACHINERY TO CONTROL SCHEDULES OF SPECIAL CONFERENCES. SECRETARIAT THINKS TREATIES CONFERENCE SHOULD BE HELD IN 1968 AND THAT UNGA SHOULD SO DECIDE DESPITE RESLN 2115. WARREN OF OUR FIFTH CTTEE DEL SAYS THAT FIFTH CTTEE WILL BE TRYING LATER ON TO DEFINE RESLN 2115 PARAS 5 BUT THAT THIS NEED NOT RPT NOT INHIBIT US FROM SPONSORING RESLN TO HOLD TREATIES CONFERENCE IN 1968. IT MAY EVEN TURN OUT THAT TREATIES CONFERENCE WILL NOT RPT NOT BE CONSIDERED TO BE A QUOTE MAJOR CONFERENCE UNQUOTE WITHIN MEANING OF RESLN 2115.

6. AFTER CONSULTING YOU I TOLD STAVROPOULOS THAT WE WOULD SEEK AUTHORITY FROM SSEA TO SPONSOR RESLN BUT WOULD NOT RPT NOT HAVE DECISION BEFORE FRI MORNING. IN MEANTIME I ADVISED HIM TO APPROACH MEXICO AND NIGERIA AS POSSIBLE COSPONSORS AS I COULD NOT RPT NOT DO SO BEFORE SSEA AUTHORITY TO SPONSOR IS GIVEN.

7. ALTHOUGH PARTS OF RESLN MAY ENCOUNTER SOME OPPOSITION IT SEEMS TO ME THAT IT IS A NECESSARY RESLN AND THAT IT WOULD BE HELPFUL TO UN FOR CDA TO TAKE THIS INITIATIVE.

8. I WILL CONSULT IGNATIEFF AND WILL ADVISE YOU IF HE HAS DIFFERENT VIEWS.

*Approved by Finance attnd J Bignell
Dept of Int C
V N D W
ABK*

ACTION COPY

L file R

FM CANDELA OCT 12/55 COM

TO EXTERNAL 1955

INFO BUEVA

REF COMTEL 1954 OCT 11

24-12-7-26st 60th
31131
20-3-1-6

21ST UNCA 6TH CTTEE HELD IN PROGRESSING DEVELOPMENT OF LAW OF
INTERNATL TRADE

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FM WASHINGTON:

REFTEL DIRECTED YOUR ATTN TO SECRETARIAT REPORT A/6396 JUST ISSUED.

IN PRESENT TEL WE WISH TO CALL SPECIAL ATTN TO SEVEN RECOMMENDATION
WHICH WILL UNDOUBTEDLY BE REFLECTED IN A RESOLN TO BE SUBMITTED TO
6TH CTTEE THIS SESSION. THIS ITEM SCHEDULED TO BE TAKEN UP NOV 30.

2. IN PARAS 213-234 OF A/6396 SEVEN DAYS FOLLOWING:

- (1) UNIFICATION AND HARMONIZATION OF LAW OF INTERNATL TRADE IS AN
APPROPRIATE SUBJECT FOR UN ACTION.
- (2) UN PARTICIPATION IN THIS ACTIVITY WOULD INCREASE USEFULNESS OF
NUMEROUS EXISTING AGENCIES EMPLOYED IN THIS FIELD.
- (3) UN PRIMARY FUNCTION SHOULD BE COORDINATION BUT UN SHOULD WHEN
APPROPRIATE PERFORM A FORMULATING FUNCTION.
- (4) UNCA SHOULD ESTABLISH A NEW COMMISSION CALLED COMMISSION
ON INTERNATL TRADE LAW (UNCITRAL) CONSISTING OF 12 TO 24 MEMBERS
SUPPORTED BY A SMALL UNIT IN UN LEGAL SECRETARIAT.
- (5) UNCITRAL SHOULD REPORT TO UNCA THROUGH 6TH CTTEE BUT SHOULD
SIMULTANEOUSLY SEND REPORTS TO UNCTAD FOR COMMENTS TO BE
TRANSMITTED THROUGH ECOSOC TO UNCA.

3. I PRESUME THESE PROPOSALS WILL NOT BE POPULAR IN OTT
BECAUSE OF COST OF A NEW COMMISSION BECAUSE WE QUESTION WISDOM OF

...2

PAGE TWO 1987 CONF

BY GETTING INTO THIS FIELD OF LAW, THE MEMBER OF CONVICAS
CONSEQUENCE OF OUR CONSTITUTIONAL SET-UP IS UNLIKELY TO HAVE MUCH
PRACTICAL INTEREST IN ANY OF THE ALTERNATIVES PROPOSED IN IT.

4. HOWEVER NOW THAT SECOFIN HAS MADE PROPOSAL I THINK MOST MEMBER
STATES ARE LIKELY TO SUPPORT IT. I AM NOT HAPPY ABOUT COST BUT
AFTER ALL IT WAS HUNGARY WHICH INITIATED IT LAST YEAR.

5. I PRESUME INTERESTED DIVS WILL BE CONSULTING WITH DEPTS OF FINANCE
TANDE AND POSSIBLY JUSTICE IN ORDER TO COMPLY WITH COM POSITION ON
SECOFIN RECOMMENDATIONS.

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20-3-1-6

*Legal Sec
(Mr. Miller)
(Mr. Robertson)*

UN48

PRESS RELEASE GA/L/1117
TWENTY-FIRST GENERAL ASSEMBLY
SIXTH COMMITTEE, 904RD MEETING (PM)
UNITED NATIONS, N.Y.

SIXTH COMMITTEE BEGINS DISCUSSION OF DRAFT
ARTICLES FOR LAW OF TREATIES

THE SIXTH COMMITTEE (LEGAL) THIS AFTERNOON BEGAN DISCUSSION OF THE DRAFT ARTICLES OF THE LAW OF TREATIES, AS PROPOSED IN THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC). THE ONLY SPEAKER WAS A.J.P. TAMMES (NETHERLANDS).

AT THE OUTSET, THE CHAIRMAN, VRATISLAV PCEHOTA (CZECHOSLOVAKIA), SUGGESTED THAT, IN ACCORDANCE WITH PAST PRACTICE, THE DEBATE ON THE DRAFT ARTICLES BE CONFINED TO GENERAL COMMENTS THIS YEAR, IN ORDER TO ALLOW SUFFICIENT TIME FOR GOVERNMENTS TO STUDY AND SUBMIT WRITTEN COMMENTS ON THE ARTICLES BEFORE A MORE DETAILED DEBATE ON THE TECHNICAL ASPECTS OF THE ARTICLES NEXT YEAR.

THE LEGAL COUNSEL, CONSTANTIN A. STAVROPOULOS, INTRODUCED A MEMORANDUM BY THE SECRETARY-GENERAL ON "PROCEDURAL AND ORGANIZATIONAL PROBLEMS INVOLVED IN A POSSIBLE DIPLOMATIC CONFERENCE ON THE LAW OF TREATIES" (DOCUMENT A/C.6/371).

IT IS SUGGESTED IN THE MEMORANDUM THAT A CONFERENCE BE HELD IN TWO PARTS, THE FIRST PART IN 1968 AND THE SECOND ONE A YAEK LATER, AND THAT THE WORK OF THE CONFERENCE BE DIVIDED BETWEEN TWO MAIN COMMITTEES.

OPENING HIS STATEMENT ON THE DRAFT ARTICLES, THE REPRESENTATIVE OF THE NETHERLANDS SAID THAT HIS DELEGATION HAD BEEN STRUCK BY THREE THINGS PARTICULARLY: FIRST, THERE WAS THE COHERENCE OF ALL PROVISIONS OF THE DRAFT WHICH MADE IT DIFFICULT TO FIND A NATURAL DIVISION OF THE MATERIAL FOR ITS ALLOCATION TO DIFFERENT COMMITTEES; SECOND, MOST OF THE RULES NOW UNDER DISCUSSION IN THE PROPOSED LAW OF TREATIES WOULD HAVE THE INDIRECT EFFECT OF REMOVING UNCERTAINTIES LEFT IN THE LEGAL SITUATION TO BE CREATED BY FUTURE TREATIES; AND FINALLY, THE PRESENT DRAFT IN ITS COMPLETENESS APPEARED TO TOUCH ON PROBLEMS OF FUNDAMENTAL SIGNNIFICANCE FOR THE WHOLE OF INTERNATIONAL LAW.

A DOMINANT PLACE IN THE LAW OF TREATIES, MR. TAMMES STATED, WAS NATURALLY HELD BY RULES CONCERNING THE CONSENT OF A STATE TO BE BOUND. IT WAS REMARKABLE, HE CONTINUED, THAT IN SO MANY PLACES, FOR OBVIOUS REASONS OF LEGAL CERTAINTY,

MORE

PAGE 2- PRESS RELEASE GA/L/1117

THE DRAFT FELL BACK ON THE PRESUMPTION OF CONSENT, ON PROBABLE CONSENT INSTEAD OF PROVED CONSENT. ALL THESE QUESTIONS OF CONSENT, "THE HARD CORE OF THE LAW OF TREATIES", HE SAID, WOULD BE OPEN TO CONTROVERSY AT THE DIPLOMATIC CONFERENCE, YET THERE COULD BE NO DENIAL OF CONSENT AS THE ESSENTIAL CONDITION FOR A STATE TO BE BOUND BY A TREATY.

WITH REFERENCE TO THE FACT THAT THE DRAFT HAD ALSO TO RELY ON THE CONCEPT OF GOOD FAITH, IT IMPLIED "THE EXISTENCE OF A NEW SOURCE OF LAW WHICH HAS TO BE FOUND IN THE CONSCIENCE OF PEOPLES". THIS FACT SUGGESTED ONCE MORE THAT A NUMBER OF DELEGATIONS AT THE DIPLOMATIC CONFERENCE WOULD FIND THAT THE APPLICATION OF WIDE LEGAL CONCEPTS COULD NOT BE LEFT TO THE FINAL DECISION OF THE INDIVIDUAL PARTIES CONCERNED, HE SAID.

IN THIS CONNEXION, MR. TAMMES DREW ATTENTION TO THE FACT THAT THE DRAFT REFERRED EXPLICITLY TO THE UNITED NATIONS CHARTER, IMPLYING THAT ARTICLE 103 OF THE CHARTER, WHICH IMPOSED CHARTER PREVALENCE ON UNITED NATIONS MEMBERS, MAY EXTEND TO NON-MEMBER STATES AS WELL, AS FAR AS THE HIGHEST PRINCIPLES ARE CONCERNED. FURTHERMORE, HE SAID, THERE WERE SEVERAL ARTICLES WHICH MADE USE OF CONCEPTS SUCH AS SOVEREIGNTY AND GOOD FAITH, WHICH HAD THEIR ORGANIC PLACE IN THE FRAMEWORK OF THE CHARTER.

HE SAID THAT THE CHARACTERISTICS OF A PARTICULAR GROUP OF ARTICLES WERE MORE POLITICAL THAN THOSE OF OTHERS AND THAT THE CONCEPT OF PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW, AS SET OUT IN THE STATUTE OF THE INTERNATIONAL LAW COMMISSION MIGHT BE USED TO AVOID A RATHER ARBITRARY DIVISION OF THE LEGAL MATERIAL TO BE DISCUSSED. AN EVEN BETTER SOLUTION MIGHT BE TO HAVE NO DIVISION AT ALL AND TO CHOOSE, FROM THE ALTERNATIVES MENTIONED IN THE SECRETARY-GENERALS MEMORANDUM, AN ORGANIZATION OF THE CONFERENCE IN THE FORM OF A COMMITTEE OF THE WHOLE.

AS NO OTHER MEMBERS OF THE COMMITTEE WERE PREPARED TO DISCUSS THE DRAFT ARTICLES TODAY, THE CHAIRMAN ADJOURNED THE MEETING UNTIL 10:30 A.M. ON THURSDAY, 6 OCTOBER.

JA 858P 4 OCT 66

001016

L	TO: <i>MR ROBERTSON</i>
	AUG 8 1966
	REGISTRY

20-3-1-16
<i>M.D. ✓</i>

16 Parc du Château Banquet
Geneva, Switzerland

cc. on 66-11

J-4
July 28, 1966

Dear Mr. Cadieux:

Since it appears unlikely that the report of the Commission on its draft articles on the Law of Treaties will be completed in time for its distribution one month ahead of the opening of the Assembly, the Secretariat have prepared the attached document, No. A/CN.4/190, containing the final versions of the draft articles as approved by the Commission, so as to enable governments to have ample time within which to consider the revision of the articles.

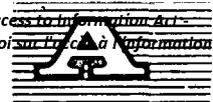
I am continuing to work on our own report whenever I have a free moment, which is not very often at present while the Outer Space Conference is on. As mentioned in our telegram No. 816 of July 15, I hope, however, to have the report completed in the latter part of August.

Yours sincerely,

J. A. BEESLEY

J. A. Beesley

Mr. M. Cadieux ,
The Under-Secretary of State
for External Affairs,
Ottawa, Canada



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/6348
9 August 1966
ENGLISH
ORIGINAL: ENGLISH/FRENCH/
SPANISH

Twenty-first session

REPORTS OF THE INTERNATIONAL LAW COMMISSION ON THE SECOND PART
OF ITS SEVENTEENTH SESSION AND ON ITS EIGHTEENTH SESSION*

Text of the draft articles on the law of treaties, as finally adopted
by the Commission on 18 and 19 July 1966

Note by the Secretary-General

1. The present document is transmitted to Governments in accordance with paragraph 5 (b) of General Assembly resolution 2045 (XX) of 18 December 1965, by which the Assembly requested the Secretary-General:

"To transmit to Governments at least one month before the opening of the twenty-first session of the General Assembly the final drafts prepared by the International Law Commission up to that time, and in particular the draft articles on the law of treaties".

2. During its eighteenth session, held in Geneva from 4 May to 19 July 1966, the International Law Commission completed its work on the law of treaties. It prepared final draft articles on that subject, with commentaries and recommendations, for submission to the General Assembly.^{1/} These draft articles, commentaries and recommendations on the law of treaties will be printed in the report of the Commission on the work of its eighteenth session (A/6309). That report, however, may not be available in printed form by the date specified in resolution 2045 (XX), and the present mimeographed document has therefore been prepared for the convenience of Governments.

3. The articles in the final draft have been renumbered consecutively. Each article is accompanied by a foot-note giving the number of the corresponding

* Item 85 of the provisional agenda.

^{1/} The Commission was unable to complete its work on special missions, as it had hoped to do.

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article or paragraph in the earlier draft as sections of it have appeared in the Commission's reports since 1962. The documentary references of those reports are as follows:

- 1962 report - Official Records of the General Assembly, Seventeenth Session, Supplement No.9 (A/5209)
- 1963 report - Official Records of the General Assembly, Eighteenth Session, Supplement No.9 (A/5509)
- 1964 report - Official Records of the General Assembly, Nineteenth Session, Supplement No.9 (A/5809)
- 1965 report - Official Records of the General Assembly, Twentieth Session, Supplement No.9 (A/6009)

DRAFT ARTICLES ON THE LAW OF TREATIES

PART I: INTRODUCTION

Article 1^{2/}

The scope of the present articles

The present articles relate to treaties concluded between States.

Article 2^{3/}

Use of terms

1. For the purposes of the present articles:

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

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

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

^{2/} 1965 Report, article 0.

^{3/} 1962 Report and 1965 Report, article 1.

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

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

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

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

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

(i) "International organization" means an inter-governmental organization.

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

Article 3^{4/}

International agreements not within the scope
of the present articles

The fact that the present articles do not relate:

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

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

Article 4^{5/}

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

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

4/ 1962 Report and 1965 Report, article 2.

5/ 1963 Report, article 48, and
1965 Report, article 3(bis)

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PART II: CONCLUSION AND ENTRY INTO FORCE OF TREATIES

Section 1 - Conclusion of treaties

Article 5^{6/}

Capacity of States to conclude treaties

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

Article 6^{7/}

Full powers to represent the State in the
conclusion of treaties

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:
 - (a) he produces appropriate full powers; or
 - (b) it appears from the circumstances that the intention of the States concerned was to dispense with full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
 - (a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
 - (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
 - (c) representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the adoption of the text of a treaty in that conference or organ.

6/ 1962 Report and 1965 Report, article 3.

7/ 1962 Report and 1965 Report, article 4.

/...

Article 7^{8/}

Subsequent confirmation of an act performed
without authority

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

Article 8^{9/}

Adoption of the text

1. The adoption of the text of a treaty takes place by the unanimous consent of the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States participating in the conference, unless by the same majority they shall decide to apply a different rule.

Article 9^{10/}

Authentication of the text

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

- (a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
- (b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 10^{11/}

Consent to be bound by a treaty
expressed by signature

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

8/ 1963 Report, article 32, paragraph 1.

9/ 1962 Report and 1965 Report, article 6.

10/ 1962 Report and 1965 Report, article 7.

11/ 1962 Report, articles 10 and 11, and 1965 Report, article 11.

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- (a) the treaty provides that signature shall have that effect;
- (b) it is otherwise established that the negotiating States were agreed that signature should have that effect;
- (c) the intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

- (a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;
- (b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 11^{12/}

Consent to be bound by a treaty

expressed by ratification, acceptance or approval

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

- (a) The treaty provides for such consent to be expressed by means of ratification;
- (b) It is otherwise established that the negotiating States were agreed that ratification should be required;
- (c) the representative of the State in question has signed the treaty subject to ratification; or
- (d) the intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

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

12/ 1962 Report, articles 12 and 14, and 1965 Report, article 12.

Article 12^{13/}

Consent to be bound by a treaty
expressed by accession

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

- (a) the treaty or an amendment to the treaty provides that such consent may be expressed by that State by means of accession;
- (b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 13^{14/}

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

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

- (a) their exchange between the contracting States;
- (b) their deposit with the depositary; or
- (c) their notification to the contracting States or to the depositary, if so agreed.

Article 14^{15/}

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

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

13/ 1962 Report, article 13.

14/ 1962 Report, articles 15 and 16, and 1965 Report, article 15.

15/ 1962 Report, article 15, paragraphs 1(b) and (c) and 1965 Report, article 16.

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

Article 15^{16/}

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

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

- (a) it has agreed to enter into negotiations for the conclusion of the treaty, while these negotiations are in progress;
- (b) it has signed the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;
- (c) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Section 2 - Reservations to multilateral treaties

Article 16^{17/}

Formulation of reservations

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

- (a) the reservation is prohibited by the treaty;
- (b) the treaty authorizes specified reservations which do not include the reservation in question; or
- (c) in cases where the treaty contains no provisions regarding reservations, the reservation is incompatible with the object and purpose of the treaty.

16/ 1962 Report and 1965 Report, article 17.

17/ 1962 Report and 1965 Report, article 18.

/...

Article 17 ^{18/}

Acceptance of and objection to reservations

1. A reservation expressly or impliedly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization, the reservation requires the acceptance of the competent organ of that organization, unless the treaty otherwise provides.
4. In cases not falling under the preceding paragraphs of this article:
 - (a) acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;
 - (b) an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;
 - (c) an act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purposes of paragraphs 2 and 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 18 ^{19/}

Procedure regarding reservations

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

18/ 1962 Report, articles 19 and 20, and 1965 Report, article 19.

19/ 1962 Report, articles 18 and 19, and 1965 Report, article 20.

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2. If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An objection to the reservation made previously to its confirmation does not itself require confirmation.

Article 19 ^{20/}

Legal effects of reservations

1. A reservation established with regard to another party in accordance with articles 16, 17 and 18:
 - (a) modifies for the reserving State the provisions of the treaty to which the reservation relates to the extent of the reservation; and
 - (b) modifies those provisions to the same extent for such other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.
3. When a State objecting to a reservation agrees to consider the treaty in force between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 20 ^{21/}

Withdrawal of reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides or it is otherwise agreed, the withdrawal becomes operative only when notice of it has been received by the other contracting States.

^{20/} 1962 Report and 1965 Report, article 21.

^{21/} 1962 Report and 1965 Report, article 22.

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Section 3 - Entry into force of treaties

Article 21 ^{22/}

Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound is established after a treaty has come into force, the treaty enters into force for that State on the date when its consent was established unless the treaty otherwise provides.

Article 22 ^{23/}

Entry into force provisionally

1. A treaty may enter into force provisionally if:
 - (a) the treaty itself prescribes that it shall enter into force provisionally pending ratification, acceptance, approval or accession by the contracting States;
 - or
 - (b) the negotiating States have in some other manner so agreed.
2. The same rule applies to the entry into force provisionally of part of a treaty.

PART III: OBSERVANCE: APPLICATION AND INTERPRETATION OF TREATIES

Section 1 - Observance of treaties

Article 23 ^{24/}

Pacta sunt servanda

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

Section 2 - Application of treaties

Article 24 ^{25/}

Non-retroactivity of treaties

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

^{22/} 1962 Report and 1965 Report, article 23.

^{23/} 1962 Report and 1965 Report, article 24.

^{24/} 1964 Report, article 55.

^{25/} 1964 Report, article 56.

Article 25 ^{26/}

Application of treaties to territory

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

Article 26 ^{27/}

Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as inconsistent with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 56, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
 - (a) as between States parties to both treaties the same rule applies as in paragraph 3;
 - (b) as between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty governs their mutual rights and obligations;
 - (c) as between a State party to both treaties and a State party only to the later treaty, the later treaty governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 37, or to any question of the termination or suspension of the operation of a treaty under article 57 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

26/ 1964 Report, article 57.

27/ 1964 Report, article 63.

Section 3 - Interpretation of treaties

Article 27 ^{28/}

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty;
 - (b) any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended. ^{29/}

Article 28 ^{30/}

Supplementary means of interpretation

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

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

^{28/} 1964 Report, article 69.

^{29/} 1964 Report, article 71.

^{30/} 1964 Report, article 70.

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Article 29 ^{31/}

Interpretation of treaties in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text. Except in the case mentioned in paragraph 1, when a comparison of the texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which as far as possible reconciles the texts shall be adopted. ^{32/}

Section 4 - Treaties and third States

Article 30 ^{33/}

General rule regarding third States

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

Article 31 ^{34/}

Treaties providing for obligations for third States

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

Article 32 ^{35/}

Treaties providing for rights for third States

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

^{31/} 1964 Report, article 72.

^{32/} 1964 Report, article 73.

^{33/} 1964 Report, article 58.

^{34/} 1964 Report, article 59.

^{35/} 1964 Report, article 60.

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

Article 33 ^{36/}

Revocation or modification of obligations or rights
of third States

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

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

Article 34 ^{37/}

Rules in a treaty becoming binding
through international custom

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

36/ 1964 Report, article 61.

37/ 1964 Report, article 62.

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PART IV: AMENDMENT AND MODIFICATION OF TREATIES

Article 35^{38/}

General rule regarding the amendment of
treaties

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

Article 36^{39/}

Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to every party each one of which shall have the right to take part in:
 - (a) the decision as to the action to be taken in regard to such proposal;
 - (b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; and article 26, paragraph 4 (b) applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
 - (a) be considered as a party to the treaty as amended; and
 - (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 37^{40/}

Agreements to modify multilateral treaties between certain
of the parties only

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

38/ 1964 Report, article 65.

39/ 1964 Report, article 66.

40/ 1964 Report, article 67.

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- (a) the possibility of such a modification is provided for by the treaty; or
- (b) the modification in question:
 - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
 - (ii) does not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole; and
 - (iii) is not prohibited by the treaty.

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

Article 38^{41/}

Modification of treaties by subsequent practice

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

PART V: INVALIDITY, TERMINATION AND SUSPENSION OF
THE OPERATION OF TREATIES

Section 1 - General provisions

Article 39^{42/}

Validity and continuance in force of treaties

- 1. The validity of a treaty may be impeached only through the application of the present articles. A treaty the invalidity of which is established under the present articles is void.
- 2. A treaty may be terminated or denounced or withdrawn from by a party only as a result of the application of the terms of the treaty or of the present articles. The same rule applies to suspension of the operation of a treaty.

Article 40^{43/}

Obligations under other rules of international law

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application

^{41/} 1964 Report, article 68.

^{42/} 1963 Report, article 30.

^{43/} New article. A similar provision was included in article 53, paragraph 4, of the 1963 Report but was there confined to cases of "termination".

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of the present articles or of the terms of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law.

Article 41^{44/}

Separability of treaty provisions

1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may only be exercised with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles may only be invoked with respect to the whole treaty except as provided in the following paragraphs or in article 57.
3. If the ground relates to particular clauses alone, it may only be invoked with respect to those clauses where:
 - (a) the said clauses are separable from the remainder of the treaty with regard to their application; and
 - (b) acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole.
4. Subject to paragraph 3, in cases falling under articles 46 and 47 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or to the particular clauses alone.
5. In cases falling under articles 48, 49 and 50, no separation of the provisions of the treaty is permitted.

Article 42^{45/}

Loss of a right to invoke a ground for invalidating,
terminating, withdrawing from or suspending the
operation of a treaty

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

^{44/} 1963 Report, article 46.

^{45/} 1963 Report, article 47.

/...

- (a) it shall have expressly agreed that the treaty, as the case may be, is valid or remains in force or continues in operation; or
- (b) it must by reason of its conduct be considered as having acquiesced, as the case may be, in the validity of the treaty or in its maintenance in force or in operation

Section 2 - Invalidity of treaties

Article 43^{46/}

Provisions of internal law regarding competence to conclude a treaty

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

Article 44^{47/}

Specific restrictions on authority to express the consent of the State

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

Article 45^{48/}

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error, or if the circumstances were such as to put that State on notice of a possible error.

46/ 1963 Report, article 31.

47/ 1963 Report, article 32, paragraph 2

48/ 1963 Report, article 34.

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

Article 46^{49/}

Fraud

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

Article 47^{50/}

Corruption of a representative of the State

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

Article 48^{51/}

Coercion of a representative of the State

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

Article 49^{52/}

Coercion of a State by the threat or use of force

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

Article 50^{53/}

Treaties conflicting with a peremptory norm of
general international law (jus cogens)

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

49/ 1963 Report, article 33.

50/ New article.

51/ 1963 Report, article 35.

52/ 1963 Report, article 36.

53/ 1963 Report, article 37.

Section 3 - Termination and suspension of the
operation of treaties

Article 51^{54/}

Termination of or withdrawal from a treaty by consent
of the parties

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

- (a) in conformity with a provision of the treaty allowing such termination or withdrawal; or
- (b) at any time by consent of all the parties.

Article 52^{55/}

Reduction of the parties to a multilateral treaty below
the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

Article 53^{56/}

Denunciation of a treaty containing no provision
regarding termination

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

Article 54^{57/}

Suspension of the operation of a treaty
by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with a provision of the treaty allowing such suspension;
- (b) at any time by consent of all the parties.

54/ 1963 Report, article 38.

55/ 1963 Report, article 38, paragraph 3 (b).

56/ 1963 Report, article 39.

57/ 1963 Report, article 40.

Article 55^{58/}

Temporary suspension of the operation of a multilateral
treaty by consent between certain of the parties only

When a multilateral treaty contains no provision regarding the suspension of its operation, two or more parties may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension:

- (a) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; and
- (b) is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

Article 56^{59/}

Termination or suspension of the operation of a treaty
implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and:
 - (a) it appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or
 - (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.
2. The earlier treaty shall be considered as only suspended in operation if it appears from the treaty or is otherwise established that such was the intention of the parties when concluding the later treaty.

Article 57^{60/}

Termination or suspension of the operation of a treaty as
a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

58/ New article.

59/ 1963 Report, article 41.

60/ 1963 Report, article 42.

2. A material breach of a multilateral treaty by one of the parties entitles:
 - (a) the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:
 - (i) in the relations between themselves and the defaulting State, or
 - (ii) as between all the parties;
 - (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
 - (c) any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of the present article, consists in:
 - (a) a repudiation of the treaty not sanctioned by the present articles; or
 - (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

Article 58^{61/}

Supervening impossibility of performance

A party may invoke an impossibility of performing a treaty as a ground for terminating it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

Article 59^{62/}

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

61/ 1963 Report, article 43.

62/ 1963 Report, article 44.

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- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
 - (b) the effect of the change is radically to transform the scope of obligations still to be performed under the treaty.
2. A fundamental change of circumstances may not be invoked:
- (a) as a ground for terminating or withdrawing from a treaty establishing a boundary;
 - (b) if the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

Article 60^{63/}

Severance of diplomatic relations

The severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations established between them by the treaty.

Article 61^{64/}

Emergence of a new peremptory norm of
general international law

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty which is in conflict with that norm becomes void and terminates.

Section 4 - Procedure

Article 62^{65/}

Procedure to be followed in cases of invalidity, termination,
withdrawal from or suspension of the operation of a treaty

1. A party which claims that a treaty is invalid or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under the provisions of the present articles must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

63/ 1964 Report, article 64.

64/ 1963 Report, article 45.

65/ 1963 Report, article 51

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2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.
3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.
4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.
5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 63^{66/}

Instruments for declaring invalid, terminating, withdrawing from
or suspending the operation of a treaty

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.
2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 64^{67/}

Revocation of notifications and instruments provided
for in articles 62 and 63

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

66/ 1963 Report, articles 49 and 50, paragraph 1.

67/ 1963 Report, article 50, paragraph 2.

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Section 5 - Consequences of the invalidity,
termination or suspension of the
operation of a treaty

Article 65^{68/}

Consequences of the invalidity of a treaty

1. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
 - (a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed.
 - (b) acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.
3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 66^{69/}

Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:
 - (a) releases the parties from any obligation further to perform the treaty:
 - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

68/ 1963 Report, article 52.

69/ 1963 Report, article 53.

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Article 67^{70/}

Consequences of the nullity or termination of a treaty conflicting
with a peremptory norm of general international law

1. In the case of a treaty void under article 50 the parties shall:
 - (a) eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and
 - (b) bring their mutual relations into conformity with the peremptory norm of general international law.
2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:
 - (a) releases the parties from any obligation further to perform the treaty;
 - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 68^{71/}

Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:
 - (a) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;
 - (b) does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible.

^{70/} New article.

^{71/} 1963 Report, article 54.

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PART VI: MISCELLANEOUS PROVISIONS

Article 69^{72/}

Cases of State succession and State responsibility

The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State.

Article 70^{73/}

Case of an aggressor State

The present articles are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII: DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 71^{74/}

Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.
2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Article 72^{75/}

Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:
 - (a) keeping the custody of the original text of the treaty, if entrusted to it;
 - (b) preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the States entitled to become parties to the treaty;
 - (c) receiving any signatures to the treaty and any instruments and notifications relating to it;

72/ New article.

73/ New article.

74/ 1962 Report, articles 28 and 29, paragraph 1, and 1965 Report, article 28.

75/ 1962 Report and 1965 Report, article 29.

/...

(d) examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question.

(e) informing the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;

(g) performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the other States entitled to become parties to the treaty, or, where appropriate, of the competent organ of the organization concerned.

Article 73^{76/}

Notifications and communications

Except as the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the present articles shall:

(a) if there is no depositary, be transmitted directly to the States for which it is intended; or if there is a depositary, to the latter;

(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1(e).

Article 74^{77/}

Correction of errors in texts or in certified
copies of treaties

1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide,

76/ 1965 Report, article 29(bis).

77/ 1962 Report, articles 26 and 27, and 1965 Report, article 26.

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be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(a) shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(b) if on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text, and communicate a copy of it to the contracting States;

(c) if an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the contracting States agree should be corrected.

4. (a) The corrected text replaces the defective text ab initio, unless the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy to the contracting States.

Article 75^{78/}

Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

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INTERNATIONAL LAW COMMISSION

Eighteenth session

Agenda item 1

DRAFT ARTICLES ON THE LAW OF TREATIES

Text as finally adopted by the Commission on 18 and 19 July 1966

Note by the Secretary-General

1. The present document is transmitted to Governments in accordance with paragraph 5(b) of General Assembly resolution 2045 (XX) of 18 December 1965, by which the Assembly requested the Secretary-General:

"To transmit to Governments at least one month before the opening of the twenty-first session of the General Assembly the final drafts prepared by the International Law Commission up to that time, and in particular the draft articles on the law of treaties".

2. During its eighteenth session, held in Geneva from 4 May to 19 July 1966, the International Law Commission completed its work on the law of treaties. It prepared final draft articles on that subject, with commentaries and recommendations, for submission to the General Assembly.^{1/} These draft articles, commentaries and recommendations on the law of treaties will be printed in Chapter II of the report of the Commission on the work of its eighteenth session. That report, however, may not be available in printed form by the date specified in resolution 2045 (XX), and the present mimeographed document has therefore been prepared for the convenience of Governments.

3. The articles in the final draft have been renumbered consecutively. Each article is accompanied by a footnote giving the number of the corresponding

^{1/} The Commission was unable to complete its work on special missions, as it had hoped to do.

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article or paragraph in the earlier draft as sections of it have appeared in the Commission's reports since 1962. The documentary references of those reports are as follows:

- 1962 report - Official Records of the General Assembly, Seventeenth Session, Supplement No.9 (A/5209)
- 1963 report - Official Records of the General Assembly, Eighteenth Session, Supplement No.9 (A/5509)
- 1964 report - Official Records of the General Assembly, Nineteenth Session, Supplement No.9 (A/5809)
- 1965 report - Official Records of the General Assembly, Twentieth Session, Supplement No.9 (A/6009)

DRAFT ARTICLES ON THE LAW OF TREATIES

PART I: INTRODUCTION

Article 1^{2/}

The scope of the present articles

The present articles relate to treaties concluded between States.

Article 2^{3/}

Use of terms

1. For the purposes of the present articles:

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

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

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

^{2/} 1965 Report, article 0.

^{3/} 1962 Report and 1965 Report, article 1.

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

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

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

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

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

(i) "International organization" means an inter-governmental organization.

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

Article 3^{4/}

International agreements not within the scope
of the present articles

The fact that the present articles do not relate:

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

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

Article 4^{5/}

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

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

4/ 1962 Report and 1965 Report, article 2

5/ 1963 Report, article 48, and
1965 Report, article 3(bis)

PART II: CONCLUSION AND ENTRY INTO FORCE OF TREATIES

Section 1 - Conclusion of treaties

Article 5^{6/}

Capacity of States to conclude treaties

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

Article 6^{7/}

Full powers to represent the State in the
conclusion of treaties

1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:
 - (a) he produces appropriate full powers; or
 - (b) it appears from the circumstances that the intention of the States concerned was to dispense with full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
 - (a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;
 - (b) heads of diplomatic missions, for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited;
 - (c) representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the adoption of the text of a treaty in that conference or organ.

^{6/} 1962 Report and 1965 Report, article 3.

^{7/} 1962 Report and 1965 Report, article 4.

Article 7^{8/}

Subsequent confirmation of an act performed
without authority

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

Article 8^{9/}

Adoption of the text

1. The adoption of the text of a treaty takes place by the unanimous consent of the States participating in its drawing up except as provided in paragraph 2.
2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States participating in the conference, unless by the same majority they shall decide to apply a different rule.

Article 9^{10/}

Authentication of the text

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

- (a) by such procedure as may be provided for in the text or agreed upon by the States participating in its drawing up; or
- (b) failing such procedure, by the signature, signature ad referendum or initialling by the representatives of those States of the text of the treaty or of the Final Act of a conference incorporating the text.

Article 10^{11/}

Consent to be bound by a treaty
expressed by signature

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

8/ 1963 Report, article 32, paragraph 1.

9/ 1962 Report and 1965 Report, article 6.

10/ 1962 Report and 1965 Report, article 7.

11/ 1962 Report, articles 10 and 11, and 1965 Report, article 11.

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- (a) the treaty provides that signature shall have that effect;
- (b) it is otherwise established that the negotiating States were agreed that signature should have that effect;
- (c) the intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. For the purposes of paragraph 1:

- (a) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;
- (b) the signature ad referendum of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.

Article 11^{12/}

Consent to be bound by a treaty

expressed by ratification, acceptance or approval

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

- (a) The treaty provides for such consent to be expressed by means of ratification;
- (b) It is otherwise established that the negotiating States were agreed that ratification should be required;
- (c) the representative of the State in question has signed the treaty subject to ratification; or
- (d) the intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

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

^{12/} 1962 Report, articles 12 and 14, and 1965 Report, article 12.

Article 12^{13/}

Consent to be bound by a treaty
expressed by accession

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

- (a) the treaty or an amendment to the treaty provides that such consent may be expressed by that State by means of accession;
- (b) it is otherwise established that the negotiating States were agreed that such consent may be expressed by that State by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

Article 13^{14/}

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

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

- (a) their exchange between the contracting States;
- (b) their deposit with the depositary; or
- (c) their notification to the contracting States or to the depositary, if so agreed.

Article 14^{15/}

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

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

13/ 1962 Report, article 13.

14/ 1962 Report, articles 15 and 16, and 1965 Report, article 15.

15/ 1962 Report, article 15, paragraphs 1(b) and (c) and 1965 Report, article 16.

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

Article 15^{16/}

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

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

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

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

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

Section 2 - Reservations to multilateral treaties

Article 16^{17/}

Formulation of reservations

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

(a) the reservation is prohibited by the treaty;

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

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

16/ 1962 Report and 1965 Report, article 17.

17/ 1962 Report and 1965 Report, article 18.

Article 17 ^{18/}

Acceptance of and objection to reservations

1. A reservation expressly or impliedly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
2. When it appears from the limited number of the negotiating States and the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
3. When a treaty is a constituent instrument of an international organization, the reservation requires the acceptance of the competent organ of that organization, unless the treaty otherwise provides.
4. In cases not falling under the preceding paragraphs of this article:
 - (a) acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;
 - (b) an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;
 - (c) an act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
5. For the purposes of paragraphs 2 and 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 18 ^{19/}

Procedure regarding reservations

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

^{18/} 1962 Report, articles 19 and 20, and 1965 Report, article 19.

^{19/} 1962 Report, articles 18 and 19, and 1965 Report, article 20.

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2. If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.
3. An objection to the reservation made previously to its confirmation does not itself require confirmation.

Article 19 ^{20/}

Legal effects of reservations

1. A reservation established with regard to another party in accordance with articles 16, 17 and 18:
 - (a) modifies for the reserving State the provisions of the treaty to which the reservation relates to the extent of the reservation; and
 - (b) modifies those provisions to the same extent for such other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty inter se.
3. When a State objecting to a reservation agrees to consider the treaty in force between **itself** and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Article 20 ^{21/}

Withdrawal of reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.
2. Unless the treaty otherwise provides or it is otherwise agreed, the withdrawal becomes operative only when notice of it has been received by the other contracting States.

20/ 1962 Report and 1965 Report, article 21.

21/ 1962 Report and 1965 Report, article 22.

Section 3 - Entry into force of treaties

Article 21 ^{22/}

Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound is established after a treaty has come into force, the treaty enters into force for that State on the date when its consent was established unless the treaty otherwise provides.

Article 22 ^{23/}

Entry into force provisionally

1. A treaty may enter into force provisionally if:
 - (a) the treaty itself prescribes that it shall enter into force provisionally pending ratification, acceptance, approval or accession by the contracting States;
 - or
 - (b) the negotiating States have in some other manner so agreed.
2. The same rule applies to the entry into force provisionally of part of a treaty.

PART III: OBSERVANCE: APPLICATION AND INTERPRETATION OF TREATIES

Section 1 - Observance of treaties

Article 23 ^{24/}

Pacta sunt servanda

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

Section 2 - Application of treaties

Article 24 ^{25/}

Non-retroactivity of treaties

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

^{22/} 1962 Report and 1965 Report, article 23.

^{23/} 1962 Report and 1965 Report, article 24.

^{24/} 1964 Report, article 55.

^{25/} 1964 Report, article 56.

Article 25 ^{26/}

Application of treaties to territory

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

Article 26 ^{27/}

Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not to be considered as inconsistent with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 56, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do not include all the parties to the earlier one:
 - (a) as between States parties to both treaties the same rule applies as in paragraph 3;
 - (b) as between a State party to both treaties and a State party only to the earlier treaty, the earlier treaty governs their mutual rights and obligations;
 - (c) as between a State party to both treaties and a State party only to the later treaty, the later treaty governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 37, or to any question of the termination or suspension of the operation of a treaty under article 57 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

^{26/} 1964 Report, article 57.

^{27/} 1964 Report, article 63.

Section 3 - Interpretation of treaties

Article 27 ^{28/}

General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty;
 - (b) any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended. ^{29/}

Article 28 ^{30/}

Supplementary means of interpretation

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

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

^{28/} 1964 Report, article 69.

^{29/} 1964 Report, article 71.

^{30/} 1964 Report, article 70.

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Article 29 ^{31/}

Interpretation of treaties in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text. Except in the case mentioned in paragraph 1, when a comparison of the texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which as far as possible reconciles the texts shall be adopted. ^{32/}

Section 4 - Treaties and third States

Article 30 ^{33/}

General rule regarding third States

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

Article 31 ^{34/}

Treaties providing for obligations for third States

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

Article 32 ^{35/}

Treaties providing for rights for third States

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

^{31/} 1964 Report, article 72.

^{32/} 1964 Report, article 73.

^{33/} 1964 Report, article 58.

^{34/} 1964 Report, article 59.

^{35/} 1964 Report, article 60

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

Article 33 ^{36/}

Revocation or modification of obligations or rights
of third States

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

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

Article 34 ^{37/}

Rules in a treaty becoming binding
through international custom

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

36/ 1964 Report, article 61.

37/ 1964 Report, article 62.

PART IV: AMENDMENT AND MODIFICATION OF TREATIES

Article 35^{38/}

General rule regarding the amendment of
treaties

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

Article 36^{39/}

Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to every party each one of which shall have the right to take part in:
 - (a) the decision as to the action to be taken in regard to such proposal;
 - (b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; and article 26, paragraph 4 (b) applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
 - (a) be considered as a party to the treaty as amended; and
 - (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article 37^{40/}

Agreements to modify multilateral treaties between certain
of the parties only

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

^{38/} 1964 Report, article 65.

^{39/} 1964 Report, article 66.

^{40/} 1964 Report, article 67.

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- (a) the possibility of such a modification is provided for by the treaty; or
- (b) the modification in question:
 - (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
 - (ii) does not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole; and
 - (iii) is not prohibited by the treaty.

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

Article 38^{41/}

Modification of treaties by subsequent practice

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

PART V: INVALIDITY, TERMINATION AND SUSPENSION OF
THE OPERATION OF TREATIES

Section 1 - General provisions

Article 39^{42/}

Validity and continuance in force of treaties

- 1. The validity of a treaty may be impeached only through the application of the present articles. A treaty the invalidity of which is established under the present articles is void.
- 2. A treaty may be terminated or denounced or withdrawn from by a party only as a result of the application of the terms of the treaty or of the present articles. The same rule applies to suspension of the operation of a treaty.

Article 40^{43/}

Obligations under other rules of international law

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application

41/ 1964 Report, article 68.

42/ 1963 Report, article 30

43/ New article. A similar provision was included in article 53, paragraph 4, of the 1963 Report but was there confined to cases of "termination".

of the present articles or of the terms of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it is subject under any other rule of international law.

Article 41^{44/}

Separability of treaty provisions

1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may only be exercised with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.
2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles may only be invoked with respect to the whole treaty except as provided in the following paragraphs or in article 57.
3. If the ground relates to particular clauses alone, it may only be invoked with respect to those clauses where:
 - (a) the said clauses are separable from the remainder of the treaty with regard to their application; and
 - (b) acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole.
4. Subject to paragraph 3, in cases falling under articles 46 and 47 the State entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or to the particular clauses alone.
5. In cases falling under articles 48, 49 and 50, no separation of the provisions of the treaty is permitted.

Article 42^{45/}

Loss of a right to invoke a ground for invalidating,
terminating, withdrawing from or suspending the
operation of a treaty

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

^{44/} 1963 Report, article 46.

^{45/} 1963 Report, article 47.

- (a) it shall have expressly agreed that the treaty, as the case may be, is valid or remains in force or continues in operation; or
- (b) it must by reason of its conduct be considered as having acquiesced, as the case may be, in the validity of the treaty or in its maintenance in force or in operation

Section 2 - Invalidity of treaties

Article 43^{46/}

Provisions of internal law regarding competence to conclude a treaty

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

Article 44^{47/}

Specific restrictions on authority to express the consent of the State

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

Article 45^{48/}

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.
2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error, or if the circumstances were such as to put that State on notice of a possible error.

46/ 1963 Report, article 31.

47/ 1963 Report, article 32, paragraph 2

48/ 1963 Report, article 34

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

Article 46^{49/}

Fraud

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

Article 47^{50/}

Corruption of a representative of the State

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

Article 48^{51/}

Coercion of a representative of the State

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

Article 49^{52/}

Coercion of a State by the threat or use of force

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

Article 50^{53/}

Treaties conflicting with a peremptory norm of
general international law (jus cogens)

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

49/ 1963 Report, article 33.

50/ New article

51/ 1963 Report, article 35.

52/ 1963 Report, article 36.

53/ 1963 Report, article 37.

Section 3 -- Termination and suspension of the
operation of treaties

Article 51^{54/}

Termination of or withdrawal from a treaty by consent
of the parties

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

- (a) in conformity with a provision of the treaty allowing such termination or withdrawal; or
- (b) at any time by consent of all the parties.

Article 52^{55/}

Reduction of the parties to a multilateral treaty below
the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number specified in the treaty as necessary for its entry into force.

Article 53^{56/}

Denunciation of a treaty containing no provision
regarding termination

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

Article 54^{57/}

Suspension of the operation of a treaty
by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

- (a) in conformity with a provision of the treaty allowing such suspension;
- (b) at any time by consent of all the parties.

54/ 1963 Report, article 38.

55/ 1963 Report, article 38, paragraph 3 (b).

56/ 1963 Report, article 39.

57/ 1963 Report, article 40

Article 55^{58/}

Temporary suspension of the operation of a multilateral
treaty by consent between certain of the parties only

When a multilateral treaty contains no provision regarding the suspension of its operation, two or more parties may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension:

- (a) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; and
- (b) is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

Article 56^{59/}

Termination or suspension of the operation of a treaty
implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and:

- (a) it appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or
- (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the treaty or is otherwise established that such was the intention of the parties when concluding the later treaty.

Article 57^{60/}

Termination or suspension of the operation of a treaty as
a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

58/ New article.

59/ 1963 Report, article 41.

60/ 1963 Report, article 42.

2. A material breach of a multilateral treaty by one of the parties entitles:
 - (a) the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:
 - (i) in the relations between themselves and the defaulting State, or
 - (ii) as between all the parties;
 - (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
 - (c) any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of the present article, consists in:
 - (a) a repudiation of the treaty not sanctioned by the present articles; or
 - (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

Article 58^{61/}

Supervening impossibility of performance

A party may invoke an impossibility of performing a treaty as a ground for terminating it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

Article 59^{62/}

Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

^{61/} 1963 Report, article 43.

^{62/} 1963 Report, article 44.

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- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
 - (b) the effect of the change is radically to transform the scope of obligations still to be performed under the treaty.
2. A fundamental change of circumstances may not be invoked:
- (a) as a ground for terminating or withdrawing from a treaty establishing a boundary;
 - (b) if the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

Article 60^{63/}

Severance of diplomatic relations

The severance of diplomatic relations between parties to a treaty does not in itself affect the legal relations established between them by the treaty.

Article 61^{64/}

Emergence of a new peremptory norm of
general international law

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty which is in conflict with that norm becomes void and terminates.

Section 4 -- Procedure

Article 62^{65/}

Procedure to be followed in cases of invalidity, termination,
withdrawal from or suspension of the operation of a treaty

1. A party which claims that a treaty is invalid or which alleges a ground for terminating, withdrawing from or suspending the operation of a treaty under the provisions of the present articles must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

63/ 1964 Report, article 64.

64/ 1963 Report, article 45.

65/ 1963 Report, article 51

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.
3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.
4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.
5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 63^{66/}

Instruments for declaring invalid, terminating, withdrawing from
or suspending the operation of a treaty

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.
2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 64^{67/}

Revocation of notifications and instruments provided
for in articles 62 and 63

A notification or instrument provided for in articles 62 and 63 may be revoked at any time before it takes effect.

^{66/} 1963 Report, articles 49 and 50, paragraph 1.

^{67/} 1963 Report, article 50, paragraph 2.

Section 5 - Consequences of the invalidity,
termination or suspension of the
operation of a treaty

Article 65^{68/}

Consequences of the invalidity of a treaty

1. The provisions of a void treaty have no legal force.
2. If acts have nevertheless been performed in reliance on such a treaty:
 - (a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed.
 - (b) acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.
3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act is imputable.
4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 66^{69/}

Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:
 - (a) releases the parties from any obligation further to perform the treaty:
 - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

68/ 1963 Report, article 52.

69/ 1963 Report, article 53.

Article 67^{70/}

Consequences of the nullity or termination of a treaty conflicting
with a peremptory norm of general international law

1. In the case of a treaty void under article 50 the parties shall:
 - (a) eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and
 - (b) bring their mutual relations into conformity with the peremptory norm of general international law.
2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:
 - (a) releases the parties from any obligation further to perform the treaty;
 - (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 68^{71/}

Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:
 - (a) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;
 - (b) does not otherwise affect the legal relations between the parties established by the treaty.
2. During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible.

^{70/} New article.

^{71/} 1963 Report, article 54.

PART VI: MISCELLANEOUS PROVISIONS

Article 69^{72/}

Cases of State succession and State responsibility

The provisions of the present articles are without prejudice to any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State.

Article 70^{73/}

Case of an aggressor State

The present articles are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

PART VII: DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 71^{74/}

Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.
2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Article 72^{75/}

Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:
 - (a) keeping the custody of the original text of the treaty, if entrusted to it;
 - (b) preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the States entitled to become parties to the treaty;
 - (c) receiving any signatures to the treaty and any instruments and notifications relating to it;

72/ New article.

73/ New article.

74/ 1962 Report, articles 28 and 29, paragraph 1, and 1965 Report, article 28.

75/ 1962 Report and 1965 Report, article 29.

(d) examining whether a signature, an instrument or a reservation is in conformity with the provisions of the treaty and of the present articles and, if need be, bringing the matter to the attention of the State in question.

(e) informing the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;

(f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;

(g) performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the other States entitled to become parties to the treaty, or, where appropriate, of the competent organ of the organization concerned.

Article 73^{76/}

Notifications and communications

Except as the treaty or the present articles otherwise provide, any notification or communication to be made by any State under the present articles shall:

(a) if there is no depositary, be transmitted directly to the States for which it is intended; or if there is a depositary, to the latter;

(b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;

(c) if transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1(e).

Article 74^{77/}

Correction of errors in texts or in certified
copies of treaties

1. Where, after the authentication of the text of a treaty, the contracting States are agreed that it contains an error, the error shall, unless they otherwise decide,

76/ 1965 Report, article 29(bis)

77/ 1962 Report, articles 26 and 27, and 1965 Report, article 26.

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be corrected:

(a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;

(b) by executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or

(c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

2. Where the treaty is one for which there is a depositary, the latter:

(a) shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;

(b) if on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text, and communicate a copy of it to the contracting States;

(c) if an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the contracting States agree should be corrected.

4. (a) The corrected text replaces the defective text ab initio, unless the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a procès-verbal specifying the rectification and communicate a copy to the contracting States.

Article 75^{78/}

Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

78/ 1962 Report and 1965 Report, article 25

PERMANENT MISSION OF CANADA TO THE
EUROPEAN OFFICE OF THE UNITED NATIONS



MISSION PERMANENTE DU CANADA AUPRÈS
DE L'OFFICE EUROPÉEN DES NATIONS UNIES

24.VIII.66

20-3-1-6
31 | 31

16 Parc du Château Banquet
Geneva, Switzerland

July 28, 1966

Robinson OR

Dear Mr. Cadieux:

*Perhaps Mr. Gotlieb should see this
pending the return of the OSSEA*

Since it appears unlikely that the report of the Commission on its draft articles on the Law of Treaties will be completed in time for its distribution one month ahead of the opening of the Assembly, the Secretariat have prepared the attached document, No. A/CN.4/190, containing the final versions of the draft articles as approved by the Commission, so as to enable governments to have ample time within which to consider the revision of the articles.

at the end of the month.

*FILE POCKET
BW*

I am continuing to work on our own report whenever I have a free moment, which is not very often at present while the Outer Space Conference is on. As mentioned in our telegram No. 816 of July 15, I hope, however, to have the report completed in the latter part of August.

Yours sincerely,

J. A. Beesley
J. A. Beesley

Mr. M. Cadieux,
The Under-Secretary of State
for External Affairs,
Ottawa, Canada

4.8.2/05

File
W

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM
De THE CANADIAN PERMANENT MISSION, GENEVA

REFERENCE
Référence OUR TELEGRAM NO. 816 OF JULY 15, 1966

SUBJECT
Sujet INTERNATIONAL LAW COMMISSION: DRAFT CONVENTION ON LAW OF TREATIES

SECURITY
Sécurité UNCLASSIFIED

DATE July 15, 1966

NUMBER
Numéro 324

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	31 31

ENCLOSURES
Annexes

2

DISTRIBUTION

Legal Div.

2. R. [Signature]



FILE POCKET
↓

We are attaching copy of Document A/CN.4/L.117
of July 13, referred to in our telegram under reference.

J. Alan Busby
Permanent Mission

CLASSIFIED

SECRET
JUL 28 1983
EXEMPTED

ACTION COPY

20-5-2-10-2

FM GN EVAL JUL 15/66 RESTR.

211 31

TO EXTERNL 816 PRIORITY

20-3-1-6

FOR USSEA, LEGAL AND UN DIVS ONLY

INTERNATL LAW COMMISSION: DRAFT CONVENTION ON LAW OF TREATIES
 APPROX ONE HALF OF OUR REPORT ON 18TH SESSION OF ILC IS COMPLETED
 IN DRAFT FORM BUT DUE TO OUTER SPACE AND OTHER CONFERENCE COMMIT-
 MENTS, IT WILL PROBABLY NOT RPT NOT BE POSSIBLE TO COMPLETE IT
 UNTIL LATE AUG. WE ARE THEREFORE TODAY FORWARDING TO YOU BY AIR,
 WITH COPY TO LEGAL DIV, DOCU A/CN4/L117 OF JUL 13, WHICH SETS OUT
 THE TEXT OF THE DRAFT ARTICLES AS REVISED BY THE COMMISSION AT
 THE 18TH SESSION UP TO AND INCLUDING JUL 12 (TOGETHER WITH CERTAIN
 ADDITIONAL CHANGES PROPOSED BY DRAFTING CTTEE, AS APPEARS FROM THE
 DOCU). COMMISSION IS NOW ENGAGED ON REVIEWING TEXT OF ITS COMMENTARY
 AND EXPECTS TO COMPLETE ITS WORK ON LAW OF TREATIES (BUT NOT RPT
 NOT SPECIAL MISSIONS) BY PROPOSED TERMINATION DATE OF JUL 19. ...

Ritchson
De la
Copy to Mr. of Bureau
(OAX)
on arrival in August
July 18/66