

United Nations Conference on the Law of Treaties

Vienna, Austria

First and Second sessions

26 March – 24 May 1968 and 9 April – 22 May 1969

Document:-

A/CONF.39/14

Report of the Committee of the Whole on its work at the first session of the Conference

Extract from the *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions (Documents of the Conference)*

C.—REPORTS OF THE COMMITTEE OF THE WHOLE

DOCUMENT A/CONF.39/14

Report of the Committee of the Whole on its work at the first session of the Conference

[Original: English]
[1 May 1969]

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Chapter I. Introduction	1-21	107
A. Submission of the report	1-2	107
B. Expression of thanks	3-5	107
C. Election of officers and of the Drafting Committee: Secretariat of the Conference	6-7	107
D. Basic proposal and background documentation	8-9	107
(i) Basic proposal	8	107
(ii) Background documentation	9	107
E. Meetings, organization of work and reports of the Drafting Committee	10-16	108
(i) Meetings	10	108
(ii) Organization of work	11-14	108
(iii) Reports of the Drafting Committee	15-16	108
F. Organization of the report of the Committee of the Whole; summary records, and state- ments for the report	17-21	109
(i) Organization of the report	17-19	109
(ii) Summary records	20	109
(iii) Statements for the report	21	109
 Chapter II. Consideration by the Committee of the Whole of the draft articles on the Law of Treaties	 22-700	 110
PART I. INTRODUCTION	22-57	110
<i>Article 1</i> (The scope of the present articles)	22-32	110
A. International Law Commission text	22	110
B. Amendments	23-24	110
C. Proceedings of the Committee of the Whole	25-32	110
(i) Meetings	25	110
(ii) Initial consideration	26-28	110
(iii) Consideration of the reports of the Drafting Committee	29-30	110
(iv) Texts adopted by the Committee of the Whole	31-32	110
(a) Text of article 1	31	110
(b) Draft resolution	32	110
<i>Article 2</i> (Use of terms)	33-40	111
A. International Law Commission text	33	111
B. Amendments	34-35	111
C. Proceedings of the Committee of the Whole	36-40	113
(i) Meetings	36	113
(ii) Consideration	37-39	113
(iii) Decision	40	113
<i>Article 3</i> (International agreements not within the scope of the present articles)	41-48	113
A. International Law Commission text	41	113
B. Amendments	42-43	113
C. Proceedings of the Committee of the Whole	44-48	114
(i) Meetings	44	114
(ii) Initial consideration	45-46	114
(iii) Consideration of the report of the Drafting Committee	47	114
(iv) Text adopted by the Committee of the Whole	48	114

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
<i>Article 4</i> (Treaties which are constituent instruments of international organizations or which are adopted within international organizations)	49-57	114
A. International Law Commission text	49	114
B. Amendments	50-51	114
C. Proceedings of the Committee of the Whole	52-57	115
(i) Meetings	52	115
(ii) Initial consideration	53-55	115
(iii) Consideration of the report of the Drafting Committee	56	116
(iv) Text adopted by the Committee of the Whole	57	116
PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES	58-230	116
<i>Section 1: Conclusion of treaties</i>	58-171	116
<i>Article 5</i> (Capacity of States to conclude treaties)	58-66	116
A. International Law Commission text	58	116
B. Amendments	59-60	116
C. Proceedings of the Committee of the Whole	61-66	117
(i) Meetings	61	117
(ii) Initial consideration	62-63	117
(iii) Consideration of the report of the Drafting Committee	64-65	118
(iv) Text adopted by the Committee of the Whole	66	118
<i>Article 5bis</i> (The right of participation in treaties)	67-69	118
A. Proposed new article	67	118
B. Proceedings of the Committee of the Whole	68-69	119
(i) Meetings and consideration	68	119
(ii) Decision	69	119
<i>Article 6</i> (Full powers to represent the State in the conclusion of treaties)	70-79	119
A. International Law Commission text	70	119
B. Amendments	71-72	119
C. Proceedings of the Committee of the Whole	73-79	120
(i) Meetings	73	120
(ii) Initial consideration	74-76	120
(iii) Consideration of the report of the Drafting Committee	77-78	120
(iv) Text adopted by the Committee of the Whole	79	121
<i>Article 7</i> (Subsequent confirmation of an act performed without authority)	80-88	121
A. International Law Commission text	80	121
B. Amendments	81-82	121
C. Proceedings of the Committee of the Whole	83-88	121
(i) Meetings	83	121
(ii) Initial consideration	84-86	121
(iii) Consideration of the report of the Drafting Committee	87	122
(iv) Text adopted by the Committee of the Whole	88	122
<i>Article 8</i> (Adoption of the text)	89-95	122
A. International Law Commission text	89	122
B. Amendments	90-91	122
C. Proceedings of the Committee of the Whole	92-95	123
(i) Meetings	92	123
(ii) Consideration	93-94	123
(iii) Decision	95	123
<i>Article 9</i> (Authentication of the text)	96-101	123
A. International Law Commission text	96	123
B. Amendments	97	123
C. Proceedings of the Committee of the Whole	98-101	123
(i) Meetings	98	123
(ii) Initial consideration	99	123
(iii) Consideration of the report of the Drafting Committee	100	123
(iv) Text adopted by the Committee of the Whole	101	123
<i>Article 9bis</i> (Consent to be bound by a treaty) and <i>article 12bis</i> (Other methods of expressing consent to be bound by a treaty)	102-108	123
A. Proposed new articles	103-104	124

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
B. Proceedings of the Committee of the Whole	105-108	124
(i) Meetings	105	124
(ii) Initial consideration	106	124
(iii) Consideration of the report of the Drafting Committee	107	124
(iv) Text adopted by the Committee of the Whole	108	124
<i>Question of a residuary rule in favour of signature or of ratification (including article 11bis)</i>	109-116	124
A. International Law Commission text	110	124
B. Amendments	111-112	125
C. Proceedings of the Committee of the Whole	113-116	125
(i) Meetings	113	125
(ii) Consideration	114-115	125
(iii) Decision	116	125
<i>Article 10 (Consent to be bound by a treaty expressed by signature)</i>	117-126	126
A. International Law Commission text	117	126
B. Amendments	118-119	126
C. Proceedings of the Committee of the Whole	120-126	126
(i) Meetings	120	126
(ii) Initial consideration	121-124	126
(iii) Consideration of the report of the Drafting Committee	125	126
(iv) Text adopted by the Committee of the Whole	126	127
<i>Article 10bis (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty)</i>	127-131	127
A. Proposed new article	127	127
B. Proceedings of the Committee of the Whole	128-131	127
(i) Meetings	128	127
(ii) Initial consideration	129	127
(iii) Consideration of the report of the Drafting Committee	130	127
(iv) Text adopted by the Committee of the Whole	131	127
<i>Article 11 (Consent to be bound by a treaty expressed by ratification, acceptance or approval)</i>	132-138	127
A. International Law Commission text	132	127
B. Amendments	133-134	127
C. Proceedings of the Committee of the Whole	135-138	128
(i) Meetings	135	128
(ii) Initial consideration	136	128
(iii) Consideration of the report of the Drafting Committee	137	128
(iv) Text adopted by the Committee of the Whole	138	128
<i>Article 11bis</i>	139	128
<i>Article 12 (Consent to be bound by a treaty expressed by accession)</i>	140-147	128
A. International Law Commission text	140	128
B. Amendments	141-142	128
C. Proceedings of the Committee of the Whole	143-147	128
(i) Meetings	143	128
(ii) Consideration	144-146	128
(iii) Decision	147	129
<i>Article 12bis (Other methods of expressing consent to be bound by a treaty)</i>	148	129
<i>Article 13 (Exchange or deposit of instruments of ratification, acceptance, approval or accession)</i>	149-155	129
A. International Law Commission text	149	129
B. Amendments	150-151	129
C. Proceedings of the Committee of the Whole	152-155	129
(i) Meetings	152	129
(ii) Initial consideration	153	129
(iii) Consideration of the report of the Drafting Committee	154	129
(iv) Text adopted by the Committee of the Whole	155	129
<i>Article 14 (Consent relating to a part of a treaty and choice of differing provisions)</i>	156-161	129
A. International Law Commission text	156	129
B. Amendments	157	130

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
C. Proceedings of the Committee of the Whole	158-161	130
(i) Meetings	158	130
(ii) Initial consideration	159	130
(iii) Consideration of the report of the Drafting Committee	160	130
(iv) Text adopted by the Committee of the Whole	161	130
<i>Article 15</i> (Obligation of a State not to frustrate the object of a treaty prior to its entry into force)	162-171	130
A. International Law Commission text	162	130
B. Amendments	163-164	130
C. Proceedings of the Committee of the Whole	165-171	131
(i) Meetings	165	131
(ii) Initial consideration	166-169	131
(iii) Consideration of the report of the Drafting Committee	170	132
(iv) Text adopted by the Committee of the Whole	171	132
<i>Section 2: Reservations to multilateral treaties</i>	172-211	132
<i>Article 16</i> (Formulation of reservations) and <i>article 17</i> (Acceptance of and objection to reservations)	172-189	132
A. International Law Commission text	173	132
B. Amendments	174-179	133
C. Proceedings of the Committee of the Whole	180-189	136
(i) Meetings	180	136
(ii) Initial consideration	181-183	136
(iii) Consideration of the reports of the Drafting Committee	184-187	137
(iv) Text adopted by the Committee of the Whole and decision	188-189	138
<i>Article 18</i> (Procedure regarding reservations)	190-196	138
A. International Law Commission text	190	138
B. Amendments	191-192	138
C. Proceedings of the Committee of the Whole	193-196	139
(i) Meetings	193	139
(ii) Initial consideration	194	139
(iii) Consideration of the report of the Drafting Committee	195	139
(iv) Text adopted by the Committee of the Whole	196	139
<i>Article 19</i> (Legal effects of reservations)	197-204	139
A. International Law Commission text	197	139
B. Amendments	198-199	139
C. Proceedings of the Committee of the Whole	200-204	140
(i) Meetings	200	140
(ii) Initial consideration	201-202	140
(iii) Consideration of the report of the Drafting Committee	203	140
(iv) Text adopted by the Committee of the Whole	204	140
<i>Article 20</i> (Withdrawal of reservations)	205-211	141
A. International Law Commission text	205	141
B. Amendments	206-207	141
C. Proceedings of the Committee of the Whole	208-211	141
(i) Meetings	208	141
(ii) Initial consideration	209	141
(iii) Consideration of the report of the Drafting Committee	210	141
(iv) Text adopted by the Committee of the Whole	211	142
<i>Section 3: Entry into force of treaties</i>	212-230	142
<i>Article 21</i> (Entry into force)	212-221	142
A. International Law Commission text	212	142
B. Amendments	213-214	142
C. Proceedings of the Committee of the Whole	215-221	142
(i) Meetings	215	142
(ii) Initial consideration	216-217	142
(iii) Consideration of the report of the Drafting Committee	218-220	143
(iv) Text adopted by the Committee of the Whole	221	143
<i>Article 22</i> (Entry into force provisionally)	222-230	143
A. International Law Commission text	222	143

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
B. Amendments	223-224	143
C. Proceedings of the Committee of the Whole	225-230	144
(i) Meetings	225	144
(ii) Initial consideration	226-228	144
(iii) Consideration of the report of the Drafting Committee	229	144
(iv) Text adopted by the Committee of the Whole	230	144
PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES	231-317	145
Section 1: <i>Observance of treaties</i>	231-240	145
Article 23 (<i>Pacta sunt servanda</i>) and article 23bis	231-240	145
A. International Law Commission text	231	145
B. Amendments	232-233	145
C. Proceedings of the Committee of the Whole	234-240	145
(i) Meetings	234	145
(ii) Initial consideration	235-236	145
(iii) Consideration of the report of the Drafting Committee	237-238	145
(iv) Texts adopted by the Committee of the Whole	239-240	145
Section 2: <i>Application of treaties</i>	241-263	146
Article 24 (Non-retroactivity of treaties)	241-248	146
A. International Law Commission text	241	146
B. Amendments	242-243	146
C. Proceedings of the Committee of the Whole	244-248	146
(i) Meetings	244	146
(ii) Initial consideration	245-246	146
(iii) Consideration of the report of the Drafting Committee	247	146
(iv) Text adopted by the Committee of the Whole	248	146
Article 25 (Application of treaties to territory)	249-256	147
A. International Law Commission text	249	147
B. Amendments	250-251	147
C. Proceedings of the Committee of the Whole	252-256	147
(i) Meetings	252	147
(ii) Initial consideration	253-254	147
(iii) Consideration of the report of the Drafting Committee	255	147
(iv) Text adopted by the Committee of the Whole	256	147
Article 26 (Application of successive treaties relating to the same subject-matter)	257-263	147
A. International Law Commission text	257	147
B. Amendments	258-259	147
C. Proceedings of the Committee of the Whole	260-263	148
(i) Meetings	260	148
(ii) Consideration	261-262	148
(iii) Decision	263	148
Section 3: <i>Interpretation of treaties</i>	264-282	148
Article 27 (General rule of interpretation) and article 28 (Supplementary means of interpretation)	264-275	148
A. International Law Commission text	265	148
B. Amendments	266-269	149
C. Proceedings of the Committee of the Whole	270-275	150
(i) Meetings	270	150
(ii) Initial consideration	271-272	150
(iii) Consideration of the report of the Drafting Committee	273	150
(iv) Texts adopted by the Committee of the Whole	274-275	150
Article 29 (Interpretation of treaties in two or more languages)	276-282	151
A. International Law Commission text	276	151
B. Amendments	277-278	151
C. Proceedings of the Committee of the Whole	279-282	151
(i) Meetings	279	151
(ii) Initial consideration	280	152
(iii) Consideration of the report of the Drafting Committee	281	152
(iv) Text adopted by the Committee of the Whole	282	152

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
<i>Section 4: Treaties and third States</i>	283-317	152
<i>Article 30</i> (General rule regarding third States)	283-290	152
A. International Law Commission text	283	152
B. Amendments	284-285	152
C. Proceedings of the Committee of the Whole	286-290	152
(i) Meetings	286	152
(ii) Initial consideration	287-288	152
(iii) Consideration of the report of the Drafting Committee	289	152
(iv) Text adopted by the Committee of the Whole	290	153
<i>Article 31</i> (Treaties providing for obligations for third States) and <i>article 32</i> (Treaties providing for rights for third States)	291-301	153
A. International Law Commission text	292	153
B. Amendments	293-294	153
C. Proceedings of the Committee of the Whole	295-301	153
(i) Meetings	295	153
(ii) Initial consideration	296-298	153
(iii) Consideration of the report of the Drafting Committee	299	153
(iv) Texts adopted by the Committee of the Whole	300-301	153
<i>Article 33</i> (Revocation or modification of obligations or rights of third States)	302-309	154
A. International Law Commission text	302	154
B. Amendments	303-304	154
C. Proceedings of the Committee of the Whole	305-309	154
(i) Meetings	305	154
(ii) Initial consideration	306-307	154
(iii) Consideration of the report of the Drafting Committee	308	154
(iv) Text adopted by the Committee of the Whole	309	154
<i>Article 34</i> (Rules in a treaty becoming binding through international custom)	310-317	154
A. International Law Commission text	310	154
B. Amendments	311-312	155
C. Proceedings of the Committee of the Whole	313-317	155
(i) Meetings	313	155
(ii) Initial consideration	314-315	155
(iii) Consideration of the report of the Drafting Committee	316	155
(iv) Text adopted by the Committee of the Whole	317	155
PART IV. AMENDMENT AND MODIFICATION OF TREATIES	318-348	155
<i>Article 35</i> (General rule regarding the amendment of treaties)	318-326	155
A. International Law Commission text	319	155
B. Amendments	320-321	156
C. Proceedings of the Committee of the Whole	322-326	156
(i) Meetings	322	156
(ii) Initial consideration	323-324	156
(iii) Consideration of the report of the Drafting Committee	325	156
(iv) Text adopted by the Committee of the Whole	326	156
<i>Article 36</i> (Amendment of multilateral treaties)	327-334	156
A. International Law Commission text	328	156
B. Amendments	329-330	156
C. Proceedings of the Committee of the Whole	331-334	157
(i) Meetings	331	157
(ii) Consideration	332-333	157
(iii) Decision	334	157
<i>Article 37</i> (Agreements to modify multilateral treaties between certain of the parties only)	335-341	157
A. International Law Commission text	335	157
B. Amendments	336-337	157
C. Proceedings of the Committee of the Whole	338-341	157
(i) Meetings	338	157
(ii) Consideration	339-340	157
(iii) Decision	341	158

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
<i>Article 38</i> (Modification of treaties by subsequent practice)	342-348	158
A. International Law Commission text	342	158
B. Amendments	343-344	158
C. Proceedings of the Committee of the Whole	345-348	158
(i) Meetings	345	158
(ii) Consideration	346-347	158
(iii) Decision	348	158
PART V. INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES	349-633	158
<i>Section 1: General provisions</i>	349-391	158
<i>Article 39</i> (Validity and continuance in force of treaties)	349-359	158
A. International Law Commission text	349	158
B. Amendments	350-351	159
C. Proceedings of the Committee of the Whole	352-359	159
(i) Meetings	352	159
(ii) Initial consideration	353-357	159
(iii) Consideration of the report of the Drafting Committee	358	160
(iv) Text adopted by the Committee of the Whole	359	160
<i>Article 40</i> (Obligations under other rules of international law)	360-366	160
A. International Law Commission text	360	160
B. Amendments	361-362	160
C. Proceedings of the Committee of the Whole	363-366	160
(i) Meetings	363	160
(ii) Initial consideration	364	160
(iii) Consideration of the report of the Drafting Committee	365	160
(iv) Text adopted by the Committee of the Whole	366	160
<i>Article 41</i> (Separability of treaty provisions)	367-379	160
A. International Law Commission text	367	160
B. Amendments	368-369	161
C. Proceedings of the Committee of the Whole	370-379	162
(i) Meetings	370	162
(ii) Initial consideration	371-374	162
(iii) Consideration of the report of the Drafting Committee	375-378	163
(iv) Text adopted by the Committee of the Whole	379	163
<i>Article 42</i> (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty)	380-391	163
A. International Law Commission text	380	163
B. Amendments	381-382	163
C. Proceedings of the Committee of the Whole	383-391	164
(i) Meetings	383	164
(ii) Initial consideration	384-387	164
(iii) Consideration of the report of the Drafting Committee	388-390	165
(iv) Text adopted by the Committee of the Whole	391	165
<i>Section 2: Invalidity of treaties</i>	392-470	165
<i>Article 43</i> (Provisions of internal law regarding competence to conclude a treaty)	392-400	165
A. International Law Commission text	392	165
B. Amendments	393-394	165
C. Proceedings of the Committee of the Whole	395-400	166
(i) Meetings	395	166
(ii) Initial consideration	396-398	166
(iii) Consideration of the report of the Drafting Committee	399	166
(iv) Text adopted by the Committee of the Whole	400	166
<i>Article 44</i> (Specific restrictions on authority to express the consent of the State)	401-409	166
A. International Law Commission text	401	166
B. Amendments	402-403	166
C. Proceedings of the Committee of the Whole	404-409	167
(i) Meetings	404	167
(ii) Initial consideration	405-407	167
(iii) Consideration of the report of the Drafting Committee	408	167
(iv) Text adopted by the Committee of the Whole	409	167

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
<i>Article 45</i> (Error)	410-418	167
A. International Law Commission text	410	167
B. Amendments	411-412	168
C. Proceedings of the Committee of the Whole	413-418	168
(i) Meetings	413	168
(ii) Initial consideration	414-416	168
(iii) Consideration of the report of the Drafting Committee	417	168
(iv) Text adopted by the Committee of the Whole	418	168
<i>Article 46</i> (Fraud)	419-428	168
A. International Law Commission text	420	168
B. Amendments	421-422	169
C. Proceedings of the Committee of the Whole	423-428	169
(i) Meetings	423	169
(ii) Initial consideration	424-426	169
(iii) Consideration of the report of the Drafting Committee	427	169
(iv) Text adopted by the Committee of the Whole	428	169
<i>Article 47</i> (Corruption of a representative of the State)	429-437	169
A. International Law Commission text	430	170
B. Amendments	431-432	170
C. Proceedings of the Committee of the Whole	433-437	170
(i) Meetings	433	170
(ii) Initial consideration	434-435	170
(iii) Consideration of the report of the Drafting Committee	436	170
(iv) Text adopted by the Committee of the Whole	437	170
<i>Article 48</i> (Coercion of a representative of the State)	438-446	171
A. International Law Commission text	438	171
B. Amendments	439-440	171
C. Proceedings of the Committee of the Whole	441-446	171
(i) Meetings	441	171
(ii) Initial consideration	442-444	171
(iii) Consideration of the report of the Drafting Committee	445	171
(iv) Text adopted by the Committee of the Whole	446	171
<i>Article 49</i> (Coercion of a State by the threat or use of force)	447-459	171
A. International Law Commission text	447	171
B. Amendments and draft declaration	448-450	171
(i) Amendments	448-449	171
(ii) Draft declaration	450	172
C. Proceedings of the Committee of the Whole	451-459	172
(i) Meetings	451	172
(ii) Initial consideration	452-456	172
(iii) Consideration of the report of the Drafting Committee	457	173
(iv) Texts adopted by the Committee of the Whole	458-459	173
(a) Text of article 49	458	173
(b) Draft resolution	459	173
<i>Article 50</i> (Treaties conflicting with a peremptory norm of general international law (<i>jus cogens</i>))	460-470	173
A. International Law Commission text	460	173
B. Amendments	461-462	173
C. Proceedings of the Committee of the Whole	463-470	174
(i) Meetings	463	174
(ii) Initial consideration	464-466	174
(iii) Consideration of the report of the Drafting Committee	467-469	175
(iv) Text adopted by the Committee of the Whole	470	175
<i>Section 3: Termination and suspension of the operation of treaties</i>	471-567	175
<i>Article 51</i> (Termination of or withdrawal from a treaty by consent of the parties)	471-477	175
A. International Law Commission text	471	175
B. Amendments	472-473	175
C. Proceedings of the Committee of the Whole	474-477	176
(i) Meetings	474	176

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
(ii) Initial consideration	475	176
(iii) Consideration of the report of the Drafting Committee	476	176
(iv) Text adopted by the Committee of the Whole	477	176
<i>Article 52</i> (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force)	478-484	176
A. International Law Commission text	478	176
B. Amendments	479-480	176
C. Proceedings of the Committee of the Whole	481-484	176
(i) Meetings	481	176
(ii) Initial consideration	482	176
(iii) Consideration of the report of the Drafting Committee	483	177
(iv) Text adopted by the Committee of the Whole	484	177
<i>Article 53</i> (Denunciation of a treaty containing no provision regarding termination)	485-495	177
A. International Law Commission text	485	177
B. Amendments	486-487	177
C. Proceedings of the Committee of the Whole	488-495	177
(i) Meetings	488	177
(ii) Initial consideration	489-491	177
(iii) Consideration of the report of the Drafting Committee	492-494	177
(iv) Text adopted by the Committee of the Whole	495	178
<i>Article 54</i> (Suspension of the operation of a treaty by consent of the parties)	496-502	178
A. International Law Commission text	496	178
B. Amendments	497-498	178
C. Proceedings of the Committee of the Whole	499-502	178
(i) Meetings	499	178
(ii) Initial consideration	500	178
(iii) Consideration of the report of the Drafting Committee	501	178
(iv) Text adopted by the Committee of the Whole	502	178
<i>Article 55</i> (Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only)	503-511	178
A. International Law Commission text	503	178
B. Amendments	504-505	178
C. Proceedings of the Committee of the Whole	506-511	179
(i) Meetings	506	179
(ii) Consideration	507-510	179
(iii) Decision	511	179
<i>Article 56</i> (Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty)	512-519	180
A. International Law Commission text	512	180
B. Amendments	513-514	180
C. Proceedings of the Committee of the Whole	515-519	180
(i) Meetings	515	180
(ii) Initial consideration	516-517	180
(iii) Consideration of the report of the Drafting Committee	518	180
(iv) Text adopted by the Committee of the Whole	519	181
<i>Article 57</i> (Termination or suspension of the operation of a treaty as a consequence of its breach)	520-528	181
A. International Law Commission text	520	181
B. Amendments	521-522	181
C. Proceedings of the Committee of the Whole	523-528	182
(i) Meetings	523	182
(ii) Initial consideration	524-526	182
(iii) Consideration of the report of the Drafting Committee	527	182
(iv) Text adopted by the Committee of the Whole	528	182
<i>Article 58</i> (Supervening impossibility of performance)	529-537	182
A. International Law Commission text	529	182
B. Amendments	530-531	182
C. Proceedings of the Committee of the Whole	532-537	183
(i) Meetings	532	183

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
(ii) Initial consideration	533-535	183
(iii) Consideration of the report of the Drafting Committee	536	183
(iv) Text adopted by the Committee of the Whole	537	183
<i>Article 59</i> (Fundamental change of circumstances)	538-546	183
A. International Law Commission text	538	183
B. Amendments	539-540	183
C. Proceedings of the Committee of the Whole	541-546	184
(i) Meetings	541	184
(ii) Initial consideration	542-544	184
(iii) Consideration of the report of the Drafting Committee	545	184
(iv) Text adopted by the Committee of the Whole	546	184
<i>Article 60</i> (Severance of diplomatic relations) and <i>article 69bis</i>	547-558	185
A. International Law Commission text	547	185
B. Amendments	548-549	185
C. Proceedings of the Committee of the Whole	550-558	185
(i) Meetings	550	185
(ii) Initial consideration	551-553	185
(iii) Consideration of the report of the Drafting Committee	554-556	185
(iv) Texts adopted by the Committee of the Whole	557-558	185
<i>Article 61</i> (Emergence of a new peremptory norm of general international law)	559-567	186
A. International Law Commission text	559	186
B. Amendments	560-561	186
C. Proceedings of the Committee of the Whole	562-567	186
(i) Meetings	562	186
(ii) Initial consideration	563-564	186
(iii) Consideration of the report of the Drafting Committee	565-566	186
(iv) Text adopted by the Committee of the Whole	567	186
<i>Section 4: Procedure</i>	568-598	186
<i>Article 62</i> (Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty)	568-581	186
A. International Law Commission text	568	186
B. Amendments and draft resolutions	569-572	187
I. Amendments	569-571	187
II. Draft resolutions	572	191
C. Proceedings of the Committee of the Whole	573-581	192
(i) Meetings	573	192
(ii) Initial consideration	574-579	192
(iii) Consideration of the report of the Drafting Committee	580	192
(iv) Text adopted by the Committee of the Whole	581	192
<i>Article 62bis</i>	582-584	193
A. Proposed new article	582-583	193
B. Proceedings of the Committee of the Whole	584	194
Meetings, consideration and decision	584	194
<i>Article 63</i> (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty)	585-592	194
A. International Law Commission text	585	194
B. Amendments	586-587	194
C. Proceedings of the Committee of the Whole	588-592	194
(i) Meetings	588	194
(ii) Initial consideration	589-590	194
(iii) Consideration of the report of the Drafting Committee	591	194
(iv) Text adopted by the Committee of the Whole	592	194
<i>Article 64</i> (Revocation of notifications and instruments provided for in articles 62 and 63)	593-598	195
A. International Law Commission text	593	195
B. Amendments	594	195
C. Proceedings of the Committee of the Whole	595-598	195
(i) Meetings	595	195
(ii) Initial consideration	596	195

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
(iii) Consideration of the report of the Drafting Committee	597	195
(iv) Text adopted by the Committee of the Whole	598	195
<i>Section 5: Consequences of the invalidity, termination or suspension of the operation of a treaty</i>	599-633	195
<i>Article 65</i> (Consequences of the invalidity of a treaty)	599-610	195
A. International Law Commission text	599	195
B. Amendments	600-601	195
C. Proceedings of the Committee of the Whole	602-610	196
(i) Meetings	602	196
(ii) Initial consideration	603-605	196
(iii) Consideration of the report of the Drafting Committee	606-609	196
(iv) Text adopted by the Committee of the Whole	610	196
<i>Article 66</i> (Consequences of the termination of a treaty)	611-617	197
A. International Law Commission text	611	197
B. Amendments	612-613	197
C. Proceedings of the Committee of the Whole	614-617	197
(i) Meetings	614	197
(ii) Consideration	615-616	197
(iii) Decision	617	197
<i>Article 67</i> (Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law)	618-625	197
A. International Law Commission text	618	197
B. Amendments	619-620	197
C. Proceedings of the Committee of the Whole	621-625	198
(i) Meetings	621	198
(ii) Consideration	622-624	198
(iii) Text adopted by the Committee of the Whole	625	198
<i>Article 68</i> (Consequences of the suspension of the operation of a treaty)	626-633	198
A. International Law Commission text	626	198
B. Amendments	627-628	198
C. Proceedings of the Committee of the Whole	629-633	198
(i) Meetings	629	198
(ii) Initial consideration	630-631	198
(iii) Consideration of the report of the Drafting Committee	632	198
(iv) Text adopted by the Committee of the Whole	633	199
PART VI. MISCELLANEOUS PROVISIONS	634-651	199
<i>Article 69</i> (Cases of State succession and State responsibility)	634-641	199
A. International Law Commission text	634	199
B. Amendments	635-636	199
C. Proceedings of the Committee of the Whole	637-641	199
(i) Meetings	637	199
(ii) Initial consideration	638-639	199
(iii) Consideration of the report of the Drafting Committee	640	199
(iv) Text adopted by the Committee of the Whole	641	199
<i>Article 69bis</i>	642	199
<i>Article 70</i> (Case of an aggressor State)	643-651	200
A. International Law Commission text	643	200
B. Amendments	644-645	200
C. Proceedings of the Committee of the Whole	646-651	200
(i) Meetings	646	200
(ii) Initial consideration	647-649	200
(iii) Consideration of the report of the Drafting Committee	650	200
(iv) Text adopted by the Committee of the Whole	651	200
PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION	652-692	200
<i>Article 71</i> (Depositaries of treaties) and <i>article 72</i> (Functions of depositaries)	652-667	200
A. International Law Commission text	653	200
B. Amendments	654-657	201

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
C. Proceedings of the Committee of the Whole	658-667	202
(i) Meetings	658	202
(ii) Initial consideration	659-661	202
(iii) Consideration of the reports of the Drafting Committee	662-665	203
(iv) Texts adopted by the Committee of the Whole	666-667	203
<i>Article 73</i> (Notifications and communications)	668-673	204
A. International Law Commission text	668	204
B. Amendments	669	204
C. Proceedings of the Committee of the Whole	670-673	204
(i) Meetings	670	204
(ii) Initial consideration	671	204
(iii) Consideration of the report of the Drafting Committee	672	204
(iv) Text adopted by the Committee of the Whole	673	204
<i>Article 74</i> (Correction of errors in texts or in certified copies of treaties)	674-681	204
A. International Law Commission text	674	204
B. Amendments	675-676	205
C. Proceedings of the Committee of the Whole	677-681	205
(i) Meetings	677	205
(ii) Initial consideration	678-679	205
(iii) Consideration of the report of the Drafting Committee	680	205
(iv) Text adopted by the Committee of the Whole	681	205
<i>Article 75</i> (Registration and publication of treaties)	682-689	206
A. International Law Commission text	682	206
B. Amendments	683-684	206
C. Proceedings of the Committee of the Whole	685-689	206
(i) Meetings	685	206
(ii) Initial consideration	686-687	206
(iii) Consideration of the report of the Drafting Committee	688	206
(iv) Text adopted by the Committee of the Whole	689	206
<i>Article 76</i>	690-692	206
A. Proposed new article	690	206
B. Proceedings of the Committee of the Whole	691-692	207
(i) Meetings and consideration	691	207
(ii) Decision	692	207
<i>Titles of parts and sections of the draft convention</i>	693-700	207
A. International Law Commission text	694	207
B. Amendments	695-696	207
C. Proceedings of the Committee of the Whole	697-700	207
(i) Meetings	697	207
(ii) Consideration and decisions	698-700	207
Chapter III. Text of the articles on the Law of Treaties and of draft resolutions adopted by the Committee of the Whole		209
Annex. Check-list of documentation submitted during the first session of the Conference to the Committee of the Whole by States participating in the Conference		220

CHAPTER I

INTRODUCTION

A. Submission of the report

1. By its resolution 2166 (XXI) of 5 December 1966, the General Assembly of the United Nations decided that an international conference of plenipotentiaries should be convened, the first session to be held early in 1968 and the second early in 1969, to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Subsequently, by its resolution 2287 (XXII) of 6 December 1967, the General Assembly decided that the first session of the Conference should be convened at Vienna, in March 1968.

2. The first session of the United Nations Conference on the Law of Treaties opened on 26 March 1968 at the Neue Hofburg, Vienna. At its first plenary meeting, on that date, the Conference, *inter alia*, established a single Committee of the Whole, to which it referred item 11 (a) of the agenda adopted by the Conference (A.CONF.39/8), namely "Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966". The present document contains the report of the Committee of the Whole to the Conference on its consideration of that item at the first session of the Conference.

B. Expression of thanks

3. At the outset of its report, the Committee of the Whole wishes to place on record its deep appreciation to the Federal Government and to the people of the Republic of Austria for making possible the holding of the Conference in Vienna, and for their generous hospitality and great contribution to the successful completion of the work of the Committee.

4. The Committee of the Whole also wishes to express its gratitude to the International Law Commission for its outstanding contribution to the progressive development and codification of the law of treaties.

5. Finally, the Committee of the Whole must express its most sincere thanks to the Drafting Committee of the Conference, and to the Expert Consultant, Sir Humphrey Waldock, for their unfailing and invaluable assistance in assuring the success of the work of the Committee of the Whole.

C. Election of officers and of the Drafting Committee: Secretariat of the Conference

6. On 27 March 1968, the Conference, at its second plenary meeting, elected by acclamation the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. At its third plenary meeting, on the same day, the Conference agreed to the recommendation of its General Committee that, in addition

to the Chairman of the Drafting Committee and the Rapporteur of the Committee of the Whole, the Drafting Committee should be composed of representatives of Argentina, China, Congo (Brazzaville), France, Ghana, Japan, Kenya, the Netherlands, Poland, Sweden, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Vice-Chairman and Rapporteur of the Committee of the Whole had been elected by acclamation earlier on the same day at the first meeting of the Committee of the Whole. The officers elected were as follows:

Chairman of the Committee of the Whole: Mr. Taslim Olowale Elias (Nigeria);

Vice-Chairman of the Committee of the Whole: Mr. Josef Smejkal (Czechoslovakia);

Rapporteur of the Committee of the Whole: Mr. Eduardo Jiménez de Aréchaga (Uruguay);

Chairman of the Drafting Committee: Mr. Mustafa Kamil Yasseen (Iraq).

7. At the first session of the Conference, the Secretariat was composed as follows: Representative of the Secretary-General of the United Nations, Mr. C. A. Stavropoulos; Executive Secretary of the Conference, Mr. A. Movchan; Secretary of the Committee of the Whole, Mr. G. W. Wattles; Assistant Secretaries of the Committee of the Whole, Mr. J. F. Scott and Mr. V. Prusa; Secretary of the Drafting Committee, Mr. N. Teslenko; Deputy Secretary of the Drafting Committee, Mr. S. Torres-Bernárdez.

D. Basic proposal and background documentation

(i) BASIC PROPOSAL

8. In accordance with rule 29 of the rules of procedure (A/CONF.39/10), adopted by the Conference at its first plenary meeting on 26 March 1968, the Committee of the Whole had before it as the basic proposal the draft articles on the law of treaties adopted by the International Law Commission at its eighteenth session.¹

(ii) BACKGROUND DOCUMENTATION

9. The Committee of the Whole, in addition to the relevant records of the International Law Commission and of the General Assembly also had available to it the following background documentation:

(a) *A selected bibliography on the law of treaties* (A/CONF.39/4);

(b) *Analytical compilation of comments and observations made in 1966 and 1967 with respect to the final draft articles on the law of treaties: working paper prepared by the Secretariat* (A/CONF.39/5, vols. I and II);

¹ See section B above.

(c) *Comments and amendments to the final draft articles on the law of treaties submitted in 1968 in advance of the Conference in accordance with General Assembly resolution 2287 (XXII)* (A/CONF.39/6 and Add.1 and 2);

(d) *Written statements submitted by specialized agencies and intergovernmental bodies invited to send observers to the Conference* (A/CONF.39/7 and Add.1 and 2 and Add.1/Corr.1).

E. Meetings, organization of work and reports of the Drafting Committee

(i) MEETINGS

10. The Committee of the Whole held 83 meetings, between 27 March and 24 May 1968. The Drafting Committee held 45 meetings, between 1 April and 23 May 1968.

(ii) ORGANIZATION OF WORK

11. In organizing its work, the Committee of the Whole used its best endeavours to follow the guide-lines set forth in the memorandum by the Secretary-General on "Methods of Work and Procedures of the First Session of the Conference" (A/CONF.39/3) which had been approved by the Conference, on the recommendation of the General Committee, at its third plenary meeting, on 27 March 1968. Weekly reports on the progress achieved were issued by the Secretariat (A/CONF.39/3/Add.1 to 8).

12. The Committee of the Whole proceeded mainly by way of article-by-article discussion of the draft articles before it and the amendments submitted to them. After initial consideration of an article and amendments by the Committee, and subject to such decisions as might have been taken on these amendments, the article was referred to the Drafting Committee. In certain instances, the Committee voted upon the principle contained in amendments, the Drafting Committee being requested, in case of adoption, to recommend the precise formulation of the principle.

13. Subsequent to its initial consideration of each article, the Committee of the Whole considered the report of the Drafting Committee on that article and proceeded to take a decision on the text recommended. In many instances, where there appeared to be very substantial or overwhelming support for the text, this decision was taken without formal vote, on the understanding that the summary records would reflect statements and reservations expressed on certain articles by a number of representatives during the consideration by the Committee of the Whole of the reports of the Drafting Committee. In other instances a formal vote was taken.

14. In the course of the first session, the Committee of the Whole discussed all the articles contained in the basic proposal, together with a number of proposed new articles. However, as indicated under the article concerned in chapter II of this report, the Committee reserved decisions on certain articles until the second session of the Conference. The articles concerned are as follows: 2, 5*bis* (proposed new article), 8, 12, 17, 26, 36, 37, 55, 62*bis* (proposed new article), 66 and 76. The Committee

also adopted a number of resolutions submitted in connexion with the articles before it. A further resolution, submitted by Nigeria at the 83rd meeting of the Committee of the Whole and adopted without objection at that meeting, dealt with arrangements for the second session of the Conference (A/CONF.39/C.1/L.378). The texts of all these resolutions will be found in chapter III of this report.

(iii) REPORTS OF THE DRAFTING COMMITTEE

15. The reports of the Drafting Committee took the form of the texts adopted. These reports did not elaborate upon particular points considered, or the reasons why certain amendments which had been referred to the Drafting Committee as drafting points had, or had not, been accepted. Each article recommended by the Drafting Committee was, however, introduced in the Committee of the Whole by the Chairman of the Drafting Committee, who described the main considerations which had resulted in the recommendations concerned. These statements by the Chairman of the Drafting Committee are to be found in the summary records of the Committee of the Whole.

16. The Drafting Committee took certain decisions regarding the text as a whole, to which attention should be drawn.

(a) In connexion with its consideration of article 1, the Drafting Committee decided that the word "Convention" should replace references to "articles", where appropriate, throughout the text. This decision was accepted without objection, by the Committee of the Whole.

(b) The Drafting Committee also decided, as explained by its Chairman at the 28th meeting of the Committee of the Whole, on 18 April 1968, to defer consideration of the titles of the parts, sections and articles of the draft convention, because their wording would depend upon the actual contents of the articles themselves. Except in the case of article 1, therefore, the texts of articles adopted by the Committee of the Whole, as set out in chapter II below, are not preceded by titles.

(c) As further explained by the Chairman of the Drafting Committee at the 28th meeting of the Committee of the Whole, the Drafting Committee decided that subparagraphs of an article which did not form a grammatically complete sentence should, for grammatical reasons, commence with a small letter. This decision is reflected in the texts of the articles adopted, and set out below in chapters II and III of the present report.

(d) At the 59th meeting of the Committee of the Whole, on 8 May 1968, the Chairman of the Drafting Committee explained the procedure followed by the Drafting Committee in preparing the texts of the articles in the different official languages. He stated that those members of the Drafting Committee whose mother tongue was Chinese, Russian or Spanish carefully studied the text of the International Law Commission's draft prepared in their language and submitted from time to time to the Drafting Committee corrections to the syntax or terminology. The Drafting Committee then referred such corrections to the Conference's language services so that the latter could ensure that they did not affect the versions in the other languages. When this had been ascertained,

the corrections were incorporated in the text of the language to which they related. The text, so corrected, was to be found in the reports submitted by the Drafting Committee to the Committee of the Whole.

F. Organization of the report of the Committee of the Whole; summary records, and statements for the report

(i) ORGANIZATION OF THE REPORT

17. In addition to the introduction, the present report contains two other chapters, the last of which sets out the text of the articles of the draft convention prepared by the Committee of the Whole and of the draft resolutions adopted. An annex contains a check-list of documentation submitted during the first session of the Conference to the Committee of the Whole.

18. Chapter II is entitled "Consideration by the Committee of the Whole of the draft articles on the law of treaties." This chapter describes the proceedings of the Committee, article by article. Except in a few cases, where amendments sought to combine certain articles and the articles were also discussed together, each article is treated separately. As far as possible, the form of the basic proposal before the Committee, namely the draft articles on the law of treaties adopted by the International Law Commission at its eighteenth session, has been followed. The titles of parts, sections and articles have been retained in chapter II below, except so far as the final text adopted is concerned, in view of the decision of the Drafting Committee on this point recorded in paragraph 16 (b) above. The original numbering of the articles has also been retained, new articles being designated 9*bis*, 10*bis*, etc., except in the case of new article 76, which follows the last of the articles recommended by the International Law Commission.

19. In most cases, the articles in chapter II are dealt with in accordance with the following plan:

(a) First, the text of the International Law Commission's draft article, or the text of a proposed new article, is set out.

(b) Next come the texts of amendments, if any, with a brief indication of the manner in which they were disposed of.

(c) The proceedings of the Committee of the Whole are then described. The numbers of the meetings at which an article was discussed are first given. Under the sub-heading "Initial consideration", amendments which were withdrawn are listed, the results of the voting on amendments or important procedural points are given, and the amendments referred to the Drafting Committee are also indicated. Under the sub-heading "Consideration of the report of the Drafting Committee", the number of the meeting at which the Chairman of the Drafting Committee introduced the text proposed by his Committee is given, together with the decision taken by the Committee of the Whole, including the vote, if any. Finally, the text adopted by the Committee of the Whole

is set out under a separate sub-heading. Departures from this pattern occur only where an article was deleted or the final decision was deferred until the second session of the Conference.

(ii) SUMMARY RECORDS

20. Chapter II of this report is designed to be read in conjunction with the summary records of the Committee of the Whole (A/CONF.39/C.1/SR.1 to SR.83). In particular, for the reasons indicated in paragraph 15 above, attention is drawn to the statements made by the Chairman of the Drafting Committee when introducing texts proposed by that Committee.

(iii) STATEMENTS FOR THE REPORT

21. It has not been possible to include in chapter II of this report any summary of the discussion, or to state which representatives spoke on a particular article, except where formal proposals were made and decided upon. A number of representatives, however, requested in the course of debate that there should be a reference in this report to particular statements which they made. These statements are here indicated by a reference to the summary records in which they will be found.

(a) *18th meeting.* Statement by the representative of *Ecuador*, made in connexion with the Committee's consideration of draft article 11, recording his delegation's views on the meaning which should be given to the word "consent" in the draft articles.

(b) *27th meeting.* Statement by the representative of *Ecuador*, made in connexion with the Committee's consideration of draft article 22, recording his delegation's views on the distinction between the entry into force and the validity of treaties.

(c) *31st meeting.* Statement by the representative of *Switzerland*, made in connexion with the Committee's consideration of draft article 26, recording the views of his delegation that Switzerland, as a non-member of the United Nations, was not bound by Article 103 of the Charter of the United Nations, and that Article 103 could not be invoked against it if Switzerland became a party to the future convention on the law of treaties. This statement further concerned the interpretation which Switzerland considered was to be given to the reference to Article 103 in paragraph 1 of draft article 26, as being by way of a reservation regarding that Article which could not have the effect of extending its area of application.

(d) *35th meeting.* Statement by the representative of the *Union of Soviet Socialist Republics*, made in connexion with the Committee's consideration of draft article 32, recalling that the International Law Commission, when drafting article 32 on the rights of third States, considered that this article did not in any way affect the rights of States enjoying most-favoured-nation treatment, and expressing the view that, similarly, the article would be adopted by the Committee of the Whole on the same understanding.

CHAPTER II

CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON THE LAW OF TREATIES

PART I. INTRODUCTION

ARTICLE 1

A. International Law Commission text

22. The International Law Commission text provided as follows:

Article 1.—The scope of the present articles

The present articles relate to treaties concluded between States.

B. Amendments

23. Amendments were submitted to article 1 by Congo (Brazzaville) (A/CONF.39/C.1/L.32), Hungary (A/CONF.39/C.1/L.18), Republic of Viet-Nam (A/CONF.39/C.1/L.27), Sweden (A/CONF.39/C.1/L.10) and United States of America (A/CONF.39/C.1/L.15).

24. These amendments were to the following effect:

(a) *Sweden* (A/CONF.39/C.1/L.10):

Delete the word “concluded”.

[Referred to the Drafting Committee, see para. 28 below]

(b) *United States of America* (A/CONF.39/C.1/L.15):
Amend article 1 to read:

The present articles *apply* to treaties concluded between *two or more States or other subjects of international law*.

[Withdrawn, see para. 26 below]

(c) *Hungary* (A/CONF.39/C.1/L.18):

“Delete article 1.”

[Referred to the Drafting Committee, see para. 28 below]

(d) *Republic of Viet-Nam* (A/CONF.39/C.1/L.27):

Amend article 1 to read as follows:

The present articles apply to treaties concluded between States and also to treaties concluded between States and other subjects of international law.

[Withdrawn, see para. 26 below]

(e) *Congo (Brazzaville)* (A/CONF.39/C.1/L.32):

Amend article 1 to read as follows:

The present Convention establishes the rules relating to treaties.

[Referred to the Drafting Committee, see para. 28 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

25. The Committee of the Whole initially discussed article 1, and the amendments thereto, at its 2nd and 3rd meetings, on 28 March 1968. At its 11th meeting, on 3 April 1968, the Committee considered two reports by the Drafting Committee submitted in connexion with article 1.

(ii) INITIAL CONSIDERATION

26. At the 3rd meeting of the Committee of the Whole, the amendments by the Republic of Viet-Nam (A/CONF.39/C.1/L.27) and the United States of America (A/CONF.39/C.1/L.15) were withdrawn.

27. At the same meeting, Sweden orally proposed that the Drafting Committee be requested to prepare the text of a resolution for adoption by the Conference recommending that the General Assembly of the United Nations ask the International Law Commission to study the question of treaties concluded between States and international organizations or between two or more international organizations.

28. The above motion was adopted unanimously. The Committee of the Whole also decided, without objection, to refer article 1 to the Drafting Committee, together with the amendments by Sweden (A/CONF.39/C.1/L.10), Hungary (A/CONF.39/C.1/L.18) and Congo (Brazzaville) (A/CONF.39/C.1/L.32).

(iii) CONSIDERATION OF THE REPORTS OF THE DRAFTING COMMITTEE

29. At the 11th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 1 adopted by the Drafting Committee (A/CONF.39/C.1/1; for text, see para. 31 below). The Committee of the Whole adopted this text by 63 votes to none, with 1 abstention.

30. At the same meeting, the Chairman of the Drafting Committee introduced a further report containing the text of a draft resolution adopted by the Drafting Committee (A/CONF.39/C.1/2; for text, see para. 32 below). The Committee of the Whole adopted this text unanimously.

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

(a) Text of article 1

31. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 1:

Article 1

The scope of the present Convention

The present Convention applies to treaties concluded between States.

(b) Draft resolution

32. The Committee of the Whole also recommends to the Conference for adoption the following draft resolution:

The United Nations Conference on the Law of Treaties

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.

ARTICLE 2

A. International Law Commission text

33. The International Law Commission text provided as follows:

Article 2.—Use of terms

1. For the purposes of the present articles:

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

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

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

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

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

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

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

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

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

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

B. Amendments

34. Amendments were submitted to article 2 by Austria and Spain (A/CONF.39/C.1/L.1 and Add.1),² Ceylon (A/CONF.39/C.1/L.17), Chile (A/CONF.39/C.1/L.22), China (A/CONF.39/C.1/L.13), Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania (A/CONF.39/C.1/L.19/Rev.1),³ Ecuador (A/CONF.39/C.1/L.25), France (A/CONF.39/C.1/L.24), Hungary (A/CONF.39/C.1/L.23), India (A/CONF.39/C.1/L.40), Malaysia and Mexico (A/CONF.39/C.1/L.33 and Add.1),⁴ Republic of Vietnam (A/CONF.39/C.1/L.29), Spain (A/CONF.39/C.1/L.28), Sweden (A/CONF.39/C.1/L.11) and United States of America (A/CONF.39/C.1/L.16).

35. These amendments, arranged under sub-headings relating to paragraph 1, its sub-paragraphs, proposed new sub-paragraphs, and paragraph 2, were to the following effect:⁵

Paragraph 1

(i) *Sub-paragraph (a)*

[Use of term "Treaty"]

(a) *United States of America* (A/CONF.39/C.1/L.16): Amend paragraph 1(a) . . . to read:

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

[Withdrawn, see para. 37 below]

(b) *Chile* (A/CONF.39/C.1/L.22):

Replace sub-paragraph (a) by the following text:

"Treaty" means a written agreement between States, governed by international law, which produces legal effects.

[Referred to the Drafting Committee, see para. 38 below]

(c) *Ecuador* (A/CONF.39/C.1/L.25):

Between the words "concluded" and "between States" insert the words "*in good faith*".

Between the words "international law" and "whether" insert the following phrase: "*which deals with a licit object, is freely consented to, and is based on justice and equity*".

[Referred to the Drafting Committee, see para. 38 below]

(d) *Spain* (A/CONF.39/C.1/L.28):

1. Delete the word "international", before the word "agreement".

2. In the French and Spanish texts place the words "*en forme écrite*" ("*por escrito*") between the word "*conclu*" ("*celebrado*") and the words "*entre Etats*" ("*entre Estados*").

[Referred to the Drafting Committee, see para. 38 below]

(e) *Malaysia and Mexico* (A/CONF.39/C.1/L.33 and Add.1):

Amend the definition of a treaty in sub-paragraph (a) to read as follows:

"Treaty" means an international agreement concluded between States in written form, *which establishes a relationship between the*

³ Original sponsors Hungary, Poland and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.19), co-sponsors Congo (Democratic Republic of), Czechoslovakia, Romania, United Arab Republic and United Republic of Tanzania (Rev.1).

⁴ Original sponsor Mexico, co-sponsor Malaysia (Add.1).

⁵ Those parts of the amendments which relate solely to the consequential renumbering of sub-paragraphs are omitted.

² Original sponsor Austria, co-sponsor Spain (Add.1).

parties governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

[Referred to the Drafting Committee, see para. 38 below]

(ii) *New sub-paragraphs between sub-paragraphs (a) and (b)*
[Use of term "State"]

(a) *China* (A/CONF.39/C.1/L.13):

Between sub-paragraphs (a) and (b), insert a new sub-paragraph reading: "State" means a sovereign State.

[Referred to the Drafting Committee, see para. 38 below]

(b) *Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania* (A/CONF.39/C.1/L.19/Rev.1):⁶

. . . Insert between present sub-paragraphs (a) and (b) the following new sub-paragraph:

"General multilateral treaty" means a multilateral treaty which deals with matters of general interest for the international community of States.

[Referred to the Drafting Committee, see para. 38 below and subsequently deferred until second session of the Conference, see para. 39 below]

(iii) *Sub-paragraph (b)*

[Use of terms "Ratification", "Acceptance", "Approval", and "Accession"]

United States of America (A/CONF.39/C.1/L.16):

Amend paragraph 1(b) . . . to read:

"Ratification" or "Accession" means an international act whereby a State establishes on the international plane its consent to be bound by a treaty.

[Referred to the Drafting Committee, see para. 38 below]

(iv) *New sub-paragraph between sub-paragraphs (b) and (c)*
[Use of term "Adoption of the text of a treaty"]

France (A/CONF.39/C.1/L.24):

Add the following sub-paragraph (c):

"Adoption of the text of a treaty" means all the acts establishing the definitive wording of the text with respect to which the negotiating States will have to express their consent.

[Referred to the Drafting Committee, see para. 38 below]

(v) *Sub-paragraph (c)*

[Use of term "Full powers"]

Austria and Spain (A/CONF.39/C.1/L.1 and Add.1):

Replace . . . the words "a document" by the words "an instrument".

[Referred to the Drafting Committee, see para. 38 below]

(vi) *Sub-paragraph (d)*

[Use of term "Reservation"]

(a) *Sweden* (A/CONF.39/C.1/L.11):

Add the word "limit" after "exclude".

[Referred to the Drafting Committee, see para. 38 below]

(b) *China* (A/CONF.39/C.1/L.13):

. . . Add the word "multilateral" before the word "treaty", where it first appears in the sub-paragraph.

[Referred to the Drafting Committee, see para. 38 below]

(c) *United States of America* (A/CONF.39/C.1/L.16):

Amend paragraph 1(d) to read:

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

[Referred to the Drafting Committee, see para. 38 below]

(d) *Chile* (A/CONF.39/C.1/L.22):

Add the word "multilateral" before the word "treaty" where it first appears in the sub-paragraph.

[Referred to the Drafting Committee, see para. 38 below]

(e) *Hungary* (A/CONF.39/C.1/L.23):

Amend the sub-paragraph to read:

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

[Referred to the Drafting Committee, see para. 38 below]

(f) *Republic of Viet-Nam* (A/CONF.39/C.1/L.29):

Amend sub-paragraph (d) to read as follows:

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

[Referred to the Drafting Committee, see para. 38 below]

(vii) *New sub-paragraph between sub-paragraphs (d) and (e)*
[Use of term "Restricted international treaty"]

France (A/CONF.39/C.1/L.24):

Add the following new sub-paragraph . . . :

"Restricted multilateral treaty" means a treaty which is intended to be binding only on the States referred to in the treaty and whose entry into force in its entirety with respect to all the negotiating States is an essential condition of the consent of each of them to be bound by it.

[Referred to the Drafting Committee, see para. 38 below and subsequently deferred until second session of the Conference, see para. 39 below]

(viii) *Sub-paragraphs (e) and (f)*

[Use of terms "Contracting State" and "Negotiating State"]

(a) *France* (A/CONF.39/C.1/L.24):

In sub-paragraph (e) delete the words "drawing up and".

[Referred to the Drafting Committee, see para. 38 below]

(b) *India* (A/CONF.39/C.1/L.40):

Delete sub-paragraphs (e) and (f).

⁶ In its original form (A/CONF.39/C.1/L.19) this amendment read: "Add the following definition: 'General multilateral treaty' means a treaty which creates general norms of international law or deals with other matters of interest to all States'."

[Referred to the Drafting Committee, see para. 38 below]

(ix) *Sub-paragraphs (g) and (h)*

[Use of terms "Party" and "Third State"]

No amendments were submitted to these sub-paragraphs.

(x) *Sub-paragraph (i)*

[Use of term "International organization"]

China (A/CONF.39/C.1/L.13)

Amend sub-paragraph (i) to read:

International organizations include intergovernmental organizations but not non-governmental organizations.

[Referred to the Drafting Committee, see para. 38 below]

Paragraph 2

Ceylon (A/CONF.39/C.1/L.17):

At the end of paragraph 2 *add*: "or in the practice of international organizations or in any treaty".

[Referred to the Drafting Committee, see para. 38 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

36. The Committee of the Whole initially discussed article 2, and the amendments thereto, at its 4th, 5th and 6th meetings, on 29 March and 1 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 2 until the second session of the Conference.

(ii) CONSIDERATION

37. At the 4th meeting of the Committee of the Whole, the amendment by United States of America (A/CONF.39/C.1/L.16) to paragraph 1(a) was withdrawn.

38. At its 6th meeting, the Committee of the Whole decided to refer article 2 to the Drafting Committee, together with the amendments by Austria and Spain (A/CONF.39/C.1/L.1 and Add.1); Ceylon (A/CONF.39/C.1/L.17); Chile (A/CONF.39/C.1/L.22); China (A/CONF.39/C.1/L.13); Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania (A/CONF.39/C.1/L.19/Rev.1); Ecuador (A/CONF.39/C.1/L.25); France (A/CONF.39/C.1/L.24); Hungary (A/CONF.39/C.1/L.23); India (A/CONF.39/C.1/L.40); Malaysia and Mexico (A/CONF.39/C.1/L.33 and Add.1); Republic of Viet-Nam (A/CONF.39/C.1/L.29); Spain (A/CONF.39/C.1/L.28); Sweden (A/CONF.39/C.1/L.11) and United States of America (paragraph 1, sub-paragraphs (b) and (d) (A/CONF.39/C.1/L.16). The Committee of the Whole requested the Drafting Committee to examine the article and the amendments thereto, as soon as it deemed it appropriate to do so, and, after consideration of the remaining articles of the draft, to report to the Committee of the Whole.

39. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second

session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or "restricted multilateral treaties". Amendments to article 2 to add definitions of a "general multilateral treaty" and of a "restricted multilateral treaty" had been submitted by *Congo (Democratic Republic of)*, *Czechoslovakia*, *Hungary*, *Poland*, *Romania*, *Ukrainian Soviet Socialist Republic*, *United Arab Republic* and *United Republic of Tanzania* (A/CONF.39/C.1/L.19/Rev.1) and *France* (A/CONF.39/C.1/L.24) respectively, in the form of proposed new sub-paragraphs between sub-paragraphs (a) and (b) and between sub-paragraphs (e) and (f).

(iii) DECISION

40. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 2 until the second session of the Conference (see document A/CONF.39/15, paras. 17-26).

ARTICLE 3

A. International Law Commission text

41. The International Law Commission text provided as follows:

Article 3.—International agreements not within the scope of the present articles

The fact that the present articles do not relate:

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

(b) To international agreements not in written form

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

B. Amendments

42. Amendments were submitted to article 3 by China (A/CONF.39/C.1/L.14), Ethiopia (A/CONF.39/C.1/L.57 and Corr.1), Gabon (A/CONF.39/C.1/L.41), Iran (A/CONF.39/C.1/L.63), Mexico (A/CONF.39/C.1/L.65), Spain (A/CONF.39/C.1/L.34), Switzerland (A/CONF.39/C.1/L.26) and United States of America (A/CONF.39/C.1/L.20).

43. These amendments were to the following effect:

(a) *China* (A/CONF.39/C.1/L.14):

Delete article 3.

[Not pressed to a vote, see para. 45 below]

(b) *United States of America* (A/CONF.39/C.1/L.20): Amend article 3 to read:

"Nothing in the present articles shall affect the legal force of international agreements not in written form or the application to them of any of the rules of international law".

[Withdrawn, see para. 45 below]

(c) *Switzerland* (A/CONF.39/C.1/L.26):

... delete the words "to which they would be subject independently of these articles".

[Referred to the Drafting Committee, see para. 46 below]

(d) *Spain* (A/CONF.39/C.1/L.34):

Delete the words "to which they would be subject" and substitute the words "to which they might be subject".

[Referred to the Drafting Committee, see para. 46 below]

(e) *Gabon* (A/CONF.39/C.1/L.41):

Amend article 3 to read as follows:

The present articles shall not affect either the legal force of international agreements not in written form or of agreements concluded between States and other subjects of international law or between such other subjects of international law, or the application to such agreements of the rules set forth in the present Convention.

[Referred to the Drafting Committee, see para. 46 below]

(f) *Ethiopia* (A/CONF.39/C.1/L.57 and Corr.1):

Replace article 3 by the following:

(a) The use of terms in articles 2(a) shall not affect the legal force of oral agreements and the application to them so far as possible of the rules of the present Convention.

(b) The scope of the present articles shall not affect the legal force of agreements between States and other subjects of international law or between such other subjects of international law and the application to them so far as possible of the rules of the present Convention.

[Referred to the Drafting Committee, see para. 46 below]

(g) *Iran* (A/CONF.39/C.1/L.63):

Delete sub-paragraph (b).

[Not pressed to a vote, see para. 45 below]

(h) *Mexico* (A/CONF.39/C.1/L.65):

Delete the concluding words "independently of these articles" and substitute the words: "in accordance with international law".

[Referred to the Drafting Committee, see para. 46 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

44. The Committee of the Whole initially discussed article 3, and the amendments thereto, at its 6th and 7th meetings, on 1 April 1968. At its 28th meeting, on 18 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

45. At the 6th meeting of the Committee of the Whole, *China* announced that it would not press for a vote on its amendment (A/CONF.39/C.1/L.14). The amendment by *United States of America* (A/CONF.39/C.1/L.20) was withdrawn. At the 7th meeting of the Committee, it was announced that the amendment by *Iran* (A/CONF.39/C.1/L.63) would not be pressed to a vote.

46. Also at its 7th meeting, the Committee of the Whole decided, without objection, to refer article 3 to the Drafting Committee, together with the amendments by *Ethiopia* (A/CONF.39/C.1/L.57 and Corr.1), *Gabon* (A/CONF.39/C.1/L.41), *Mexico* (A/CONF.39/C.1/L.65), *Spain* (A/CONF.39/C.1/L.34) and *Switzerland* (A/CONF.39/C.1/L.26).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

47. At the 28th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 3 adopted by the Drafting Committee (A/CONF.39/C.1/3; for text, see para. 48 below).⁷ The Committee adopted this text without formal vote.⁸

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

48. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 3:

Article 3

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present Convention to which they would be subject, in accordance with international law, independently of the Convention;
- (c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

ARTICLE 4

A. International Law Commission text

49. The International Law Commission text provided as follows:

Article 4.—Treaties which are constituent instruments of international organizations or which are adopted within international organizations

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

B. Amendments

50. Amendments were submitted to article 4 by Ceylon (A/CONF.39/C.1/L.53), Congo (Brazzaville) (A/CONF.39/C.1/L.76), France (A/CONF.39/C.1/L.55), Gabon (A/CONF.39/C.1/L.42), Jamaica and Trinidad and Tobago (A/CONF.39/C.1/L.75), Peru (A/CONF.39/C.1/L.58), Philippines and Sweden (A/CONF.39/C.1/L.52 and Add.1),⁹ Spain (A/CONF.39/C.1/L.35/Rev.1), Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.12), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.39), United States of America (A/CONF.39/C.1/L.21) and Zambia (A/CONF.39/C.1/L.73).

51. These amendments were to the following effect:

(a) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.12):

⁷ This report stated that the Drafting Committee had decided to defer consideration of the titles of the parts, sections and articles.

⁸ See para. 13 above.

⁹ Original sponsor Sweden, co-sponsor Philippines (Add.1).

... replace the words "shall be subject to any relevant rules" by the words "shall take into account the relevant rules".

[Rejected, see para. 54(c) below]

(b) *United States of America* (A/CONF.39/C.1/L.21):

Delete article 4. Substitute instead exceptions in favour of the rules of international organizations in articles 6, 8, 9, 13, 16, 17, 37 and 72.

[Rejected, see para. 54(a) below]

(c) *Spain* (A/CONF.39/C.1/L.35/Rev.1):¹⁰

Replace the title and text of article 4 by the following:

Treaties which are constituent instruments of international organizations or are adopted within an organ of or under the auspices of or are deposited with an international organization

1. Articles 5 to 15, 23, 39 to 50 and 58 to 61 of the present articles shall apply to treaties which are constituent instruments of international organizations. The other articles shall apply subject to the provisions of the treaty itself and to any other applicable rules of the organization.

2. The present articles shall apply to treaties adopted within an organ of an international organization or under its auspices, or which are deposited with an international organization. Nevertheless, such application shall be subject to any relevant rules of the said organization:

(a) in the case of treaties adopted within an organ of an international organization or under its auspices, in respect of articles 5 to 22 and 71 to 75 of the present articles, and

(b) in the case of treaties deposited with an international organization in respect of articles 71 to 75 of the present articles.

[Withdrawn, see para. 53 below]

(d) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.39):

... after the words "relevant rules" add the words "and established practices".

[Referred to the Drafting Committee, see para. 55 below]

(e) *Gabon* (A/CONF.39/C.1/L.42):

Amend article 4 to read as follows:

Treaties constituting international organizations or adopted within an international organization

The application of the present articles to treaties constituting an international organization or adopted within an international organization shall be subject to any relevant rules of that organization.

[Referred to the Drafting Committee, see para. 55 below]

¹⁰ In its original form (A/CONF.39/C.1/L.35) this amendment read:

Replace the title and text of article 4 by the following wording: "*Treaties which are constituent instruments of international organizations or are concluded within an organ of, or under the auspices of, or are deposited with an international organization.*"

"1. Articles 5 to 23 of the present articles shall apply to treaties which are constituent instruments of international organizations. The application of the other articles to such treaties shall be subject to the provisions of the treaty itself and to any other applicable rules of the organization.

"2. The present articles shall apply to treaties concluded within an organ of an international organization or under its auspices, or which are deposited with an international organization, save that such application shall be subject to any relevant rules of the said organization:

"(a) in the case of treaties concluded within an organ of an international organization or under its auspices, in respect of articles 4 to 22 and 71 to 75 of the present articles; and

"(b) in the case of treaties deposited with an international organization, in respect of articles 71 to 75 of the present articles."

(f) *Philippines and Sweden* (A/CONF.39/C.1/L.52 and Add.1):

Delete the article.

[Rejected, see para. 54(a) below]

(g) *Ceylon* (A/CONF.39/C.1/L.53):

Amend the title and text of article 4 to read as follows:

Treaties which are constituent instruments of international organizations

The application of the present articles to a treaty which is the constituent instrument of an international organization shall be subject to the provisions of such treaty and to any relevant rules or decisions of the organization.

[Rejected, see para. 54(b) below]

(h) *France* (A/CONF.39/C.1/L.55):

Replace the text of article 4 by the following wording:

The application of the present articles to a treaty which is the constituent instrument of an international organization or to an agreement concluded in virtue of such a treaty shall be subject to any relevant rules resulting from the treaty.

[Referred to the Drafting Committee, see para. 55 below]

(i) *Peru* (A/CONF.39/C.1/L.58):

Amend article 4 to read as follows:

The present articles shall apply to treaties which are constituent instruments of an international organization or are adopted within the competence of an international organization, without prejudice to any relevant special provisions laid down in such constituent instruments or adopted by virtue of them.

[Referred to the Drafting Committee, see para. 55 below]

(j) *Zambia* (A/CONF.39/C.1/L.73):

Add the following phrase at the end of article 4:

except that where the relevant rules of the organization conflict with the rules set out in this Convention, the rules of the Convention shall prevail over those of the organization.

[Withdrawn, see para. 53 below]

(k) *Jamaica and Trinidad and Tobago* (A/CONF.39/C.1/L.75):

Amend the article to read:

The application of the present articles to treaties which are constituent instruments of international organizations shall be subject to any relevant rules of the organizations.

[Withdrawn, see para. 53 below]

(l) *Congo (Brazzaville)* (A/CONF.39/C.1/L.76):

Delete article 4.

[Rejected, see para. 54(a) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

52. The Committee of the Whole initially discussed article 4, and the amendments thereto, at its 8th, 9th and 10th meetings, on 2 and 3 April 1968. At its 28th meeting, on 18 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

53. At the 8th meeting of the Committee of the Whole, the amendment by *Zambia* (A/CONF.39/C.1/L.73) was withdrawn. At the 10th meeting, the amendments by *Jamaica and Trinidad and Tobago* (A/CONF.39/C.1/L.75)

and *Spain* (A/CONF.39/C.1/L.35/Rev.1) were also withdrawn.

54. At the 10th meeting of the Committee of the Whole, votes were taken on certain of the subsisting amendments, as follows:

(a) The amendments by *Congo (Brazzaville)* (A/CONF.39/C.1/L.76), *Philippines* and *Sweden* (A/CONF.39/C.1/L.52 and Add.1) and *United States of America* (A/CONF.39/C.1/L.21) were to the same effect in that they proposed that article 4 be deleted. They were put to a single roll-call vote, with the following results:

In favour: Australia, Congo (Brazzaville), Federal Republic of Germany, Japan, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Sweden, United States of America.

Against: Afghanistan, Algeria, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Ceylon, Chile, Colombia, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mexico, Monaco, Mongolia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Spain, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Abstentions: China, Switzerland.

These amendments were therefore rejected by 84 votes to 10, with 2 abstentions.

(b) The amendment by *Ceylon* (A/CONF.39/C.1/L.53) was rejected by 70 votes to 5, with 5 abstentions.

(c) The amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.12) was rejected by 42 votes to 26, with 19 abstentions.

55. Also at the 10th meeting, the Committee of the Whole decided, without objection, to refer article 4 to the Drafting Committee, together with the amendments by *France* (A/CONF.39/C.1/L.55), *Gabon* (A/CONF.39/C.1/L.42), *Peru* (A/CONF.39/C.1/L.58) and *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.39).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

56. At the 28th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 4 adopted by the Drafting Committee (A/CONF.39/C.1/3; for text, see para. 57 below). The Committee of the Whole adopted this text by 84 votes to none, with 7 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

57. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 4:

Article 4

The present Convention applies to any treaty which is the constituent instrument of an international organization or to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1: CONCLUSION OF TREATIES

ARTICLE 5

A. International Law Commission text

58. The International Law Commission text provided as follows:

Article 5.—Capacity of States to conclude treaties

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

B. Amendments

59. Amendments were submitted to article 5 by Australia (A/CONF.39/C.1/L.62), Austria (A/CONF.39/C.1/L.2), Congo (Brazzaville) (A/CONF.39/C.1/L.80), Finland (A/CONF.39/C.1/L.54/Rev.1 and Corr.1), Malaysia and Mexico (A/CONF.39/C.1/L.66 and Add.1),¹¹ Nepal (A/CONF.39/C.1/L.77/Rev.1), New Zealand (A/CONF.39/C.1/L.59) and Republic of Viet-Nam (A/CONF.39/C.1/L.82). The Byelorussian Soviet Socialist Republic submitted a sub-amendment (A/CONF.39/C.1/L.92) to the amendment by Austria (A/CONF.39/C.1/L.2).

60. These amendments and the sub-amendment, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2, were to the following effect:

(i) Article as a whole

(a) *Malaysia and Mexico* (A/CONF.39/C.1/L.66 and Add.1):

Delete article 5.

[Rejected, see para. 62(a) and (b) below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.82):

Delete article 5.

[Rejected, see para. 62(a) and (b) below]

(ii) Paragraph 1

(a) *Finland* (A/CONF.39/C.1/L.54/Rev.1 and Corr.1):¹²
For paragraph 1, substitute the following text:

¹¹ Original sponsor Mexico, co-sponsor Malaysia (Add.1).

¹² In its original form (A/CONF.39/C.1/L.54), this amendment read: "Delete article 5".

Every State which is a subject of international law possesses capacity to conclude treaties.

[Referred to the Drafting Committee, see para. 63 below]

(b) *Nepal* (A/CONF.39/C.1/L.77/Rev.1):¹³

Amend paragraph 1 to read:

Every State including a State member of a Federal Union, having treaty-making power, possesses capacity to conclude treaties.

[Referred to the Drafting Committee, see para. 63 below]

(c) *Congo (Brazzaville)* (A/CONF.39/C.1/L.80):

Replace text of [paragraph 1] by the following:

Every State which is a subject of international law possesses capacity to conclude treaties.

[Referred to the Drafting Committee, see para. 63 below]

(iii) Paragraph 2

(a) *Austria* (A/CONF.39/C.1/L.2):

Renumber paragraph 2 as paragraph 2(a). Add a new paragraph 2(b): For the purpose of concluding a treaty, the extent of such capacity has to be confirmed by an authority of the federal union competent under article 6.

[Rejected, see para. 62 (d) below]

(b) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.92): *sub-amendment to Austrian amendment* (A/CONF.39/C.1/L.2):

Add the following words to paragraph 2(b) of the Austrian amendment . . .

"if it is provided for in the constitutional law of a federation, or of States, members of a federation".

[Rejected, see para. 62(c) below]

(c) *Finland* (A/CONF.39/C.1/L.54/Rev.1 and Corr.1):

For paragraph 2 substitute the following text:

States members of a union of States may possess a capacity to conclude treaties if such capacity is admitted by the constitution or the other constituent instruments of the union, and within the limits laid down in the said instruments.

[Referred to the Drafting Committee, see para. 63 below]

(d) *New Zealand* (A/CONF.39/C.1/L.59):

Replace the opening words "States members" by the words "Political subdivisions".

[Referred to the Drafting Committee, see para. 63 below]

(e) *Australia* (A/CONF.39/C.1/L.62):

Delete the paragraph.

[Rejected, see para. 62(b) below]

(f) *Nepal* (A/CONF.39/C.1/L.77/Rev.1):

Delete paragraph 2.

[Rejected, see para. 62(b) below]

(g) *Congo (Brazzaville)* (A/CONF.39/C.1/L.80):

Replace text of [paragraph 2] by the following:

2. States members of a federation may possess this capacity only in so far as the federal constitution so provides.

[Referred to the Drafting Committee, see para. 63 below]

¹³ In its original form, this amendment (A/CONF.39/C.1/L.77) did not relate to paragraph 1, since it read "Delete paragraph 2." In its revised form, the proposal to delete paragraph 2 was retained, its substance being incorporated in paragraph 1.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

61. The Committee of the Whole initially discussed article 5, and the amendments thereto, at its 11th and 12th meetings, on 3 and 4 April 1968. At its 28th meeting, on 18 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

62. At its 12th meeting, the Committee of the Whole decided first to vote separately on amendments to delete paragraph 1 and then on amendments to delete paragraph 2 of article 5. Thereafter certain of the remaining amendments before the Committee were put to the vote. The voting was as follows:

(a) The amendments to delete paragraph 1 of article 5 were rejected by 70 votes to 19, with 7 abstentions.

(b) A roll-call vote was taken on amendments to delete paragraph 2 of article 5, with the following results:

In favour: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Ceylon, China, Cyprus, Dominican Republic, Ethiopia, Federal Republic of Germany, Greece, Guatemala, India, Ireland, Israel, Italy, Japan, Malaysia, Mexico, Nepal, Netherlands, New Zealand, Norway, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Singapore, South Africa, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia.

Against: Afghanistan, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Dahomey, Finland, France, Gabon, Guinea, Honduras, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Liberia, Madagascar, Mali, Mongolia, Nigeria, Pakistan, Poland, Romania, Saudi Arabia, Senegal, Somalia, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Abstentions: Chile, Czechoslovakia, Denmark, Ecuador, Ghana, Holy See, Jamaica, Lebanon, Sierra Leone, Spain.

These amendments were thus rejected by 45 votes to 38, with 10 abstentions. By the two foregoing votes the amendments by *Australia* (A/CONF.39/C.1/L.62), *Malaysia* and *Mexico* (A/CONF.39/C.1/L.66 and Add.1), *Nepal* (part 2) (A/CONF.39/C.1/L.77/Rev.1), and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.82) were disposed of.

(c) The sub-amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.92) to the amendment by *Austria* to article 5 (A/CONF.39/C.1/L.2) was rejected by 42 votes to 17, with 28 abstentions.

(d) The amendment by *Austria* (A/CONF.39/C.1/L.2) was rejected by 35 votes to 29, with 21 abstentions.

63. The Committee of the Whole then decided, without objection, to refer article 5 to the Drafting Committee together with the remaining amendments before it,

namely those by *Congo (Brazzaville)* (A/CONF.39/C.1/L.80), *Finland* (A/CONF.39/C.1/L.54/Rev.1 and Corr.1), *Nepal* (A/CONF.39/C.1/L.77/Rev.1, part 1 only) and *New Zealand* (A/CONF.39/C.1/L.59).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

64. At the 28th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 5 adopted by the Drafting Committee (A/CONF.39/C.1/3; for text, see para. 66 below).

65. At the same meeting, requests were made for separate roll-call votes on paragraph 1 and on paragraph 2 of the text recommended by the Drafting Committee, and on the article as a whole. A motion was also made that the Committee should vote first upon paragraph 1 of article 5. The results of the voting were as follows:

(a) The motion to vote first on paragraph 1 was rejected by 43 votes to 35, with 10 abstentions.

(b) PARAGRAPH 2:

In favour: Afghanistan, Algeria, Argentina, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, France, Gabon, Guatemala, Guinea, Holy See, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Mali, Monaco, Mongolia, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Senegal, South Africa, Switzerland, Syria, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia.

Against: Australia, Belgium, Brazil, Canada, Ceylon, Chile, China, Denmark, Dominican Republic, Ethiopia, Federal Republic of Germany, Greece, India, Ireland, Israel, Italy, Jamaica, Japan, Malaysia, Mauritius, Mexico, Netherlands, New Zealand, Norway, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Sierra Leone, Singapore, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia.

Abstentions: Bolivia, Congo (Democratic Republic of), Finland, Ghana, Pakistan, Thailand, Trinidad and Tobago, United Republic of Tanzania.

Paragraph 2 of article 5 was therefore adopted by 46 votes to 39, with 8 abstentions.

(c) PARAGRAPH 1:

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, Chile, China, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Holy See, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Malaysia, Mali,

Mauritius, Mexico, Monaco, Mongolia, Morocco, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Republic of Viet-Nam.

Abstentions: Belgium, Canada, Italy, Netherlands, Portugal, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, United States of America.

Paragraph 1 of article 5 was therefore adopted by 85 votes to 1, with 8 abstentions.

(d) ARTICLE 5 AS A WHOLE:

In favour: Afghanistan, Algeria, Argentina, Austria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, China, Congo (Brazzaville), Costa Rica, Cuba, Czechoslovakia, Ecuador, Ethiopia, Finland, France, Gabon, Guatemala, Guinea, Holy See, Hungary, Indonesia, Iran, Iraq, Ivory Coast, Kenya, Kuwait, Lebanon, Liberia, Liechtenstein, Madagascar, Mali, Monaco, Mongolia, Morocco, Nigeria, Pakistan, Poland, Romania, Saudi Arabia, Senegal, South Africa, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Against: Australia, Belgium, Canada, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, New Zealand, Norway, Philippines, Republic of Korea, Republic of Viet-Nam, San Marino, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstentions: Brazil, Ceylon, Chile, Congo (Democratic Republic of), Denmark, Dominican Republic, Ghana, India, Ireland, Israel, Jamaica, Malaysia, Mauritius, Mexico, Peru, Sierra Leone, Singapore, Spain, Sweden, Trinidad and Tobago, Venezuela, Zambia.

Article 5 was therefore adopted by 54 votes to 17, with 22 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

66. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 5:

Article 5

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

ARTICLE 5bis

A. Proposed new article

67. Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia (A/CONF.39/

C.1/L.74 and Add.1 and 2)¹⁴ submitted an amendment which was to the following effect:

Insert the following new article between articles 5 and 6:

"The right of participation in treaties"

"All States have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality."

[Deferred until the second session of the Conference, see para. 69 below]

B. Proceedings of the Committee of the Whole

(i) MEETINGS AND CONSIDERATION

68. At its 13th meeting, on 4 April 1968, the Committee of the Whole decided, without objection, to postpone the discussion of proposed new article 5*bis*. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties", including article 5*bis*, which related to universal participation in general multilateral treaties.

(ii) DECISION

69. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of proposed new article 5*bis* until the second session of the Conference (see document A/CONF.39/15, paras. 27-32).

ARTICLE 6

A. International Law Commission text

70. The International Law Commission text provided as follows:

Article 6.—Full powers to represent the State in the conclusion of treaties

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

(a) He produces appropriate full powers; or

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

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

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

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

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

¹⁴ Original sponsors Ceylon, Hungary, India, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia, co-sponsors Algeria (Add.1) and Mali (Add.2).

B. Amendments

71. Amendments were submitted to article 6 by the Federal Republic of Germany (A/CONF.39/C.1/L.50), Hungary and Poland (A/CONF.39/C.1/L.78 and Add.1),¹⁵ Iran and Mali (A/CONF.39/C.1/L.64 and Add.1),¹⁶ Italy (A/CONF.39/C.1/L.83), Spain (A/CONF.39/C.1/L.36), Sweden and Venezuela (A/CONF.39/C.1/L.68/Rev.1)¹⁷ and United States of America (A/CONF.39/C.1/L.90).

72. These amendments, arranged under sub-headings relating to the article as a whole, to paragraph 1 and paragraph 2 of the article and a proposed new paragraph 3, were to the following effect:

(i) Article as a whole

(a) Spain (A/CONF.39/C.1/L.36):

For the existing text of article 6 substitute the following:

1. The representative of a State for the purpose of adopting or authenticating the text of a treaty, or for the purpose of expressing the consent of a State to be bound by a treaty, is considered as accredited by the production of full powers.

2. Production of full powers is not considered necessary when the following act in virtue of their functions:

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

(b) heads of diplomatic missions for the adoption of the text of a treaty between the accrediting State and the State to which they are accredited;

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

3. Failure to produce full powers does not affect the validity of the treaty when it is established, or it appears from the circumstances, that such production was not considered necessary by the States concerned.

[Referred to the Drafting Committee, see para. 76 below]

(b) Federal Republic of Germany (A/CONF.39/C.1/L.50):

Amend article 6 to read:

The following persons are considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty:

(a) Heads of States;

(b) Any other person

(i) who is authorized under the internal law of his State to perform the acts mentioned above without the authorization of the Head of State;

(ii) who produces appropriate full powers from the Head of State;

(iii) who produces appropriate full powers from any of the persons mentioned under (i).

[Withdrawn, see para. 74 below]

¹⁵ Original sponsor Hungary, co-sponsor Poland (Add.1).

¹⁶ Original sponsor Iran, co-sponsor Mali (Add.1).

¹⁷ Original sponsor Venezuela (A/CONF.39/C.1/L.68), co-sponsor Sweden (Rev.1).

(ii) *Paragraph 1*(a) *Iran and Mali* (A/CONF.39/C.1/L.64 and Add.1):

Amend paragraph 1 to read as follows:

Except as provided in paragraph 2, and subject to the provisions of the internal law of the States concerned, a person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if:

[Withdrawn, see para. 74 below]

(b) *Sweden and Venezuela* (A/CONF.39/C.1/L.68/Rev.1):¹⁸

(i) Delete the introductory words: "Except as provided in paragraph 2".

(ii) Delete the word "only" before "if".

(iii) Delete the letter "(a)" at the beginning of sub-paragraph (a).

(iv) Delete sub-paragraph (b).

[Rejected, see para. 75 below]

(c) *Hungary and Poland* (A/CONF.39/C.1/L.78 and Add.1):

... Insert the word "negotiating" between the words "for the purpose of" and "adopting".

[Referred to the Drafting Committee, see para. 76 below]

(d) *United States of America* (A/CONF.39/C.1/L.90):

Replace the reference to "paragraph 2" by a reference to "paragraphs 2 and 3".

Change sub-paragraph (b) of paragraph 1 to read as follows:

It has been the practice of the States concerned or it otherwise appears from the circumstances that their intention was to dispense with full powers.

[Referred to the Drafting Committee, see para. 76 below]

(iii) *Paragraph 2*(a) *Hungary and Poland* (A/CONF.39/C.1/L.78 and Add.1):

Insert the words "negotiating or" after the words "for the purpose of" in paragraph 2(b).

In paragraph 2(c) replace the words "to an organ of an international organization, for the purpose of the adoption of" by the words "to an international organization or to any of its organs for the purpose of negotiating or adopting".

[Referred to the Drafting Committee, see para. 76 below]

(b) *Italy* (A/CONF.39/C.1/L.83):

Add the following words at the end of sub-paragraph (b):

and for the purpose of concluding an agreement between those States in conformity with diplomatic practice, in particular, in the form of an exchange of notes;

[Referred to the Drafting Committee, see para. 76 below]

(c) *United States of America* (A/CONF.39/C.1/L.90):

In sub-paragraph (c) of paragraph 2 replace the words "to an organ of an international organization" by the words "to an international organization or one of its organs".

[Referred to the Drafting Committee, see para. 76 below]

(iv) *New paragraph 3**United States of America* (A/CONF.39/C.1/L.90):

Add a new paragraph 3 reading as follows:

Nothing in the present article shall prevent States from agreeing to require full powers for the purpose of performing any international act relating to the conclusion of a treaty.

[Referred to the Drafting Committee, see para. 76 below]

C. *Proceedings of the Committee of the Whole*(i) *MEETINGS*

73. The Committee of the Whole initially discussed article 6, and the amendments thereto, at its 13th meeting, on 4 April 1968. At its 34th meeting, on 23 April 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) *INITIAL CONSIDERATION*

74. At the 13th meeting of the Committee of the Whole, the amendments by *Federal Republic of Germany* (A/CONF.39/C.1/L.50) and *Iran and Mali* (A/CONF.39/C.1/L.64 and Add.1) were withdrawn.

75. At the same meeting, the amendment by *Sweden and Venezuela* (A/CONF.39/C.1/L.68/Rev.1) was put to the vote and was rejected by 51 votes to 13, with 23 abstentions.

76. Also at its 13th meeting the Committee of the Whole decided, without objection, to refer article 6 to the Drafting Committee, together with the amendments by *Hungary and Poland* (A/CONF.39/C.1/L.78 and Add.1), *Italy* (A/CONF.39/C.1/L.83), *Spain* (A/CONF.39/C.1/L.36) and *United States of America* (A/CONF.39/C.1/L.90).

(iii) *CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE*

77. At the 34th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 6 adopted by the Drafting Committee (A/CONF.39/C.1/4; for text, see para. 79 below).

78. At the same meeting, separate votes were requested on sub-paragraph (b) of paragraph 1, and on sub-paragraph (c) of paragraph 2 of the text recommended by the Drafting Committee. The results of the voting were as follows:

(a) The text of sub-paragraph (b) of paragraph 1 was adopted by 83 votes to 3, with 5 abstentions.

(b) The text of sub-paragraph (c) of paragraph 2 was adopted by 84 votes to 1, with 3 abstentions.

¹⁸ In its original form this amendment, sponsored by Venezuela (A/CONF.39/C.1/L.68), called only for the deletion of sub-paragraph (b).

(c) The remainder of the text of the article was adopted by 88 votes to none, with 2 abstentions.

(d) The text of the article as a whole was adopted by 88 votes to none, with 4 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
79. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 6.

Article 6

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

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

ARTICLE 7

A. International Law Commission text

80. The International Law Commission text provided as follows:

Article 7.—Subsequent confirmation of an act performed without authority

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

B. Amendments

81. Amendments were submitted to article 7 by Japan (A/CONF.39/C.1/L.98), Malaysia (A/CONF.39/C.1/L.99), Singapore (A/CONF.39/C.1/L.96), Spain (A/CONF.39/C.1/L.37), United States of America (A/CONF.39/C.1/L.56) and Venezuela (A/CONF.39/C.1/L.69).

82. These amendments were to the following effect:

(a) *Spain* (A/CONF.39/C.1/L.37):

Replace the present text of article 7 by the following:

For the purposes of article 6, a defect or vice in the powers of a person acting as representative of a State shall be remedied by subsequent confirmation given by the competent authority of that State.

[Referred to the Drafting Committee, see para. 86 below]

(b) *United States of America* (A/CONF.39/C.1/L.56):
Amend article 7 to read:

"An act expressing the consent of a State to be bound by a treaty performed by a person who cannot be considered under article 6 as representing his State for that purpose is without legal effect, subject to the provisions of article 42".

[First part rejected, see para. 85(a) below; second part not pressed to a vote, see para. 84 below]

(c) *Venezuela* (A/CONF.39/C.1/L.69):

Between the words "afterwards" and "confirmed". . . insert the adverb "expressly".

[Rejected, see para. 85(b) below]

(d) *Singapore* (A/CONF.39/C.1/L.96):

The text of article 7 should become paragraph 3 of article 6 and should be amended to read as follows:

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

[Referred to the Drafting Committee, see para. 86 below]

(e) *Japan* (A/CONF.39/C.1/L.98):

Transfer the article to Section 2 of Part V.

[Referred to the Drafting Committee, see para. 86 below]

(f) *Malaysia* (A/CONF.39/C.1/L.99):

1. Substitute the word "subsequently" for the word "afterwards".

2. Insert the expression "expressly or by necessary implication" between the words "confirmed" and "by the competent authority".

[Rejected, see para. 85(c) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

83. The Committee of the Whole initially discussed article 7, and the amendments thereto, at its 14th meeting on 5 April 1968. At its 34th meeting, on 23 April 1968, the Committee considered the report of the Drafting Committee on the article.

(ii) INITIAL CONSIDERATION

84. At the 14th meeting of the Committee, the *United States of America* announced that it would not press for a vote on that part of its amendment (A/CONF.39/C.1/L.56) which proposed to add at the end of the article the words "subject to the provisions of article 42".

85. The Committee then proceeded to vote on certain of the amendments before it, as follows:

(a) The remaining part of the amendment by the *United States of America* (A/CONF.39/C.1/L.56) was rejected by 54 votes to 18, with 16 abstentions.

(b) The amendment by *Venezuela* (A/CONF.39/C.1/L.69) was rejected by 51 votes to 22, with 13 abstentions.

(c) The amendment by *Malaysia* (A/CONF.39/C.1/L.99) was rejected by 38 votes to 16, with 34 abstentions.

86. Also at its 14th meeting, the Committee of the Whole agreed, without objection, to refer article 7 to the Drafting Committee, together with the amendments by *Japan* (A/CONF.39/C.1/L.98), *Singapore* (A/CONF.39/C.1/L.96) and *Spain* (A/CONF.39/C.1/L.37).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

87. At the 34th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 7 adopted by the Drafting Committee (A/CONF.39/C.1/4; for text, see para. 88 below). The Committee adopted this text by 87 votes to 2, with 1 abstention.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

88. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 7:

Article 7

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

ARTICLE 8

A. International Law Commission text

89. The International Law Commission text provided as follows:

Article 8.—Adoption of the text

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

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

B. Amendments

90. Amendments were submitted to article 8 by *Ceylon* (A/CONF.39/C.1/L.43), *France* (A/CONF.39/C.1/L.30), *Peru* (A/CONF.39/C.1/L.101 and Corr.1), the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1), and the *United Republic of Tanzania* (A/CONF.39/C.1/L.103). A sub-amendment was submitted by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30).

91. These amendments and the sub-amendment, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article, and a proposed new subparagraph, were to the following effect:

(i) Paragraph 1

Peru (A/CONF.39/C.1/L.101 and Corr.1):

Replace the existing text of article 8 [paragraph 1] by the following:

1. The adoption of the text of a treaty takes place by unanimous consent when the number of States participating in its drawing

up is limited or restricted, unless the said States shall decide to apply a different rule.

[Referred to the Drafting Committee, see para. 93 below]

(ii) Paragraph 2

(a) *France* (A/CONF.39/C.1/L.30):

Amend the beginning of paragraph 2 to read as follows:

The adoption of the text of a multilateral treaty other than a restricted multilateral treaty at an international conference...

[Referred to the Drafting Committee, see para. 93 below, and subsequently deferred until the second session of the Conference, see para. 94 below]

(b) Sub-amendment by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30):

Amend the beginning of paragraph 2 to read as follows:

The adoption of the text of a *general multilateral treaty* or a multilateral treaty other than a restricted multilateral treaty at an international conference...

[Referred to the Drafting Committee, see para. 93 below and subsequently deferred until the second session of the Conference, see para. 94 below]

(c) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1):¹⁹

Amend the first part of paragraph 2 to read as follows:

The adoption of the text of a general or other multilateral treaty, with the exception of limited multilateral treaties, at an international conference takes place by the vote of two-thirds of the States...

[Referred to the Drafting Committee, see para. 93 below and subsequently deferred until the second session of the Conference, see para. 94 below]

(d) *Peru* (A/CONF.39/C.1/L.101 and Corr.1):

Replace the existing text of article 8 [paragraph 2] by the following:

"2. The adoption of the text of a treaty at a general international conference at which the number of States participating is substantial takes place by the vote of two-thirds of the States participating in the conference, unless by the same majority the said States shall decide to apply a different rule".

[Referred to the Drafting Committee, see para. 93 below]

(e) *United Republic of Tanzania* (A/CONF.39/C.1/L.103):

For the [words in] paragraph 2 reading:

unless by the same majority they shall decide to apply a different rule.

substitute:

unless it is decided during the conference to apply a different rule.

[Referred to the Drafting Committee, see para. 93 below]

¹⁹ In its original form (A/CONF.39/C.1/L.51) this amendment read: "Amend the first part of paragraph 2 to read as follows: 'The adoption of the text of a general multilateral treaty at an international conference takes place by the vote of two-thirds of the States...'"

(iii) *New paragraph 3*

Ceylon (A/CONF.39/C.1/L.43):

Add the following new paragraph:

"3. The adoption of the text of a treaty by an international organization takes place by action of a competent organ of such organization according to its rules".

[Referred to the Drafting Committee, see para. 93 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

92. The Committee of the Whole initially discussed article 8 and the amendments thereto, at its 15th meeting, on 5 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 8 until the second session of the Conference.

(ii) CONSIDERATION

93. At the 15th meeting of the Committee of the Whole, it was decided, without objection, to refer article 8 to the Drafting Committee, together with all the amendments and the sub-amendment, namely the amendments by *Ceylon* (A/CONF.39/C.1/L.43), *France* (A/CONF.39/C.1/L.30), *Peru* (A/CONF.39/C.1/L.101 and Corr.1), *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1) and *United Republic of Tanzania* (A/CONF.39/C.1/L.103), and the sub-amendment by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30).

94. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties." Amendments to paragraph 2 of article 8 to add references to restricted and to general multilateral treaties had been submitted by *France* (A/CONF.39/C.1/L.30), and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.51/Rev.1) respectively. A sub-amendment to add a reference to general multilateral treaties had also been submitted by *Czechoslovakia* (A/CONF.39/C.1/L.102) to the amendment by *France* (A/CONF.39/C.1/L.30).

(iii) DECISION

95. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 8 until the second session of the Conference (see document A/CONF.39/15, paras. 33-42).

ARTICLE 9

A. International Law Commission text

96. The International Law Commission text provided as follows:

Article 9.—Authentication of the text

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

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

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

B. Amendments

97. No amendments were submitted to article 9.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

98. The Committee of the Whole initially discussed article 9 at its 15th meeting, on 5 April 1968. At its 59th meeting, on 8 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

99. At its 15th meeting, the Committee of the Whole adopted article 9 without formal vote²⁰ and referred it to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

100. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 9 adopted by the Drafting Committee (A/CONF.39/C.1/5; for text, see para. 101 below). The Committee of the Whole adopted this text without formal vote.²¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

101. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 9:

Article 9

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

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

ARTICLE 9bis and ARTICLE 12bis

102. An amendment was submitted to the Committee of the Whole, proposing the insertion of a new article 9bis to serve as an introductory article to subsequent provisions in the International Law Commission's text concerning the various forms by which a State might express its consent to be bound by a treaty. A further amendment, containing a proposed new article 12bis, was to the same effect as part of the proposed article 9bis. At its 18th meeting, on 9 April 1968, the Committee of the Whole eventually decided to discuss these two proposed new articles together. They are therefore considered together under a single heading.

²⁰ See para. 13 above.

²¹ *Ibid.*

A. Proposed new articles

103. The amendments referred to above were submitted by Poland and the United States of America (A/CONF.39/C.1/L.88 and Add.1)²² and Belgium (A/CONF.39/C.1/L.111).

104. These amendments were to the following effect:

(a) Article 9bis

Poland and United States of America (A/CONF.39/C.1/L.88 and Add.1):

Insert the following new article between articles 9 and 10:

Consent to be bound by a treaty

The consent of a State to be bound by a treaty may be expressed by the signature, exchange of instruments constituting a treaty, ratification, approval, acceptance or accession or by any other means if so agreed.

[Adopted, see para. 106 below, subject to the decision recorded in that paragraph]

(b) Article 12bis

Belgium (A/CONF.39/C.1/L.111):

Add a new article 12bis to read as follows:

Article 12bis

Other methods of expressing consent to be bound by a treaty

In addition to the cases dealt with in articles 10, 11 and 12, the consent of a State to be bound by a treaty may be expressed by any other method agreed upon between the contracting States.

[Adopted, see para. 106 below, subject to the decision recorded in that paragraph]

B. Proceedings of the Committee of the Whole

(i) MEETINGS

105. The Committee of the Whole initially discussed the proposed new article 9bis at its 15th and 18th meetings, on 5 and 9 April 1968. The proposed new article 12bis was discussed in conjunction with article 9bis at the 18th meeting of the Committee. At its 59th meeting, on 8 May 1968, the Committee considered the report of the Drafting Committee containing a single text for these proposed new articles.

(ii) INITIAL CONSIDERATION

106. At its 18th meeting, the Committee of the Whole approved in principle the amendments by *Poland* and *United States of America* (A/CONF.39/C.1/L.88 and Add.1) and *Belgium* (A/CONF.39/C.1/L.111), and decided to insert in the text an article or articles incorporating the substance of proposed articles 9bis and 12bis. The Committee also decided, without objection, to refer these two amendments to the Drafting Committee for formulation, and for placing in the text.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

107. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 9bis adopted by the Drafting Committee (A/CONF.39/C.1/5; for text, see para. 108 below), and incorporating the substance of the proposed new articles 9bis and 12bis. The Committee of the Whole adopted this text without formal vote.²³

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

108. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 9bis:

Article 9bis

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, approval, acceptance or accession, or by any other means if so agreed.

QUESTION OF A RESIDUARY RULE IN FAVOUR OF SIGNATURE OR OF RATIFICATION (INCLUDING ARTICLE 11bis)

109. At its 16th meeting, on 8 April 1968, the Committee of the Whole noted that certain amendments to article 10, article 11 and a proposed new article 11bis raised the issue whether, in the absence of indication of the intention of the States concerned, consent to be bound by a treaty is expressed by signature or by ratification. The Committee decided that the question of inserting in the text a residuary rule in favour of signature or of ratification should be discussed separately from its consideration of articles 10 and 11. In view of this decision of the Committee, the question is dealt with under a separate heading.

A. International Law Commission text

110. The International Law Commission text of articles 10 and 11 provided as follows:

Article 10.—Consent to be bound by a treaty expressed by signature

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

- (a) The treaty provides that signature shall have that effect;
- (b) It is otherwise established that the negotiating States were agreed that signature should have that effect;

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

2. For the purposes of paragraph 1:

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

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

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

²² Original sponsor Poland, co-sponsor United States of America (Add.1).

²³ See para. 13 above.

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

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

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

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

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

B. Amendments

111. Amendments which related to the question of a residuary rule were submitted by Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela (A/CONF.39/C.1/L.105); Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2);²⁴ Switzerland (A/CONF.39/C.1/L.87) and Venezuela (A/CONF.39/C.1/L.71).

112. These amendments, arranged in the order of the articles to which they relate, were to the following effect:

(i) Article 10

Czechoslovakia, Sweden and Poland (A/CONF.39/L.38 and Add.1 and 2):

Replace paragraph 1 by the following wording:

The consent of a State to be bound by a treaty is expressed by the signature of its representative, except in the cases referred to in articles 11 and 12.

[Withdrawn, see para. 114 below]

(ii) Article 11

(a) *Venezuela* (A/CONF.39/C.1/L.71):

Replace the present text [of paragraph 1] by the following:

The consent of a State to be bound by a treaty is expressed by ratification, unless the treaty provides otherwise".

Delete paragraph 2 if it is decided to delete paragraph 1(b) of article 2.

[Withdrawn, see para. 114 below]

(b) *Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela* (A/CONF.39/C.1/L.105):

Replace paragraph 1 by the following text:

The consent of a State to be bound by a treaty is expressed by ratification except in the cases provided for in articles 10 and 12.

[Rejected, see para. 115 below]

(iii) New article 11bis

Switzerland (A/CONF.39/C.1/L.87):

Add a new article 11bis reading as follows:

When the method of expressing consent to be bound cannot be established in accordance with the preceding articles, consent shall be expressed by ratification.

[Rejected, see para. 115 below]

²⁴ Original sponsor Czechoslovakia, co-sponsors Sweden (Add.1) and Poland (Add.2).

C. Proceedings of the Committee of the Whole

(i) MEETINGS

113. The question of the insertion in the text of a residuary rule in favour of signature or of ratification as expressing consent to be bound by a treaty, and the amendments relevant thereto, were discussed by the Committee of the Whole at its 16th, 17th and 18th meetings, on 8 and 9 April 1968.

(ii) CONSIDERATION

114. At the 16th meeting of the Committee of the Whole, the amendment by *Venezuela* (A/CONF.39/C.1/L.71) was withdrawn. At the 18th meeting, the amendment by *Czechoslovakia, Sweden and Poland* (A/CONF.39/C.1/L.38 and Add.1 and 2) was also withdrawn.

115. At the 18th meeting of the Committee of the Whole, a vote was taken by roll-call on the principle whether a residuary rule in favour of ratification should be included in the text, with the following results:

In favour: Bolivia, Chile, Colombia, Dominican Republic, Ethiopia, Gabon, Greece, Guatemala, Guinea, Iran, Iraq, Kuwait, Liechtenstein, Mexico, Peru, Republic of Korea, South Africa, Spain, Switzerland, Syria, Turkey, United Arab Republic, Uruguay, Venezuela, Zambia.

Against: Australia, Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Ceylon, Congo (Democratic Republic of), Cyprus, Czechoslovakia, Dahomey, Denmark, Federal Republic of Germany, Finland, France, Ghana, Holy See, Hungary, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kenya, Lebanon, Liberia, Madagascar, Mali, Monaco, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sweden, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstentions: Afghanistan, Algeria, Argentina, Brazil, China, Congo (Brazzaville), Cuba, Ecuador, India, Indonesia, Israel, Malaysia, Morocco, Philippines, United Republic of Tanzania, Yugoslavia.

The amendments by *Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela* (A/CONF.39/C.1/L.105) and *Switzerland* (A/CONF.39/C.1/L.87) were therefore rejected by 53 votes to 25, with 16 abstentions.

(iii) DECISION

116. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended to the Conference any residuary rule on whether, in the absence of indication of the intention of the States concerned, consent to be bound by a treaty is expressed by signature or by ratification.

ARTICLE 10

(CONSENT TO BE BOUND BY A TREATY EXPRESSED BY SIGNATURE)

A. International Law Commission text

117. The International Law Commission text of article 10 appears in paragraph 110 above, under the heading "Question of a residuary rule in favour of signature or of ratification".

B. Amendments

118. In addition to the amendment by Czechoslovakia, Sweden and Poland (A/CONF.39/C.1/L.38 and Add.1 and 2)²⁵ relating to a residuary rule, the text of which appears in paragraph 112(i) above, other amendments were submitted to article 10 by Belgium (A/CONF.39/C.1/L.100), Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru and Venezuela (A/CONF.39/C.1/L.107), Italy (A/CONF.39/C.1/L.81), Spain (A/CONF.39/C.1/L.108) and Venezuela (A/CONF.39/C.1/L.70).

119. These other amendments, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2, were to the following effect:

(i) *Article as a whole*

Spain (A/CONF.39/C.1/L.108):

For the existing article 10 substitute the following:

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

- (a) The treaty provides that signature shall have that effect;
- (b) It is clear from the circumstances that the negotiating States were agreed that signature should have that effect;
- (c) The intention of the State to give that effect to the signature appears from the full powers of its representatives or was expressed during the negotiation.

2. For the purposes of the previous paragraph:

- (a) The initialling of a treaty constitutes a signature of the treaty when it is clear from the circumstances that the negotiating States considered initialling as equivalent to signature;
- (b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty, unless such confirmation states that consent to be bound by the treaty is understood to be as from the notification of confirmation.

[Referred to the Drafting Committee, see para. 124 below]

(ii) *Paragraph 1*

(a) *Venezuela* (A/CONF.39/C.1/L.70):

Delete sub-paragraphs (b) and (c).

[Withdrawn, see para. 121 below]

(b) *Italy* (A/CONF.39/C.1/L.81):

Amend sub-paragraph (c) to read as follows:

The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was *formally manifested* during the negotiations.

²⁵ Original sponsor Czechoslovakia, co-sponsors Sweden (Add.1) and Poland (Add.2). The proceedings of the Committee in relation to this amendment are described under the heading "Question of a residuary rule in favour of signature or of ratification" in paragraphs 109 to 116 above.

[Referred to the Drafting Committee, see para. 124 below]

(c) *Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru and Venezuela* (A/CONF.39/C.1/L.107):

Replace paragraph 1, sub-paragraphs (b) and (c), by the following:

(b) In conformity with the internal law of that State the treaty is an administrative or an executive agreement.

[Rejected, see para. 122 below]

(iii) *Paragraph 2*

Belgium (A/CONF.39/C.1/L.100):

In sub-paragraph (a) of paragraph 2, insert the word "expressly" before the word "so".

[Referred to the Drafting Committee, see para. 124 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

120. The aspects of article 10 other than those dealt with under the question of a residuary rule considered in paragraphs 109 to 116 above, and the amendments to the article, were initially discussed by the Committee of the Whole at its 17th meeting, on 8 April 1968. At its 59th meeting, on 8 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

121. At the 17th meeting of the Committee of the Whole, the amendment by *Venezuela* (A/CONF.39/C.1/L.70) was withdrawn.

122. At the same meeting, the amendment by *Bolivia, Chile, Colombia, Dominican Republic, Guatemala, Honduras, Mexico, Peru and Venezuela* (A/CONF.39/C.1/L.107) was put to the vote and was rejected by 60 votes to 10, with 16 abstentions.

123. Also at the 17th meeting, *Austria* requested a separate vote on the words "or was expressed during the negotiation". This was put to the vote in the form of a motion to delete those words. The motion was rejected by 37 votes to 10, with 30 abstentions.

124. The Committee of the Whole then decided, without objection, to refer article 10 to the Drafting Committee, together with the amendments by *Belgium* (A/CONF.39/C.1/L.100), *Italy* (A/CONF.39/C.1/L.81) and *Spain* (A/CONF.39/C.1/L.108).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

125. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 10 adopted by the Drafting Committee (A/CONF.39/C.1/5; for text, see para. 126 below). The Committee of the Whole adopted this text without formal vote.²⁶

²⁶ See para. 13 above.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
126. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 10:

Article 10

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

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

2. For the purposes of paragraph 1:

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

ARTICLE 10bis

A. Proposed new article

127. Poland submitted an amendment (A/CONF.39/C.1/L.89) which was to the following effect:

Insert the following new article between articles 10 and 11:

"Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty"

"The consent of States to be bound by a treaty embodied in two or more related instruments is expressed by the exchange of such instruments, unless the States in question otherwise agreed."

[Adopted, see para. 129 below, subject to the decision recorded in that paragraph]

B. Proceedings of the Committee of the Whole

(i) MEETINGS

128. The Committee of the Whole initially discussed the proposed new article 10bis at its 17th and 18th meetings, on 8 and 9 April 1968. At its 59th meeting, on 8 May 1968, it considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

129. At its 18th meeting, the Committee of the Whole voted on the principle contained in the amendment by Poland (A/CONF.39/C.1/L.89) to add a new article 10bis. This principle was adopted by 42 votes to 10, with 27 abstentions. The Committee also decided, without objection, to refer the wording of the principle to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

130. At the 59th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 10bis adopted by the Drafting Committee (A/CONF.39/C.1/6; for text,

see para. 131 below). This text was adopted by 69 votes to 1, with 18 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
131. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 10bis:

Article 10bis

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) the instruments provide that their exchange shall have that effect;
- (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

ARTICLE 11

(CONSENT TO BE BOUND BY A TREATY EXPRESSED BY RATIFICATION, ACCEPTANCE OR APPROVAL)

A. International Law Commission text

132. The International Law Commission text of article 11 appears in paragraph 110 above, under the heading "Question of a residuary rule in favour of signature or of ratification".

B. Amendments

133. In addition to the amendments by Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela (A/CONF.39/C.1/L.105) and Venezuela (A/CONF.39/C.1/L.71), relating to a residuary rule, the texts of which appear in paragraph 112 (ii) above,²⁷ other amendments were submitted to article 11 by Finland (A/CONF.39/C.1/L.60) and Spain (A/CONF.39/C.1/L.109).

134. These amendments were to the following effect:

- (a) *Finland* (A/CONF.39/C.1/L.60):

Paragraph [1] should be amended as follows:

Sub-paragraph (c) would be placed immediately after sub-paragraph (a), replacing the present sub-paragraph (b), while the present sub-paragraphs (d) and (b) would be amalgamated, in that sequence, into a new sub-paragraph (c) by using the conjunction "or".

[Referred to the Drafting Committee, see para. 136 below]

- (b) *Spain* (A/CONF.39/C.1/L.109):

For the existing article 11, substitute the following:
The consent of a State to be bound by a treaty is expressed by ratification, acceptance or approval when:

- (a) the treaty expressly so provides;
- (b) it is clear from the circumstances that the negotiating States intended that ratification, acceptance or approval should be required; or
- (c) the intention of the State to sign the treaty subject to ratification, acceptance or approval appears from the full powers of its representative or was expressed during the negotiation.

²⁷ The proceedings of the Committee in relation to these amendments are also described under the heading "Question of a residuary rule in favour of signature or of ratification" in paragraphs 109 to 116 above.

[Referred to the Drafting Committee, see para. 136 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

135. The aspects of article 11 other than those dealt with under the question of a residuary rule considered in paragraphs 109 to 116 above, and the amendments to the article, were initially discussed by the Committee of the Whole at its 18th meeting, on 9 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

136. At its 18th meeting, the Committee of the Whole decided, without objection, to refer article 11 to the Drafting Committee, together with the amendments by *Finland* (A/CONF.39/C.1/L.60) and *Spain* (A/CONF.39/C.1/L.109).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

137. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 11 adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 138 below). The Committee of the Whole adopted this text without formal vote.²⁸

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

138. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 11:

Article 11

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

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

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

ARTICLE 11bis

139. An amendment by Switzerland (A/CONF.39/C.1/L.87) proposing the addition of a new article 11bis is considered under the heading "Question of a residuary rule in favour of signature or of ratification" in paragraphs 109 to 116 above.

²⁸ See para. 13 above.

ARTICLE 12

A. International Law Commission text

140. The International Law Commission text provided as follows:

Article 12.—Consent to be bound by a treaty expressed by accession

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

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

B. Amendments

141. An amendment was submitted to article 12 by Czechoslovakia (A/CONF.39/C.1/L.104).

142. This amendment was to the following effect:

Consider the present wording of article 12 as paragraph 1 and add a paragraph 2 which would read as follows: "2. The consent to be bound by a general multilateral treaty may be expressed by accession by any State. Any State also has the right to become, by accession, a party to a multilateral treaty which affects its legitimate interest."

[Deferred until the second session of the Conference, see para. 146 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

143. The Committee of the Whole initially discussed article 12 at its 18th meeting, on 9 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 12 until the second session of the Conference.

(ii) CONSIDERATION

144. At its 18th meeting, the Committee of the Whole agreed, without objection, to defer consideration of the amendment by *Czechoslovakia* (A/CONF.39/C.1/L.104) to article 12 until such time as the Committee took up consideration of the proposed new article 5bis.

145. Subject to the foregoing decision, the Committee of the Whole decided, at the same meeting, to refer article 12 to the Drafting Committee.²⁹

²⁹ On this basis, the Drafting Committee submitted a report (A/CONF.39/C.1/6) to the Committee of the Whole containing the following text of article 12:

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

"(a) the treaty provides that such consent may be expressed by that State by means of accession;

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

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

This text was not formally introduced in the Committee of the Whole by the Chairman of the Drafting Committee, pending a final decision by the Committee of the Whole on the amendment by Czechoslovakia (A/CONF.39/C.1/L.104).

146. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *Czechoslovakia* (A/CONF.39/C.1/L.104) to article 12 related to universal participation in general multilateral treaties.

(iii) DECISION

147. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 12 until the second session of the Conference (see document A/CONF.39/15, paras. 43-49).

ARTICLE 12bis

(OTHER METHODS OF EXPRESSING CONSENT
TO BE BOUND BY A TREATY)

148. An amendment by Belgium (A/CONF.39/C.1/L.111) proposing the addition of a new article 12bis is considered together with article 9bis in paragraphs 102 to 108 above.

ARTICLE 13

A. International Law Commission text

149. The International Law Commission text provided as follows:

Article 13.—Exchange or deposit of instruments of ratification, acceptance, approval or accession

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

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

B. Amendments

150. Amendments were submitted to article 13 by Canada (A/CONF.39/C.1/L.110) and Poland (A/CONF.39/C.1/L.93/Rev.1).

151. These amendments were to the following effect:

- (a) *Poland* (A/CONF.39/C.1/L.93/Rev.1):³⁰

Replace the present wording of article 13 by the following text:

Establishment of the consent to be bound by a treaty

Unless it is otherwise agreed, the consent of a State to be bound by a treaty is established upon:

- (a) signing of the treaty; or
- (b) exchange of the instruments of ratification, acceptance or approval between the contracting States; or

³⁰ In the original version of this amendment (A/CONF.39/C.1/L.93) the words "Unless the treaty otherwise provides" appeared in the introductory phrase in place of the words "Unless it is otherwise agreed", and sub-paragraph (d) read as follows: "(d) notification of ratification, acceptance, approval or accession made to the contracting States or to the depositary, if so agreed; or".

- (c) deposit of the instruments mentioned under sub-paragraph (b), or of the instrument of accession with the depositary; or
- (d) notification of ratification, acceptance, approval or accession made to the contracting States or to the depositary; or
- (e) exchange of instruments constituting a treaty.

[Referred to the Drafting Committee, see para. 153 below]

- (b) *Canada* (A/CONF.39/C.1/L.110):

In the opening phrase of the article, insert the words "or instrument" between the words "treaty" and "otherwise".

[Referred to the Drafting Committee, see para. 153 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

152. The Committee of the Whole initially discussed article 13, and the amendments thereto, at its 18th meeting, on 9 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

153. At its 18th meeting, the Committee of the Whole decided, without objection, to refer article 13 to the Drafting Committee, together with the amendments by *Canada* (A/CONF.39/C.1/L.110) and *Poland* (A/CONF.39/C.1/L.93/Rev.1).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

154. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 13 adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 155 below). The Committee of the Whole adopted this text without formal vote.³¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

155. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 13:

Article 13

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

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

ARTICLE 14

A. International Law Commission text

156. The International Law Commission text provided as follows:

³¹ See para. 13 above.

Article 14.—Consent relating to a part of a treaty and choice of differing provisions

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

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

B. Amendments

157. No amendments were submitted to article 14.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

158. The Committee of the Whole initially discussed article 14 at its 18th meeting, on 9 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

159. At its 18th meeting, the Committee of the Whole approved article 14 in principle and referred it to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

160. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 14 adopted by the Drafting Committee (A/CONF.39/C.1/7; for text, see para. 161 below). The Committee of the Whole adopted this text without formal vote.³²

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

161. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 14:

Article 14

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

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

ARTICLE 15

A. International Law Commission text

162. The International Law Commission text provided as follows:

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

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

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

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

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

B. Amendments

163. Amendments were submitted to article 15 by Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1),³³ Australia (A/CONF.39/C.1/L.129), Belgium, Federal Republic of Germany, Finland, Guinea and Japan (A/CONF.39/C.1/L.61 and Add.1 to 4),³⁴ Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.114), Congo (Brazzaville) (A/CONF.39/C.1/L.145), Greece and Venezuela (A/CONF.39/C.1/L.72 and Add.1),³⁵ Malaysia (A/CONF.39/C.1/L.122), Republic of Viet-Nam (A/CONF.39/C.1/L.124), Switzerland (A/CONF.39/C.1/L.112), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.135), United Republic of Tanzania (A/CONF.39/C.1/L.130) and United States of America (A/CONF.39/C.1/L.134).

164. These amendments, arranged under sub-headings relating to the article as a whole, the title, the opening sentence, sub-paragraph (a), sub-paragraph (b) and sub-paragraph (c) of the article, were as follows:

(i) Article as a whole

United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.135):

Delete the article.

[Rejected, see para. 167(a) below]

(ii) Title

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114):

Amend the title . . . to read as follows:

Obligation of a State to refrain from acts rendering impossible the future performance of a treaty which has not entered into force.

[Referred to the Drafting Committee, see para. 169 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.124):

In the title after the word "frustrate", add the words "distort or restrict".

[Referred to the Drafting Committee, see para. 169 below]

(iii) Opening sentence

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114):

Amend the opening sentence to read as follows:

A State is obliged to refrain from acts which might render impossible the future performance of a treaty which is to be concluded when:

³³ Original sponsors Argentina and Uruguay, co-sponsor Ecuador (Add.1).

³⁴ Original sponsor Finland, co-sponsors Guinea (Add.1), Federal Republic of Germany (Add.2), Belgium (Add.3), and Japan (Add.4).

³⁵ Original sponsor Venezuela, co-sponsor Greece (Add.1).

³² *Ibid.*

[Referred to the Drafting Committee, see para. 169 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.124):

Amend the beginning of article 15 to read as follows:
A State is obliged to refrain from acts tending to frustrate, *distort* or *restrict* the object of a proposed treaty when:

[Referred to the Drafting Committee, see para. 169 below]

(c) *Australia* (A/CONF.39/C.1/L.129):

Replace the words "tending to frustrate" . . . by the words "which would frustrate".

[Referred to the Drafting Committee, see para. 169 below]

(d) *United States of America* (A/CONF.39/C.1/L.134):

. . . Delete the words "tending to" and replace them with the word "which".

[Referred to the Drafting Committee, see para. 169 below]

(iv) *Sub-paragraph (a)*

(a) *Belgium, Federal Republic of Germany, Finland, Guinea and Japan* (A/CONF.39/C.1/L.61 and Add.1 to 4):

Delete sub-paragraph (a).

[Adopted, see para. 167(b) below]

(b) *Greece and Venezuela* (A/CONF.39/C.1/L.72 and Add.1):

Delete sub-paragraph (a)

[Adopted, see para. 167(b) below]

(c) *Switzerland* (A/CONF.39/C.1/L.112):

In sub-paragraph (a), after the words "the conclusion of a treaty", insert the words "and the principle of good faith so requires".

[Not voted upon, see para. 168 below]

(d) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114):

Amend . . . sub-paragraph (a) . . . to read as follows:

(a) It is carrying on negotiations for the conclusion of the treaty;
[Withdrawn, see para. 166 below]

(e) *Malaysia* (A/CONF.39/C.1/L.122):

Delete paragraph (a).

[Adopted, see para. 167(b) below]

(f) *Australia* (A/CONF.39/C.1/L.129):

Delete sub-paragraph (a).

[Adopted, see para. 167(b) below]

(g) *United Republic of Tanzania* (A/CONF.39/C.1/L.130):

Delete the semi-colon after "progress" and add the following words "unless such negotiations are unduly protected".

[Not voted upon, see para. 168 below]

(h) *Congo (Brazzaville)* (A/CONF.39/C.1/L.145):

Replace . . . sub-paragraph (a) by the following text:

Negotiations for the conclusion of the treaty are in progress;
[Not voted upon, see para. 168 below]

(v) *Sub-paragraph (b)*

Malaysia (A/CONF.39/C.1/L.122):

Replace the words "made its intention clear" by the words "expressed its intention in the clearest terms".

[Referred to the Drafting Committee, see para. 169 below]

(vi) *Sub-paragraph (c)*

Argentina, Ecuador and Uruguay (A/CONF.39/C.1/L.131 and Add.1):

. . . Replace the words "is not unduly delayed" by the words "is not delayed for more than twelve months".

[Referred to the Drafting Committee, see para. 169 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

165. The Committee of the Whole initially discussed article 15, and the amendments thereto, at its 19th and 20th meetings, on 9 and 10 April 1968. At its 61st meeting, on 9 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

166. At the 20th meeting of the Committee of the Whole, that part of the amendment of the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.114) which related to sub-paragraph (a) of article 15 was withdrawn.

167. At the same meeting, the Committee of the Whole voted upon certain of the other amendments before it:

(a) The amendment by *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.135) to delete the entire article was put to a roll-call vote, with the following results:

In favour: Australia, Brazil, Canada, China, Indonesia, Japan, New Zealand, Norway, Philippines, Republic of Korea, Republic of Viet-Nam, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela.

Against: Algeria, Argentina, Austria, Belgium, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Ecuador, Ethiopia, Finland, Gabon, Ghana, Guatemala, Guinea, Holy See, Hungary, India, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Kuwait, Liberia, Liechtenstein, Madagascar, Malaysia, Mali, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Poland, Portugal, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, United States of America, Yugoslavia, Zambia.

Abstentions: Afghanistan, Chile, Federal Republic of Germany, France, Greece, Iran.

This amendment was therefore rejected by 74 votes to 14, with 6 abstentions.

(b) Those amendments, or parts of amendments, which called for the deletion of sub-paragraph (a) of article 15 were then put to a roll-call vote, with the following results:

In favour: Afghanistan, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Chile, China, Colombia, Czechoslovakia, Federal Republic of Germany, Finland, France, Ghana, Greece, Guinea, India, Indonesia, Iran, Ireland, Jamaica, Japan, Kenya, Liberia, Malaysia, Mauritius, Monaco, Mongolia, New Zealand, Norway, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Sierra Leone, Singapore, Somalia, Sweden, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

Against: Algeria, Bolivia, Ceylon, Congo (Democratic Republic of), Cuba, Dahomey, Ecuador, Ethiopia, Gabon, Guatemala, Holy See, Hungary, Iraq, Italy, Ivory Coast, Kuwait, Liechtenstein, Madagascar, Mali, Mexico, Netherlands, Nigeria, Pakistan, Peru, Poland, San Marino, Saudi Arabia, Senegal, South Africa, Spain, Switzerland, Yugoslavia, Zambia.

Abstentions: Argentina, Central African Republic, Congo (Brazzaville), Cyprus, Denmark, Israel, Morocco, Romania, Thailand, Tunisia, United Republic of Tanzania.

Those amendments, or parts of amendments, by *Australia* (A/CONF.39/C.1/L.129), *Belgium, Federal Republic of Germany, Finland, Guinea and Japan* (A/CONF.39/C.1/L.61 and Add.1 to 4), *Greece and Venezuela* (A/CONF.39/C.1/L.72 and Add.1) and *Malaysia* (A/CONF.39/C.1/L.122) which called for the deletion of sub-paragraph (a) were therefore adopted by 50 votes to 33, with 11 abstentions.

168. In view of the decision of the Committee of the Whole to delete sub-paragraph (a) of article 15, it was not necessary to put to the vote those amendments by *Congo (Brazzaville)* (A/CONF.39/C.1/L.145), *Switzerland* (A/CONF.39/C.1/L.112) and *United Republic of Tanzania* (A/CONF.39/C.1/L.130) which sought to add to or revise sub-paragraph (a) of the article.

169. Also at its 20th meeting, the Committee of the Whole agreed, without objection, to refer article 15, as amended, to the Drafting Committee, together with those amendments, or parts of amendments still remaining, namely: *Argentina, Ecuador and Uruguay* (amendment to sub-paragraph (c)) (A/CONF.39/C.1/L.131 and Add.1), *Australia* (amendment to the opening sentence) (A/CONF.39/C.1/L.129), *Byelorussian Soviet Socialist Republic* (amendment to title and opening sentence) (A/CONF.39/C.1/L.114), *Malaysia* (amendment to sub-paragraph (b)) (A/CONF.39/C.1/L.122), *Republic of Viet-Nam* (amendment to title and to opening sentence) (A/CONF.39/C.1/L.124), and *United States of America* (amendment to opening sentence) (A/CONF.39/C.1/L.134).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

170. At the 61st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 15 adopted by the Drafting Committee (A/CONF.39/C.1/6; for text, see para. 171 below). The Committee of the Whole adopted this text without formal vote.³⁶

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

171. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 15:

Article 15

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

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

SECTION 2: RESERVATIONS TO MULTILATERAL TREATIES

ARTICLES 16 AND 17

172. At its 21st meeting, on 10 April 1968, the Committee of the Whole decided, without objection, to discuss articles 16 and 17 together. In view of this decision of the Committee, and as certain of the amendments submitted sought to combine the articles, they are considered together under a single heading.

A. International Law Commission text

173. The International Law Commission text provided as follows:

Article 16.—Formulation of reservations

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

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

Article 17.—Acceptance of and objection to reservations

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

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

³⁶ See para. 13 above.

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

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

- (a) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;
- (b) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;
- (c) An act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

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

B. Amendments

SINGLE ARTICLE TO REPLACE ARTICLES 16 AND 17

174. Amendments were submitted by France (A/CONF.39/C.1/L.169 and Corr.1) and the Union of Soviet Socialist Republics (A/CONF.39/C.1/L.115) to replace articles 16 and 17 by a single article.

175. These amendments were to the following effect:

(a) *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115):

Replace articles 16 and 17 by a new article 16 reading as follows:

Article 16

Formulation of and objection to reservations

1. A State may make reservations when signing, ratifying, accepting, approving or acceding to a treaty unless the reservation is incompatible with the object and purposes of the treaty.

2. An objection by any of the contracting States to a reservation shall not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is clearly expressed by the objecting State.

3. A reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of six months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

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

[Referred to the Drafting Committee, see para. 183 below, subject to decisions recorded in para. 182(a), (b) and (j) below]

(b) *France* (A/CONF.39/C.1/L.169 and Corr.1):

Replace articles 16 and 17 by a single article reading as follows:

Formulation and acceptance of reservations

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

- (a) The reservation is prohibited by the treaty;
- (b) The reservation is incompatible with the object and purpose of the treaty.

2. A reservation expressly authorized by the treaty cannot be the subject of an objection by other contracting States unless the treaty so provides.

3. A reservation to a bilateral treaty or to a restricted multilateral treaty must be accepted by all the contracting States.

4. In cases not falling under paragraphs 2 and 3, a reservation may be the subject of an objection by any other contracting State which has not accepted it. Nevertheless, a reservation is considered to have been accepted by a State if it shall have raised no objection to it by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

[Referred to the Drafting Committee, see para. 183 below]

OTHER AMENDMENTS TO ARTICLE 16

176. Other amendments were submitted to article 16 by Ceylon (A/CONF.39/C.1/L.139), China (A/CONF.39/C.1/L.161), Colombia and United States of America (A/CONF.39/C.1/L.126 and Add.1),³⁷ Federal Republic of Germany (A/CONF.39/C.1/L.128), Japan, Philippines and Republic of Korea (A/CONF.39/C.1/L.133/Rev.1),³⁸ Malaysia (A/CONF.39/C.1/L.163), Peru (A/CONF.39/C.1/L.132), Poland (A/CONF.39/C.1/L.136), Republic of Viet-Nam (A/CONF.39/C.1/L.125) and Spain (A/CONF.39/C.1/L.147).

177. These other amendments, arranged under sub-headings relating to the article as a whole, the introductory sentence, sub-paragraph (a), sub-paragraph (b) sub-paragraph (c) and a proposed new sub-paragraph were to the following effect:

(i) *Article 16 as a whole*

(a) *Japan, Philippines and Republic of Korea* (A/CONF.39/C.1/L.133/Rev.1):³⁹

Replace the present text of article 16 by the following:

1. A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation which is not incompatible with the object and purpose of the treaty unless:

- (a) The reservation is prohibited by the treaty;
- (b) The treaty authorizes specified reservations which do not include the reservation in question.

2. A contracting State may raise an objection to a reservation on the ground that it is incompatible with the object and purpose of the treaty within twelve months after it is communicated to the contracting States. If objections have been raised on that ground by a majority of the contracting States as of the time of expiry of the twelve month period, the signature, ratification, acceptance, approval or accession accompanied by such a reservation shall be without legal effect.

[First part referred to the Drafting Committee, see para. 183 below, second part rejected, see para. 182(c) below]

³⁷ Original sponsor United States of America, co-sponsor Colombia (Add.1).

³⁸ Original sponsor Japan (A/CONF.39/C.1/L.133), co-sponsor Philippines (Add.1) and Republic of Korea (Add.2).

³⁹ In its original form (A/CONF.39/C.1/L.133), the time-limit mentioned in paragraph 2 of this amendment was three months instead of twelve months.

(b) *Ceylon* (A/CONF.39/C.1/L.139):

Substitute the following as article 16:

Article 16
(Reservations)

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation to the extent that the treaty so provides.

[Withdrawn, see para. 181 below]

(c) *Spain* (A/CONF.39/C.1/L.147):

Replace the existing text of article 16 by the following:

1. Any State may, when signing or expressing its consent to be bound by a treaty, formulate a reservation unless:

(a) The reservation has been prohibited by the treaty itself;

(b) The treaty is the constituent instrument of an international organization.

2. In cases where the treaty contains no provisions regarding reservations, the reservation shall be deemed to be prohibited if it is incompatible with the nature, object or purpose of the treaty.

[Sub-para. (b) withdrawn, see para. 181 below, remainder referred to the Drafting Committee, see para. 183 below, subject to decision recorded in para. 182(b) below]

(ii) *Introductory sentence of article 16*

China (A/CONF.39/C.1/L.161):

... Substitute the words "make reservations" for the words "formulate a reservation".

[Referred to the Drafting Committee, see para. 183 below]

(iii) *Sub-paragraph (a) of article 16*

Apart from the complete reformulations of article 16 in the amendments by *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115), which omitted sub-paragraph (a), and by *Spain* (A/CONF.39/C.1/L.147), which contained a redraft, no other amendments were submitted to sub-paragraph (a).

(iv) *Sub-paragraph (b) of article 16*

(a) *Colombia and United States of America* (A/CONF.39/C.1/L.126 and Add.1):

Delete sub-paragraph (b).

[Rejected, see para. 182(b) below]

(b) *Federal Republic of Germany* (A/CONF.39/C.1/L.128):

Delete sub-paragraph (b) and renumber sub-paragraph (c) accordingly.

[Rejected, see para. 182(b) below]

(c) *Poland* (A/CONF.39/C.1/L.136):

... Insert the word "only" between the words "authorizes" and "specified".

[Referred to the Drafting Committee, see para. 183 below]

(d) *Malaysia* (A/CONF.39/C.1/L.163):

Replace paragraph (b) by the following:

The specified reservation authorized by the treaty precludes the intended reservation;

[Referred to the Drafting Committee, see para. 183 below]

(v) *Sub-paragraph (c) of article 16*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.125):

In sub-paragraph (c), delete the words "in cases where the treaty contains no provisions regarding reservations".
[Rejected, see para. 182(d) below]

(b) *Colombia and United States of America* (A/CONF.39/C.1/L.126 and Add.1):

In sub-paragraph (c) delete "object and" . . . and substitute "character or".

[Referred to the Drafting Committee, see para. 183 below]

(c) *Malaysia* (A/CONF.39/C.1/L.163):

Replace paragraph (c) by the following:

The reservation is incompatible with the object and purpose of the treaty which contains no provisions regarding reservations.

[Referred to the Drafting Committee, see para. 183 below]

(vi) *Proposed new sub-paragraph of article 16*

Peru (A/CONF.39/C.1/L.132):

Add the following text as sub-paragraph (d):

The reservation renders the treaty inoperative by making its application subject, in a general and indeterminate manner, to national law.

[Rejected, see para. 182(e) below]

OTHER AMENDMENTS TO ARTICLE 17

178. In addition to the amendments mentioned in paragraph 174 above, other amendments were submitted to article 17 by *Australia* (A/CONF.39/C.1/L.166), *Austria* (A/CONF.39/C.1/L.3), *Ceylon* (A/CONF.39/C.1/L.140), *China* (A/CONF.39/C.1/L.162), *Czechoslovakia* (A/CONF.39/C.1/L.84 and L.85), *France* (A/CONF.39/C.1/L.31 and Add.1, replaced by A/CONF.39/C.1/L.113), *France and Tunisia* (A/CONF.39/C.1/L.113), *Spain* (A/CONF.39/C.1/L.148), *Switzerland* (A/CONF.39/C.1/L.97), *Syria* (A/CONF.39/C.1/L.94), *Thailand* (A/CONF.39/C.1/L.150) and *United States of America* (A/CONF.39/C.1/L.127).

179. These other amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2, paragraph 3, paragraph 4, paragraph 5 and a proposed new paragraph, were to the following effect:

(i) *Article 17 as a whole*

(a) *Ceylon* (A/CONF.39/C.1/L.140):

Substitute the following for article 17:

1. A reservation to a treaty which is a constituent instrument of an international organization requires the acceptance of the competent organ of that organization.

2. In cases not falling under the preceding paragraph, and except as the treaty otherwise provides, the following principles shall apply to acceptance of, and objections to, reservations:

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

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

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

[Withdrawn, see para. 181 below]

(b) *Spain* (A/CONF.39/C.1/L.148):

Replace the existing text of article 17 by the following:

1. A reservation authorized by the treaty does not require, in order to be effective, any acceptance by the other contracting States unless the treaty itself so prescribes.

2. A reservation to the constituent treaty of an existing international organization requires the acceptance of the competent organ of the said organization, unless the constituent treaty otherwise provides.

3. In cases where a reservation is neither expressly prohibited nor expressly permitted:

(a) Any other contracting State may accept the reservation in relation to the reserving State; or

(b) Any other contracting State may object to the reservation in relation to the reserving State.

4. A reservation is considered to have been accepted by a contracting State if it shall have raised no objection thereto by the end of a period of twelve months after it was notified of the formulation of such reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

[Referred to the Drafting Committee, see para. 183 below, subject to decision in para. 182(g) below]

(ii) *Paragraph 1 of article 17*

(a) *Czechoslovakia* (A/CONF.39/C.1/L.84):

Amend paragraph 1 to read:

1. A reservation expressly or impliedly authorized by a general multilateral treaty or other multilateral treaty, with the exception of cases provided for in paragraphs 2 and 3, does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

[Referred to the Drafting Committee, see para. 183 below, subsequently deferred until the second session of the Conference, see para. 187 below]

(b) *Switzerland* (A/CONF.39/C.1/L.97):

In paragraph 1, delete the words "or impliedly".

[Adopted, see para 182(f) below]

(c) *France and Tunisia* (A/CONF.39/C.1/L.113):

Delete the words "or impliedly".

[Adopted, see para. 182(f) below]

(d) *Thailand* (A/CONF.39/C.1/L.150):

Delete the words "or impliedly".

[Adopted, see para. 182(f) below]

(iii) *Paragraph 2 of article 17*

(a) *France and Tunisia* (A/CONF.39/C.1/L.113):

Replace paragraph 2 by the following text:

A reservation to a bilateral treaty or to a restricted multilateral treaty requires acceptance by all the contracting States.

[Referred to the Drafting Committee, see para. 183 below, subsequently deferred until the second session of the Conference, see para. 187 below. As stated in A/CONF.39/C.1/L.31/Add.1, this joint amendment re-

placed an identical amendment by France to paragraph 2 of article 17 in document A/CONF.39/C.1/L.31]

(b) *United States of America* (A/CONF.39/C.1/L.127):

In paragraph 2, replace . . . the words "and the object and" by the words "or the character or".

[Referred to the Drafting Committee, see para. 183 below]

(iv) *Paragraph 3 of article 17*

(a) *Austria* (A/CONF.39/C.1/L.3):

Add the following sentence:

When the reservation is formulated while the treaty is not yet in force, the expression of the consent of the State which has formulated the reservation takes effect only when such competent organ is properly constituted and has accepted the reservation.

[Referred to the Drafting Committee, see para. 183 below]

(b) *Switzerland* (A/CONF.39/C.1/L.97):

Delete paragraph 3.

[Rejected, see para. 182(h) below]

(c) *France and Tunisia* (A/CONF.39/C.1/L.113):

Delete paragraph 3.

[Rejected, see para. 182(h) below. As stated in A/CONF.39/C.1/L.31/Add.1, this joint amendment replaced an identical amendment by France to paragraph 3 in document A/CONF.39/C.1/L.31]

(d) *United States of America* (A/CONF.39/C.1/L.127):

In paragraph 3, add at the end:

but such acceptance shall not preclude any contracting State from objecting to the reservation.

[Adopted, see para. 182(i) below, subsequently deleted from a provisional text of article 17, see para. 186 below]

(e) *China* (A/CONF.39/C.1/L.162):

Add the following sentence at the end of the paragraph:

When the reservation is made before the entry into force of the treaty, the reservation shall be subject to subsequent acceptance by the competent organ after such competent organ has been properly instituted.

[Referred to the Drafting Committee, see para. 183 below]

(v) *Paragraph 4 of article 17*

(a) *Czechoslovakia* (A/CONF.39/C.1/L.85):

Amend sub-paragraph (b) to read as follows:

An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States if the objecting State explicitly expressed such intention.

[Rejected, see para. 182(j) below]

(b) *Syria* (A/CONF.39/C.1/L.94):

Amend sub-paragraph (b) to read as follows:

An objection by another contracting State to a reservation precludes the application of the provisions to which the reservation relates as between the reserving State and the objecting State, unless the objecting State expressed its intention to terminate the treaty in its entirety as between itself and the reserving State;

[Rejected, see para. 182(j) below]

(c) *Switzerland* (A/CONF.39/C.1/L.97):

Amend the beginning of paragraph 4 to read as follows:

In cases not falling under the preceding paragraphs of this article and unless the reservation is prohibited by virtue of article 16, sub-paragraphs (a) and (b):

[Referred to the Drafting Committee, see para. 183 below]

(d) *United States of America* (A/CONF.39/C.1/L.127):

In paragraph 4, after the words "In cases not falling under the preceding paragraphs of this article" insert "and unless the reservation is prohibited by virtue of article 16:"

In sub-paragraph 4(a), add at the end, "for those States;"

[Referred to the Drafting Committee, see para. 183 below]

(e) *Thailand* (A/CONF.39/C.1/L.150):

Replace the words "In cases not falling under" by the words "Subject to".

[Referred to the Drafting Committee, see para. 183 below]

(f) *Australia* (A/CONF.39/C.1/L.166):

Replace paragraph 4 by the following:

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

(a) A reservation shall be communicated to all the States entitled to become parties to the treaty;

(b) Any negotiating State or other State which has become a contracting State may object to the reservation within six months after it was notified of the reservation;

(c) An act expressing the State's consent to be bound by a treaty and containing a reservation shall be effective if at the expiry of the six-month period two-thirds of the States referred to in sub-paragraph (b)

(i) accept the reservation, or

(ii) in objecting to the reservation expressly agree that the treaty should nevertheless enter into force for the reserving State.

[Withdrawn, see para. 181 below]

(vi) *Paragraph 5 of article 17*(a) *United States of America* (A/CONF.39/C.1/L.127):

Insert . . . after the word "State" the words "unless the treaty otherwise provides".

[Referred to the Drafting Committee, see para. 183 below]

(b) *Thailand* (A/CONF.39/C.1/L.150):

Delete the figure "5" and the . . . words "For the purposes of paragraphs 2 and 4".

The remainder of paragraph 5 should become sub-paragraph (d) of paragraph 4.

[Referred to the Drafting Committee, see para. 183 below]

(c) *Australia* (A/CONF.39/C.1/L.166):

Amend the introductory words of paragraph 5 by replacing the word "purposes" by "purpose" and by omitting "and 4".

[Withdrawn, see para. 181 below]

(vii) *Proposed new paragraph for article 17**Australia* (A/CONF.39/C.1/L.166):

Insert a new paragraph 6 as follows:

"For the purpose of paragraph 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of the period of six months after it was notified of the reservation".

[Withdrawn, see para. 181 below]

C. *Proceedings of the Committee of the Whole*(i) *MEETINGS*

180. The Committee of the Whole initially discussed articles 16 and 17, and the amendments thereto, at its 21st to 25th meetings inclusive, between 10 and 16 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on article 16. At its 72nd meeting, on 15 May 1968, the Committee considered a provisional report of the Drafting Committee on article 17. At the 80th meeting of the Committee of the Whole on 21 May 1968, it was decided to defer final consideration of article 17 until the second session of the Conference.

(ii) *INITIAL CONSIDERATION*

181. At the 24th meeting of the Committee of the Whole, the amendments by *Ceylon* to articles 16 and 17 (A/CONF.39/C.1/L.139 and A/CONF.39/C.1/L.140) were withdrawn. At the 25th meeting, sub-paragraph 1(b) of the amendment by *Spain* (A/CONF.39/C.1/L.147) to article 16 and the amendment by *Australia* (A/CONF.39/C.1/L.166) to article 17 were also withdrawn.

182. At its 25th meeting, the Committee of the Whole voted upon certain of the amendments to articles 16 and 17, or the principles contained in those amendments, in the order of the paragraphs or sub-paragraphs of the articles to which they related. The results were as follows:

Article 16

(a) *Sub-paragraph (a)*. The deletion of sub-paragraph (a) was rejected by 70 votes to 10, with 3 abstentions. This sub-paragraph had been omitted in the amendment by the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115).

(b) *Sub-paragraph (b)*. The deletion of sub-paragraph (b) was rejected by 53 votes to 23, with 12 abstentions. The amendments by *Colombia* and the *United States of America* (A/CONF.39/C.1/L.126 and Add.1) and by the *Federal Republic of Germany* (A/CONF.39/C.1/L.128) had proposed this deletion. The sub-paragraph had also been omitted in the amendments by *Spain* (A/CONF.39/C.1/L.147) and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115).

(c) *Sub-paragraph (c)*. Paragraph 2 of the amendment by *Japan*, the *Philippines* and the *Republic of Korea* (A/CONF.39/C.1/L.133/Rev.1) was rejected by 48 votes to 14, with 25 abstentions.

(d) *Sub-paragraph (c)*. The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.125) was rejected by 54 votes to 7, with 16 abstentions.

(e) *Proposed new sub-paragraph.* The amendment by *Peru* (A/CONF.39/C.1/L.132) was rejected by 44 votes to 16, with 26 abstentions.

Article 17

(f) *Paragraph 1.* The amendments by *France* and *Tunisia* (A/CONF.39/C.1/L.113), *Switzerland* (A/CONF.39/C.1/L.97), and *Thailand* (A/CONF.39/C.1/L.150) to delete the words "or impliedly" were adopted by 55 votes to 18, with 12 abstentions.

(g) *Paragraph 2.* The deletion of paragraph 2 was rejected by 79 votes to 2, with 5 abstentions. This paragraph had been omitted in the amendment by *Spain* (A/CONF.39/C.1/L.148).

(h) *Paragraph 3.* The amendments by *France* and *Tunisia* (A/CONF.39/C.1/L.113) and *Switzerland* (A/CONF.39/C.1/L.97) to delete paragraph 3 were rejected by 50 votes to 26, with 11 abstentions.

(i) *Paragraph 3.* The amendment by the *United States of America* (A/CONF.39/C.1/L.127) to add the words "but such acceptance shall not preclude any contracting State from objecting to the reservation" was adopted by 33 votes to 22, with 29 abstentions.

(j) *Paragraph 4.* The principle, contained in the amendments by *Czechoslovakia* (A/CONF.39/C.1/L.85), *Syria* (A/CONF.39/C.1/L.94), and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115), that a treaty enters into force between a reserving State and an objecting State unless the objecting State expressly declares to the contrary, was rejected by 48 votes to 28, with 8 abstentions.

183. Subject to the foregoing decisions, the Committee of the Whole decided, without objection, at its 25th meeting, to refer article 16, and article 17 as amended, to the Drafting Committee, with all remaining amendments. The amendments so referred to the Drafting Committee were as follows:

(a) *Single new article:* *France* (A/CONF.39/C.1/L.169 and Corr.1) and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.115) (subject to the decisions recorded in paragraph 182(a), (b) and (j) above).

(b) *Article 16:* *China* (A/CONF.39/C.1/L.161), *Colombia* and the *United States of America* (A/CONF.39/C.1/L.161 and Add.1) (amendment to sub-paragraph (c) only), *Japan*, *Philippines* and the *Republic of Korea* (A/CONF.39/C.1/L.133/Rev.1) first paragraph only), *Malaysia* (A/CONF.39/C.1/L.163), *Poland* (A/CONF.39/C.1/L.136) and *Spain* (A/CONF.39/C.1/L.147) (subject to the decisions recorded in paragraphs 181 and 182(b) above).

(c) *Article 17:* *Austria* (A/CONF.39/C.1/L.3), *China* (A/CONF.39/C.1/L.162), *Czechoslovakia* (A/CONF.39/C.1/L.84), *France* and *Tunisia* (A/CONF.39/C.1/L.113) (amendment to paragraph 2 only), *Spain* (A/CONF.39/C.1/L.148) (subject to the decisions recorded in paragraph 182(g) above), *Switzerland* (A/CONF.39/C.1/L.97) (amendment to paragraph 4 only), *Thailand* (A/CONF.39/C.1/L.150) (amendments to paragraphs 4 and 5), and the *United States of America* (A/CONF.39/C.1/L.127) (amendments to paragraphs 2, 4 and 5).

The Committee of the Whole further referred to the Drafting Committee the question whether articles 16 and 17 should be combined into a single article.

(iii) CONSIDERATION OF THE REPORTS OF THE DRAFTING COMMITTEE

184. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 16 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 188 below). The Committee of the Whole adopted this text without formal vote.⁴⁰

185. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced the text of article 17 provisionally adopted by the Drafting Committee (A/CONF.39/C.1/L.344). This provisional text provided as follows:

Article 17

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

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

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, the reservation requires the acceptance of the competent organ of that organization but such acceptance shall not preclude any contracting State from objecting to the reservation.

4. In cases not falling under the preceding paragraphs of this article and unless the treaty otherwise provides:

- (a) acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force for those States;
- (b) an objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;
- (c) an act expressing the State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

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

186. At the same meeting, the Committee of the Whole decided, without objection, to adopt the suggestion that the words "but such acceptance shall not preclude any contracting State from objecting to the reservation", in paragraph 3 of the provisional text of article 17, be deleted. These words had been added by the Drafting Committee to the provisional text in view of the earlier decision of the Committee of the Whole to adopt the amendment by the *United States of America* (A/CONF.39/C.1/L.127) to paragraph 3 of article 17. This deletion from the provisional text of article 17 was agreed to on

⁴⁰ See para. 13 above.

the understanding that the question of objections to reservations to constituent instruments of international organizations formed part of a topic already before the International Law Commission, and that meanwhile the question would continue to be regulated by general international law.

187. At the 80th meeting of the Committee of the Whole, it was decided without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". An amendment to add a reference to general multilateral treaties had been submitted to paragraph 1 of article 17 by *Czechoslovakia* (A/CONF.39/C.1/L.84) and an amendment to add a reference to restricted multilateral treaties to paragraph 2 of article 17 had been submitted by *France* and *Tunisia* (A/CONF.39/C.1/L.113).

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
AND DECISION

188. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 16:

Article 16

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

- (a) the reservation is prohibited by the treaty;
- (b) the treaty authorizes only specified reservations which do not include the reservation in question; or
- (c) in cases other than those covered by paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

189. Also on the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 17 until the second session of the Conference (see document A/CONF.39/15, paras. 50-57).

ARTICLE 18

A. International Law Commission text

190. The International Law Commission text provided as follows:

Article 18.—Procedure regarding reservations

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

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

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

B. Amendments

191. Amendments were submitted to article 18 by *Canada* (A/CONF.39/C.1/L.158), *Ceylon* (A/CONF.39/

C.1/L.151), *Hungary* (A/CONF.39/C.1/L.138), *Spain* (A/CONF.39/C.1/L.149) and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.116).

192. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2 and paragraph 3, were as follows:

(i) *Article as a whole*

Spain (A/CONF.39/C.1/L.149):

Replace the existing text of article 18 by the following:

1. A reservation, an acceptance of a reservation, and an objection to a reservation must be formulated in writing and duly communicated by the reserving, accepting or objecting State to the other States which are parties, or are entitled to become parties, to the treaty.

2. When the treaty is, or is required to be, deposited, the depositary must make the communication in the form prescribed for that purpose.

3. A communication to the effect that a reservation has been formulated must contain express notice that, in accordance with the provisions of article 17, paragraph 4, the said reservation will be considered to have been accepted if no formal objection has been raised to it by the end of a period of twelve months.

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

[Referred to the Drafting Committee, see para. 194 below]

(ii) *Paragraph 1*

(a) *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.116):

Delete the words "an express acceptance of a reservation".

[Referred to the Drafting Committee, see para. 194 below]

(b) *Canada* (A/CONF.39/C.1/L.158):

Substitute the words "negotiating States and contracting States" for the words "other States entitled to become parties to the treaty".

[Referred to the Drafting Committee, see para. 194 below]

(iii) *Paragraph 2*

Hungary (A/CONF.39/C.1/L.138):

At the end of paragraph 2 add the following sentence:

If the reservation is not confirmed on the date of ratification, it shall be considered invalid.

[Referred to the Drafting Committee, see para. 194 below]

(iv) *Paragraph 3*

(a) *Hungary* (A/CONF.39/C.1/L.138):

Amend paragraph 3 to read:

An express acceptance of or an objection to a reservation does not require confirmation even if the reservation itself does.

[Referred to the Drafting Committee, see para. 194 below]

(b) *Ceylon* (A/CONF.39/C.1/L.151):

Amend paragraph 3 . . . to read as follows:

An objection to *or an acceptance of* the reservation made previously to its confirmation does not itself require confirmation.

[Referred to the Drafting Committee, see para. 194 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

193. The Committee of the Whole initially discussed article 18, and the amendments thereto, at its 23rd meeting, on 11 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

194. At its 23rd meeting, the Committee of the Whole agreed, without objection and subject to such decisions as it might subsequently take on articles 16 and 17, to refer article 18 to the Drafting Committee, together with the amendments thereto, namely the amendments by *Canada* (A/CONF.39/C.1/L.158), *Ceylon* (A/CONF.39/C.1/L.151), *Hungary* (A/CONF.39/C.1/L.138), *Spain* (A/CONF.39/C.1/L.149) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.116).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

195. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 18 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 196 below). The Committee of the Whole adopted this text without formal vote.⁴¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

196. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 18:

Article 18

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

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

3. An express acceptance of, or an objection to, the reservation made previously to confirmation of the reservation does not itself require confirmation.

⁴¹ *Ibid.*

ARTICLE 19

A. International Law Commission text

197. The International Law Commission text provided as follows:

Article 19.—Legal effects of reservations

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

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

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

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

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

B. Amendments

198. Amendments were submitted to article 19 by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.157 and Add.1),⁴² Canada (A/CONF.39/C.1/L.159), Ceylon (A/CONF.39/C.1/L.152), China (A/CONF.39/C.1/L.172), Czechoslovakia (A/CONF.39/C.1/L.86), France (A/CONF.39/C.1/L.170), Hungary (A/CONF.39/C.1/L.177), Syria (A/CONF.39/C.1/L.95) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.117).

199. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2 and paragraph 3 of the article, and a proposed new paragraph, were to the following effect:

(i) *Article as a whole*

France (A/CONF.39/C.1/L.170):⁴³

Replace the wording of article 19 by the following:

1. In the case referred to in article 16, paragraph 2, an act expressing a State's consent to be bound by a treaty and containing a reservation is effective with regard to all the other parties to the treaty, and, in other cases, with regard to any other contracting State which has accepted the reservation, without prejudice to the provisions of article 16, paragraph 3.

2. A reservation established with regard to another party in accordance with the preceding paragraph:

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

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

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

4. An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the reserving and objecting States unless a contrary intention is expressed by the latter; in such case, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

⁴² Original sponsors Bulgaria and Romania, co-sponsor Sweden (Add.1).

⁴³ This amendment related to the amendment by France to article 16 in document A/CONF.39/C.1/L.169.

[Referred to the Drafting Committee, see para. 202 below]

(ii) *Paragraph 1*

(a) *Bulgaria, Romania and Sweden* (A/CONF.39/C.1/L.157 and Add.1):

Replace paragraph 1 by the following text:

A reservation established with regard to any other party, in accordance with articles 16, 17 and 18, modifies the provisions of the treaty, to the extent of the reservation, in relations between the reserving State and that other party.

[Referred to the Drafting Committee, see para. 202 below]

(b) *Canada* (A/CONF.39/C.1/L.159):

At the end of the opening sentence delete the words "and 18" and add the words "and notified to that party".

[Referred to the Drafting Committee, see para. 202 below]

(c) *China* (A/CONF.39/C.1/L.172):

In the opening sentence delete the words "with regard to another party".

In sub-paragraph (b), replace the words "for such other party" by the words "for the accepting State".

[Referred to the Drafting Committee, see para. 202 below]

(d) *Hungary* (A/CONF.39/C.1/L.177):

In sub-paragraphs (a) and (b) insert the words "or interprets" after the word "modifies".

[Referred to the Drafting Committee, see para. 202 below]

(iii) *Paragraph 2*

Hungary (A/CONF.39/C.1/L.177):

Insert the words "or interpret" after the words "does not modify".

[Referred to the Drafting Committee, see para. 202 below]

(iv) *Paragraph 3*

(a) *Czechoslovakia* (A/CONF.39/C.1/L.86):

Amend paragraph 3 to read:

Unless a State objecting to a reservation explicitly expressed the intention not to consider the treaty in force between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

[Withdrawn, see para. 201 below]

(b) *Syria* (A/CONF.39/C.1/L.95):

Amend paragraph 3 to read as follows:

When a State has objected to a reservation, the provisions to which the reservation relates do not apply as between that State and the reserving State to the extent of the reservation, unless the objecting State expresses its intention to terminate the treaty as between itself and the reserving State.

[Withdrawn, see para. 201 below]

(c) *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.117):

Amend paragraph 3 to read as follows:

If a State objects to a reservation, the treaty shall be in force in the relations between that State and the reserving State, with the

exception of the provision to which the reservation has been made, unless the objecting State clearly declares otherwise.

[Withdrawn, see para. 201 below]

(v) *New paragraph*

Ceylon (A/CONF.39/C.1/L.152):

Add the following new paragraph as paragraph 4 of article 19:

The consent of a State to be bound by a treaty expressed subject to a reservation made in accordance with article 16 shall be counted among the number of such consents required for entry into force of the treaty, unless the treaty otherwise provides.

[Referred to the Drafting Committee, see para. 202 below]

C. Proceedings of the Committee of the Whole

(i) **MEETINGS**

200. The Committee of the Whole initially discussed article 19, and the amendments thereto, at its 25th meeting, on 16 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) **INITIAL CONSIDERATION**

201. At the 25th meeting of the Committee of the Whole, the amendments by *Czechoslovakia* (A/CONF.39/C.1/L.86), *Syria* (A/CONF.39/C.1/L.95) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.117) were withdrawn, as they were consequential upon amendments by the same States to articles 16 and 17 which the Committee had rejected.

202. At the same meeting, the Committee of the Whole decided, without objection, to refer article 19 to the Drafting Committee, together with the remaining amendments by *Bulgaria, Romania and Sweden* (A/CONF.39/C.1/L.157 and Add.1), *Canada* (A/CONF.39/C.1/L.159), *Ceylon* (A/CONF.39/C.1/L.152), *China* (A/CONF.39/C.1/L.172), *France* (A/CONF.39/C.1/L.170) and *Hungary* (A/CONF.39/C.1/L.177).

(iii) **CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE**

203. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 19 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 204 below). The Committee of the Whole adopted this text without formal vote.⁴⁴

(iv) **TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE**

204. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 19:

Article 19

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

⁴⁴ See para. 13 above.

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

ARTICLE 20

A. International Law Commission text

205. The International Law Commission text provided as follows:

Article 20.—Withdrawal of reservations

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

B. Amendments

206. Amendments to article 20 were submitted by Austria and Finland (A/CONF.39/C.1/L.4 and Add.1),⁴⁵ Hungary (A/CONF.39/C.1/L.178), Switzerland (A/CONF.39/C.1/L.119) and United States of America (A/CONF.39/C.1/L.171). The Union of Soviet Socialist Republics submitted a sub-amendment (A/CONF.39/C.1/L.167) to the amendment by Austria and Finland (A/CONF.39/C.1/L.4 and Add.1).

207. These amendments and the sub-amendment, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article and a proposed new paragraph, were to the following effect:

(i) Paragraph 1

(a) *Austria and Finland* (A/CONF.39/C.1/L.4 and Add.1):

In paragraph 1 insert . . . between the words “withdrawn” and “at any time” the words “in writing”.

[Referred to the Drafting Committee, see para. 209 below]

(b) *United States of America* (A/CONF.39/C.1/L.171):

In . . . paragraph 1, replace the words “a State which has accepted the reservation” by the words “other States”.

[Referred to the Drafting Committee, see para. 209 below]

(c) *Hungary* (A/CONF.39/C.1/L.178):

In paragraph 1 insert the words “in writing” after the words “a reservation may be withdrawn at any time”.

[Referred to the Drafting Committee, see para. 209 below]

⁴⁵ Original sponsor Austria, co-sponsor Finland (Add.1).

(ii) Paragraph 2

(a) *Switzerland* (A/CONF.39/C.1/L.119):

In paragraph 2, delete the words “or it is otherwise agreed”.

[Referred to the Drafting Committee, see para. 209 below]

(b) *United States of America* (A/CONF.39/C.1/L.171):

In . . . paragraph 2, insert the word “written” before the word “notice”.

[Referred to the Drafting Committee, see para. 209 below]

(iii) Proposed new paragraph

(a) *Austria and Finland* (A/CONF.39/C.1/L.4 and Add.1):

Add the following new paragraph:

3. If the withdrawal of a reservation to which objection had been raised removes the cause which precluded the entry into force of the treaty as between the objecting and reserving States, the treaty comes into force as between the two States when the withdrawal becomes operative under the preceding paragraph.

[Referred to the Drafting Committee, see para. 209 below]

(b) *Union of Soviet Socialist Republics*: sub-amendment (A/CONF.39/C.1/L.167) to the amendment by *Austria and Finland* (A/CONF.39/C.1/L.4 and Add.1):

In the text of the Austrian amendment, replace the words “the cause which precluded the entry into force of the treaty as between the objecting and reserving States” by the words “the reason why the objecting State declared that it did not consider itself bound by the treaty to the reserving State”.

[Referred to the Drafting Committee, see para. 209 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

208. The Committee of the Whole initially discussed article 20, and the amendments thereto, at its 25th meeting, on 16 April 1968. At its 70th meeting, on 14 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

209. At its 25th meeting, the Committee of the Whole decided, without objection, to refer article 20 to the Drafting Committee, together with the amendments submitted to it, namely those by *Austria and Finland* (A/CONF.39/C.1/L.4 and Add.1), *Hungary* (A/CONF.39/C.1/L.178), *Switzerland* (A/CONF.39/C.1/L.119) and *United States of America* (A/CONF.39/C.1/L.171), and the sub-amendment by the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.167) to the amendment by *Austria and Finland* (A/CONF.39/C.1/L.4 and Add.1).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

210. At the 70th meeting of the Committee of the Whole, the Chairman of the Drafting Committee intro-

duced a report containing the text of article 20 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 211 below). The Committee of the Whole adopted this text without formal vote.⁴⁶

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
211. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 20:

Article 20

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

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

SECTION 3: ENTRY INTO FORCE OF TREATIES

ARTICLE 21

A. International Law Commission text

212. The International Law Commission text provided as follows:

Article 21.—Entry into force

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

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

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

B. Amendments

213. Amendments were submitted to article 21 by Canada (A/CONF.39/C.1/L.123), Chile (A/CONF.39/C.1/L.190), Congo (Brazzaville) (A/CONF.39/C.1/L.188), Republic of Viet-Nam (A/CONF.39/C.1/L.175) and United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.186).

214. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2 and paragraph 3 of the article and a proposed new paragraph, were to the following effect:

(i) Paragraph 1

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.175):

Replace the words “negotiating States”, in paragraph 1, by the words “States parties to the treaty” . . .

[Referred to the Drafting Committee, see para. 217 below]

(b) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.186):

At the beginning of paragraph 1, insert the phrase: “Except as provided in paragraph 4”.

⁴⁶ See para. 13 above.

[Adopted, see para. 216(c) below, subject to the decision recorded in paragraph 217]

(c) *Congo (Brazzaville)* (A/CONF.39/C.1/L.188):

Delete paragraph 1 of article 21 or, failing that, amend it to read as follows:

Every treaty should, unless the parties agree otherwise, prescribe the manner and especially the date of its entry into force.

[First part rejected, see para. 216(a) below, second part referred to the Drafting Committee, see para. 217 below]

(ii) Paragraph 2

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.175):

Replace the words “negotiating States” . . . in paragraph 2 by the words “States entitled to become parties to the treaty”.

[Referred to the Drafting Committee, see para. 217 below]

(b) *Chile* (A/CONF.39/C.1/L.190):

In paragraph 2, replace the word “all” by the words “two-thirds of”.

[Rejected, see para. 216(b) below]

(iii) Paragraph 3

Canada (A/CONF.39/C.1/L.123):

In . . . para. 3, substitute the words “becomes effective” for the words “was established”.

[Referred to the Drafting Committee, see para. 217 below]

(iv) Proposed new paragraph

United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.186):

Add a new paragraph 4 in the following terms:

The provisions of a treaty regulating the processes of ratification, accession, acceptance or approval, the manner or date of its entry into force and other related procedural matters have legal effect prior to entry into force of the treaty.

[Adopted, see para. 216(c) below, subject to the decision recorded in paragraph 217]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

215. The Committee of the Whole initially discussed article 21, and the amendments thereto, at its 26th meeting, on 17 April 1968. At its 72nd meeting on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

216. At the 26th meeting of the Committee of the Whole, the Committee voted upon certain of the amendments before it, with the following results:

(a) That part of the amendment by *Congo (Brazzaville)* (A/CONF.39/C.1/L.188) which proposed the deletion of paragraph 1 was rejected by 75 votes to 1, with 12 abstentions.

(b) The amendment by *Chile* (A/CONF.39/C.1/L.190) to paragraph 2 was rejected by 64 votes to 9, with 15 abstentions.

(c) The principle contained in the amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.186) to add a new paragraph and consequentially to amend paragraph 1 was adopted without formal vote.

217. At the same meeting, the Committee of the Whole decided, without objection, to refer article 21 to the Drafting Committee, together with the remaining amendments by *Canada* (A/CONF.39/C.1/L.123), *Congo (Brazzaville)* (A/CONF.39/C.1/L.188) (second part), and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.175). The Committee of the Whole further requested the Drafting Committee to formulate the principle contained in the amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.186).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

218. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 21 adopted by the Drafting Committee (A/CONF.39/C.1/8).⁴⁷

219. At the same meeting, *Australia* submitted an oral amendment to add the words "the time of" between the words "apply from" and "the adoption of its text" in paragraph 4 of the text recommended by the Drafting Committee. The Committee of the Whole adopted this oral amendment without formal vote.

220. Also at its 72nd meeting, the Committee of the Whole adopted the text of article 21 recommended by the Drafting Committee, as amended, without formal vote.⁴⁸

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

221. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 21:

Article 21

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.
2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.
3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.
4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty shall apply from the time of the adoption of its text.

⁴⁷ The text of this article appearing in paragraph 221 below is that recommended by the Drafting Committee, with the addition, in paragraph 4, of the words "the time of" before the words "the adoption of its text".

⁴⁸ See para. 13 above.

ARTICLE 22

A. International Law Commission text

222. The International Law Commission text provided as follows:

Article 22.—Entry into force provisionally

1. A treaty may enter into force provisionally if:

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

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

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

B. Amendments

223. Amendments were submitted to article 22 by *Belgium* (A/CONF.39/C.1/L.194), *Bulgaria* and *Romania* (A/CONF.39/C.1/L.195), *Czechoslovakia* and *Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1),⁴⁹ *Greece* (A/CONF.39/C.1/L.192), *Hungary* and *Poland* (A/CONF.39/C.1/L.198), *India* (A/CONF.39/C.1/L.193), *Philippines* (A/CONF.39/C.1/L.165), *Republic of Korea*, *Republic of Viet-Nam* and *United States of America* (A/CONF.39/C.1/L.154 and Add.1),⁵⁰ and *Republic of Viet-Nam* (A/CONF.39/C.1/L.176).

224. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2 of the article, and proposed new paragraphs, were to the following effect:

(i) *Article as a whole*

(a) *Republic of Korea*, *Republic of Viet-Nam* and *United States of America* (A/CONF.39/C.1/L.154 and Add.1):

Delete the article.

[Not pressed to a vote, see para. 226 below]

(b) *Greece* (A/CONF.39/C.1/L.192):

Replace article 22 by the following:

A treaty may enter into force provisionally, in whole or in part, if the treaty itself prescribes that it shall enter into force provisionally, in whole or in part, pending ratification, acceptance, approval or accession by the contracting States, or the negotiating States have in some other manner so agreed.

[Referred to the Drafting Committee, see para. 228 below]

(ii) *Paragraph 1*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.176):

If article 22 is not deleted (see A/CONF.39/C.1/L.154 and Add.1), replace the words "negotiating States" in paragraph 1(b) by the words "States parties to the treaty".

[Referred to the Drafting Committee, see para. 228 below]

⁴⁹ Original sponsor *Yugoslavia*, co-sponsor *Czechoslovakia* (Add.1).

⁵⁰ Original sponsor *United States of America*, co-sponsors *Republic of Korea* and *Republic of Viet-Nam* (Add.1).

(b) *Czechoslovakia and Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1):

Amend paragraph 1 to read as follows:

A treaty or a part of a treaty may be applied provisionally if:

(a) The treaty itself prescribes that it shall be applied provisionally pending ratification, acceptance, approval or accession by the contracting States; or

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

[Adopted, see para. 227(b) below]

(c) *India* (A/CONF.39/C.1/L.193):

Amend paragraph 1(a) to read as follows:

(a) The treaty itself prescribes that it shall enter into force provisionally pending ratification, acceptance, approval, accession, or other modes of expressing consent, by the States concerned.

[Referred to the Drafting Committee, see para. 228 below]

(d) *Bulgaria and Romania* (A/CONF.39/C.1/L.195):

Replace paragraph 1 by the following text:

1. A treaty may enter into force provisionally pending ratification, acceptance, approval or accession by the contracting States, if those States have so agreed either in the treaty itself or in some other manner.

[Referred to the Drafting Committee, see para. 228 below]

(iii) Paragraph 2

(a) *Philippines* (A/CONF.39/C.1/L.165):

Delete paragraph 2.

[Rejected, see para. 227(a) below]

(b) *Czechoslovakia and Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1):

Delete paragraph 2.

[Rejected, see para. 227(a) below]

(iv) Proposed new paragraphs

(a) *Belgium* (A/CONF.39/C.1/L.194):

Add a paragraph 3 reading as follows:

Unless otherwise provided or agreed, a State may terminate the provisional entry into force with respect to itself, by manifesting its intention not to become a party to the treaty.

[Adopted, see para. 227(c) below, subject to the decision recorded in that paragraph]

(b) *Hungary and Poland* (A/CONF.39/C.1/L.198):

Add a new paragraph reading as follows:

3. The provisional application of a treaty is terminated:

(a) when the treaty enters into force; or

(b) when the States between which the treaty provisionally applied agree to such a termination; or

(c) upon notification by one of such States of its intention not to become a party to the treaty with respect to that State.

[Adopted, see para. 227(c) below, subject to the decision recorded in that paragraph]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

225. The Committee of the Whole initially discussed article 22, and the amendments thereto, at its 26th and

27th meetings, on 17 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

226. At the 27th meeting of the Committee of the Whole, it was announced that the amendment by *Republic of Korea, Republic of Viet-Nam and United States of America* (A/CONF.39/C.1/L.154 and Add.1) would not be pressed to a vote.

227. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it, with the following results:

(a) The deletion of paragraph 2, as proposed in the second part of the amendment by *Czechoslovakia and Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1) and in the amendment by the *Philippines* (A/CONF.39/C.1/L.165), was rejected by 63 votes to 11, with 12 abstentions.

(b) The first part of the amendment by *Czechoslovakia and Yugoslavia* (A/CONF.39/C.1/L.185 and Add.1) was adopted by 72 votes to 3, with 11 abstentions.

(c) The principle of including a new paragraph 3 on the termination of the provisional entry into force or provisional application of a treaty, as proposed in the amendments by *Belgium* (A/CONF.39/C.1/L.194) and *Hungary and Poland* (A/CONF.39/C.1/L.198), was adopted by 69 votes to 1, with 20 abstentions.

228. Also at its 27th meeting, the Committee of the Whole decided to refer article 22, as amended, to the Drafting Committee, together with the remaining amendments by *Bulgaria and Romania* (A/CONF.39/C.1/L.195), *Greece* (A/CONF.39/C.1/L.192), *India* (A/CONF.39/C.1/L.193) and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.176). The Committee of the Whole further requested the Drafting Committee to formulate the principle contained in the amendments by *Belgium* (A/CONF.39/C.1/L.194) and *Hungary and Poland* (A/CONF.39/C.1/L.198).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

229. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 22 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 230 below). The Committee of the Whole adopted this text without formal vote.⁵¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

230. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 22:

Article 22

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or

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

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a

⁵¹ See para. 13 above.

part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III.—OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1: OBSERVANCE OF TREATIES

ARTICLES 23 AND 23bis

A. International Law Commission text

231. The International Law Commission text of article 23 provided as follows:

Article 23.—Pacta sunt servanda

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

B. Amendments

232. Amendments were submitted to article 23 by Bolivia, Czechoslovakia, Ecuador, Spain, and United Republic of Tanzania (A/CONF.39/C.1/L.118), Congo (Brazzaville) (A/CONF.39/C.1/L.189), Cuba (A/CONF.39/C.1/L.173), Pakistan (A/CONF.39/C.1/L.181) and Thailand (A/CONF.39/C.1/L.196).

233. These amendments were to the following effect:

(a) *Bolivia, Czechoslovakia, Ecuador, Spain and United Republic of Tanzania* (A/CONF.39/C.1/L.118):

Replace the expression "Every treaty in force" by the expression "Every valid treaty".

[Referred to the Drafting Committee, see para. 236 below]

(b) *Cuba* (A/CONF.39/C.1/L.173):

Between the words "in force" and the words "is binding", insert the following words: "in conformity with the provisions of the present Convention".

[Referred to the Drafting Committee, see para. 236 below]

(c) *Pakistan* (A/CONF.39/C.1/L.181):

Amend the article to read as follows:

Every treaty in force is binding upon the parties to it and must be performed by them in good faith, *and no party may invoke the provisions of its constitution or its laws as an excuse for its failure to perform this duty.*

[Adopted, see para. 235 below, subject to the decision recorded in that paragraph]

(d) *Congo (Brazzaville)* (A/CONF.39/C.1/L.189):

Redraft article 23 to read as follows:

1. Treaties which have been regularly concluded and have entered into force are binding upon the parties and must be performed in good faith.

2. Good faith is presumed.

[Referred to the Drafting Committee, see para. 236 below]

(e) *Thailand* (A/CONF.39/C.1/L.196):

... Delete the words "to it".

[Referred to the Drafting Committee, see para. 236 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

234. The Committee of the Whole initially discussed article 23, and the amendments thereto, at its 28th and 29th meetings, on 18 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article and on article 23bis (see para. 237 below).

(ii) INITIAL CONSIDERATION

235. At its 29th meeting, the Committee of the Whole voted upon the principle contained in the amendment by *Pakistan* (A/CONF.39/C.1/L.181), without prejudice to its placing in the text. The principle was adopted by 55 votes to none, with 30 abstentions.

236. At the same meeting, the Committee of the Whole decided, without objection, to refer article 23 to the Drafting Committee, together with the amendments submitted thereto, namely the amendments by *Bolivia, Czechoslovakia, Ecuador, Spain and United Republic of Tanzania* (A/CONF.39/C.1/L.118), *Congo (Brazzaville)* (A/CONF.39/C.1/L.189), *Cuba* (A/CONF.39/C.1/L.173) and *Thailand* (A/CONF.39/C.1/L.196). In so doing, the Committee took note that the sponsors of the first three of these amendments had indicated their acceptance in principle of the existing text of article 23. The Committee of the Whole further requested the Drafting Committee to formulate the principle contained in the amendment by *Pakistan* (A/CONF.39/C.1/L.181) and to consider the question of its placing in the text.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

237. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 23 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 239 below). This report also set out the text of an article 23bis (see para. 240 below), adopted by the Drafting Committee in order to incorporate in the text of the draft convention the amendment by *Pakistan* (A/CONF.39/C.1/L.181) to article 23 which had been adopted in principle by the Committee of the Whole.

238. At the same meeting, the Committee of the Whole adopted the text of article 23 recommended by the Drafting Committee, without formal vote.⁵² It also adopted the text of article 23bis without formal vote.⁵³

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

239. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 23:

⁵² *Ibid.*

⁵³ *Ibid.*

Article 23

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

240. It likewise recommends for adoption the following text of article 23bis:

Article 23bis

No party may invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 43.

SECTION 2: APPLICATION OF TREATIES

ARTICLE 24

A. International Law Commission text

241. The International Law Commission text provided as follows:

Article 24.—Non-retroactivity of treaties

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

B. Amendments

242. Amendments were submitted to article 24 by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1),⁵⁴ Cuba (A/CONF.39/C.1/L.146), Finland (A/CONF.39/C.1/L.91), Japan (A/CONF.39/C.1/L.191), Republic of Viet-Nam (A/CONF.39/C.1/L.179) and United States of America (A/CONF.39/C.1/L.155).

243. These amendments were to the following effect:

(a) *Austria and Greece* (A/CONF.39/C.1/L.5 and Add.1):

Replace the words “Unless a different intention appears from the treaty or is otherwise established” . . . by the words “Unless the treaty so provides”.

[Rejected, see para. 245(a) below]

(b) *Finland* (A/CONF.39/C.1/L.91):

Add the words “Subject to the provisions of article 15 and” before the first words of article 24.

[Referred to the Drafting Committee, see para. 246 below]

(c) *Cuba* (A/CONF.39/C.1/L.146):

Replace the words “any act or fact which took place” by the words “any act or fact which was completed”.

[Referred to the Drafting Committee, see para. 246 below]

(d) *United States of America* (A/CONF.39/C.1/L.155):

Delete the words “or any situation which ceased to exist”.

[Rejected, see para. 245(b) below]

(e) *Republic of Viet-Nam* (A/CONF.39/C.1/L.179):

Replace the words “Unless a different intention appears from the treaty or is otherwise established, its

provisions do not bind” by the words “Unless the treaty expressly so provides, it does not bind”.

[Not voted upon, see para. 245 below]

(f) *Japan* (A/CONF.39/C.1/L.191):

. . . Replace the words “Unless a different intention appears from the treaty or is otherwise established” by the words “Unless the treaty otherwise provides or a contrary intention is established”.

[Referred to the Drafting Committee, see para. 246 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

244. The Committee of the Whole initially discussed article 24, and the amendments thereto, at its 30th meeting, on 19 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

245. At its 30th meeting, the Committee of the Whole voted upon certain amendments before it, with the following results:

(a) The amendment by *Austria and Greece* (A/CONF.39/C.1/L.5 and Add.1) was rejected by 46 votes to 24, with 18 abstentions.

(b) The amendment by the *United States of America* (A/CONF.39/C.1/L.155) was rejected by 47 votes to 23, with 17 abstentions.

In view of the rejection of the amendment by *Austria and Greece* (A/CONF.39/C.1/L.5 and Add.1), it was not necessary to put to the vote the amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.179), which was to a similar effect.

246. Also at its 30th meeting, the Committee of the Whole decided, without objection, to refer article 24 to the Drafting Committee, together with the remaining amendments by *Cuba* (A/CONF.39/C.1/L.146), *Finland* (A/CONF.39/C.1/L.91) and *Japan* (A/CONF.39/C.1/L.191).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

247. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 24 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 248 below). The Committee of the Whole adopted this text without formal vote.⁵⁵

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

248. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 24:

⁵⁴ Original sponsor Austria, co-sponsor Greece (Add.1).

⁵⁵ See para. 13 above.

Article 24

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

ARTICLE 25

A. International Law Commission text

249. The International Law Commission text provided as follows:

Article 25.—Application of treaties to territory

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

B. Amendments

250. Amendments were submitted to article 25 by the Republic of Viet-Nam (A/CONF.39/C.1/L.180) and the Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.164).

251. These amendments were to the following effect:

(a) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.164):

Amend the provisions of article 25 to read as follows:

Territorial scope of the treaty

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

[Referred to the Drafting Committee, see para. 254 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.180):

Word article 25 as follows:

Unless the treaty contains express provisions in this respect, it applies to the entire territory of each party.

[Withdrawn, see para. 253 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

252. The Committee of the Whole initially discussed article 25, and the amendments thereto, at its 30th and 31st meetings, on 19 April 1968. At its 72nd meeting, on 15 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

253. At the 30th meeting of the Committee of the Whole, the amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.180) was withdrawn.

254. At its 31st meeting, the Committee of the Whole decided, without objection, to refer article 25 to the Drafting Committee, together with the amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.164).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

255. At the 72nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 25 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 256 below). The Committee of the Whole adopted this text without formal vote.⁵⁶

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

256. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 25:

Article 25

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

ARTICLE 26

A. International Law Commission text

257. The International Law Commission text provided as follows:

Article 26.—Application of successive treaties relating to the same subject-matter

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

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

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

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

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

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

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

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

B. Amendments

258. Amendments were submitted to article 26 by Cambodia (A/CONF.39/C.1/L.208), France (A/CONF.39/C.1/L.44), Japan (A/CONF.39/C.1/L.207), Romania

⁵⁶ *Ibid.*

and Sweden (A/CONF.39/C.1/L.204) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.202).

259. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2, paragraph 3, paragraph 4 and paragraph 5 of the article, were to the following effect:

(i) *Paragraph 1*

No amendments.

(ii) *Paragraph 2*

Japan (A/CONF.39/C.1/L.207):

Delete the words "or that it is not to be considered as inconsistent with," together with the comma preceding them.

[Referred to the Drafting Committee, see para. 261 below]

(iii) *Paragraph 3*

No amendments.

(iv) *Paragraph 4*

(a) *France* (A/CONF.39/C.1/L.44):

At the end of paragraph 4(a) . . . add the following sentence:

however, when the earlier treaty is a restricted multilateral treaty and the later treaty is concluded between certain of the parties only, the provisions of the earlier treaty shall prevail;

[Referred to the Drafting Committee, see para. 261, below, and subsequently deferred until the second session of the Conference, see para. 262 below]

(b) *Romania* and *Sweden* (A/CONF.39/C.1/L.204):

Replace sub-paragraphs (b) and (c) of paragraph 4 by the following text:

(b) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

[Referred to the Drafting Committee, see para. 261 below]

(c) *Cambodia* (A/CONF.39/C.1/L.208):

At the end of paragraph 4, add a new sub-paragraph (d) reading as follows:

In case of conflict between the two treaties referred to in sub-paragraphs (b) and (c) above, the provisions of the earlier treaty prevail over those of the later treaty.

[Referred to the Drafting Committee, see para. 261 below]

(v) *Paragraph 5*

Union of Soviet Socialist Republics (A/CONF.39/C.1/L.202):

At the beginning of paragraph 5, insert a reference to article 23; the opening words of the paragraph would then read:

Paragraph 4 is without prejudice to articles 23 and 37.

[Referred to the Drafting Committee, see para. 261 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

260. The Committee of the Whole initially discussed article 26, and the amendments thereto, at its 31st meeting, on 19 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 26 until the second session of the Conference.

(ii) CONSIDERATION

261. At its 31st meeting, the Committee of the Whole decided, without objection, to refer article 26 to the Drafting Committee, together with all the amendments thereto, namely the amendments by *Cambodia* (A/CONF.39/C.1/L.208), *France* (A/CONF.39/C.1/L.44), *Japan* (A/CONF.39/C.1/L.207), *Romania* and *Sweden* (A/CONF.39/C.1/L.204) and the *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.202).

262. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *France* (A/CONF.39/C.1/L.44) proposed to add a reference to restricted multilateral treaties in article 26.

(iii) DECISION

263. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 26 until the second session of the Conference (see document A/CONF.39/15, paras. 58-66).

SECTION 3: INTERPRETATION OF TREATIES

ARTICLES 27 AND 28

264. At its 31st meeting, on 19 April 1968, the Committee of the Whole decided, without objection, to discuss articles 27 and 28 together. In view of this decision of the Committee, and as certain of the amendments submitted sought to combine the articles, they are considered together under a single heading.

A. International Law Commission text

265. The International Law Commission text provided as follows:

Article 27.—General rule of interpretation

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

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

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

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

3. There shall be taken into account, together with the context :
 - (a) Any subsequent agreement between the parties regarding the interpretation of the treaty;
 - (b) Any subsequent practice in the application of the treaty which establishes the understanding of the parties regarding its interpretation;
 - (c) Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 28.—Supplementary means of interpretation

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

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

B. Amendments

266. Amendments combining articles 27 and 28 into a single article were submitted by Republic of Viet-Nam (A/CONF.39/C.1/L.199) and United States of America (A/CONF.39/C.1/L.156).

267. Other amendments to article 27 were submitted by Australia (A/CONF.39/C.1/L.210), Ceylon (A/CONF.39/C.1/L.212), Federal Republic of Germany (A/CONF.39/C.1/L.214), Greece (A/CONF.39/C.1/L.213), Romania (A/CONF.39/C.1/L.203), Pakistan (A/CONF.39/C.1/L.182), Philippines (A/CONF.39/C.1/L.174), Spain (A/CONF.39/C.1/L.216) and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.201).

268. In addition to the amendments mentioned in paragraph 266 above combining articles 27 and 28, further amendments were submitted to article 28 by Spain (A/CONF.39/C.1/L.217) and United Republic of Tanzania (A/CONF.39/C.1/L.215).

269. Those amendments, arranged under sub-headings relating to a combined single article, article 27 as a whole, paragraph 1, paragraph 2 and paragraph 3 of that article, and article 28, were as follows:

(i) *Combined single article*

- (a) *United States of America* (A/CONF.39/C.1/L.156): Amend article 27 to read as follows:

A treaty shall be interpreted in good faith in order to determine the meaning to be given to its terms in the light of all relevant factors, including in particular:

- (a) the context of the treaty;
- (b) its objects and purposes;
- (c) any agreement between the parties regarding the interpretation of the treaty;
- (d) any instrument made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty;
- (e) any subsequent practice in the application of the treaty which establishes the common understanding of the meaning of the terms as between the parties generally;
- (f) the preparatory work of the treaty;
- (g) the circumstances of its conclusion;
- (h) any relevant rules of international law applicable in the relations between the parties;

- (i) the special meaning to be given to a term if the parties intended such term to have a special meaning.

Delete article 28.

[Rejected, see para. 271(a) below]

- (b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.199):

Combine articles 27 and 28 into a single article by inserting in article 27, paragraph 3, a new sub-paragraph (a) reading as follows:

The preparatory work of the treaty and the circumstances of its conclusion;

Article 28, whose provisions will have been incorporated in the new article 27, will be deleted; article 29 *et seq.* should then be renumbered accordingly.

In addition the title of article 27 should be placed in the plural, so as to read "General rules of interpretation". [Rejected, see para. 271(b) below]

(ii) *Article 27 as a whole*

Philippines (A/CONF.39/C.1/L.174):

Replace the present text of article 27 by the following:

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

2. A special meaning shall be given to the treaty if the parties so intended.

3. Together with the context, the following shall be taken into account in interpreting a treaty:

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

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

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

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

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

[Referred to the Drafting Committee, see para. 272 below]

(iii) *Paragraph 1 of article 27*

- (a) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.201):

At the end of . . . paragraph [1], add the words "expressing the agreed intentions of the parties;"

[Referred to the Drafting Committee, see para. 272 below]

- (b) *Spain* (A/CONF.39/C.1/L.216):

In paragraph 1 after the words "meaning to be given" add the words "between the parties".

[Referred to the Drafting Committee, see para. 272 below]

(iv) *Paragraph 2 of article 27*

- (a) *Romania* (A/CONF.39/C.1/L.203):

In sub-paragraph (a) of paragraph 2, between the words "any" and "agreement" insert the word "relevant".

In sub-paragraph (b) of paragraph 2, between the words "any" and "instrument" insert the word "relevant".

[Referred to the Drafting Committee, see para. 272 below]

(b) *Ceylon* (A/CONF.39/C.1/L.212):

Add the following new sub-paragraph:

(c) In the case of a treaty adopted within an international organization, any other instrument adopted by the organization and intended to constitute part of the context for the interpretation of the treaty.

[Rejected, see para. 271(c) below]

(c) *Greece* (A/CONF.39/C.1/L.213):

Replace the words "including its preamble and annexes" . . . by the following: "including the title of the treaty, the titles of parts, chapters, sections and articles of it, the preamble and the annexes".

[Referred to the Drafting Committee, see para. 272 below]

(v) *Paragraph 3 of article 27*

(a) *Pakistan* (A/CONF.39/C.1/L.182):

Amend paragraph 3(a) to read as follows:

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

(a) any subsequent agreement between the parties regarding the interpretation or implementation of the treaty.

[Referred to the Drafting Committee, see para. 272 below]

(b) *Australia* (A/CONF.39/C.1/L.210):

Amend sub-paragraph (a) by deleting the word "subsequent".

Amend sub-paragraph (b) by inserting the word "common" before the word "understanding".

[Referred to the Drafting Committee, see para. 272 below]

(c) *Federal Republic of Germany* (A/CONF.39/C.1/L.214):

Add a new sub-paragraph (d) to paragraph 3, reading as follows:

any relevant international obligation of one or more of the parties.

[Referred to the Drafting Committee, see para. 272 below]

(vi) *Article 28*

(a) *United Republic of Tanzania* (A/CONF.39/C.1/L.215):

Amend article 28 to read:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.

[Rejected, see para. 271 (d) below]

(b) *Spain* (A/CONF.39/C.1/L.217):

Add the words "and the subsequent acts of the parties" after the words "circumstances of its conclusion".

Replace "confirm" by "supplement".

[Referred to the Drafting Committee, see para. 272 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

270. The Committee of the Whole initially discussed articles 27 and 28, and the amendments thereto, at its 31st, 32nd and 33rd meetings, on 19 and 22 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on these articles.

(ii) INITIAL CONSIDERATION

271. At its 33rd meeting, the Committee of the Whole voted on certain of the amendments before it. The results of the voting were as follows:

(a) The amendment by the *United States of America* (A/CONF.39/C.1/L.156) to articles 27 and 28 was rejected by 66 votes to 8, with 10 abstentions.

(b) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.199) to articles 27 and 28 was rejected by 70 votes to 3, with 9 abstentions.

(c) The amendment by *Ceylon* (A/CONF.39/C.1/L.212) to paragraph 2 of article 27 was rejected by 29 votes to 9, with 49 abstentions.

(d) The amendment by *United Republic of Tanzania* (A/CONF.39/C.1/L.215) to article 28 was rejected by 54 votes to 8, with 25 abstentions.

272. Also at its 33rd meeting, the Committee of the Whole decided, without objection, to refer article 27 to the Drafting Committee, together with the remaining amendments thereto, namely the amendments submitted by *Australia* (A/CONF.39/C.1/L.210), *Federal Republic of Germany* (A/CONF.39/C.1/L.214), *Greece* (A/CONF.39/C.1/L.213), *Romania* (A/CONF.39/C.1/L.203), *Pakistan* (A/CONF.39/C.1/L.182), *Philippines* (A/CONF.39/C.1/L.174), *Spain* (A/CONF.39/C.1/L.216) and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.201). The Committee likewise referred article 28 to the Drafting Committee, together with the remaining amendment by *Spain* (A/CONF.39/C.1/L.217).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

273. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the texts of articles 27 and 28 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see paras. 274 and 275 below). The Committee of the Whole adopted the text of article 27 without formal vote.⁵⁷ It likewise adopted the text of article 28 without formal vote.⁵⁸

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

274. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 27:

⁵⁷ See para. 13 above.

⁵⁸ *Ibid.*

Article 27

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

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

- (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.

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

275. It likewise recommends for adoption the following text of article 28:

Article 28

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

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

ARTICLE 29

A. International Law Commission text

276. The International Law Commission text provided as follows:

Article 29.—Interpretation of treaties in two or more languages

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

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

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

B. Amendments

277. Amendments were submitted to article 29 by the Republic of Viet-Nam (A/CONF.39/C.1/L.209) and the United States of America (A/CONF.39/C.1/L.197). A sub-amendment was submitted by Australia (A/CONF.39/C.1/L.219) to the amendment by United States of America (A/CONF.39/C.1/L.197).

278. These amendments, and the sub-amendment, arranged under sub-headings relating to paragraph 1,

paragraph 2 and paragraph 3 of the article, and a proposed new paragraph, were to the following effect:

(i) Paragraph 1

United States of America (A/CONF.39/C.1/L.197):

At the end of paragraph 1, replace the word "text" between "a particular" and "shall prevail" by the words "language version".

[Referred to the Drafting Committee, see para. 280 below]

(ii) Paragraph 2

No amendments.

(iii) Paragraph 3

(a) *United States of America* (A/CONF.39/C.1/L.197):

Replace paragraph 3 by the following:

The terms of the treaty are presumed to have the same meaning in each authentic language version.

[Referred to the Drafting Committee, see para. 280 below]

(b) *Republic of Viet-Nam* (A/CONF.39/C.1/L.209):

. . . replace the words "the application of articles 27 and 28" by the words "the application of article 27"; and . . . replace the words "a meaning which as far as possible reconciles the texts" by the words "the meaning which comes closest to the object and purpose of the treaty".

[Referred to the Drafting Committee, see para. 280 below]

(iv) Proposed new paragraph

(a) *United States of America* (A/CONF.39/C.1/L.197):

Add a new paragraph 4 to read as follows:

Except in the case mentioned in paragraph 1, when a comparison of the several language versions discloses a difference in meaning which the application of article 27 does not remove, a meaning shall be adopted which is most consonant with the object and purpose of the treaty.

[Referred to the Drafting Committee, see para. 280 below]

(b) *Australia* (A/CONF.39/C.1/L.219): sub-amendment to the amendment by the *United States of America* (A/CONF.39/C.1/L.197):

Amend the new paragraph 4 proposed in document A/CONF.39/C.1/L.197 by:

- (i) inserting the words "article 28" after the words "article 27";
- (ii) omitting the word "most";
- (iii) adding the following words to the end of the paragraph: "and which best reconciles the versions".

[Referred to the Drafting Committee, see para. 280 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

279. The Committee of the Whole initially discussed article 29, and the amendments thereto, at its 34th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968,

the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

280. At its 34th meeting, the Committee of the Whole agreed, without objection, to refer article 29 to the Drafting Committee, together with the amendments thereto by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.209) and the *United States of America* (A/CONF.39/C.1/L.197) and the sub-amendment by *Australia* (A/CONF.39/C.1/L.219) to the latter amendment.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

281. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 29 adopted by the Drafting Committee (A/CONF.39/C.1/8; for text, see para. 282 below). The Committee of the Whole adopted this text without formal vote.⁵⁹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

282. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 29:

Article 29

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

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

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except in the case mentioned in paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4: TREATIES AND THIRD STATES

ARTICLE 30

A. International Law Commission text

283. The International Law Commission text provided as follows:

Article 30.—General rule regarding third States

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

B. Amendments

284. Amendments were submitted to article 30 by *Venezuela* (A/CONF.39/C.1/L.205/Rev.1) and the *United Republic of Tanzania* (A/CONF.39/C.1/L.221).

285. These amendments were to the following effect:

(a) *Venezuela* (A/CONF.39/C.1/L.205/Rev.1):⁶⁰

Combine articles 30, 31, 32 and 33 in a single article reading as follows:

1. Treaties do not create obligations and rights for third States except with their express consent and under the conditions they establish.

2. The modification or revocation of the rights and obligations referred to in the foregoing paragraph shall require the express consent of the parties and of the third State, unless the treaty otherwise provides or it clearly otherwise appears from its nature and provisions.

[Withdrawn, see para. 287 below]

(b) *United Republic of Tanzania* (A/CONF.39/C.1/L.221):

Replace the whole article by the following:

Except as provided in articles 31, 32 and 34, a treaty does not create either obligations or rights for a third State.

[Referred to the Drafting Committee, see para. 288 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

286. The Committee of the Whole initially discussed article 30, and the amendments thereto, at its 35th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

287. At the 35th meeting of the Committee of the Whole, the amendment by *Venezuela* (A/CONF.39/C.1/L.205/Rev.1) was withdrawn.

288. At the same meeting, the Committee of the Whole decided, without objection, to refer article 30 to the Drafting Committee, together with the amendment by the *United Republic of Tanzania* (A/CONF.39/C.1/L.221).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

289. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 30 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see para. 290 below). The Committee of the Whole adopted this text without formal vote.⁶¹

⁶⁰ In its original form (A/CONF.39/C.1/L.205) this amendment provided:

Combine articles 30, 31, 32 and 33 in a single article to read as follows:

"1. A treaty creates obligations or rights for a third State solely with its express consent and under the conditions established in the treaty.

"2. The modification or revocation of the rights and obligations referred to in the preceding paragraph shall require the express consent of the parties and of the third State, unless the treaty otherwise provides or this clearly appears from its nature and conditions."

⁶¹ See para. 13 above.

⁵⁹ *Ibid.*

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
290. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 30:

Article 30

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

ARTICLES 31 AND 32

291. At its 35th meeting, on 23 April 1968, the Committee of the Whole decided, without objection, to discuss articles 31 and 32 together. In view of this decision of the Committee, and as one of the amendments submitted related to both the articles, they are considered together under a single heading.

A. International Law Commission text

292. The International Law Commission text provided as follows:

Article 31.—Treaties providing for obligations for third States

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

Article 32.—Treaties providing for rights for third States

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

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

B. Amendments

293. In addition to the amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1),⁶² considered under article 30 above, an amendment to both articles 31 and 32 was submitted by Mongolia (A/CONF.39/C.1/L.168). Other amendments to article 32 were submitted by Finland (A/CONF.39/C.1/L.141), Japan (A/CONF.39/C.1/L.218) and Netherlands (A/CONF.39/C.1/L.224).

294. These amendments, arranged under sub-headings relating to articles 31 and 32 jointly and to article 32, were to the following effect:

(i) *Articles 31 and 32*

Mongolia (A/CONF.39/C.1/L.168):

Transpose articles 31 and 32 so that the article concerning rights for third States comes first.

[Referred to the Drafting Committee, see para. 298 below]

(ii) *Article 32*

(a) *Finland* (A/CONF.39/C.1/L.141):

Delete second sentence of paragraph 1.

⁶² See para. 285(a) above.

[Rejected, see para. 297 below]

(b) *Japan* (A/CONF.39/C.1/L.218):

Add "Unless the treaty otherwise provides," at the beginning of the last sentence [of paragraph 1.]

[Referred to the Drafting Committee, see para. 298 below]

(c) *Netherlands* (A/CONF.39/C.1/L.224):

In paragraph 1 replace "arises" . . . by "may arise"; delete at the end of the paragraph the words "and the State assents thereto. Its assent shall be presumed so long as the contrary is not indicated".

[Withdrawn, see para. 296 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

295. The Committee of the Whole initially discussed articles 31 and 32, and the remaining amendments⁶³ thereto, at its 35th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on these articles.

(ii) INITIAL CONSIDERATION

296. At the 35th meeting of the Committee of the Whole, the amendment by the *Netherlands* (A/CONF.39/C.1/L.224) to article 32 was withdrawn.

297. At the same meeting the Committee of the Whole voted upon the amendment by *Finland* (A/CONF.39/C.1/L.141) to article 32. The amendment was rejected by 46 votes to 25, with 17 abstentions.

298. Also at its 35th meeting, the Committee of the Whole decided, without objection, to refer articles 31 and 32 to the Drafting Committee, together with the remaining amendments by *Japan* (A/CONF.39/C.1/L.218) and *Mongolia* (A/CONF.39/C.1/L.168).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

299. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the texts of articles 31 and 32 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see paras. 300 and 301 below). The Committee of the Whole adopted the text of article 31 without formal vote.⁶⁴ It likewise adopted the text of article 32 without formal vote.⁶⁵

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

300. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 31:

⁶³ The amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1) was withdrawn in connexion with the Committee's discussion of article 30, see under that article, para. 287 above.

⁶⁴ See para. 13 above.

⁶⁵ *Ibid.*

Article 31

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

301. It likewise recommends for adoption the following text of article 32:

Article 32

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

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

ARTICLE 33

A. International Law Commission text

302. The International Law Commission text provided as follows:

Article 33.—Revocation or modification of obligations or rights of third States

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

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

B. Amendments

303. In addition to the amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1)⁶⁶ considered under article 30, other amendments to article 33 were submitted by the Netherlands (A/CONF.39/C.1/L.225) and the Philippines (A/CONF.39/C.1/L.211).

304. These amendments were to the following effect:

(a) *Philippines* (A/CONF.39/C.1/L.211):

Amend article 33 by deleting the words and punctuation marks in brackets and by inserting the words that are in *italics*:

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

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

[Referred to the Drafting Committee, see para. 307 below]

(b) *Netherlands* (A/CONF.39/C.1/L.225):

In *paragraph 1* delete the words "or modified".

Amend *paragraph 2* to read:

When a right has arisen for a third State in conformity with article 32, and *provided the State has actually exercised the right and complied with the conditions for its exercise*, the right may not be revoked by the parties if it is established that the right was intended not to be revocable without the consent of the third State.

[Withdrawn, see para. 306 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

305. The Committee of the Whole initially discussed article 33, and the remaining amendments thereto,⁶⁷ at its 35th meeting, on 23 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

306. At the 35th meeting of the Committee of the Whole, the amendment by the *Netherlands* (A/CONF.39/C.1/L.225) was withdrawn.

307. At the same meeting, the Committee of the Whole decided, without objection, to refer article 33 to the Drafting Committee, together with the amendment by the *Philippines* (A/CONF.39/C.1/L.211).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

308. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 33 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see para. 309 below). The Committee of the Whole adopted this text without formal vote.⁶⁸

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

309. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 33:

Article 33

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

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

ARTICLE 34

A. International Law Commission text

310. The International Law Commission text provided as follows:

⁶⁷ The amendment by Venezuela (A/CONF.39/C.1/L.205/Rev.1) was withdrawn in connexion with the Committee's discussion of article 30, see under that article, para. 287 above.

⁶⁸ See para. 13 above.

⁶⁶ See para. 285(a) above.

Article 34.—Rules in a treaty becoming binding through international custom

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

B. Amendments

311. Amendments were submitted to article 34 by Finland (A/CONF.39/C.1/L.142), Mexico (A/CONF.39/C.1/L.226), Syria (A/CONF.39/C.1/L.106) and Venezuela (A/CONF.39/C.1/L.223).

312. These amendments were to the following effect:

(a) *Syria* (A/CONF.39/C.1/L.106):

Add the words "recognized as such" at the end of the article.

[Adopted, see para. 314(c) below]

(b) *Finland* (A/CONF.39/C.1/L.142):

Delete article.

[Rejected, see para. 314(a) below]

(c) *Venezuela* (A/CONF.39/C.1/L.223):

Delete the article.

[Rejected, see para. 314(a) below]

(d) *Mexico* (A/CONF.39/C.1/L.226):

At the end of the article, add the words "or as a general principle of law."

[Adopted, see para. 314(b) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

313. The Committee of the Whole initially discussed article 34, and the amendments thereto, at its 35th and 36th meetings, on 23 and 24 April 1968. At its 74th meeting, on 16 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

314. At its 36th meeting the Committee of the Whole voted on the amendments submitted to article 34. The voting was as follows:

(a) A roll-call vote was taken on the amendments by *Finland* (A/CONF.39/C.1/L.142) and *Venezuela* (A/CONF.39/C.1/L.223) to delete the article, with the following results:

In favour: Afghanistan, Argentina, Ceylon, Federal Republic of Germany, Finland, Norway, Peru, Republic of Korea, Spain, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

Against: Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Central African Republic, Chile, China, Colombia, Congo (Democratic Republic of), Cuba, Denmark, Ecuador, Ethiopia, Ghana, Guatemala, Holy See, Hungary, India, Iran, Iraq, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Liechtenstein, Madagascar, Malaysia, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Pakistan, Philippines,

Poland, Portugal, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Thailand, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yugoslavia, Zambia.

Abstentions: Algeria, Bolivia, Congo (Brazzaville), Costa Rica, Cyprus, Czechoslovakia, Dahomey, Dominican Republic, France, Gabon, Greece, Guinea, Indonesia, Ivory Coast, Liberia, Monaco, Syria, Tunisia.

These amendments were therefore rejected by 63 votes to 14, with 18 abstentions.

(b) The amendment by *Mexico* (A/CONF.39/C.1/L.226) was adopted by 38 votes to 28, with 28 abstentions.

(c) The amendment by *Syria* (A/CONF.39/C.1/L.106) was adopted by 59 votes to 15, with 17 abstentions.

315. Also at its 36th meeting, the Committee of the Whole decided, without objection, to refer article 34, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

316. At the 74th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 34 adopted by the Drafting Committee (A/CONF.39/C.1/9; for text, see para. 317 below). The Committee of the Whole adopted this text without formal vote.⁶⁹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

317. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 34:

Article 34

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

PART IV.—AMENDMENT AND MODIFICATION OF TREATIES

ARTICLE 35

318. At its 36th meeting, on 24 April 1968, the Committee of the Whole decided, without objection, to discuss articles 35 and 36 together. However, as none of the amendments to those two articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. International Law Commission text

319. The International Law Commission text provided as follows:

⁶⁹ *Ibid.*

Article 35.—General rule regarding the amendment of treaties

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

B. Amendments

320. Amendments were submitted to article 35 by Ceylon (A/CONF.39/C.1/L.153) and Chile (A/CONF.39/C.1/L.235).

321. These amendments were to the following effect:

(a) *Ceylon* (A/CONF.39/C.1/L.153):

Amend the first sentence to read:

A treaty may be amended by *any procedure specified in the treaty or agreed upon by the parties.*

[Withdrawn, see para. 323 below]

(b) *Chile* (A/CONF.39/C.1/L.235):

Amend the first sentence to read as follows:

A *bilateral* treaty may be amended *only* by agreement between the parties.

[Withdrawn, see para. 323 below]

C. Proceedings of the Committee of the Whole**(i) MEETINGS**

322. The Committee of the Whole initially discussed article 35, together with article 36, at its 36th and 37th meetings, on 24 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on article 35.

(ii) INITIAL CONSIDERATION

323. At the 37th meeting of the Committee of the Whole, the amendments by *Ceylon* (A/CONF.39/C.1/L.153) and *Chile* (A/CONF.39/C.1/L.235) to article 35 were withdrawn.

324. At the same meeting, the Committee of the Whole decided, without objection, to refer article 35 to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

325. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 35 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 326 below). The Committee of the Whole adopted this text without formal vote.⁷⁰

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

326. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 35:

Article 35

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

ARTICLE 36

327. At its 36th meeting, on 24 April 1968, the Committee of the Whole decided, without objection, to discuss articles 35 and 36 together. However, as none of the amendments to these two articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. International Law Commission text

328. The International Law Commission text provided as follows:

Article 36.—Amendment of multilateral treaties

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

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

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

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

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

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

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

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

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

B. Amendments

329. Amendments were submitted to article 36 by France (A/CONF.39/C.1/L.45) and the Netherlands (A/CONF.39/C.1/L.232).

330. These amendments were to the following effect:

(a) *France* (A/CONF.39/C.1/L.45):

Replace paragraph 1 by the following two paragraphs:

1. Restricted multilateral treaties can only be amended by agreement between all the parties.

2. Unless the treaty otherwise provides, the amendment of multilateral treaties not covered by the preceding paragraph shall be governed by the following provisions.

Renumber the other paragraphs accordingly.

[Referred to the Drafting Committee, see para. 332 below, and subsequently deferred until the second session of the Conference, see para. 333 below]

(b) *Netherlands* (A/CONF.39/C.1/L.232):

Amend the first sentence of . . . paragraph [2] to read:

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

[Referred to the Drafting Committee, see para. 332 below]

⁷⁰ *Ibid.*

C. Proceedings of the Committee of the Whole

(i) MEETINGS

331. The Committee of the Whole initially discussed article 36, together with article 35, at its 36th and 37th meetings, on 24 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 36 until the second session of the Conference.

(ii) CONSIDERATION

332. At its 37th meeting, the Committee of the Whole decided, without objection, to refer article 36 to the Drafting Committee, together with the amendments by *France* (A/CONF.39/C.1/L.45) and the *Netherlands* (A/CONF.39/C.1/L.232).

333. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by *France* (A/CONF.39/C.1/L.45) proposed to add a reference to restricted multilateral treaties in article 36.

(iii) DECISION

334. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 36 until the second session of the Conference (see document A/CONF.39/15, paras. 67-75).

ARTICLE 37

A. International Law Commission text

335. The International Law Commission text provided as follows:

Article 37.—Agreements to modify multilateral treaties between certain of the parties only

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

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

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

B. Amendments

336. Amendments were submitted to article 37 by *Australia* (A/CONF.39/C.1/L.237), *Bulgaria*, *Romania* and *Syria* (A/CONF.39/C.1/L.240), *Czechoslovakia* (A/CONF.39/C.1/L.238) and *France* (A/CONF.39/C.1/L.46).

337. These amendments were to the following effect:

(a) *France* (A/CONF.39/C.1/L.46):

At the beginning of paragraph 1, before the words "Two or more" insert the words "Except in the case of a restricted multilateral treaty,".

[Referred to the Drafting Committee, see para. 339 below, and subsequently deferred until the second session of the Conference, see para. 340 below]

(b) *Australia* (A/CONF.39/C.1/L.237):

At the beginning of paragraph 1, before the words "Two or more" insert the words "Except in the case of a treaty of the type referred to in paragraph 2 of article 17,".

[Referred to the Drafting Committee, see para. 339 below, subsequently deferred until the second session of the Conference, see para. 340 below]

(c) *Czechoslovakia* (A/CONF.39/C.1/L.238):

At the end of sub-paragraph (b) (iii) [of paragraph 1] add the words "or by another rule of international law".

[Referred to the Drafting Committee, see para. 339 below]

(d) *Bulgaria*, *Romania* and *Syria* (A/CONF.39/C.1/L.240):

Amend article 37, paragraph 1(b) to read:

(b) The modification in question is not prohibited by the treaty, provided that the modification:

- (i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
- (ii) does not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.

[Referred to the Drafting Committee, see para. 339 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

338. The Committee of the Whole initially discussed article 37, and the amendments thereto, at its 37th meeting, on 24 April 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 37 until the second session of the Conference.

(ii) CONSIDERATION

339. At its 37th meeting, the Committee of the Whole decided, without objection, to refer article 37 to the Drafting Committee, together with the amendments by *Australia* (A/CONF.39/C.1/L.237), *Bulgaria*, *Romania* and *Syria* (A/CONF.39/C.1/L.240), *Czechoslovakia* (A/CONF.39/C.1/L.238) and *France* (A/CONF.39/C.1/L.46).

340. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendments by *Australia* (A/CONF.39/C.1/L.237) and *France* (A/CONF.39/C.1/L.46) proposed to add references to restricted multilateral

treaties in article 37, by way of cross-reference or direct mention respectively.

(iii) DECISION

341. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 37 until the second session of the Conference (see document A/CONF.39/15, paras. 76-85).

ARTICLE 38

A. International Law Commission text

342. The International Law Commission text provided as follows:

Article 38.—Modification of treaties by subsequent practice

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

B. Amendments

343. Amendments were submitted to article 38 by Finland (A/CONF.39/C.1/L.143), France (A/CONF.39/C.1/L.241), Japan (A/CONF.39/C.1/L.200), Republic of Viet-Nam (A/CONF.39/C.1/L.220) and Venezuela (A/CONF.39/C.1/L.206).

344. These amendments were to the following effect:

(a) *Finland* (A/CONF.39/C.1/L.143):

Delete article.

[Adopted, see para. 346 below]

(b) *Japan* (A/CONF.39/C.1/L.200):

Delete the article.

[Adopted, see para. 346 below]

(c) *Venezuela* (A/CONF.39/C.1/L.206):

Delete the article.

[Adopted, see para. 346 below]

(d) *Republic of Viet-Nam* (A/CONF.39/C.1/L.220):

Delete article 38.

[Adopted, see para. 346 below]

(e) *France* (A/CONF.39/C.1/L.241):

At the beginning of the existing text of the article, insert the following phrase:

Provided its provisions or the conditions of its conclusion are no bar...

[Not voted upon, see para. 347 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

345. The Committee of the Whole discussed article 38, and the amendments thereto, at its 37th and 38th meetings, on 24 and 25 April 1968.

(ii) CONSIDERATION

346. At the 38th meeting of the Committee of the Whole, a roll-call vote was taken on the amendments by *Finland* (A/CONF.39/C.1/L.143), *Japan* (A/CONF.39/

C.1/L.200), *Republic of Viet-Nam* (A/CONF.39/C.1/L.220) and *Venezuela* (A/CONF.39/C.1/L.206) to delete article 38. The results of the voting were as follows:

In favour: Algeria, Australia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Federal Republic of Germany, Finland, Greece, Guinea, Hungary, Israel, Japan, Kuwait, Lebanon, Liechtenstein, Mexico, Mongolia, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Saudi Arabia, South Africa, Spain, Sweden, Syria, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia.

Against: Argentina, Austria, Bolivia, Cambodia, Denmark, Ecuador, India, Indonesia, Iraq, Italy, Kenya, Mali, San Marino, Sierra Leone, Switzerland.

Abstentions: Afghanistan, Belgium, Central African Republic, Congo (Democratic Republic of), Dahomey, Ethiopia, France, Gabon, Ghana, Guatemala, Holy See, Iran, Ivory Coast, Liberia, Madagascar, Malaysia, Monaco, Morocco, Nigeria, Pakistan, Romania, Senegal, Singapore, Thailand, Tunisia, Zambia.

These amendments were therefore adopted by 53 votes to 15, with 26 abstentions.

347. In the light of the decision of the Committee to delete article 38, it was not necessary to vote upon the amendment by *France* (A/CONF.39/C.1/L.241), which had sought to add an additional phrase to the article.

(iii) DECISION

348. On the basis of the foregoing, the Committee of the Whole decided not to include in the text to be recommended to the Conference an article on the modification of treaties by subsequent practice.

PART V.—INVALIDITY, TERMINATION AND
SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1: GENERAL PROVISIONS

ARTICLE 39

A. International Law Commission text

349. The International Law Commission text provided as follows:

*Article 39.—Validity and continuance
in force of treaties*

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

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

B. Amendments

350. Amendments were submitted to article 39 by Australia (A/CONF.39/C.1/L.245), China (A/CONF.39/C.1/L.242), Peru (A/CONF.39/C.1/L.227), Republic of Viet-Nam (A/CONF.39/C.1/L.233), Singapore (A/CONF.39/C.1/L.270) and Switzerland (A/CONF.39/C.1/L.121).

351. These amendments, arranged under sub-headings relating to a proposed new paragraph, and paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) *New paragraph*

Singapore (A/CONF.39/C.1/L.270):

Add the following new paragraph at the beginning of the article:

1. Subject to paragraphs 2 and 3, a treaty concluded in accordance with Part II of the present Convention is presumed valid.

2. Paragraphs 1 and 2 of the present draft to be renumbered accordingly.

[For oral revision, see para. 355 below]

[Rejected, see para. 356(b) below]

(ii) *Paragraph 1*

(a) *Switzerland* (A/CONF.39/C.1/L.121):

For paragraph 1 substitute the following text:

The invalidation of a treaty may be requested only through the application of the present Convention.

[Rejected, see para. 356(c) below]

(b) *Peru* (A/CONF.39/C.1/L.227):

Amend the second sentence of paragraph 1 to read:

A treaty the invalidity of which has been established as a result of the application of the procedure laid down in article 62 is void.

[Rejected, see para. 356(e) below]

(c) *Republic of Viet-Nam* (A/CONF.39/C.1/L.233):

In the first sentence, replace the words "of the present articles" by the words "of the present Convention".

Amend the second sentence in paragraph 1 to read:

Similarly, the invalidity of a treaty may be determined only by reference to the Convention.

[First part disposed of by decision recorded in para. 16(a) of the Introduction to this report; second part rejected, see para. 356(d) below]

(d) *China* (A/CONF.39/C.1/L.242):

Add at the end of paragraph 1 the words "*ab initio*".

[Withdrawn, see para. 353 below]

(e) *Australia* (A/CONF.39/C.1/L.245):

Amend the first sentence of paragraph 1 by adding at the end the words "including article 62". Amend the second sentence by replacing the words "the present articles" by the words "these articles".

[Referred to the Drafting Committee, see para. 357 below]

(iii) *Paragraph 2*

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.233):

In the first sentence, replace the words "of the present articles" by the words "of the present Convention".

[Disposed of by decision recorded in para. 16(a) of the Introduction to this report]

(b) *Australia* (A/CONF.39/C.1/L.245):

Amend the first sentence of paragraph 2 by adding at the end the words "including where applicable article 62".

[Referred to the Drafting Committee, see para. 357 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

352. The Committee of the Whole discussed article 39, and the amendments thereto, at its 39th and 40th meetings, on 26 April 1968, at its 76th meeting, on 17 May 1968, and at its 81st meeting, on 22 May 1968. At its 83rd meeting, on 24 May 1968, the Committee of the Whole considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

353. At the 39th meeting of the Committee of the Whole, the amendment by *China* (A/CONF.39/C.1/L.242) was withdrawn.

354. At its 40th meeting, the Committee of the Whole decided, without objection, to defer further consideration of article 39 and the amendments thereto. The Committee considered the article and amendments again at its 76th meeting and decided, without objection, to defer its decisions until after consideration of article 62 had been completed. The Committee again took up article 39, and the amendments thereto, at its 81st meeting.

355. At the 76th meeting, *France* submitted an oral amendment to transfer the second sentence of paragraph 1 of article 39 to paragraph 1 of article 65. *Singapore* orally revised its amendment (A/CONF.39/C.1/L.270) by deleting the words "Subject to paragraphs 2 and 3, a" and adding the word "Every" before the word "treaty".

356. At its 81st meeting, the Committee of the Whole voted upon certain of the remaining amendments before it. The results of the voting were as follows:

(a) The oral amendment by *France* to transfer the second sentence of paragraph 1 of article 39 to paragraph 1 of article 65 was adopted by 34 votes to 29, with 22 abstentions.

(b) The amendment by *Singapore* (A/CONF.39/C.1/L.270), as orally amended, to add a new paragraph at the beginning of the article, was rejected by 31 votes to 21, with 31 abstentions.

(c) The amendment by *Switzerland* (A/CONF.39/C.1/L.121) to paragraph 1 was rejected by 53 votes to 19, with 16 abstentions.

(d) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.233) to the second sentence of paragraph 1 was rejected by 43 votes to 3, with 33 abstentions.

(e) The amendment by *Peru* (A/CONF.39/C.1/L.227) to paragraph 1 was rejected by 39 votes to 14, with 29 abstentions.

357. Also at its 81st meeting, the Committee of the Whole decided, without objection, to refer article 39 to

the Drafting Committee, together with the remaining amendment, by *Australia* (A/CONF.39/C.1/L.245).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

358. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 39 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 359 below). The Committee of the Whole adopted this text without formal vote.⁷¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

359. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 39:

Article 39

1. The validity of a treaty or the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

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

ARTICLE 40

A. International Law Commission text

360. The International Law Commission text provided as follows:

Article 40.—Obligations under other rules of international law

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

B. Amendments

361. Amendments were submitted to article 40 by *China* (A/CONF.39/C.1/L.243), *Pakistan* (A/CONF.39/C.1/L.183) and the *United States of America* (A/CONF.39/C.1/L.262).

362. These amendments were to the following effect:

(a) *Pakistan* (A/CONF.39/C.1/L.183):

Add the following words at the end of the article: or under the Charter of the United Nations.

[Referred to the Drafting Committee, see para. 364 below]

(b) *China* (A/CONF.39/C.1/L.243):

Replace the words “as a result of the application of the present articles or of the terms of the treaty” by the words “as a result of the application of the terms of the treaty or of the present Convention”.

[Referred to the Drafting Committee, see para. 364 below]

(c) *United States of America* (A/CONF.39/C.1/L.262):

Replace the words “it is subject under any other rule of international law” by the words “it is otherwise subject under international law”.

[Referred to the Drafting Committee, see para. 364 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

363. The Committee of the Whole initially discussed article 40, and the amendments thereto, at its 40th meeting, on 26 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

364. At its 40th meeting, the Committee of the Whole decided, without objection, to refer article 40 to the Drafting Committee, together with the amendments by *China* (A/CONF.39/C.1/L.243), *Pakistan* (A/CONF.39/C.1/L.183) and *United States of America* (A/CONF.39/C.1/L.262).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

365. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 40 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 366 below). The Committee of the Whole adopted this text without formal vote.⁷²

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

366. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 40:

Article 40

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

ARTICLE 41

A. International Law Commission text

367. The International Law Commission text provided as follows:

Article 41.—Separability of treaty provisions

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

⁷¹ See para. 13 above.

⁷² *Ibid.*

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

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

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

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

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

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

B. Amendments

368. Amendments were submitted to article 41 by Argentina (A/CONF.39/C.1/L.244), Finland (A/CONF.39/C.1/L.144), Hungary (A/CONF.39/C.1/L.246), India (A/CONF.39/C.1/L.253), United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.257 and Corr.1) and United States of America (A/CONF.39/C.1/L.260). Subsequently, after a decision on the amendments to article 41 had been deferred (see para. 371 below), a second amendment was submitted by the United States of America (A/CONF.39/C.1/L.350). This amendment had first been proposed (A/CONF.39/C.1/L.325) as an amendment to article 57, but was withdrawn in that connexion (see under article 57, para. 524 below), on the understanding it would be considered in conjunction with article 41.

369. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1, paragraph 2, paragraph 3, paragraph 4, and paragraph 5 of the article, and a proposed new paragraph 6, were to the following effect:

(i) Article as a whole

United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.257 and Corr.1):

Replace the present text by the following:

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

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

3. Where—

(a) the ground relates solely to a particular article or group of articles; and

(b) the remainder of the treaty is capable of being applied without that article or group of articles; and

(c) it appears from the treaty or otherwise from the circumstances that acceptance of the article or group of articles was not an essential basis of the consent of any other party to the treaty as a whole,

the ground may be invoked only with respect to that article or group of articles.

4. In cases falling under articles 46, 47 and 57, the State entitled to invoke the fraud, corruption or material breach may do so with

respect either to the whole treaty or, subject to the conditions stated in paragraph 3 of this article, to the particular article or group of articles.

5. In this article, the term “group of articles” means a number of articles or provisions which are interconnected whether they are contained in the same or a separate section, chapter, part or other subdivision of a treaty.

[Referred to the Drafting Committee, see para. 374 below, on the understanding recorded in para. 372 below]

(ii) Paragraph 1

Argentina (A/CONF.39/C.1/L.244):

In paragraph 1, replace the phrase “may only be exercised” by the phrase “may not be exercised except”.

[Referred to the Drafting Committee, see para. 374 below]

(iii) Paragraph 2

(a) *Finland* (A/CONF.39/C.1/L.144):

Add to the end of paragraph 2: “and 59”.

[Withdrawn, see para. 372 below]

(b) *Argentina* (A/CONF.39/C.1/L.244):

Amend paragraph 2 to read:

A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may not be invoked except with respect to the whole treaty, save as provided in article 57.

In the Spanish text, replace the words “*terminación*” and “*retirada*” by the words “*extinción*” and “*retiro*”.

[Referred to the Drafting Committee, see para. 374 below]

(c) *Hungary* (A/CONF.39/C.1/L.246):

Insert the words: “subject to paragraph 3 of the present article” before the words “in article 57”.

[Referred to the Drafting Committee, see para. 374 below]

(d) *United States of America* (A/CONF.39/C.1/L.350):

Amend paragraph 2 to read as follows:

A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles, other than article 57, may only be invoked with respect to the whole treaty except as provided in paragraphs 3, 4 and 5 of this article.

[Rejected, see para. 373(b) below]

(iv) Paragraph 3

(a) *Argentina* (A/CONF.39/C.1/L.244):

Delete paragraph 3.

[Withdrawn, see para. 372 below]

(b) *United States of America* (A/CONF.39/C.1/L.260):

Add new paragraph 3(c) as follows:

Continued performance of the remainder of the treaty would not be unjust.

[Adopted, see para. 373(a) below]

(v) Paragraph 4

Argentina (A/CONF.39/C.1/L.244):

Delete paragraph 4.

[Withdrawn, see para. 372 below]

(vi) *Paragraph 5*(a) *Finland* (A/CONF.39/C.1/L.144):

Delete in *paragraph 5* reference to article 50.

[Referred to the Drafting Committee, see para. 374 below, and subsequently rejected, see para. 377 below]

(b) *Argentina* (A/CONF.39/C.1/L.244):

Delete paragraph 5.

[Withdrawn, see para. 372 below]

(c) *India* (A/CONF.39/C.1/L.253):

Amend the opening phrase of paragraph 5 to read as follows:

5. In cases falling under articles 48, 49 and *paragraph 1* of article 50, ...

[Withdrawn, see para. 372 below]

[NOTE: An amendment by *India* to article 50 (A/CONF.39/C.1/L.254) proposed that the International Law Commission's text of article 50 should form paragraph 1 of that article and that a new paragraph should be added (see under article 50, para. 462(ii)(a) below).]

(vii) *Proposed new paragraph**United States of America* (A/CONF.39/C.1/L.350):

Add a new paragraph 6 to read as follows:

A ground for terminating or suspending the operation of a treaty recognized in paragraphs 1 and 2(b) of article 57 may be invoked to terminate or suspend the operation of the treaty in whole or in part as may be appropriate considering the nature and extent of the breach and the extent to which the parties involved have performed the treaty obligations.

[Rejected, see para. 373(c) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

370. The Committee of the Whole initially discussed article 41, and the amendments thereto, at its 41st and 42nd meetings, on 27 and 29 April 1968. At its 42nd meeting, the Committee decided to postpone the voting upon the amendments before it. The Committee again took up article 41, and the amendments thereto, at its 66th meeting, on 13 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

371. At the 42nd meeting of the Committee of the Whole, a motion was made by the *Union of Soviet Socialist Republics* that a vote should be taken immediately on the amendments submitted to article 41. A roll-call vote was requested. The results of the voting were as follows:

In favour: Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, Iraq, Mongolia, Poland, Romania, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Yugoslavia.

Against: Australia, Austria, Belgium, Cambodia, Canada, Ceylon, Chile, China, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Guyana, Honduras, Indonesia, Iran, Israel, Italy, Jamaica, Japan, Lebanon, Liberia, Liechtenstein, Malaysia, Mexico, Monaco, Netherlands, New Zealand, Norway, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Senegal, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Zambia.

Abstentions: Argentina, Brazil, Central African Republic, Congo (Democratic Republic of), Cyprus, Dahomey, Ethiopia, Holy See, India, Ivory Coast, Kenya, Kuwait, Madagascar, Morocco, Nigeria, Pakistan, Peru, Saudi Arabia, Sierra Leone, Uruguay.

The motion to vote immediately upon the amendments to article 41 was, therefore, rejected by 51 votes to 22, with 20 abstentions. Further consideration of the article, and amendments thereto, was consequently deferred. The Committee resumed consideration of the article and amendments at its 61st meeting.

372. At the 52nd meeting of the Committee of the Whole, in connexion with the consideration of article 50, the amendment by *India* (A/CONF.39/C.1/L.253) to article 41, which was consequential upon an amendment by that State to article 50, was withdrawn (see under article 50, para. 464 below). At the 66th meeting of the Committee, in connexion with the consideration of article 41, that part of the amendment by *Argentina* (A/CONF.39/C.1/L.244) proposing the deletion of paragraphs 3, 4 and 5 of the article was withdrawn. That part of the amendment by *Finland* (A/CONF.39/C.1/L.144) proposing the addition of the words "and 59" to the end of paragraph 2 of the article was also withdrawn. Finally, in so far as the redraft in the amendment submitted by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.257 and Corr.1) contained a proposal to delete paragraph 5 of the article, that proposal to delete was withdrawn.

373. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(a) The amendment by the *United States of America* (A/CONF.39/C.1/L.260) to add a new sub-paragraph (c) to paragraph 3 was adopted by 27 votes to 14, with 45 abstentions.

(b) The amendment by the *United States of America* (A/CONF.39/C.1/L.350) to paragraph 2 was rejected by 22 votes to 18, with 50 abstentions.

(c) The amendment by the *United States of America* (A/CONF.39/C.1/L.350) to add a new paragraph 6 was rejected by 35 votes to 21, with 33 abstentions.

374. Also at its 66th meeting, the Committee of the Whole decided, without objection, to refer article 41, as amended, to the Drafting Committee, together with the remaining amendments, or parts of amendments, namely those by *Argentina* (A/CONF.39/C.1/L.244) (paragraph 1 and paragraph 2), *Finland* (A/CONF.39/

C.1/L.144) (paragraph 5), *Hungary* (A/CONF.39/C.1/L.246) and the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.257 and Corr.1) (redraft of the article on the understanding recorded in paragraph 372 above).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

375. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 41 adopted by the Drafting Committee (A/CONF.39/C.1/L.12; for text, see para. 379 below).

376. This report stated that the Drafting Committee had taken no decision on the amendment by *Finland* (A/CONF.39/C.1/L.144) to delete the reference to article 50 in paragraph 5 of article 41. This amendment had been referred to the Drafting Committee by the Committee of the Whole (see para. 374 above). The Drafting Committee considered that this amendment raised a question of substance which it was for the Committee of the Whole to decide.

377. A roll-call vote was requested on that amendment. The results of the voting were as follows:

In favour: Australia, Austria, Belgium, Canada, China, Denmark, Finland, France, Ireland, Italy, Japan, Mexico, Monaco, Netherlands, New Zealand, Norway, Peru, Philippines, Portugal, San Marino, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Chile, Congo (Brazzaville), Cyprus, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Kenya, Kuwait, Liberia, Mali, Mongolia, Nigeria, Pakistan, Poland, Romania, Sierra Leone, Singapore, Spain, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Brazil, Costa Rica, Dominican Republic, Ethiopia, Federal Republic of Germany, Gabon, Greece, Guatemala, Israel, Lebanon, Liechtenstein, Malaysia, Nepal, Panama, Republic of Korea, Republic of Vietnam, Trinidad and Tobago.

This amendment was therefore rejected by 39 votes to 27, with 17 abstentions.

378. The Committee of the Whole adopted the text of article 41 recommended by the Drafting Committee by 72 votes to none, with 11 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

379. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 41:

Article 41

1. A right of a party provided for in a treaty to denounce, withdraw from or suspend the operation of the treaty may be exercised

only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

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

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

- (a) the said clauses are separable from the remainder of the treaty with regard to their application;
- (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole; and
- (c) continued performance of the remainder of the treaty would not be unjust.

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

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

ARTICLE 42

A. International Law Commission text

380. The International Law Commission text provided as follows:

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

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

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

B. Amendments

381. Amendments were submitted to article 42 by Australia (A/CONF.39/C.1/L.354), Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela (A/CONF.39/C.1/L.251 and Add.1-3),⁷³ Cambodia (A/CONF.39/C.1/L.273), Czechoslovakia and Finland (A/CONF.39/C.1/L.247 and Add.1),⁷⁴ Guyana (A/CONF.39/C.1/L.268), Guyana and United States of America (A/CONF.39/C.1/L.267 and Add.1),⁷⁵ Spain (A/CONF.39/C.1/L.272) and Switzerland (A/CONF.39/C.1/L.340).

⁷³ Original sponsors Bolivia, Colombia, Dominican Republic, Guatemala and Venezuela (A/CONF.39/C.1/L.251), co-sponsors Union of Soviet Socialist Republics (Add.1), Byelorussian Soviet Socialist Republic (Add.2), and Congo (Brazzaville) (Add.3).

⁷⁴ Original sponsor Finland, co-sponsor Czechoslovakia (Add.1).

⁷⁵ Original sponsor United States of America, co-sponsor Guyana (Add.1).

382. These amendments, arranged under sub-headings relating to the original text, and proposed new paragraphs, were to the following effect:

(i) *Original text*

(a) *Czechoslovakia and Finland* (A/CONF.39/C.1/L.247 and Add.1):

Delete reference to article 58.

[Adopted, see para. 386(d) below]

(b) *Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela* (A/CONF.39/C.1/L.251 and Add. 1-3):

1. In the opening paragraph of the article, delete the words "to 47 inclusive or articles 57 to 59".

2. Replace them by the words "to 45".

3. Delete sub-paragraph (b).

[Paragraphs 1 and 2 withdrawn, see para. 385 below; paragraph 3 rejected, see para. 386(a) below]

(c) *Guyana* (A/CONF.39/C.1/L.268):

Substitute the word "shall" for "may" in the first sentence.

[Referred to the Drafting Committee, see para. 387 below]

(d) *Spain* (A/CONF.39/C.1/L.272):

1. At the end of the opening sentence replace the words, "if, after becoming aware of the facts" by the words "if, being aware of the ground, and the ground having ceased to exist:"

2. Replace sub-paragraph (b) by the following text:

If its conduct clearly shows that it has renounced the right to invoke the ground for invalidating, terminating, withdrawing from or suspending the operation of the treaty.

[Paragraph 1 withdrawn, see para. 385 below; paragraph 2 rejected, see para. 386(b) below]

(e) *Cambodia* (A/CONF.39/C.1/L.273):

In sub-paragraph (b) replace the words:

It must by reason of its conduct be considered as having acquiesced by the following words:

It shall by reason of its conduct have behaved like a State which has freely acquiesced.

[Withdrawn, see para. 385 below]

(f) *Switzerland* (A/CONF.39/C.1/L.340):

Replace the words "under articles 43 to 47 inclusive" by the words "under articles 43 to 49 inclusive".

[Rejected, see para. 386(c) below]

(ii) *Proposed new paragraph*

(a) *Guyana and United States of America* (A/CONF.39/C.1/L.267 and Add.1):

Number present article as paragraph "1" and add new paragraph "2" as follows:

2. In any case, a State which invokes a ground for invalidating a treaty under articles 43-47 shall be considered to have acquiesced in the validity of the treaty if a period of ten years has elapsed from the date it first exercised rights or obtained the performance of obligations pursuant to the treaty.

[Rejected, see para. 386(f) below]

(b) *Australia* (A/CONF.39/C.1/L.354):

Add a new paragraph number 2 reading as follows:

2. A State wishing to invoke a ground for invalidating a treaty under articles 43-47 shall do so without unreasonable delay and shall be considered as having acquiesced in the validity of the treaty if it is established that a period of 12 months has elapsed from the date upon which it first became aware of the ground of invalidity.

[Rejected, see para. 386(e) below]

C. *Proceedings of the Committee of the Whole*

(i) *MEETINGS*

383. At its 42nd meeting, on 29 April 1968, the Committee of the Whole decided to defer its consideration of article 42. The Committee initially discussed this article, and the amendments thereto, at its 66th and 67th meetings, on 13 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) *INITIAL CONSIDERATION*

384. At the 42nd meeting of the Committee of the Whole, immediately after the decision to defer voting on article 41 and the amendments thereto (see para. 371 above), the motion was put to the vote that discussion on article 42 be opened forthwith, the vote on the article and the amendments thereto to be deferred to a later stage. This motion for immediate discussion was rejected by 15 votes to 7, with 60 abstentions. The Committee took up article 42, and the amendments thereto, at its 66th meeting.

385. At the 67th meeting, that part of the amendment by *Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela* (A/CONF.39/C.1/L.251 and Add.1-3) which related to the opening sentence of article 42 was withdrawn. The amendment by *Cambodia* (A/CONF.39/C.1/L.273), and that part of the amendment by *Spain* (A/CONF.39/C.1/L.272) which related to the opening sentence of the article, were also withdrawn.

386. At the same meeting, the Committee of the Whole voted upon certain of the remaining amendments before it. The results of the voting were as follows:

(a) A roll-call vote was requested on the remaining part of the amendment by *Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela* (A/CONF.39/C.1/L.251 and Add.1-3) to delete sub-paragraph (b) of the article. The results were as follows:

In favour: Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Hungary, India,* Iran, Kenya, Mexico, Mongolia, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela.

* At the 82nd meeting of the Committee of the Whole, on 23 May 1968, the representative of India stated that the vote of his delegation in favour of this amendment was the result of an error and that India had intended to vote against it.

Against: Algeria, Australia, Austria, Belgium, Brazil, Cambodia, Canada, Ceylon, Chile, China, Congo (Democratic Republic of), Denmark, Federal Republic of Germany, Finland, France, Gabon, Ghana, Guyana, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Lebanon, Liechtenstein, Madagascar, Malaysia, Mali, Monaco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, Republic of Viet-Nam, Singapore, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America.

Abstaining: Afghanistan, Argentina, Central African Republic, Cyprus, Czechoslovakia, Dahomey, Ethiopia, Greece, Guinea, Holy See, Indonesia, Iraq, Israel, Liberia, Morocco, Poland, Republic of Korea, Romania, Senegal, Sierra Leone, Syria, Thailand, Trinidad and Tobago, Tunisia, United Arab Republic, Yugoslavia, Zambia.

This amendment was therefore rejected by 47 votes to 20, with 27 abstentions.

(b) The amendment by *Spain* (A/CONF.39/C.1/L.272) to sub-paragraph (b) of the article was rejected by 40 votes to 25, with 25 abstentions.

(c) The amendment by *Switzerland* (A/CONF.39/C.1/L.340) was rejected by 63 votes to 12, with 16 abstentions.

(d) The amendment by *Czechoslovakia* and *Finland* (A/CONF.39/C.1/L.247 and Add.1) was adopted by 42 votes to 13, with 36 abstentions.

(e) The principle contained in the amendment by *Australia* (A/CONF.39/C.1/L.354) was rejected by 44 votes to 23, with 24 abstentions.

(f) The principle contained in the amendment by *Guyana* and *United States of America* (A/CONF.39/C.1/L.267 and Add.1) was rejected by 42 votes to 21, with 26 abstentions.

387. Also at its 67th meeting, the Committee of the Whole decided, without objection, to refer article 42, as amended, to the Drafting Committee, together with the remaining amendment, by *Guyana* (A/CONF.39/C.1/L.268).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

388. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 42 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 391 below).

389. *Australia* submitted an oral amendment to delete the word "inclusive" appearing in the opening phrase of the text of the article recommended by the Drafting Committee. The Committee of the Whole decided, without objection, to refer this oral amendment to the Drafting Committee for consideration at the second session of the Conference, when the Drafting Committee undertook its final review of the draft convention. *

* The word "inclusive" was deleted at the second session.

390. The Committee of the Whole adopted the text of article 42, recommended by the Drafting Committee, without formal vote.⁷⁶

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

391. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 42:

Article 42

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

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

SECTION 2. INVALIDITY OF TREATIES

ARTICLE 43

A. International Law Commission text

392. The International Law Commission text provided as follows:

Article 43.—Provisions of internal law regarding competence to conclude a treaty

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

B. Amendments

393. Amendments were submitted to article 43 by *Australia* (A/CONF.39/C.1/L.271/Rev.1), *Iran* (A/CONF.39/C.1/L.280), *Japan* and *Pakistan* (A/CONF.39/C.1/L.184 and Add.1),⁷⁷ *Peru* and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.228 and Add.1),⁷⁸ *Philippines* (A/CONF.39/C.1/L.239), *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.274) and *Venezuela* (A/CONF.39/C.1/L.252).

394. These amendments were to the following effect:

(a) *Japan* and *Pakistan* (A/CONF.39/C.1/L.184 and Add.1):

Delete the phrase "unless that violation of its internal law was manifest".

[Rejected, see para. 397(a) below]

(b) *Peru* and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.228 and Add.1):

At the end of the article, between the words "was" and "manifest", insert the words "of fundamental importance and".

[Adopted, see para. 397(c) below]

⁷⁶ See para. 13 above.

⁷⁷ Original sponsor Pakistan, co-sponsor Japan (Add.1).

⁷⁸ Original sponsor Peru, co-sponsor Ukrainian Soviet Socialist Republic (Add.1).

(c) *Philippines* (A/CONF.39/C.1/L.239):

Add a second sentence as follows:

In the latter case, the State desiring to invoke such fact must do so without delay.

[Withdrawn, see para. 396 below]

(d) *Venezuela* (A/CONF.39/C.1/L.252):

Replace the present text by the following:

A State may invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent if that violation of its internal law was manifest.

[Withdrawn, see para. 396 below]

(e) *Australia* (A/CONF.39/C.1/L.271/Rev.1):⁷⁹

At the end of article 43, add a second sentence reading as follows:

In the latter case, the State desiring to invoke such fact must do so without delay and at the latest within (twelve) months of its occurrence.

[Rejected, see para. 397(b) below]

(f) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.274):

Add the following sentence at the end of the article:

A violation is manifest if it would be objectively evident to any State dealing with the matter normally and in good faith.

[Adopted, see para. 397(d) below]

(g) *Iran* (A/CONF.39/C.1/L.280):

Word the article as follows:

If consent to be bound by a treaty has been expressed by a person authorized by the Head of State, a State may not invoke the fact that its consent has been expressed in violation of a provision of its internal law.

[Withdrawn, see para. 396 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

395. The Committee of the Whole initially discussed article 43, and the amendments thereto, at its 43rd meeting, on 29 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

396. At the 43rd meeting of the Committee of the Whole, the amendments by *Iran* (A/CONF.39/C.1/L.280), *Philippines* (A/CONF.39/C.1/L.239) and *Venezuela* (A/CONF.39/C.1/L.252) were withdrawn.

397. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(a) The amendment by *Japan* and *Pakistan* (A/CONF.39/C.1/L.184 and Add.1) was rejected by 56 votes to 25, with 7 abstentions.

⁷⁹ In its original form (A/CONF.39/C.1/L.271), this amendment was submitted as a sub-amendment to the amendment by the *Philippines* (A/CONF.39/C.1/L.239), and proposed to add to that amendment the words "and at latest within (twelve) months of its occurrence". After the withdrawal of the amendment by the *Philippines*, *Australia* reintroduced it and incorporated its own sub-amendment into the text.

(b) The amendment by *Australia* (A/CONF.39/C.1/L.271/Rev.1) was rejected by 44 votes to 20, with 27 abstentions.

(c) The amendment by *Peru* and the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.228 and Add.1) was adopted by 45 votes to 15, with 30 abstentions.

(d) The amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.274) was adopted by 41 votes to 13, with 39 abstentions.

398. Also at its 43rd meeting, the Committee of the Whole decided, without objection, to refer article 43, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

399. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 43 adopted by the Drafting Committee (A/CONF.39/C.1/10); for text, see para. 400 below). The Committee of the Whole adopted this text without formal vote.⁸⁰

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

400. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 43:

Article 43

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

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

ARTICLE 44

A. International Law Commission text

401. The International Law Commission text provided as follows:

Article 44.—Specific restrictions on authority to express the consent of the State

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

B. Amendments

402. Amendments were submitted to article 44 by *Japan* (A/CONF.39/C.1/L.269), *Mexico* (A/CONF.39/C.1/L.265), *Spain* (A/CONF.39/C.1/L.288) and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.287).

403. These amendments were to the following effect:

(a) *Mexico* (A/CONF.39/C.1/L.265):

⁸⁰ See para. 13 above.

Amend the last part of the article to read as follows:
... unless the restriction was brought to the knowledge of the other negotiating States or of the depositary prior to his expressing such consent.

[Adopted, as orally amended, see paras. 405 and 406(a) below]

(b) *Japan* (A/CONF.39/C.1/L.269):

Replace the words "brought to the knowledge of" by the words "expressly notified to".

[Adopted in principle: see para. 406(b) below]

(c) *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.287):

It is proposed that, without change in the substance of the article, it should be redrafted for greater clarity as follows:

If the authority of a representative to express the consent of his State to be bound by a particular treaty is restricted by instructions from his Government, his omission to observe that restriction may not be invoked as invalidating a consent expressed by him unless the restriction was brought to the knowledge of the other negotiating States prior to his expressing such consent.

[Rejected, see para. 406(c) below]

(d) *Spain* (A/CONF.39/C.1/L.288):

Replace the text of the draft article by the following:

The omission by a representative expressing the consent of his State to be bound by a treaty to observe a specific restriction imposed by his State on the authority granted to him for that purpose may not be invoked as invalidating the consent unless the restriction was notified to the other negotiating States prior to his expressing such consent.

[Reference to "notified" adopted, see para. 406(b) below; remainder referred to the Drafting Committee, see para. 407 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

404. The Committee of the Whole initially discussed article 44, and the amendments thereto, at its 44th meeting, on 30 April 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

405. At the 44th meeting of the Committee of the Whole, *Mexico* accepted an oral sub-amendment, by *Israel*, to add the words "of the treaty" after the words "or of the depositary" in its amendment (A/CONF.39/C.1/L.265).

406. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it, including the proposal in the amendments by *Japan* (A/CONF.39/C.1/L.269) and *Spain* (A/CONF.39/C.1/L.288) that a restriction on the authority of a representative to express the consent of his State to be bound by a particular treaty should be "expressly notified" or "notified" to other negotiating States. The results of the voting were as follows:

(a) The amendment by *Mexico* (A/CONF.39/C.1/L.265), as orally amended, was adopted by 53 votes to 3, with 35 abstentions.

(b) The proposal regarding "express notification" or "notification" of a restriction on the authority of a representative, included in the amendments by *Japan* (A/CONF.39/C.1/L.269) and *Spain* (A/CONF.39/C.1/L.288), was in principle adopted, by 30 votes to 23, with 35 abstentions.

(c) The amendment by the *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.287) was rejected by 46 votes to 16, with 30 abstentions.

407. Also at its 44th meeting, the Committee of the Whole decided, without objection, to refer article 44, as amended, to the Drafting Committee, together with that part of the amendment by *Spain* (A/CONF.39/C.1/L.288) not already voted upon. The Drafting Committee was requested to incorporate into the text, in a suitable manner, the amendment by *Japan* (A/CONF.39/C.1/L.269) and that part of the amendment by *Spain* (A/CONF.39/C.1/L.288) adopted in principle.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

408. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 44 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 409 below). The Committee of the Whole adopted this text without formal vote.⁸¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

409. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 44:

Article 44

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

ARTICLE 45

A. International Law Commission text

410. The International Law Commission text provided as follows:

Article 45.—Error

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

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

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

⁸¹ *Ibid.*

B. Amendments

411. Amendments were submitted to article 45 by Australia (A/CONF.39/C.1/L.281) and the United States of America (A/CONF.39/C.1/L.275).

412. These amendments were to the following effect:

(a) *United States of America* (A/CONF.39/C.1/L.275):

Amend article 45 to read as follows (deletions are in brackets and additions are italicised):

1. A State may invoke an error [in a treaty] as invalidating its consent to be bound by [the] *a* treaty if:

(a) The error relates to a fact or situation which was assumed by that State to exist at the time [when] the treaty was concluded and formed an essential basis of its consent to be bound by the treaty [; and

(b) *The assumed fact or situation was of material importance to its consent to be bound or the performance of the treaty.*

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

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

[Deletion of words "in a treaty", in paragraph 1 of the amendment, withdrawn, see para. 414 below; remainder rejected, see paras. 415(a), (b) and (c) below]

(b) *Australia* (A/CONF.39/C.1/L.281):

(i) Add a new paragraph immediately after existing paragraph 1 as follows:

2. The State in question must initiate the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the error.

(ii) Renumber existing paragraphs 2 and 3 as 3 and 4 respectively.

[Rejected, see para. 415(d) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

413. The Committee of the Whole initially discussed article 45, and the amendments thereto, at its 44th and 45th meetings, on 30 April 1968. At its 78th meeting, on 20 May 1968, it considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

414. At the 45th meeting of the Committee of the Whole, that part of the amendment by the *United States of America* (A/CONF.39/C.1/L.275) to paragraph 1 of article 45 which called for the deletion of the words "in a treaty" was withdrawn.

415. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) A separate vote was requested upon the words "or the performance of the treaty" in paragraph 1(b) of the amendment by the *United States of America* (A/CONF.39/C.1/L.275). These words were rejected by 45 votes to 12, with 30 abstentions.

(b) The remainder of the amendment by the *United States of America* (A/CONF.39/C.1/L.275) to paragraph 1 was rejected by 38 votes to 20, with 31 abstentions.

(c) The amendment by the *United States of America* (A/CONF.39/C.1/L.275) to paragraph 2 was rejected by 45 votes to 25, with 20 abstentions.

(d) The amendment by *Australia* (A/CONF.39/C.1/L.281) to add a new paragraph 2 was rejected by 40 votes to 23, with 27 abstentions.

(e) A separate vote was requested on the words "or if the circumstances were such as to put that State on notice of a possible error" in paragraph 2 of the International Law Commission's text. This was put to the vote in the form of an amendment to delete the words concerned. This amendment was rejected by 69 votes to 8, with 7 abstentions.

416. Also at its 45th meeting, the Committee of the Whole decided, without objection, to refer article 45 to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

417. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 45 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 418 below). The Committee of the Whole adopted this text without formal vote.⁸²

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

418. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 45:

Article 45

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

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

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

ARTICLE 46

419. At its 45th meeting, on 30 April 1968, the Committee of the Whole decided, without objection, to discuss articles 46 and 47 together. However, as none of the amendments to those two articles sought to combine them into a single text, the articles are dealt with separately in this report.

A. International Law Commission text

420. The International Law Commission text provided as follows:

⁸² *Ibid.*

Article 46.—Fraud

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

B. Amendments

421. Amendments were submitted to article 46 by Australia (A/CONF.39/C.1/L.282), Chile and Malaysia (A/CONF.39/C.1/L.263 and Add.1),⁸³ Congo (Brazzaville) and Venezuela (A/CONF.39/C.1/L.259 and Add.1),⁸⁴ the Republic of Viet-Nam (A/CONF.39/C.1/L.234/Rev.1) and the United States of America (A/CONF.39/C.1/L.276).

422. These amendments were to the following effect:

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.234/Rev.1)⁸⁵

Word the article as follows:

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

[Rejected, see para. 425(e) below]

(b) *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.259 and Add.1):

Replace the present text of the article by the following:

A treaty is void if its conclusion has been procured by the deliberately fraudulent conduct of a negotiating State.

[Rejected, see para. 425(b) below]

(c) *Chile and Malaysia* (A/CONF.39/C.1/L.263 and Add.1):

Delete the article.

[Rejected, see para. 425(a) below]

(d) *United States of America* (A/CONF.39/C.1/L.276):

Amend article 46 to read as follows (deletions are bracketed and additions are italicised):

A State which has [been induced to] conclude a treaty *in reasonable reliance upon* [by] the fraudulent conduct of another negotiating State *concerning a fact or situation of material importance to its consent to be bound or to the performance of the treaty* may invoke the fraud as invalidating its consent to be bound by the treaty.

[Words "or to the performance of the treaty" withdrawn, see para. 424 below; remainder rejected, see para. 425(c) below]

(e) *Australia* (A/CONF.39/C.1/L.282):

Add the following words at the end of the article: provided that it initiates the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the fraud.

[Rejected, see para. 425(d) below]

C. Proceedings of the Committee of the Whole**(i) MEETINGS**

423. The Committee of the Whole initially discussed article 46, together with article 47, and the amendments

⁸³ Original sponsor Chile, co-sponsor Malaysia (Add.1).

⁸⁴ Original sponsor Venezuela, co-sponsor Congo (Brazzaville) (Add.1).

⁸⁵ In the original form of this amendment (A/CONF.39/C.1/L.234) the words "which has become a party to the treaty" appeared after the words "negotiating State."

thereto, at its 45th, 46th and 47th meetings, on 30 April and 2 May 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

424. At the 47th meeting of the Committee of the Whole, the words "or to the performance of the treaty" in the amendment by the *United States of America* (A/CONF.39/C.1/L.276) were withdrawn.

425. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) The amendment by *Chile and Malaysia* (A/CONF.39/C.1/L.263 and Add.1) was rejected by 74 votes to 8, with 8 abstentions.

(b) The amendment by *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.259 and Add.1) was rejected by 51 votes to 22, with 16 abstentions.

(c) The remaining part of the amendment by the *United States of America* (A/CONF.39/C.1/L.276) was rejected by 46 votes to 18, with 27 abstentions.

(d) The amendment by *Australia* (A/CONF.39/C.1/L.282) was rejected by 43 votes to 18, with 32 abstentions.

(e) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.234/Rev.1) was rejected by 52 votes to 1, with 32 abstentions.

426. Also at its 47th meeting, the Committee of the Whole decided, without objection, to refer article 46 to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

427. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 46 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 428 below). The Committee of the Whole adopted this text without formal vote.⁸⁶

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

428. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 46:

Article 46

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

ARTICLE 47

429. At its 45th meeting, on 30 April 1968, the Committee of the Whole decided, without objection, to discuss articles 46 and 47 together. However, as none of the amendments to these two articles sought to combine them into a single text, the articles are dealt with separately in this report.

⁸⁶ See para. 13 above.

A. International Law Commission text

430. The International Law Commission text provided as follows:

Article 47.—Corruption of a representative of the State

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

B. Amendments

431. Amendments were submitted to article 47 by Australia (A/CONF.39/C.1/L.283), Chile, Japan and Mexico (A/CONF.39/C.1/L.264 and Add.1),⁸⁷ Congo (Brazzaville) and Venezuela (A/CONF.39/C.1/L.261 and Add.1)⁸⁸ and Peru (A/CONF.39/C.1/L.229).

432. These amendments were to the following effect:

(a) *Peru* (A/CONF.39/C.1/L.229):

Add the following as paragraph 2 of the article:

2. This ground for invalidation may not be invoked if the treaty has been subsequently ratified by the State concerned.

[Rejected, see para. 434(c) below]

(b) *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.261 and Add.1):

Replace the present text of the article by the following:

A treaty is void if its conclusion has been procured through the corruption of the representative of a negotiating State effected directly or indirectly by another negotiating State.

[Rejected, see para. 434(b) below]

(c) *Chile, Japan and Mexico* (A/CONF.39/C.1/L.264): and Add.1):

Delete the article.

[Rejected, see para. 434(a) below]

(d) *Australia* (A/CONF.39/C.1/L.283):

Add the following words at the end of the article:

provided that it initiates the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the corruption.

[Rejected, see para. 434(d) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

433. The Committee of the Whole initially discussed article 47, together with article 46, and the amendments thereto, at its 45th, 46th and 47th meetings, on 30 April and 2 May 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

434. At its 47th meeting, the Committee of the Whole voted upon the amendments before it. The voting was as follows:

⁸⁷ Original sponsors Chile and Mexico, co-sponsor Japan (Add.1).

⁸⁸ Original sponsor Venezuela, co-sponsor Congo (Brazzaville) (Add.1).

(a) A roll-call vote was taken on the amendment by *Chile, Japan and Mexico* (A/CONF.39/C.1/L.264 and Add.1), with the following results:

In favour: Argentina, Australia, Austria, Belgium, Canada, Chile, Denmark, Federal Republic of Germany, France, Guyana, Italy, Japan, Lebanon, Liberia, Liechtenstein, Mexico, Monaco, New Zealand, Norway, Peru, Portugal, Republic of Korea, San Marino, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Against: Afghanistan, Algeria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, China, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Ecuador, Ethiopia, Ghana, Guatemala, Guinea, Holy See, Hungary, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jamaica, Kenya, Kuwait, Madagascar, Mali, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Philippines, Poland, Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, South Africa, Spain, Syria, Thailand, Trinidad and Tobago, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Finland, Gabon, Honduras, Turkey.

The amendment by *Chile, Japan and Mexico* (A/CONF.39/C.1/L.264 and Add.1) was therefore rejected by 61 votes to 28, with 4 abstentions.

(b) The amendment by *Congo (Brazzaville)* and *Venezuela* (A/CONF.39/C.1/L.261 and Add.1) was rejected by 54 votes to 23, with 16 abstentions.

(c) The amendment by *Peru* (A/CONF.39/C.1/L.229) was rejected by 54 votes to 10, with 27 abstentions.

(d) The amendment by *Australia* (A/CONF.39/C.1/L.283) was rejected by 41 votes to 20, with 31 abstentions.

435. Also at its 47th meeting, the Committee of the Whole decided, without objection, to refer article 47 to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

436. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 47 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 437 below). The Committee of the Whole adopted this text without formal vote.⁸⁹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

437. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 47:

Article 47

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

⁸⁹ See para. 13 above.

ARTICLE 48

A. International Law Commission text

438. The International Law Commission text provided as follows:

Article 48.—Coercion of a representative of the State

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

B. Amendments

439. Amendments were submitted to article 48 by Australia (A/CONF.39/C.1/L.284), France (A/CONF.39/C.1/L.300) and United States of America (A/CONF.39/C.1/L.277).

440. These amendments were to the following effect:

(a) *United States of America* (A/CONF.39/C.1/L.277):

1. Amend the title of the article to read as follows:
Coercion of a Representative of a State.

2. Amend the article to read as follows (deletions are bracketed and additions are italicised):

If the expression of a State's consent to be bound by a treaty [which] has been procured by the coercion of its representative through acts or threats directed against him personally [shall be without any legal effect] by another negotiating State, the consenting State may invoke such coercion as a ground for invalidating its consent to be bound by the treaty.

[Paragraph 1 referred to the Drafting Committee, see para. 444 below, paragraph 2 rejected, see para. 443(b) below]

(b) *Australia* (A/CONF.39/C.1/L.284):

Redraft the article as follows:

If the expression of a State's consent to be bound by a treaty has been procured by the coercion of its representative through acts or threats directed against him personally, the State may invoke such coercion as invalidating its consent to be bound by the treaty provided that it initiates the procedure for claiming invalidity without delay and at the latest within (twelve) months after it discovers the coercion.

[Words "and at the latest within (twelve) months" withdrawn, see para. 442 below; remainder, with the oral amendments referred to in para. 442 below, rejected, see para. 443(a) below]

(c) *France* (A/CONF.39/C.1/L.300):

Replace the text of the article by the following wording:

If the expression of a State's consent to be bound by a treaty has been procured by the coercion of its representative through acts or threats directed against him personally, the State may invoke such coercion as invalidating its consent to be bound by the treaty.

[Rejected, see para. 443(c) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

441. The Committee of the Whole initially discussed article 48, and the amendments thereto, at its 47th and 48th meetings, on 2 May 1968. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

442. At the 47th meeting of the Committee of the Whole, the words "and at the latest within (twelve) months" in the amendment by *Australia* (A/CONF.39/C.1/L.284) were withdrawn. The amendment was further orally revised by its sponsor by inserting the word "unreasonable" between the words "without" and "delay".

443. At its 48th meeting, the Committee of the Whole voted upon certain of the amendments before it. The results of the voting were as follows:

(a) The amendment by *Australia* (A/CONF.39/C.1/L.284), as orally revised, was rejected by 56 votes to 17, with 13 abstentions.

(b) Paragraph 2 of the amendment by the *United States of America* (A/CONF.39/C.1/L.277) was rejected by 44 votes to 26, with 18 abstentions.

(c) The amendment by *France* (A/CONF.39/C.1/L.300) was rejected by 42 votes to 33, with 10 abstentions.

444. Also at its 48th meeting, the Committee of the Whole decided, without objection, to refer article 48 to the Drafting Committee, together with paragraph 1 of the amendment by United States of America (A/CONF.39/C.1/L.277).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

445. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 48 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 446 below). The Committee of the Whole adopted this text without formal vote.⁹⁰

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

446. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 48:

Article 48

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

ARTICLE 49

A. International Law Commission text

447. The International Law Commission text provided as follows:

Article 49.—Coercion of a State by the threat or use of force

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

B. Amendments and draft declaration

(i) AMENDMENTS

448. Amendments were submitted to article 49 by Afghanistan, Algeria, Bolivia, Congo (Brazzaville),

⁹⁰ *Ibid.*

Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (A/CONF.39/C.1/L.67/Rev.1/Corr.1),⁹¹ Australia (A/CONF.39/C.1/L.296), Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.289 and Add.1),⁹² China (A/CONF.39/C.1/L.301), Japan and Republic of Viet-Nam (A/CONF.39/C.1/L.298 and Add.1)⁹³ and Peru (A/CONF.39/C.1/L.230).

449. These amendments were to the following effect:

(a) *Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia* (A/CONF.39/C.1/L.67/Rev.1/Corr.1):

Amend article 49 to read as follows:

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

[Not pressed to a vote, see para. 454 below]

(b) *Peru* (A/CONF.39/C.1/L.230):

Amend the article to read as follows:

A treaty is void if it is established that its conclusion was procured by the threat or use of force in violation of the relevant norms of the Charter of the United Nations.

[Rejected, see para. 455(e) below]

(c) *Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.289 and Add.1):

Amend article 49 to read:

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

[Adopted, see para. 455(d) below]

(d) *Australia* (A/CONF.39/C.1/L.296):

Replace the word "void" by the word "invalid".

[Withdrawn, see para. 454 below]

(e) *Japan and the Republic of Viet-Nam* (A/CONF.39/C.1/L.298 and Add.1):

Add the following at the end of the article, replacing the full stop by a comma:

provided that such threat or use of force had been duly reported to a competent organ of the United Nations and that it had failed to take necessary actions in order to remove or prevent such threat or use of force.

[Rejected, see para. 455(c) below]

⁹¹ Original sponsor Afghanistan (A/CONF.39/C.1/L.67), co-sponsors Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia (Rev.1/Corr.1).

⁹² Original sponsors Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico and Ukrainian Soviet Socialist Republic, co-sponsor Spain (Add.1).

⁹³ Original sponsor Japan, co-sponsor Republic of Viet-Nam (Add.1).

(f) *China* (A/CONF.39/C.1/L.301):

1. Add the words "*ab initio*" after the word "void".

2. Add a new paragraph reading:

When a State is aware that it is under coercion, it should suspend the negotiation for the conclusion of the treaty and take the first opportunity to bring the case to the attention of the Security Council or the General Assembly of the United Nations, or any other competent organ of an international organization with a view to an early settlement of the case.

[Rejected, see paras. 455(a) and (b) below]

(ii) DRAFT DECLARATION

450. After the foregoing amendments had been discussed by the Committee of the Whole, a *Draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in Concluding a Treaty* was submitted by the Netherlands (A/CONF.39/C.1/L.323). The text of this draft declaration, which was adopted without change (see para. 453 below), is contained in paragraph 459 below.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

451. The Committee of the Whole initially discussed article 49, and the amendments thereto, at its 48th to 51st meetings inclusive, on 2 and 3 May 1968, and at its 57th meeting, on 7 May 1968. The draft declaration was introduced at the last of these meetings. At its 78th meeting, on 20 May 1968, the Committee considered the report of the Drafting Committee on article 49.

(ii) INITIAL CONSIDERATION

452. At the 51st meeting of the Committee of the Whole, the Netherlands orally proposed that the decision on article 49, and the amendments thereto, should be deferred on the understanding that informal consultations would take place with a view to formulating a draft declaration to be voted upon at the same time as the article. This proposal was adopted without objection.

453. The draft declaration by the Netherlands (A/CONF.39/C.1/L.323) was introduced at the 57th meeting of the Committee of the Whole, and was adopted without formal vote.⁹⁴

454. At the same meeting, it was announced that the amendment by *Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecuador, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia* (A/CONF.39/C.1/L.67/Rev.1/Corr.1) would not be pressed to a vote. The amendment by *Australia* (A/CONF.39/C.1/L.296) was withdrawn.

455. Also at its 57th meeting, the Committee of the Whole voted upon the remaining amendments before it. The voting was as follows:

(a) The first part of the amendment by *China* (A/CONF.39/C.1/L.301) to add the words "*ab initio*" after

⁹⁴ See para. 13 above.

the word "void" was rejected by 36 votes to 8, with 28 abstentions.

(b) The second part of the amendment by *China* (A/CONF.39/C.1/L.301) to add a new paragraph was rejected by 44 votes to 2, with 29 abstentions.

(c) The amendment by *Japan* and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.298 and Add.1) was rejected by 55 votes to 2, with 27 abstentions.

(d) A roll-call vote was requested upon the amendment by *Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain* and *Ukrainian Soviet Socialist Republic* (A/CONF.39/C.1/L.289 and Add.1), with the following results:

In favour: Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Colombia, Congo (Brazzaville), Congo (Democratic Republic of), Costa Rica, Cuba, Cyprus, Czechoslovakia, Ecuador, Ethiopia, Finland, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, India, Indonesia, Iraq, Israel, Kenya, Kuwait, Malaysia, Mali, Mexico, Mongolia, Morocco, Nigeria, Poland, Romania, Sierra Leone, Singapore, South Africa, Spain, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Australia, Chile, China, Japan, New Zealand, Peru, Portugal, Republic of Korea, Republic of Viet-Nam, United Kingdom of Great Britain and Northern Ireland.

Abstentions: Argentina, Austria, Belgium, Brazil, Canada, Central African Republic, Dahomey, Denmark, Federal Republic of Germany, France, Gabon, Holy See, Iran, Italy, Ivory Coast, Jamaica, Lebanon, Liberia, Liechtenstein, Monaco, Netherlands, Norway, Pakistan, Philippines, San Marino, Saudi Arabia, Senegal, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, United States of America.

This amendment was therefore adopted by 49 votes to 10, with 33 abstentions.

(e) The amendment by *Peru* (A/CONF.39/C.1/L.230) was rejected by 36 votes to 11, with 40 abstentions.

456. Finally, at its 57th meeting, the Committee of the Whole decided, without objection, to refer article 49, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

457. At the 78th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 49 adopted by the Drafting Committee (A/CONF.39/C.1/10; for text, see para. 458 below). The Committee of the Whole adopted this text without formal vote.⁹⁵

⁹⁵ *Ibid.*

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

(a) Text of article 49

458. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 49:

Article 49

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

(b) Draft resolution

459. The Committee of the Whole also recommends to the Conference for adoption the following draft declaration:

Draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in Concluding a Treaty

The United Nations Conference on the Law of Treaties, Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith, Reaffirming the principle of sovereign equality of States, Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty, Mindful of the fact that in the past instances have occurred where States have been forced to conclude treaties under pressures in various forms exercised by other States,

Deprecating the same,

Expressing its concern at the exercise of such pressure and anxious to ensure that no such pressures in any form are exercised by any State whatever in the matter of conclusion of treaties,

1. Solemnly condemns the threat or use of pressure in any form, military, political, or economic, by any State, in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of sovereign equality of States and freedom of consent;

2. Decides that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties.

ARTICLE 50

A. International Law Commission text

460. The International Law Commission text provided as follows:

Article 50.—Treaties conflicting with a peremptory norm of general international law (jus cogens)

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

B. Amendments

461. Amendments were submitted to article 50 by Finland (A/CONF.39/C.1/L.293), Finland, Greece and Spain (A/CONF.39/C.1/L.306 and Add.1 and 2),⁹⁶ India (A/CONF.39/C.1/L.254), Mexico (A/CONF.39/C.1/L.266), Romania and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.258/Corr.1) and United States of America (A/CONF.39/C.1/L.302). The United Kingdom

⁹⁶ Original sponsor Greece, co-sponsors Finland (Add.1) and Spain (Add.2).

of Great Britain and Northern Ireland submitted a sub-amendment (A/CONF.39/C.1/L.312) to the amendment by the United States of America (A/CONF.39/C.1/L.302).

462. These amendments and the sub-amendment, arranged under sub-headings relating to the original text, and proposed new sub-paragraphs, were to the following effect:

(i) *Original text*

(a) *Romania and Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.258/Corr.1):

Insert the words “*that is with a norm*” and amend the text to read as follows:

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

[Referred to the Drafting Committee, see para. 466 below]

(b) *United States of America* (A/CONF.39/C.1/L.302):

Replace the text of the present article by the following:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory rule of general international law which is recognized in common by the national and regional legal systems of the world and from which no derogation is permitted.

[Words “at the time of its conclusion” adopted, see para. 465(d) below; replacement of “peremptory norm” by “peremptory rule” referred to the Drafting Committee, see para. 466 below; words “which is recognized in common by the national and regional legal systems of the world” rejected, see para. 465(e) below]

(c) *Finland, Greece and Spain* (A/CONF.39/C.1/L.306 and Add.1 and 2):

Between the words “general international law” and “from which no derogation”, insert the words “recognized by the international community as a norm”.

[Referred to the Drafting Committee, see para. 466 below]

(ii) *Proposed new paragraphs*

(a) *India* (A/CONF.39/C.1/L.254):

Make the present text of article 50 as paragraph 1 and add the following as paragraph 2:

If a new peremptory norm of general international law is established, any existing treaty which is in conflict with that norm becomes void.

[Withdrawn, see para. 464 below]

(b) *Mexico* (A/CONF.39/C.1/L.266):

Add a second paragraph reading as follows:

The present article shall not have retroactive effect.

[Withdrawn, see para. 464 below]

(c) *Finland* (A/CONF.39/C.1/L.293):

Add a *new paragraph 2* which would read:

Under the conditions specified in article 41 if only certain clauses of the treaty are in conflict with the peremptory norm of general international law, these clauses only shall be void.

[Withdrawn, see para. 464 below]

(d) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.312), sub-amendment to the

amendment by the *United States of America* (A/CONF.39/C.1/L.302):

Add an additional paragraph as follows:

Except so far as such peremptory rules are set forth in this Part of the present Convention, they shall be defined from time to time in protocols to the Convention.

[Withdrawn, see para. 464 below]

C. **Proceedings of the Committee of the Whole**

(i) **MEETINGS**

463. The Committee of the Whole initially discussed article 50, and the amendments thereto, at its 52nd to 57th meetings inclusive, between 4 and 7 May 1968. At its 80th meeting, on 21 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) **INITIAL CONSIDERATION**

464. At the 52nd meeting of the Committee of the Whole, the amendment by *India* (A/CONF.39/C.1/L.254) was withdrawn. At the 56th meeting, the amendments by *Mexico* (A/CONF.39/C.1/L.266) and *Finland* (A/CONF.39/C.1/L.293) were also withdrawn. The sub-amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.312) to the amendment by *United States of America* (A/CONF.39/C.1/L.302) was withdrawn at the 57th meeting of the Committee.

465. At the 57th meeting of the Committee of the Whole, a motion was made by the *United States of America* to the effect that the Committee should defer voting on article 50 and all amendments thereto, and that the article and the three remaining amendments should be referred to the Drafting Committee. The Committee then proceeded to vote upon certain procedural motions and, as a result, upon part of the amendment by the *United States of America* (A/CONF.39/C.1/L.302). The voting was as follows:

(a) A motion by *Italy* to suspend the meeting for thirty minutes was rejected by 49 votes to 24, with 16 abstentions.

(b) A motion by *Czechoslovakia* for division of voting on the motion by the *United States of America* was objected to by *United Kingdom of Great Britain and Northern Ireland*. The motion for division was adopted by 45 votes to 28, with 15 abstentions.

(c) A roll-call vote was requested on the first part of the motion by the *United States of America* for deferring the voting on article 50 and all amendments thereto. The results were as follows:

In favour: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Costa Rica, Denmark, Federal Republic of Germany, Finland, France, Gabon, Greece, Guatemala, Holy See, Honduras, Israel, Italy, Japan, Lebanon, Liberia, Liechtenstein, Malaysia, Mexico, Monaco, Netherlands, New Zealand, Nigeria, Norway, Peru, Portugal, Republic of Korea, Republic of Viet-Nam, Senegal, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Afghanistan, Algeria, Bolivia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Congo

(Brazzaville), Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Dahomey, Ecuador, Ethiopia, Ghana, Guinea, Hungary, India, Indonesia, Iraq, Ivory Coast, Jamaica, Kenya, Kuwait, Mali, Mongolia, Morocco, Pakistan, Philippines, Poland, Romania, Sierra Leone, Spain, Syria, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, Venezuela, Yugoslavia, Zambia.

Abstentions: Central African Republic, Iran, Saudi Arabia, Singapore, Thailand, Tunisia, Uruguay.

The first part of the motion by the *United States of America* was therefore rejected, 42 votes being cast in favour and 42 against, with 7 abstentions.

(d) That part of the amendment by the *United States of America* (A/CONF.39/C.1/L.302) which proposed the inclusion of the words "at the time of its conclusion" was adopted by 43 votes to 27, with 12 abstentions.

(e) That part of the amendment by the *United States of America* (A/CONF.39/C.1/L.302) which proposed the inclusion of the words "which is recognized in common by the national and regional systems of the world" was rejected by 57 votes to 24, with 7 abstentions.

(f) A motion by *Uruguay* to refer article 50, as amended, to the Drafting Committee, together with the remaining amendments, was adopted by 66 votes to 2, with 8 abstentions.

466. On the basis of the foregoing, it was decided, at the 57th meeting of the Committee of the Whole, to refer article 50, as amended, to the Drafting Committee, together with the remaining amendments by *Finland, Greece and Spain* (A/CONF.39/C.1/L.306 and Add.1 and 2), *Romania* and *Union of Soviet Socialist Republics* (A/CONF.39/C.1/L.258/Corr.1) and *United States of America* (replacement of word "norm" by "rule") (A/CONF.39/C.1/L.302). The Chairman said it was understood that the article, as amended, and the amendments just mentioned, had been referred to the Drafting Committee for consideration of the drafting, without modification of the substance, and that the principle of *jus cogens* embodied in the article had been adopted.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

467. At the 80th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 50 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 470 below).

468. A separate vote was requested on the words "as a whole" appearing in the text recommended by the Drafting Committee. These words were adopted by 57 votes to 3, with 27 abstentions.

469. A roll-call vote was requested on the text of the article as a whole. The results of the voting were as follows:

In favour: Algeria, Argentina, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, China, Congo (Brazzaville), Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Domini-

can Republic, Ecuador, Ethiopia, Finland, Ghana, Greece, Guatemala, Guinea, Guyana, Holy See, Honduras, Hungary, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Jamaica, Kenya, Kuwait, Lebanon, Liechtenstein, Madagascar, Malaysia, Mali, Mexico, Mongolia, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Sierra Leone, Singapore, Spain, Sweden, Syria, Thailand, Trinidad and Tobago, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Monaco, Switzerland, Turkey.

Abstentions: Australia, Austria, Belgium, Canada, Chile, Denmark, Federal Republic of Germany, France, Gabon, Ireland, Italy, Japan, Liberia, New Zealand, Norway, Senegal, South Africa, United Kingdom of Great Britain and Northern Ireland.

The text of the article was therefore adopted by 72 votes to 3, with 18 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

470. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 50:

Article 50

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

ARTICLE 51

A. International Law Commission text

471. The International Law Commission text provided as follows:

Article 51.—Termination of or withdrawal from a treaty by consent of the parties

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

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

(b) At any time by consent of all the parties.

B. Amendments

472. Amendments were submitted to article 51 by Greece (A/CONF.39/C.1/L.314 and Rev.1), the Netherlands (A/CONF.39/C.1/L.313), Peru (A/CONF.39/C.1/L.231) and the Republic of Viet-Nam (A/CONF.39/C.1/L.222/Rev.1).

473. These amendments were to the following effect:

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.222/Rev.1):⁹⁷

Amend the title and text of article 51 to read as follows:

Termination of a treaty or withdrawal of the parties

1. A treaty may be terminated when it provides for that possibility or, at any time, by consent of all the parties.

2. A party may withdraw from a treaty under the same conditions.

[Referred to the Drafting Committee, see para. 475 below]

(b) *Peru* (A/CONF.39/C.1/L.231):

Amend sub-paragraph (a) of article 51 to read as follows:

In the manner and under the conditions laid down in the treaty itself;

[Referred to the Drafting Committee, see para. 475 below]

(c) *Netherlands* (A/CONF.39/C.1/L.313):

Amend paragraph (b) to read:

at any time by consent of all the contracting States.

[Referred to the Drafting Committee, see para. 475 below]

(d) *Greece* (A/CONF.39/C.1/L.314 and Rev.1):⁹⁸

1. Word article 51 as follows:

Subject to the provisions of article 53, a treaty terminates or a party may terminate or withdraw from a treaty:

(a) in conformity with the provisions of the treaty; or

(b) at any time by consent of all the parties.

2. Amend the title of the article to read:

Termination of or withdrawal from a treaty by a party in virtue of the provisions of the treaty or by consent of the parties.

[Referred to the Drafting Committee, see para. 475 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

474. The Committee of the Whole initially discussed article 51, and the amendments thereto, at its 58th meeting, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

475. At its 58th meeting, the Committee of the Whole decided, without objection, to refer article 51 to the Drafting Committee, together with the amendments submitted by *Greece* (A/CONF.39/C.1/L.314 and Rev.1), the *Netherlands* (A/CONF.39/C.1/L.313), *Peru* (A/CONF.39/C.1/L.231) and the *Republic of Viet-Nam* (A/CONF.39/C.1/L.222/Rev.1).

⁹⁷ In the original form of this amendment (A/CONF.39/C.1/L.222), paragraph 1 provided: "A treaty may be terminated when it so provides or, at any time, by consent of all the parties."

⁹⁸ In the original form of this amendment (A/CONF.39/C.1/L.314) the word "all" in paragraph 1(b) was omitted.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

476. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 51 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 477 below). The Committee of the Whole adopted this text without formal vote.⁹⁹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

477. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 51:

Article 51

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

(a) in conformity with the provisions of the treaty allowing such termination or withdrawal; or

(b) at any time by consent of all the parties after consultation with the other contracting States.

ARTICLE 52

A. International Law Commission text

478. The International Law Commission text provided as follows:

Article 52.—Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

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

B. Amendments

479. An amendment was submitted to article 52 by the United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.310).

480. This amendment was to the following effect:

Delete the words "specified in the treaty as".

[Referred to the Drafting Committee, see para. 482 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

481. The Committee of the Whole initially discussed article 52, and the amendment thereto, at its 58th meeting, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

482. At its 58th meeting, the Committee of the Whole decided, without objection, to refer article 52 to the Drafting Committee, together with the amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.310).

⁹⁹ See para. 13 above.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

483. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 52 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 484 below). The Committee of the Whole adopted this text without formal vote.¹⁰⁰

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

484. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 52:

Article 52

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

ARTICLE 53**A. International Law Commission text**

485. The International Law Commission text provided as follows:

Article 53.—Denunciation of a treaty containing no provision regarding termination

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

B. Amendments

486. Amendments were submitted to article 53 by Colombia, Spain and Venezuela (A/CONF.39/C.1/L.307 and Add.1 and 2),¹⁰¹ Cuba (A/CONF.39/C.1/L.160), Greece (A/CONF.39/C.1/L.315), Peru (A/CONF.39/C.1/L.303) and United Kingdom of Great Britain and Northern Ireland (A/CONF.39/C.1/L.311).

487. These amendments, all of which related to paragraph 1 of the article, were to the following effect:

(a) *Cuba* (A/CONF.39/C.1/L.160):

Redraft to read as follows:

A treaty which contains no provision regarding termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless the nature of the treaty, the circumstances of its conclusion or a statement by the parties admit the possibility of denunciation or withdrawal.

[Rejected, see para. 490(b) below]

(b) *Peru* (A/CONF.39/C.1/L.303):

After the word "unless" delete the words "it is established" and substitute the words "the nature of the treaty so permits and it is established beyond doubt".

[Rejected, see para. 490(d) below]

(c) *Colombia, Spain and Venezuela* (A/CONF.39/C.1/L.307 and Add.1 and 2):

For paragraph 1 of the article substitute the following:

When a treaty contains no provision regarding termination, denunciation or withdrawal, any party may denounce it or withdraw from it unless the intention of the parties to exclude the possibility of denunciation or withdrawal appears from the nature of the treaty and the circumstances of its conclusion.

[Rejected, see para. 490(a) below]

(d) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.311):

Insert at the end of paragraph 1 the words:

or unless the character of the treaty is such that a right of denunciation or withdrawal may be implied.

[Adopted, see para. 490(c) below]

(e) *Greece* (A/CONF.39/C.1/L.315):

Between the words "it is established" and the words "that the parties intended", insert the words "*in the light of all the circumstances of the case*".

[Withdrawn, see para. 489 below]

C. Proceedings of the Committee of the Whole**(i) MEETINGS**

488. The Committee of the Whole initially discussed article 53, and the amendments thereto, at its 58th and 59th meetings, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

489. At the 59th meeting of the Committee of the Whole, the amendment by *Greece* (A/CONF.39/C.1/L.315) was withdrawn.

490. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(a) The amendment by *Colombia, Spain and Venezuela* (A/CONF.39/C.1/L.307 and Add.1 and 2) was rejected by 55 votes to 10, with 21 abstentions.

(b) The amendment by *Cuba* (A/CONF.39/C.1/L.160) was rejected, 34 votes being cast in favour and 34 against, with 24 abstentions.

(c) The amendment by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.39/C.1/L.311) was adopted by 26 votes to 25, with 37 abstentions.

(d) The amendment by *Peru* (A/CONF.39/C.1/L.303) was rejected by 41 votes to 5, with 43 abstentions.

491. Also at its 59th meeting, the Committee of the Whole decided, without objection, to refer article 53, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

492. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 53 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 495 below).

¹⁰⁰ *Ibid.*

¹⁰¹ Original sponsor Spain, co-sponsors Venezuela (Add.1) and Colombia (Add. 2).

493. A separate vote was requested on sub-paragraph (b) of paragraph 1 of the text recommended by the Drafting Committee. The text of this sub-paragraph was adopted by 56 votes to 10, with 13 abstentions.

494. Article 53 as a whole, as recommended by the Drafting Committee, was adopted by 73 votes to 2, with 4 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

495. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 53:

Article 53

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

- (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- (b) a right of denunciation or withdrawal may be implied from the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

ARTICLE 54

A. International Law Commission text

496. The International Law Commission text provided as follows:

Article 54.—Suspension of the operation of a treaty by consent of the parties

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

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

B. Amendments

497. Amendments were submitted to article 54 by Greece (A/CONF.39/C.1/L.316) and Peru (A/CONF.39/C.1/L.304).

498. These amendments were to the following effect:

- (a) *Peru* (A/CONF.39/C.1/L.304):

Amend sub-paragraph (a) to read as follows:

In the manner and subject to the conditions laid down in the treaty itself;

[Referred to the Drafting Committee, see para. 500 below]

- (b) *Greece* (A/CONF.39/C.1/L.316):

In the first sentence of the article, between the words "of a treaty" and the words "in regard", insert the words "or of certain of its provisions".

[Referred to the Drafting Committee, see para. 500 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

499. The Committee of the Whole initially discussed article 54, and the amendments thereto, at its 59th meet-

ing, on 8 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

500. At its 59th meeting, the Committee of the Whole decided, without objection, to refer article 54 to the Drafting Committee, together with the amendments by *Greece* (A/CONF.39/C.1/L.316) and *Peru* (A/CONF.39/C.1/L.304).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

501. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 54 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 502 below). The Committee of the Whole adopted this text without formal vote.¹⁰²

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

502. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 54:

Article 54

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

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

ARTICLE 55

A. International Law Commission text

503. The International Law Commission text provided as follows:

Article 55.—Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only

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

- (a) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; and

- (b) Is not incompatible with the effective execution as between the parties as a whole of the object and purpose of the treaty.

B. Amendments

504. Amendments were submitted to article 55 by Australia (A/CONF.39/C.1/L.324), Austria, Finland and Poland (A/CONF.39/C.1/L.6 and Add.1 and 2),¹⁰³ Austria, Canada, Finland, Poland, Romania and Yugoslavia (A/CONF.39/C.1/L.321 and Add.1),¹⁰⁴ Canada

¹⁰² See para. 13 above.

¹⁰³ Original sponsor Austria, co-sponsors Finland (Add.1) and Poland (Add.2).

¹⁰⁴ Original sponsors Austria, Canada, Finland, Poland and Romania, co-sponsor Yugoslavia (Add.1).

(A/CONF.39/C.1/L.286), France (A/CONF.39/C.1/L.47), Greece (A/CONF.39/C.1/L.317) and Peru (A/CONF.39/C.1/L.305).

505. These amendments, arranged under sub-headings relating to the article as a whole, the introductory sentence, and a proposed new paragraph 2, were to the following effect:

(i) *Article as a whole*

(a) *Canada* (A/CONF.39/C.1/L.286):

Revise article 55 to read as follows:

Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension:

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

(b) is not incompatible with the effective execution of the object and purpose of the treaty as a whole; and

(c) is not prohibited by the treaty.

[Withdrawn, see para. 507 below]

(b) *Austria, Canada, Finland, Poland, Romania and Yugoslavia* (A/CONF.39/C.1/L.321 and Add.1):

Revise article 55 to read as follows:

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty temporarily and as between themselves alone if such suspension is not prohibited by the treaty and:

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

(b) is not incompatible with the effective execution of the object and purpose of the treaty as a whole.

2. The parties in question shall notify the other parties of those provisions of the treaty whose operation they intend to suspend.

[Adopted, see para. 508(b) below]

(ii) *Introductory sentence*

(a) *France* (A/CONF.39/C.1/L.47):

At the beginning of article 55, before the words "when a multilateral treaty", insert the words "Except in the case of a restricted multilateral treaty,".

[Referred to the Drafting Committee, see para. 509 below]

(b) *Peru* (A/CONF.39/C.1/L.305):

In the opening paragraph between the words "may" and "conclude", insert the words "after notifying the other parties".

[Referred to the Drafting Committee, see para. 509 below]

(c) *Greece* (A/CONF.39/C.1/L.317):

In the introductory paragraph, between the words "operation of" and the words "provisions of the treaty", insert the words "some or all of the".

[Rejected, see para. 508(a) below]

(d) *Australia* (A/CONF.39/C.1/L.324):

At the beginning of the article, before the words "When a multilateral treaty" insert the words "Except in the case of a treaty of the type referred to in paragraph 2 of article 17".

[Referred to the Drafting Committee, see para. 509 below]

(iii) *New paragraph 2*

Austria, Finland and Poland (A/CONF.39/C.1/L.6 and Add.1 and 2):

1. Add the following new paragraph 2:

The parties in question shall notify the other parties of those provisions of the treaty whose operation they intend to suspend.

[Withdrawn, see para. 507 below]

C. *Proceedings of the Committee of the Whole*

(i) *MEETINGS*

506. The Committee of the Whole initially discussed article 55, and the amendments thereto, at its 60th meeting, on 9 May 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 55 until the second session of the Conference.

(ii) *CONSIDERATION*

507. Prior to the initial discussion of article 55, the amendments by *Austria, Finland and Poland* (A/CONF.39/C.1/L.6 and Add.1 and 2) and *Canada* (A/CONF.39/C.1/L.286) were withdrawn and replaced by the amendment by *Austria, Canada, Finland, Poland, Romania and Yugoslavia* (A/CONF.39/C.1/L.321 and Add.1).

508. At its 60th meeting, the Committee of the Whole voted on certain of the amendments before it. The results of the voting were as follows:

(a) The amendment by *Greece* (A/CONF.39/C.1/L.317) was rejected by 25 votes to 13, with 49 abstentions.

(b) The principle contained in the amendment by *Austria, Canada, Finland, Poland, Romania and Yugoslavia* (A/CONF.39/C.1/L.321 and Add.1) was adopted by 82 votes to none, with 6 abstentions.

509. At the same meeting, the Committee of the Whole decided, without objection, to refer article 55, as amended in principle, to the Drafting Committee, together with the amendments by *Australia* (A/CONF.39/C.1/L.324), *France* (A/CONF.39/C.1/L.47) and *Peru* (A/CONF.39/C.1/L.305).

510. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendments by *Australia* (A/CONF.39/C.1/L.324) and *France* (A/CONF.39/C.1/L.47) proposed to add references to restricted multilateral treaties in article 55, by way of cross-reference or direct mention respectively.

(iii) *DECISION*

511. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 55 until the second session of the Conference (see document A/CONF.39/15, paras. 86-94).

ARTICLE 56

A. International Law Commission text

512. The International Law Commission text provided as follows:

Article 56.—Termination or suspension of the operation of a treaty implied from entering into a subsequent treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a further treaty relating to the same subject-matter and:

(a) It appears from the treaty or is otherwise established that the parties intended that the matter should thenceforth be governed by the later treaty, or

(b) The provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the treaty or is otherwise established that such was the intention of the parties when concluding the later treaty.

B. Amendments

513. Amendments were submitted to article 56 by Austria (A/CONF.39/C.1/L.7), Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.292), Canada (A/CONF.39/C.1/L.285), China (A/CONF.39/C.1/L.327) and Romania (A/CONF.39/C.1/L.308 (to French text only)).

514. These amendments, arranged under sub-headings relating to paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) Paragraph 1

(a) *Austria* (A/CONF.39/C.1/L.7):

In sub-paragraph (b) replace the words "are not capable" by the words "are in none of their provisions capable".

[Referred to the Drafting Committee, see para. 517 below]

(b) *Canada* (A/CONF.39/C.1/L.285):

A. In the opening phrase add the words "in whole or in part" after the word "terminated".

B. Replace sub-paragraph (b) by the following:

The provisions of the later treaty are so far incompatible with those of the earlier one that not all of the provisions of the two treaties are capable of being applied at the same time.

[Part A referred to the Drafting Committee, see para. 517 below; part B withdrawn, see para. 516 below]

(c) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.292):

Amend sub-paragraph (a) to read as follows:

It is established *by the treaty or by some other instrument relating thereto* that the parties intended that the matter should thenceforth be governed by the later treaty; or.

[Referred to the Drafting Committee, see para. 517 below]

(d) *Romania* (A/CONF.39/C.1/L.308 (French only)):

In the French text, replace the word "*ce*" in sub-paragraph (b) by the word "*tel*", and the word "*précédent*" by the word "*antérieur*".

[Referred to the Drafting Committee, see para. 517 below]

(e) *China* (A/CONF.39/C.1/L.327):

1. In the opening part of the paragraph, replace the words "a further treaty relating to the same subject-matter" by the words "another treaty relating to the same matter".

2. In sub-paragraph (a), replace the words "the treaty" by the words "such other treaty".

3. In sub-paragraph (b), delete the word "far".

[Referred to the Drafting Committee, see para. 517 below]

(ii) Paragraph 2

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.292):

Amend the paragraph to read as follows:

The earlier treaty shall be considered as only suspended in operation if it is established *by the treaty or by some other instrument relating thereto* that such was the intention of the parties when concluding the later treaty.

[Referred to the Drafting Committee, see para. 517 below]

(b) *Romania* (A/CONF.39/C.1/L.308 (French only)):

In the French text of paragraph 2, replace the word "*précédent*" by the word "*antérieur*".

[Referred to the Drafting Committee, see para. 517 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

515. The Committee of the Whole initially discussed article 56, and the amendments thereto, at its 60th meeting, on 9 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

516. At the 60th meeting of the Committee of the Whole, part B of the amendment by *Canada* (A/CONF.39/C.1/L.285), relating to paragraph 1(b) of article 56, was withdrawn.

517. At the same meeting, the Committee of the Whole decided, without objection, to refer article 56 to the Drafting Committee, together with the remaining amendments by *Austria* (A/CONF.39/C.1/L.7), *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.292), *Canada* (part A only) (A/CONF.39/C.1/L.285), *China* (A/CONF.39/C.1/L.327) and *Romania* (A/CONF.39/C.1/L.308 (French text only)).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

518. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 56 adopted by the Drafting Committee (A/CONF.39/C.1/11; for

text, see para. 519 below). The Committee of the Whole adopted this text without formal vote.¹⁰⁵

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
519. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 56:

Article 56

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

- (a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty, or
- (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

ARTICLE 57

A. International Law Commission text

520. The International Law Commission text provided as follows:

Article 57.—Termination or suspension of the operation of a treaty as a consequence of its breach

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

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) The other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:

- (i) in the relations between themselves and the defaulting State, or
- (ii) as between all the parties;

(b) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) Any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(a) A repudiation of the treaty not sanctioned by the present articles; or

(b) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

B. Amendments

521. Amendments were submitted to article 57 by Finland (A/CONF.39/C.1/L.309), Spain (A/CONF.39/C.1/L.326), the United States of America (A/CONF.39/C.1/L.325) and Venezuela (A/CONF.39/C.1/L.318).

522. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2, and paragraph 3

¹⁰⁵ See para. 13 above.

of the article, there being no amendment to paragraph 4, were to the following effect:

(i) Paragraph 1

(a) *Venezuela* (A/CONF.39/C.1/L.318):

For the present text substitute the following:

A material breach of a bilateral treaty by one of the parties entitles the other to terminate the treaty or to suspend its operation in whole or in part in accordance with the provisions of the present Convention.

[Rejected, see para. 525(a) below]

(b) *United States of America* (A/CONF.39/C.1/L.325):

Add the following words at the end of paragraph 1:
as may be appropriate considering the nature and extent of the breach and the extent to which the treaty obligations have been performed.

[Withdrawn, see para. 524 below, on the understanding recorded in that paragraph]

(ii) Paragraph 2

(a) *Venezuela* (A/CONF.39/C.1/L.318):

For the present text substitute the following:

A material breach of a multilateral treaty by one of the parties entitles the other parties, proceeding in accordance with the present Convention, to suspend the operation of the treaty or to terminate it

(a) in the relations between themselves and the defaulting State or as between all the parties, as the case may be;

(b) a party specially affected by the breach, in the relations between itself and the defaulting State;

(c) any other party with respect to itself if the treaty is of such a character that a breach of its provisions by one party substantially changes the general position or the position of every party with respect to the further performance of the obligations created by the treaty.

[Rejected, see para. 525(b) below]

(b) *United States of America* (A/CONF.39/C.1/L.325):

Add the following words at the end of sub-paragraph (b):

as may be appropriate considering the nature and extent of the breach and the extent to which the treaty obligations have been performed by itself and the defaulting State.

[Withdrawn, see para. 524 below, on the understanding recorded in that paragraph]

(iii) Paragraph 3

(a) *Finland* (A/CONF.39/C.1/L.309):

At the end of sub-paragraph (b) add the words "*or a violation which in itself is of a serious character*".

[Rejected, see para. 525(d) below]

(b) *Venezuela* (A/CONF.39/C.1/L.318):

For the present text substitute the following:

A material breach of a treaty, for the purposes of the present article, consists in:

(a) The unjustified repudiation of the treaty;

(b) The violation of a provision essential to the accomplishment of the object or purpose of the treaty.

[Rejected, see para. 525(c) below]

(c) *Spain* (A/CONF.39/C.1/L.326):

Amend sub-paragraph (b) to read:

The non-performance of the essential obligations laid down in the treaty and add a new sub-paragraph (c) reading:

(c) The abuse of the rights or faculties granted by the treaty.

[Rejected, see para. 525(e) and (f) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

523. The Committee of the Whole initially discussed article 57, and the amendments thereto, at its 60th and 61st meetings, on 9 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

524. At the 61st meeting of the Committee of the Whole, the amendment by the *United States of America* (A/CONF.39/C.1/L.325) was withdrawn, on the understanding it would be considered in connexion with article 41. An oral amendment was submitted by *Switzerland* to add a new paragraph 5 to article 57, providing that:

The foregoing rules do not apply to humanitarian conventions concluded with or between States not bound by multilateral conventions for the protection of the human person which prohibit reprisals against individuals. Agreements of this kind must be observed in all circumstances.

This amendment was not pressed to a vote.

525. At the same meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

(a) The amendment by *Venezuela* (A/CONF.39/C.1/L.318) to paragraph 1 was rejected by 52 votes to 4, with 34 abstentions.

(b) The amendment by *Venezuela* (A/CONF.39/C.1/L.318) to paragraph 2 was rejected by 51 votes to 3, with 38 abstentions.

(c) The amendment by *Venezuela* (A/CONF.39/C.1/L.318) to paragraph 3 was rejected by 48 votes to 5, with 35 abstentions.

(d) The amendment by *Finland* (A/CONF.39/C.1/L.309) to paragraph 3 was rejected by 33 votes to 14, with 41 abstentions.

(e) The amendment by *Spain* (A/CONF.39/C.1/L.326) to sub-paragraph (b) of paragraph 3 was rejected by 56 votes to 10, with 27 abstentions.

(f) The amendment by *Spain* (A/CONF.39/C.1/L.326) to add a new sub-paragraph (c) to paragraph 3 was rejected by 63 votes to 6, with 20 abstentions.

526. Also at its 61st meeting, the Committee of the Whole decided, without objection, to refer article 57 to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

527. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 57 adopted by the Drafting Committee (A/CONF.39/C.1/11; for

text, see para. 528 below). The Committee of the Whole adopted this text without formal vote.¹⁰⁶

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

528. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 57:

Article 57

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

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

ARTICLE 58

A. International Law Commission text

529. The International Law Commission text provided as follows:

Article 58.—Supervening impossibility of performance

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

B. Amendments

530. Amendments were submitted to article 58 by Ecuador (A/CONF.39/C.1/L.332/Rev.1), Mexico (A/CONF.39/C.1/L.330) and the Netherlands (A/CONF.39/C.1/L.331).

531. These amendments were to the following effect:

(a) *Mexico* (A/CONF.39/C.1/L.330):

Amend article 58 to read as follows:

A party may invoke *force majeure* as a ground for terminating a treaty when the result of the *force majeure* is to render permanently impossible the fulfilment of its obligations under the treaty. If the

¹⁰⁶ *Ibid.*

impossibility is temporary, the *force majeure* may be invoked only as a ground for suspending the operation of the treaty.

[Withdrawn, see para. 533 below]

(b) *Netherlands* (A/CONF.39/C.1/L.331):

1. Replace in the [first sentence] the words "for terminating it if" by the words: "for terminating or withdrawing from the treaty if".

2. Add a new paragraph 2:

An impossibility of performance may not be invoked by a party if it is the result of a breach by that party either of the treaty or of a different international obligation owed to the other parties to the treaty.

[First part referred to the Drafting Committee, see para. 535 below; second part adopted, see para. 534 below]

(c) *Ecuador* (A/CONF.39/C.1/L.332/Rev.1):¹⁰⁷

Add the word "non-existence" between the words "results from the" and the words "permanent disappearance or destruction".

[Withdrawn, see para. 533 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

532. The Committee of the Whole initially discussed article 58, and the amendments thereto, at its 62nd meeting, on 9 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

533. At the 62nd meeting of the Committee of the Whole, the amendments by *Ecuador* (A/CONF.39/C.1/L.332/Rev.1) and *Mexico* (A/CONF.39/C.1/L.330) were withdrawn.

534. At the same meeting, the Committee of the Whole voted upon the second part of the amendment by the *Netherlands* (A/CONF.39/C.1/L.331) to add a new paragraph 2. This part of the amendment was adopted by 30 votes to 10, with 40 abstentions.

535. Also at its 62nd meeting, the Committee of the Whole decided, without objection, to refer article 58, as amended, to the Drafting Committee, together with the first part of the amendment by the *Netherlands* (A/CONF.39/C.1/L.331).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

536. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 58 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 537 below). The Committee of the Whole adopted this text without formal vote.¹⁰⁸

¹⁰⁷ In its original form (A/CONF.39/C.1/L.332), this amendment also proposed to replace the words "an object" by the word "something".

¹⁰⁸ See para. 13 above.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
537. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 58:

Article 58

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

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

ARTICLE 59

A. International Law Commission text

538. The International Law Commission text provided as follows:

Article 59.—Fundamental change of circumstances

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

(a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
(b) The effect of the change is radically to transform the scope of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked:

(a) As a ground for terminating or withdrawing from a treaty establishing a boundary;
(b) If the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

B. Amendments

539. Amendments were submitted to article 59 by Canada (A/CONF.39/C.1/L.320), Finland (A/CONF.39/C.1/L.333), Japan (A/CONF.39/C.1/L.336), the Republic of Viet-Nam (A/CONF.39/C.1/L.299), the United States of America (A/CONF.39/C.1/L.335) and Venezuela (A/CONF.39/C.1/L.319).

540. These amendments, arranged under sub-headings relating to the article as a whole, paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) Article as a whole

Venezuela (A/CONF.39/C.1/L.319):

Replace the present text of the article by the following:

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

(a) the existence of those circumstances constitutes an essential basis of the consent of the parties to be bound by the treaty; and
(b) the consequence of the change is to transform in an essential respect the character of the permanent obligations assumed under the treaty.

2. A fundamental change of circumstances may not be invoked:
(a) as a ground for terminating or withdrawing from a treaty establishing a boundary;

(b) if the fundamental change is the result of a breach by the party invoking it either of the treaty or of a different international obligation owed to the other parties to the treaty.

[Withdrawn, see para. 542 below]

(ii) Paragraph 1

(a) *Canada* (A/CONF.39/C.1/L.320):

Amend the opening section of paragraph 1 to read:
... may be invoked as a ground for *suspending*, terminating or withdrawing from the treaty unless:

[Adopted, see para. 543(a) below]

(b) *Finland* (A/CONF.39/C.1/L.333):

Amend the introductory sentence of paragraph 1 to read as follows:

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

[Words "in whole or in part" withdrawn, see para. 542 below; remainder adopted, see para. 543(a) below]

(c) *Japan* (A/CONF.39/C.1/L.336):

Add at the end [of sub-para. (b) of para. 1] the words "to a serious disadvantage of the party invoking it".

[Rejected, see para. 543(b) below]

(iii) Paragraph 2

(a) *Republic of Viet-Nam* (A/CONF.39/C.1/L.299):

Amend paragraph 2 to read as follows:

2. A fundamental change of circumstances may not be invoked:

(a) as a ground *either* for terminating a treaty establishing a boundary or *confirming a negotiated political settlement or* for withdrawing from such a treaty;

(b) *if that change was deliberately provoked by the party invoking it, or is the result of a breach by that party* either of the treaty or of a different international obligation owed to the other parties to the treaty.

[Rejected, see para. 543(c) and (d) below]

(b) *United States of America* (A/CONF.39/C.1/L.335):

Amend sub-paragraph (a) of paragraph 2 to read as follows:

As a ground for terminating or withdrawing from a treaty drawing a boundary or otherwise establishing territorial status.

["Drawing a boundary" referred to the Drafting Committee, see para. 544 below; remainder rejected, see para. 543(e) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

541. The Committee of the Whole initially discussed article 59, and the amendments thereto, at its 63rd, 64th and 65th meetings, on 10 and 11 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

542. At the 65th meeting of the Committee of the Whole, that part of the amendment by *Finland* (A/CONF.39/C.1/L.333) which proposed to add the words "in whole or in part" was withdrawn. The amendment by *Venezuela* (A/CONF.39/C.1/L.319) was also withdrawn.

543. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it. The results of the voting were as follows:

(a) The amendment by *Canada* (A/CONF.39/C.1/L.320) and the remaining part of the amendment by *Finland* (A/CONF.39/C.1/L.333), to add a reference to suspension of the operation of a treaty, were in principle adopted by 31 votes to 26, with 28 abstentions.

(b) The amendment by *Japan* (A/CONF.39/C.1/L.336) was rejected by 41 votes to 6, with 35 abstentions.

(c) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.299) to sub-paragraph (a) of paragraph 2 was rejected by 64 votes to 1, with 13 abstentions.

(d) The amendment by the *Republic of Viet-Nam* (A/CONF.39/C.1/L.299) to sub-paragraph (b) of paragraph 2 was rejected by 50 votes to 2, with 24 abstentions.

(e) That part of the amendment by the *United States of America* (A/CONF.39/C.1/L.335) to add the words "or otherwise establishing territorial status" to sub-paragraph (a) of paragraph 2 was rejected by 43 votes to 14, with 28 abstentions.

544. Also at its 65th meeting, the Committee of the Whole agreed, without objection, to refer article 59, as amended in principle, to the Drafting Committee together with the first part of the amendment by the *United States of America* (A/CONF.39/C.1/L.335).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

545. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 59 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 546 below). The Committee of the Whole adopted this text without formal vote.¹⁰⁹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

546. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 59:

Article 59

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

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

¹⁰⁹ *Ibid.*

2. A fundamental change of circumstances may not be invoked:
 - (a) as a ground for terminating or withdrawing from a treaty establishing a boundary;
 - (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.
3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke that ground for suspending the operation of the treaty.

ARTICLES 60 AND 69bis

A. International Law Commission text

547. The International Law Commission text of article 60 provided as follows:

Article 60.—Severance of diplomatic relations

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

B. Amendments

548. Amendments were submitted to article 60 by *Chile* (A/CONF.39/C.1/L.341), *Hungary* (A/CONF.39/C.1/L.334), *Italy* and *Switzerland* (A/CONF.39/C.1/L.322) and *Japan* (A/CONF.39/C.1/L.337).

549. These amendments were to the following effect:

(a) *Italy* and *Switzerland* (A/CONF.39/C.1/L.322):

At the end of the article, add the following words: unless those legal relations necessarily postulate the existence of normal diplomatic relations.

[Adopted, see para. 552(b) below]

(b) *Hungary* (A/CONF.39/C.1/L.334):

Insert the words "and consular" between the words "diplomatic" and "relations" in the title and text of the article.

[Adopted, see para. 552(a) below]

(c) *Japan* (A/CONF.39/C.1/L.337):

Place the article at the end of Section 3 of Part V. [Referred to the Drafting Committee, see para. 553 below]

(d) *Chile* (A/CONF.39/C.1/L.341):

Add the following as a new paragraph:

2. The severance of diplomatic relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not affect the situation in regard to diplomatic relations.

[Adopted, see para. 552(c) and (d) below, as orally amended, see para. 551 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

550. The Committee of the Whole initially discussed article 60, and the amendments thereto, at its 65th meeting, on 11 May 1968. At its 81st meeting, on 22 May 1968, the Committee considered the report of the Drafting

Committee on this article and on article 69bis (see para. 554 below).

(ii) INITIAL CONSIDERATION

551. At the 65th meeting of the Committee of the Whole, an oral sub-amendment by *Israel* to add the words "or absence" after the word "severance" in the first sentence of the amendment by *Chile* (A/CONF.39/C.1/L.341) was accepted by the sponsor.

552. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) The amendment by *Hungary* (A/CONF.39/C.1/L.334) was adopted by 79 votes to none, with 11 abstentions.

(b) The amendment by *Italy* and *Switzerland* (A/CONF.39/C.1/L.322) was adopted in principle by 62 votes to none, with 25 abstentions.

(c) The first sentence of the amendment by *Chile* (A/CONF.39/C.1/L.341), as orally sub-amended, was adopted in principle by 56 votes to 2, with 30 abstentions.

(d) The second sentence of the amendment by *Chile* (A/CONF.39/C.1/L.341) was adopted in principle by 43 votes to none, with 44 abstentions.

553. Also at its 65th meeting, the Committee of the Whole decided, without objection, to refer article 60, as amended in principle, to the Drafting Committee, together with the remaining amendment by *Japan* (A/CONF.39/C.1/L.337).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

554. At the 81st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 60 adopted by the Drafting Committee (A/CONF.39/C.1/11; for text, see para. 557 below).

This report also set out the text of an article 69bis (for text, see para. 558 below), which had been adopted by the Drafting Committee in order to incorporate into the text of the draft convention the amendment by *Chile* (A/CONF.39/C.1/L.341) to article 60, which had been adopted in principle by the Committee of the Whole. The Chairman of the Drafting Committee introduced article 69bis together with article 60.

555. The Committee of the Whole adopted the text of article 60, recommended by the Drafting Committee, without formal vote.¹¹⁰

556. The Committee of the Whole also adopted the text of article 69bis, recommended by the Drafting Committee, by 40 votes to 13, with 34 abstentions.

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

557. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 60:

¹¹⁰ *Ibid.*

Article 60

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

558. It likewise recommends to the Conference for adoption the following text of article 69bis:

Article 69bis

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

ARTICLE 61

A. International Law Commission text

559. The International Law Commission text provided as follows:

Article 61.—Emergence of a new peremptory norm of general international law

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

B. Amendments

560. Amendments were submitted to article 61 by Finland (A/CONF.39/C.1/L.294) and India (A/CONF.39/C.1/L.255).

561. These amendments were to the following effect:

(a) *India* (A/CONF.39/C.1/L.255):

Delete the article.

[Withdrawn, see para. 563 below]

[NOTE: An amendment by India to article 50 (A/CONF.39/C.1/L.254) proposed to add to the text of article 50 a new para. 2 which contained the substance of article 61; see para. 462(ii)(a) above].

(b) *Finland* (A/CONF.39/C.1/L.294):

Amend article to read as follows:

If a new peremptory norm of general international law of the kind referred to in article 50 is established, any existing treaty or, under the conditions specified in article 41, those of its provisions which are in conflict with that norm, become void and terminate.

[Referred to the Drafting Committee, see para. 564 below, subsequently withdrawn, see para. 566 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

562. The Committee of the Whole initially discussed article 61, and the amendment thereto,¹¹¹ at its 66th meeting, on 13 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

¹¹¹ The amendment by India (A/CONF.39/C.1/L.255) was withdrawn before the article was discussed, see para. 464 above.

(ii) INITIAL CONSIDERATION

563. At the 52nd meeting of the Committee of the Whole, in connexion with the consideration of article 50, the amendment by *India* (A/CONF.39/C.1/L.255) to article 61, which was consequential upon an amendment by that State to article 50, was withdrawn (see para. 464 above).

564. At its 66th meeting, the Committee decided, without objection, to refer article 61 to the Drafting Committee, together with the amendment by *Finland* (A/CONF.39/C.1/L.294).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

565. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 61 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 567 below). This report stated that the Drafting Committee had taken no decision on the amendment by *Finland* (A/CONF.39/C.1/L.294) to article 61 because it considered that it raised a question of substance which it was for the Committee of the Whole to settle.

566. Also at the 83rd meeting, the amendment by *Finland* (A/CONF.39/C.1/L.294) was withdrawn. The Committee of the Whole then adopted the text of article 61, recommended by the Drafting Committee, without formal vote.¹¹²

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

567. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 61:

Article 61

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

ARTICLE 62

A. International Law Commission text

568. The International Law Commission text provided as follows:

Article 62.—Procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty

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

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party

¹¹² See para. 13 above.

making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

B. Amendments and draft resolutions

I. AMENDMENTS

569. Amendments were submitted to article 62 by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352/Rev.1/Corr.1),¹¹³ Central African Republic and Gabon (A/CONF.39/C.1/L.345), Colombia, Finland, Lebanon, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.346), Cuba (A/CONF.39/C.1/L.353), France (A/CONF.39/C.1/L.342), Japan (A/CONF.39/C.1/L.338), Japan (A/CONF.39/C.1/L.339), Switzerland (A/CONF.39/C.1/L.347), the United States of America (A/CONF.39/C.1/L.355) and Uruguay (A/CONF.39/C.1/L.343).

570. In addition, an amendment was submitted by Switzerland (A/CONF.39/C.1/L.348) proposing that paragraph 4 of article 62 of the International Law Commission text, with certain consequential amendments, be inserted as a new article 62*bis*; the text of this amendment is given under that article (see para. 583(a) below). At the conclusion of the debate on article 62, the sponsors of certain other amendments to that article stated that their amendments were being withdrawn as amendments to article 62, for resubmission as a proposed new article 62*bis*, to be considered at the second session of the Conference (see para. 577 below).

571. These amendments, in the form in which they were submitted as amendments to article 62 and arranged under sub-headings relating to complete reformulations of article 62, other provisions for arbitration, conciliation or judicial settlement, and the remaining amendments to specified paragraphs of article 62, were to the following effect:

(i) Complete reformulations of article 62

(a) Uruguay (A/CONF.39/C.1/L.343):

Amend the present text of the article to read as follows:

1. A party which alleges a material breach of a treaty as a ground for terminating the treaty or suspending its operation, pursuant to article 57, may unilaterally suspend the execution of the treaty, in whole or in part.

2. A party which claims that a treaty is invalid, under articles 43, 44, 45, 46, 47, 48, 49 or 50, or which alleges a ground for terminat-

ing, withdrawing from or suspending the operation of a treaty under articles 53, 56, 59 or 61, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

3. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

4. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Articles 33, 35 and 36 of the Charter of the United Nations. The same obligation will arise in case any party raises an objection as to the existence of any of the grounds provided for in articles 51, 54, 55, 57 or 58 for the suspension or termination of a treaty.

5. The rights referred to in the preceding paragraphs may not be invoked or validly exercised by a party which has not accepted in advance, for the purposes of the dispute arising under paragraph 4 above, the obligations of pacific settlement provided in the Charter of the United Nations, or by a party which refuses to accept the resolution of the competent organ of the United Nations recommending, among the procedures enumerated in Article 33 (1) of the Charter of the United Nations, the most appropriate method for the peaceful settlement of the dispute which has arisen.

6. States parties to the present Convention engage themselves to act, individually and within the international organizations in which they are members, in such a way as to facilitate and encourage the settlement of disputes arising under the present Convention, by peaceful means and in accordance with the provisions of the Charter of the United Nations.

7. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

[Withdrawn as an amendment to article 62, for possible resubmission and consideration at the second session of the Conference in connexion with article 62*bis*, see para. 577 below]

(b) Switzerland (A/CONF.39/C.1/L.347):

Word the title and the article as follows:

Procedure to be followed for claiming the invalidity of, terminating, withdrawing from, or suspending the operation of a treaty

1. A party which intends to claim the invalidity, terminate, withdraw from or suspend the operation of a treaty, under the provisions of the present articles, shall notify the other parties of its intention. The notification shall indicate the measure proposed to be taken with respect to the treaty and the grounds therefor.

2. If, after the expiry of a period which shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may, in the manner provided in article 63:

(a) if it intends to claim the invalidity of a treaty, notify the other parties of the date on which the treaty will terminate so far as it is concerned;

(b) if it intends to terminate, withdraw from or suspend the operation of the treaty, take the measure proposed.

3. If an objection is raised by any other party, the parties to the dispute may agree within a period of three months after the objection, to adopt a procedure for the settlement of the dispute.

4. If the parties fail to reach agreement within the period laid down in paragraph 3 above, the party which has made the notification may, not more than six months after the objection referred to in paragraph 3, bring the dispute before the International Court of Justice by simple application, or before a committee of arbitration in conformity with the provisions of paragraph 5.

5. Unless the parties otherwise agree, the arbitration procedure shall be as follows:

¹¹³ Original sponsors Central African Republic, Colombia, Finland, Gabon, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352), co-sponsors Dahomey and Ivory Coast (Add.1) and Denmark (Rev.1/Corr.1).

(a) The Committee of Arbitration shall be composed of five members. Each of the parties shall appoint one member. The other three arbitrators shall be appointed by agreement of the parties from nationals of third States. They shall be of different nationalities, shall not have their usual place of residence in the territory of the parties and shall not be in the service of the parties.

(b) The chairman of the Committee of Arbitration shall be appointed by the parties from among the arbitrators appointed by agreement of the parties.

(c) If within a period of three months, the parties have been unable to reach agreement on the appointment of the arbitrators to be appointed jointly, the President of the International Court of Justice shall make the appointment. If within a period of three months one of the parties has not appointed the arbitrator he is responsible for appointing, the President of the International Court of Justice shall make the appointment.

(d) If the President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, he shall be replaced by the most senior member of the Court whose nationality is not the same as that of any of the parties.

(e) Unless the parties otherwise agree, the Committee of Arbitration shall decide its own procedure. Failing that, the provisions of chapter III of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 shall apply.

(f) The Committee of Arbitration shall decide all questions, submitted to it by simple majority vote, and its decisions shall be binding on the parties.

6. Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by the court of jurisdiction, the treaty shall remain in operation between the parties to the dispute.

7. If the party which has made the notification does not within the prescribed period of six months have recourse to one of the tribunals referred to in paragraph 4, it shall be deemed to have renounced its claim of invalidity or the measure proposed.

[Resubmitted for consideration in connexion with article 62*bis* at the second session of the Conference, see paras. 577 and 583(c) below and document A/CONF.39/15, para. 98(d)]

(ii) *Other provisions for arbitration, conciliation or judicial settlement*

(a) *Japan* (A/CONF.39/C.1/L.339):

Replace paragraph 3 by the following:

3. If objection has been raised by any other party, the parties concerned shall seek the settlement of the dispute arising out of the claim in the following manner:

(a) In a case where the dispute relates to a claim under article 50 or article 61, the dispute shall be referred to the International Court of Justice for decision at the request of either of the parties to the dispute;

(b) In all other cases, the parties to the dispute shall first of all seek a solution of the dispute through the means indicated in Article 33 of the Charter of the United Nations. If no solution has been reached within twelve months, the dispute shall be referred to arbitration by a tribunal provided for in the annex to the present Convention, unless the parties to the dispute agree to refer the dispute to the International Court of Justice.

3*bis*. Pending the settlement of the dispute in accordance with paragraph 3, the treaty shall continue in force, provided that the performance of the treaty may be suspended:

(i) by agreement of the parties, or

(ii) by a decision of the body to which the dispute has been referred in accordance with paragraph 3.

Add at the end of the text of the convention:

Annex

Arbitral Tribunal under article 62

1. The tribunal shall be constituted by five members. Each party to the dispute shall nominate two members, one of whom may possess the nationality of the party concerned, within thirty days of the notification by one party to the other party of its intention to refer the dispute to arbitration. The fifth member, who may not possess the nationality of either party to the dispute, shall be appointed by the Secretary-General of the United Nations, within thirty days of the nomination of the four members by both parties.

2. The member appointed by the Secretary-General of the United Nations shall act as president of the tribunal.

3. The tribunal shall decide its own procedures.

4. The decision of the tribunal shall be given by a simple majority and the president shall have the casting vote if the necessity arises.

5. The decision of the tribunal shall be final and binding upon the parties to the dispute.

[Withdrawn as amendment to article 62, for possible resubmission and consideration at the second session of the Conference in connexion with article 62*bis*, see para. 577 below and document A/CONF.39/15, para. 98(a)]

(b) *Central African Republic and Gabon* (A/CONF.39/C.1/L.345):

Replace paragraph 3 of the article by the following:

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations upon the conditions laid down in the annex to the present Convention.

Add at the end of the text of the convention:

Annex

1. Except as otherwise provided in a treaty or in the constituent instrument of a regional organization, and within the framework of Article 33 of the Charter of the United Nations, disputes arising from the application or interpretation of the provisions of Part V of the present Convention shall be brought before a conciliation commission, and, if the conciliation fails, before an arbitral tribunal.

2. A permanent list of experts representing the principal legal systems of the world on an equitable geographical basis shall be drawn up.

Such experts shall be appointed, on the proposal of States, by the Secretary-General of the United Nations for a period of three years, and shall be eligible for reappointment.

3. In the event of a dispute, each party shall appoint:

(a) a commissioner of its own nationality, chosen either from the list referred to in paragraph 2 or from outside that list;

(b) a commissioner not of its nationality, chosen from that list.

The commission thus constituted shall appoint a chairman chosen from the list.

The commissioners chosen by the parties shall be appointed within a period of sixty days after the opening of the conciliation procedure by the party requesting it.

The appointment of the chairman by the commissioners shall be made within sixty days after their own appointment.

If the appointment of the commissioners or of the chairman has not been made within the above-mentioned period, it shall be made by the Secretary-General of the United Nations.

4. In the event of failure of the conciliation procedure, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal for settlement.

The arbitral tribunal for each dispute shall consist of three arbitrators, one appointed by each party, and a chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months after the date when it is established that the conciliation procedure has failed.

The chairman also shall be appointed within a period of six months after the date of the appointment of the arbitrators by the parties.

If the chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

5. A permanent secretariat, the cost of whose activities shall be borne by the United Nations, shall be responsible for receiving complaints and preparing the documentation concerning disputes submitted to conciliation or arbitration.

[Withdrawn, see para. 574 below]

(c) *Colombia, Finland, Lebanon, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.346):

Insert as a new paragraph 3bis the following text:

If the parties have been unable to agree upon any means of reaching a solution within three months following the raising of the objection, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement, either party may request the Secretary-General of the United Nations to set in motion the procedures indicated in the annex to the present Convention.

Add at the end of the text of the convention:

Annex

(1) A Conciliation Commission shall be established consisting of twenty-five highly-qualified jurists representing the various legal systems of the world and selected having due regard to the importance of as wide a geographical distribution as possible. Members of the Commission shall be appointed by the Secretary-General, on the nomination of States, for five years and may be reappointed.

(2) Where a dispute is referred to the Secretary-General for settlement, and unless the parties agree that the full Commission shall consider the dispute, a sub-commission shall be appointed within 60 days consisting of one member appointed by each party to the dispute from among the members of the Commission who do not possess its nationality, one member appointed by each party who possesses its nationality (from outside the membership of the Commission where necessary) and a chairman (not possessing the nationality of either party) appointed by the other members of the sub-commission from among the members of the Commission. If any appointment is not made within the period of 60 days the appointment shall be made by the Secretary-General of the United Nations.

(3) The Commission and any sub-commission so constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly solution of the question. The Commission shall establish its own procedure. Decisions of the Commission and of the sub-commission shall be taken by majority vote. The Secretary-General shall provide to the Commission or the sub-commission such assistance and facilities as it may require. The expenses of the Commission and of the sub-commission shall be borne by the United Nations.

(4) The Commission or the sub-commission, as the case may be, shall be obliged to report within twelve months of its constitution. Reports shall be transmitted to the Secretary-General and the parties. If the Commission or the sub-commission has succeeded in effecting a friendly solution, the report shall be confined to a brief statement of the facts and the solution reached. If the Commission or sub-commission has not succeeded in effecting a friendly

solution, its report shall deal fully with the factual and legal elements of the dispute.

(5) If no solution has been reached by the Commission or a sub-commission any question relating to the interpretation or application of any of the articles contained in Part V of the present Convention may be submitted, by agreement between the parties, to arbitration or to the International Court of Justice. Failing such agreement within a period of three months these questions shall be submitted, at the request of either party, to an arbitral tribunal for decision. The arbitral tribunal shall consist of one member appointed by each party to the dispute and a chairman appointed by common agreement between the parties. If any of these appointments has not been made within a period of six months from the request for arbitration, it shall be made by the Secretary-General of the United Nations.

(6) The Secretary-General shall provide the arbitration tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Withdrawn, see para. 574 below]

(d) *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.352/Rev.1/Corr.1):¹¹⁴

Insert a new paragraph 3bis reading as follows:

If the parties have been unable to agree upon any means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement, either party may request the Secretary-General of the United Nations to set in motion the procedures specified in the annex to the present Convention.

Add at the end of the text of the convention:

Annex

(1) A permanent list of conciliators consisting of qualified jurists shall be drawn up by the Secretary-General of the United Nations. To this end every State Member of the United Nations and every party to the present Convention shall be invited to nominate two conciliators for a period of five years, which may be renewed.

(2) In the event of a dispute, each party shall appoint:

- one conciliator of its own nationality chosen either from the list referred to in paragraph 1 above or from outside that list;
- one conciliator not of its own nationality chosen from the list.

The Commission thus constituted shall appoint a chairman chosen from the list.

The conciliators chosen by the parties shall be appointed within a period of three months after the opening of the conciliation procedure by the party requesting it.

The conciliators shall appoint their chairman within two months after their own appointment.

If the appointment of the conciliators or of the chairman has not been made within the above-mentioned periods, it shall be made by the Secretary-General of the United Nations.

¹¹⁴ In the original version of this amendment (A/CONF.39/C.1/L.352), the words "or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement" were omitted in para. 3bis. In the first sentence of para. (1) of the annex the words "representing the various legal systems of the world" were inserted after the word "jurists". In the third sentence of para. (2) of the annex the words "sixty days" appeared in place of the words "three months", and, in the fourth sentence, "sixty days" in place of "two months". Finally, para. 6 did not appear in the original version.

(3) The Commission thus constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly settlement of the dispute. The Commission shall establish its own procedure. Decisions and recommendations of the Commission shall be taken by a majority vote. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(4) The Commission shall be required to report within twelve months of its constitution. Its reports shall be transmitted to the Secretary-General and to the parties.

(5) In the event of failure of the conciliation procedure and if the parties have not agreed on a means of judicial settlement within three months from the date when it is established that the conciliation procedure has failed, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal.

The arbitral tribunal shall consist of two arbitrators, one appointed by each party, and a chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months from the date when it is established that the conciliation procedure has failed.

The chairman shall also be appointed within a period of six months from the date of the appointment of the arbitrators by the parties.

If the chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

(6) The arbitral tribunal shall establish its own procedure. The decisions of the arbitral tribunal shall be taken by a majority vote. The award shall be binding and definitive.

(7) The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Resubmitted for consideration in connexion with article 62*bis* at the second session of the Conference, see paras. 577 and 583(*b*) below and document A/CONF.39/15, para. 98(*b*)]

(e) *United States of America* (A/CONF.39/C.1/L.355):

(1) Insert as a new paragraph 3*bis* the following text:

If the parties have been unable to agree upon any means of reaching a solution within three months following the raising of the objection, or if they have agreed upon any means of settlement (other than adjudication or arbitration) which has not led to a solution within 12 months after such agreement, either party may refer the dispute to the Commission on Treaty Disputes for settlement in accordance with the procedures indicated in the annex to the present Convention.

(2) Renumber paragraphs 4 and 5 of the International Law Commission text as paragraphs 6 and 7 and insert new paragraphs 4 and 5 to read as follows:

4. Except as provided in paragraph 5, when an objection has been raised, the party claiming the invalidity of a treaty or alleging a ground for termination, suspension or withdrawal from a treaty may not carry out the measure proposed in its notification until the matter is resolved unless: (a) the parties agree that such measure may be taken; or, (b) any international tribunal to which the parties have submitted the dispute or, if they have not submitted the dispute to such a tribunal, the Commission on Treaty Disputes established in the annex to the present Convention, shall have issued an order laying down provisional measures to be taken to preserve the respective rights of either party.

5. A party alleging material breach of a treaty may, upon the expiry of the applicable period provided in paragraph 2 of this article, suspend operation wholly if the effect of the alleged breach

would be to frustrate the object and purpose of the treaty; otherwise, operation may be suspended of those provisions which were allegedly breached or the performance of which is directly related to or dependent upon performance of the provision allegedly breached. In the event of a dispute as to the materiality of the breach or the appropriateness of the suspension an objecting party may apply to any competent international tribunal to which the parties have submitted the dispute or, if they have not submitted the dispute to such a tribunal, to the Commission on Treaty Disputes for the issuance of an interlocutory order requiring modification of action taken under this paragraph.

(3) Add at the end of the text of the convention:

Annex

Article 1

(1) A Commission on Treaty Disputes shall be established consisting of twenty-five highly qualified jurists representing the principal legal systems of the world. The Commission shall reflect a wide geographical distribution.

(2) Members of the Commission shall be elected by the General Assembly from a list of candidates nominated by the States parties to this Convention. They shall serve for nine years and may be re-elected.

(3) Subject to the approval of the General Assembly, the Commission shall be constituted as an organ of the United Nations and authorized to request advisory opinions from the International Court of Justice under the conditions set forth in article 4 below.

Article 2

(1) When a dispute is referred to the Commission on Treaty Disputes, and unless the parties agree that the full Commission shall consider the dispute, a sub-commission shall be appointed within 60 days consisting of one member appointed by each party to the dispute from among the members of the Commission who do not possess its nationality, one member appointed by each party who possesses its nationality (from outside the membership of the Commission where necessary) and a chairman (not possessing the nationality of either party) appointed by the other members of the sub-commission from among the members of the Commission. If any appointment is not made within the period of 60 days, the appointment shall be made by the Secretary-General of the United Nations or in the case of the chairman, by the Commission as a whole.

(2) An application for provisional measures or for review of the action taken in respect of an alleged breach shall be considered by a sub-commission if one has been selected; otherwise the application shall be considered by the Commission as a whole.

Article 3

(1) The Commission or any sub-commission constituted under article 2 shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly solution of the question. The Commission or a sub-commission shall have the power to order provisional measures to preserve the rights of the parties.

(2) Decisions of the Commission and of the sub-commission shall be taken by majority vote. Subject to the foregoing, the Commission shall establish its own procedures.

(3) The Secretary-General shall provide to the Commission or the sub-commission such assistance and facilities as it may require.

Article 4

If the proposals made to the parties by the Commission or sub-commission are not accepted within three months of being made and there remain unresolved legal questions, or at any time with the consent of the parties, the Commission or sub-commission may request an advisory opinion from the International Court of Justice. If the parties agree, the Commission shall request the Court to form a chamber under Article 26 of its Statute to deal with the questions.

Article 5

(1) The Commission or the sub-commission, as the case may be, shall be obliged to report within twelve months after the dispute has been referred to it unless at the end of that time there is outstanding a request for an advisory opinion. In such case, the Commission or sub-commission may delay its report until three months after receipt of the opinion.

(2) The report shall be transmitted to the Secretary-General and the parties. If the Commission or the sub-commission has succeeded in effecting a friendly solution, the report shall be confined to a brief statement of the facts and the solution reached. If the Commission or the sub-commission has not succeeded in effecting a friendly solution, its report shall deal fully with the factual and legal elements of the disputes.

Article 6

(1) If no solution has been effected by the Commission or sub-commission, the parties may agree to submit any question relating to the interpretation or application of any of the articles contained in Part V of the present Convention to the International Court of Justice.

(2) If within two months after issuance of the Commission or sub-commission report, no agreement for submission to the International Court of Justice has been reached, any such question shall be submitted, at the request of either party, to an arbitral tribunal for decision.

(3) The arbitral tribunal shall consist of one member appointed by each party to the dispute and a chairman appointed by common agreement between the parties. If any of these appointments has not been made within a period of three months from the request for arbitration, it shall be made from the list of members of the Permanent Court of Arbitration by the President of the International Court of Justice.

(4) The Secretary-General shall provide to the arbitration tribunal such assistance and facilities as it may require.

Article 7

If the parties agree the arbitral tribunal may be (a) the sub-commission of the Commission on Treaty Disputes which has been seized of the dispute, or (b) another sub-commission constituted in the same manner as provided in article 2, or (c) the full Commission.

[Withdrawn as amendment to article 62, for possible resubmission and consideration at the second session of the Conference in connexion with article 62bis, see para. 577 below]

(iii) *Remaining amendments to specified paragraphs of article 62*

(1) *Paragraph 1*

(a) *Japan* (A/CONF.39/C.1/L.338):

Insert "void or" between the words "a treaty is" and "invalid" in the first sentence.

[Not pressed to a vote, see para. 578 below]

(b) *France* (A/CONF.39/C.1/L.342):

Replace the first sentence by the following:

A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim.

[Adopted, see para. 578 below]

(2) *Paragraph 2*

(a) *Japan* (A/CONF.39/C.1/L.338):

Delete the words "except in cases of special urgency". [Withdrawn, see para. 576 below]

(b) *United States of America* (A/CONF.39/C.1/L.355):

Amend paragraph 2 to read as follows:

2. (a) If after the expiry of a period which, except in cases of special urgency shall not be less than three months after receipt of the notification, the party making the notification has not received an objection from any other party and, in the case of a multilateral treaty, has ascertained that no other party has communicated any objection to the depositary, it may carry out in the manner provided in article 63 the measure which it has proposed.

(b) In cases of special urgency the time period shall, in every case, be sufficient to allow the other parties to make an objection.

[Not pressed to a vote, see para. 576 below]

(3) *New paragraph 6*

Cuba (A/CONF.39/C.1/L.353):

Add the following paragraph:

6. The foregoing provisions shall not apply to a treaty which is legally void *ab initio* in accordance with articles 48, 49 and 50.

[Withdrawn, see para. 576 below]

II. DRAFT RESOLUTIONS

572. In the course of the discussion of article 62, and the amendments thereto, draft resolutions were introduced by the Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.362) and by Ceylon and Czechoslovakia (A/CONF.39/C.1/L.361).

These draft resolutions were to the following effect:

(a) *Ceylon and Czechoslovakia* (A/CONF.39/C.1/L.361):

The Committee of the Whole recommends to the Conference the adoption of the following resolution:

The United Nations Conference on the Law of Treaties,

Mindful that in the process of codification and progressive development of the law of treaties the procedure to be followed in cases of invalidity, termination, withdrawal from or suspension of the operation of a treaty, as well as participation of all States in certain treaty relations require further detailed study,

Being aware that through lack of time, the Conference was unable to give at its first session full consideration to all the relevant aspects of those two problems,

Calls upon States represented at the Conference, in particular those which made concrete suggestions regarding the solution of the two problems mentioned above, to devote their utmost efforts to preparing their solution at the second session of the Conference, in particular by undertaking, in the period between the two sessions of the Conference, such consultations and other preparatory measures as they may deem necessary, with a view to making the convention on the law of treaties acceptable to as large a number of States as possible.

[Withdrawn, see para. 576 below]

(b) *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.362):

The Committee of the Whole,

Having examined article 62 of the draft convention on the law of treaties,

Considering that the article does not provide for procedures in cases in which the parties do not succeed in agreeing on the means of settlement of differences relating to the invalidation, termination or suspension of treaties under Part V of the convention,

Considering it necessary to add to article 62 provisions for effective and impartial procedures for the settlement of such differences at the request of either party,

Aware of the complexities of the various amendments submitted to that effect and the need for a careful study of them by Governments,

Desiring to facilitate such study and further consultations on the matter between Governments with a view to reaching a solution that may have broad support,

Decides to defer all votes on article 62 and the amendments submitted thereto.

[Withdrawn, see para. 576 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

573. The Committee of the Whole initially discussed article 62, and the amendments thereto, at its 68th to 74th meetings inclusive, between 14 and 16 May 1968, and at its 80th meeting, on 21 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

574. The amendments by *Cambodia, Finland, Lebanon, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.346) and by *Gabon and the Central African Republic* (A/CONF.39/C.1/L.345) were withdrawn before the Committee of the Whole commenced its consideration of article 62, in favour of the joint amendment by the *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.352/Rev.1/Corr.1).

575. At the 74th meeting of the Committee of the Whole, *Kenya* moved the adjournment of the debate on article 62, and the amendments and draft resolutions relating thereto, until 21 May 1968. This motion was adopted without objection. Consideration of the article, amendments and draft resolutions was resumed by the Committee on that date, at its 80th meeting.

576. At the 80th meeting, the draft resolutions submitted by the *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.362) and by *Ceylon and Czechoslovakia* (A/CONF.39/C.1/L.361) were withdrawn. At the same meeting, the amendment by *Japan* (A/CONF.39/C.1/L.388) to paragraph 2 of article 62 was withdrawn. The amendment by *Cuba* (A/CONF.39/C.1/L.353) proposing to add a new paragraph 6 to article 62 was also withdrawn. That part of the amendment by the *United States of America* which related to paragraph 2 of article 62 was not pressed to a vote.

577. Likewise at the 80th meeting, the *Netherlands*, on behalf of the sponsors of the amendment by the

Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.362/Rev.1/Corr.1), withdrew that amendment as an amendment to article 62 and resubmitted it, with certain consequential changes, as a proposed new article 62bis (A/CONF.39/C.1/L.352/Rev.2), to be considered at the second session of the Conference (see para. 583(b) below). The amendments by *Japan* (A/CONF.39/C.1/L.339), the *United States of America* (A/CONF.39/C.1/L.355) and *Uruguay* (A/CONF.39/C.1/L.343), were also withdrawn, on the understanding that the sponsors reserved the right to resubmit those amendments to the second session of the Conference for consideration together with proposed new article 62bis. Consideration of the amendments by *Switzerland* (A/CONF.39/C.1/L.347) to article 62, and of its proposed new article 62bis (A/CONF.39/C.1/L.348, see para. 583(a) below) was deferred until the second session of the Conference. The amendment by *Switzerland* (A/CONF.39/C.1/L.347) was subsequently resubmitted, with consequential amendments, as a proposed article 62bis (see para. 583(c) below) at the first session.

578. At the same meeting, the Committee of the Whole voted upon the amendment by *France* (A/CONF.39/C.1/L.342) to paragraph 1 of article 62. This amendment was adopted by 39 votes to 31, with 20 abstentions. By virtue of the foregoing vote, the amendment by *Japan* (A/CONF.39/C.1/L.338) to paragraph 1 of article 62 was disposed of.

579. Finally, at its 80th meeting, the Committee of the Whole agreed, without objection, to the statement by the Chairman that article 62 was adopted and referred to the Drafting Committee, as amended.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

580. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 62 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 581 below). The Committee of the Whole adopted this text without formal vote.¹¹⁵

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

581. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 62:

Article 62

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the

¹¹⁵ See para. 13 above.

notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

ARTICLE 62bis

A. Proposed new article

582. An amendment was submitted by Switzerland (A/CONF.39/C.1/L.348) proposing that paragraph 4 of article 62 of the International Law Commission text, with certain consequential amendments, be inserted as a new article 62bis. Certain amendments, submitted originally to article 62, were subsequently resubmitted as amendments proposing to add a new article 62bis (see para. 577 above).¹¹⁶ These amendments were by Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia (A/CONF.39/C.1/L.352/Rev.2) and Switzerland (A/CONF.39/C.1/L.377).

583. The above amendments were to the following effect:

(a) *Switzerland* (A/CONF.39/C.1/L.348):

Insert the following new article between articles 62 and 63:

Other procedures provided for by agreement between the parties
Nothing in the preceding article shall affect the rights or obligations of the parties under any provision in force between them concerning the settlement of disputes.

[Deferred for consideration at the second session of the Conference, see para. 584 below and document A/CONF.39/15, para. 115]

(b) *Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia* (A/CONF.39/C.1/L.352/Rev.2):

Insert a new article 62bis reading as follows:

If the parties have been unable to agree, as provided in article 62, upon any means of reaching a solution within four months following the date on which the objection was raised, or if they have agreed upon any means of settlement other than adjudication or arbitration and that means of settlement has not led to a solution within twelve months after such agreement, either party may request the Secretary-General of the United Nations to set in motion the procedures specified in the annex to the present Convention.

¹¹⁶ In addition, the sponsors of the following amendments to article 62 reserved the right (see para. 577 above) to resubmit their amendments to the second session of the Conference for consideration under article 62bis: Japan (A/CONF.39/C.1/L.339; for text, see para. 571(ii)(a) above); United States of America (A/CONF.39/C.1/L.355; for text, see para. 571(ii)(e) above); Uruguay (A/CONF.39/C.1/L.343; for text, see para. 571(i)(a) above).

Add at the end of the text of the convention:

Annex

(1) A permanent list of conciliators consisting of qualified jurists shall be drawn up by the Secretary-General of the United Nations. To this end every State Member of the United Nations and every party to the present Convention shall be invited to nominate two conciliators for a period of five years, which may be renewed.

(2) In the event of a dispute, each party shall appoint:

(a) one conciliator of its own nationality chosen either from the list referred to in paragraph 1 above or from outside that list;

(b) one conciliator not of its own nationality chosen from the list.

The Commission thus constituted shall appoint a chairman chosen from the list.

The conciliators chosen by the parties shall be appointed within a period of three months after the opening of the conciliation procedure by the party requesting it.

The conciliators shall appoint their chairman within two months after their own appointment.

If the appointment of the conciliators or of the chairman has not been made within the above-mentioned periods, it shall be made by the Secretary-General of the United Nations.

(3) The Commission thus constituted shall establish the facts and shall make proposals to the parties with a view to arriving at a friendly settlement of the dispute. The Commission shall establish its own procedure. Decisions and recommendations of the Commission shall be taken by a majority vote. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

(4) The Commission shall be required to report within twelve months of its constitution. Its reports shall be transmitted to the Secretary-General and to the parties.

(5) In the event of failure of the conciliation procedure and if the parties have not agreed on a means of judicial settlement within three months from the date when it is established that the conciliation procedure has failed, the dispute shall, at the request of either party to it, be brought before an arbitral tribunal.

The arbitral tribunal shall consist of two arbitrators, one appointed by each party, and a chairman appointed by agreement between the arbitrators.

The arbitrators shall be appointed within a period of six months from the date when it is established that the conciliation procedure has failed.

The chairman shall also be appointed within a period of six months from the date of the appointment of the arbitrators by the parties.

If the chairman or arbitrators are not appointed within the above-mentioned period, the appointment shall be made by the Secretary-General of the United Nations.

(6) The arbitral tribunal shall establish its own procedure. The decisions of the arbitral tribunal shall be taken by a majority vote. The award shall be binding and definitive.

(7) The Secretary-General shall provide the arbitral tribunal with such assistance and facilities as it may require. The expenses of the arbitral tribunal shall be borne by the United Nations.

[Deferred for consideration at the second session of the Conference, see para. 584 below and document A/CONF.39/15, para. 98(b)]

(c) *Switzerland* (A/CONF.39/C.1/L.377):

Insert a new article 62bis reading as follows:

1. If the parties have been unable to reach any agreement on the settlement procedure within a period of three months after the

objection referred to in article 62, paragraph 3, the party which has made the notification may, not more than six months after the objection, bring the dispute before the International Court of Justice by simple application, or before a commission of arbitration in conformity with the provisions of paragraph 2.

2. Unless the parties otherwise agree, the arbitration procedure shall be as follows:

(a) The commission of arbitration shall be composed of five members. Each of the parties shall appoint one member. The other three arbitrators shall be appointed jointly by the parties from nationals of third States. They shall be of different nationalities, shall not have their usual place of residence in the territory of the parties and shall not be in the service of the parties.

(b) The president of the commission of arbitration shall be appointed by the parties from among the arbitrators appointed jointly.

(c) If, within a period of three months, the parties have been unable to reach agreement on the appointment of the arbitrators to be appointed jointly, the President of the International Court of Justice shall make the appointment. If within a period of three months one of the parties has not appointed the arbitrator it is responsible for appointing, the President of the International Court of Justice shall make the appointment.

(d) If the President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, the Vice-President of the International Court of Justice shall make the necessary appointments. If the Vice-President of the International Court of Justice is unable to do so, or is of the same nationality as one of the parties, he shall be replaced by the most senior member of the Court whose nationality is not the same as that of any of the parties.

(e) Unless the parties otherwise agree, the commission of arbitration shall decide its own procedure. Failing that, the provisions of chapter III of the Hague Convention for the Pacific Settlement of International Disputes of 18 October 1907 shall apply.

(f) The commission of arbitration shall decide all questions submitted to it by simple majority vote, and its decisions shall be binding on the parties.

3. Throughout the duration of the dispute, in the absence of any agreement to the contrary between the parties or of provisional measures ordered by the court of jurisdiction, the treaty shall remain in operation between the parties to the dispute.

4. If the party which has made the notification does not within the prescribed period of six months have recourse to one of the tribunals referred to in paragraph 1, it shall be deemed to have renounced its claim of invalidity or to the measure proposed.

[Deferred for consideration at the second session of the Conference, see para. 584 below and document A/CONF.39/15, para. 98(d)]

B. Proceedings of the Committee of the Whole

MEETINGS, CONSIDERATION AND DECISION

584. At the 80th meeting of the Committee of the Whole, on 21 May 1968, it was decided, without objection, to defer until the second session of the Conference consideration of all amendments proposing the addition of a new article 62*bis*.

ARTICLE 63

A. International Law Commission text

585. The International Law Commission text provided as follows:

Article 63.—Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

B. Amendments

586. An amendment to article 63 was submitted by Switzerland (A/CONF.39/C.1/L.349 and Corr.1).

587. This amendment was to the following effect:

Amend the title and the text of paragraph 1 of article 63 to read as follows:

Instruments of execution

1. Any act executing one of the measures referred to in article 62, paragraphs 1 and 2, shall be carried out through an instrument communicated to the other parties.

[Rejected, see para. 590 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

588. The Committee of the Whole initially discussed article 63, and the amendment thereto, at its 74th meeting, on 16 May 1968, and at its 81st meeting, on 22 May 1968. At its 83rd meeting, on 24 May 1968, it considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

589. At its 74th meeting, the Committee of the Whole decided, without objection, to refer article 63 to the Drafting Committee, on the understanding that a decision on the amendment by *Switzerland* (A/CONF.39/C.1/L.349 and Corr.1) would be taken by the Committee of the Whole after its consideration of article 62 was completed.

590. At its 81st meeting, the Committee of the Whole voted upon the amendment by *Switzerland* (A/CONF.39/C.1/L.349 and Corr.1). The amendment was rejected by 43 votes to 11, with 33 abstentions.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

591. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 63 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 592 below). The Committee of the Whole adopted this text without formal vote.¹¹⁷

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

592. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 63:

¹¹⁷ See para. 13 above.

Article 63

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

ARTICLE 64

A. International Law Commission text

593. The International Law Commission text provided as follows:

Article 64.—Revocation of notifications and instruments provided for in articles 62 and 63

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

B. Amendments

594. No amendments were submitted to article 64.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

595. The Committee of the Whole initially discussed article 64 at its 74th meeting, on 16 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

596. At its 74th meeting, the Committee of the Whole decided, without objection, to adopt article 64 and to refer it to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

597. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 64 adopted by the Drafting Committee (A/CONF.39/C.1/13; for text, see para. 598 below). The Committee of the Whole adopted this text without formal vote.¹¹⁸

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

598. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 64:

Article 64

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

¹¹⁸ *Ibid.*

SECTION 5. CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

ARTICLE 65

A. International Law Commission text

599. The International Law Commission text provided as follows:

Article 65.—Consequences of the invalidity of a treaty

1. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) Each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) Acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or corrupt act is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

B. Amendments

600. Amendments were submitted to article 65 by Australia (A/CONF.39/C.1/L.297), Bulgaria and Poland (A/CONF.39/C.1/L.278), France (A/CONF.39/C.1/L.48 and L.363), Switzerland (A/CONF.39/C.1/L.358) and the United States of America (A/CONF.39/C.1/L.360).

601. These amendments, arranged under sub-headings relating to paragraph 1, paragraph 2, paragraph 3 and paragraph 4 of the article, were to the following effect:

(i) Paragraph 1

(a) *Australia* (A/CONF.39/C.1/L.297):

Amend [paragraph 1] by replacing the words "a void treaty" by the words "a treaty established as invalid under the present Convention".

[Referred to the Drafting Committee, see para. 605 below]

(b) *Switzerland* (A/CONF.39/C.1/L.358):

Replace paragraph 1 by the following:

The provisions of an invalidated treaty have no legal force.

[Referred to the Drafting Committee, see para. 605 below]

(c) *United States of America* (A/CONF.39/C.1/L.360):

Article 65 [paragraph 1] is revised to read as follows:

The provisions of a treaty determined to be void in accordance with the present Convention have no legal force.

[Referred to the Drafting Committee, see para. 605 below]

(d) *France* (A/CONF.39/C.1/L.363):

Replace paragraph 1 by the following text:

The provisions of a treaty the invalidity of which has been established in accordance with article 62 have no legal force.

[Referred to the Drafting Committee, see para. 605 below]

(ii) *Paragraph 2*

United States of America (A/CONF.39/C.1/L.360):

Article 65 [paragraph 2] is revised to read as follows:
Acts performed in good faith in reliance upon such provisions of a treaty before nullity was established are not rendered unlawful by reason only of the nullity.

[Rejected, see para. 604(a) below]

(iii) *Paragraph 3*

(a) *Bulgaria and Poland* (A/CONF.39/C.1/L.278):

Redraft paragraph 3 by replacing the words "is imputable" by the words "has been the cause of the invalidity or nullity of the treaty".

[Referred to the Drafting Committee, see para. 605 below]

(b) *Switzerland* (A/CONF.39/C.1/L.358):

Delete paragraph 3.

[Rejected, see para. 604(b) below]

(c) *United States of America* (A/CONF.39/C.1/L.360):

[NOTE: This amendment omitted paragraph 3 of the International Law Commission text, paragraph 4 of that text being renumbered as paragraph 3. The amendment therefore proposed the deletion of paragraph 3 of the original text]

[Rejected, see para. 604(b) below]

(iv) *Paragraph 4*

France (A/CONF.39/C.1/L.48):

After the words "multilateral treaty", insert the words "other than a restricted multilateral treaty".

[Withdrawn, see para. 603 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

602. The Committee of the Whole initially discussed article 65, and the amendments thereto, at its 74th meeting, on 16 May 1968. At its 83rd meeting, on 24 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

603. At the 74th meeting of the Committee of the Whole, the amendment by *France* (A/CONF.39/C.1/L.48) to paragraph 4 of article 65 was withdrawn.

604. At the same meeting, the Committee of the Whole voted upon certain of the amendments before it. The results of the voting were as follows:

(a) The amendment by the *United States of America* (A/CONF.39/C.1/L.360) to paragraph 2 was rejected by 39 votes to 28, with 20 abstentions.

(b) The amendments by *Switzerland* (A/CONF.39/C.1/L.358) and *United States of America* (A/CONF.39/C.1/L.360) proposing the deletion of paragraph 3 were rejected by 46 votes to 24, with 17 abstentions.

605. Also at its 74th meeting, the Committee of the Whole decided, without objection, to refer article 65 to the Drafting Committee, together with the remaining amendments by *Australia* (A/CONF.39/C.1/L.297), *Bulgaria* and *Poland* (A/CONF.39/C.1/L.278), *France* (A/CONF.39/C.1/L.363), *Switzerland* (A/CONF.39/C.1/L.358) (para. 1 only) and *United States of America* (A/CONF.39/C.1/L.360) (para. 1 only).

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

606. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 65 adopted by the Drafting Committee (A/CONF.39/C.1/13). Paragraph 1 of this text read as follows:

1. A treaty the invalidity of which is established under articles 43 to 50 and 61, and in accordance with the procedures laid down in article 62, is void. The provisions of a void treaty have no legal force.

607. *Ghana* proposed an oral amendment to substitute the following text for the first sentence of paragraph 1 of article 65: "A treaty the invalidity of which is established under the present Convention is void."

Canada proposed that separate votes be taken on the words "under articles 43 to 50 and 61" and on the words "and in accordance with the procedures laid down in article 62" which appeared in the text of paragraph 1 of article 65 recommended by the Drafting Committee, but which were omitted in the oral amendment by *Ghana*. *Sweden* proposed an oral amendment to replace the words "under articles 43 to 50 and 61", in the text of paragraph 1 recommended by the Drafting Committee by the words "under the present Convention".

608. The oral amendment by *Ghana* was adopted by 48 votes to 31, with 8 abstentions. As a result of this vote, the proposal by *Canada* for separate votes and the oral amendment by *Sweden* were disposed of.

609. The Committee of the Whole adopted the text of article 65 recommended by the Drafting Committee, as amended, by 63 votes to 2, with 20 abstentions.

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

610. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 65:

Article 65

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

- (a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;
- (b) acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or act of corruption is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

ARTICLE 66

A. International Law Commission text

611. The International Law Commission text provided as follows:

Article 66.—Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

B. Amendments

612. An amendment was submitted to article 66 by France (A/CONF.39/C.1/L.49).

613. This amendment was to the following effect:

In paragraph 2, after the words "multilateral treaty", insert the words "other than a restricted multilateral treaty".

[Referred to the Drafting Committee, see para. 615 below; subsequently deferred until the second session of the Conference, see para. 616 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

614. The Committee initially discussed article 66, and the amendment thereto, at its 75th meeting, on 17 May 1968. At the 80th meeting of the Committee, on 21 May 1968, it was decided to defer final consideration of article 66 until the second session of the Conference.

(ii) CONSIDERATION

615. At its 75th meeting, the Committee of the Whole decided, without objection, to refer article 66 to the Drafting Committee, together with the amendment by France (A/CONF.39/C.1/L.49).

616. At the 80th meeting of the Committee of the Whole, it was decided, without objection, to defer to the second session of the Conference consideration of all amendments proposing the addition of references to "general multilateral treaties" or to "restricted multilateral treaties". The amendment by France (A/CONF.39/C.1/L.49) proposed to add a reference to "restricted multilateral treaty" in article 66.

(iii) DECISION

617. On the basis of the foregoing, the Committee of the Whole decided to defer final consideration of article 66

until the second session of the Conference (see document A/CONF.39/15, paras. 121-128).

ARTICLE 67

A. International Law Commission text

618. The International Law Commission text provided as follows:

Article 67.—Consequences of the nullity or termination of a treaty conflicting with a peremptory norm of general international law

1. In the case of a treaty void under article 50 the parties shall:

(a) Eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) Bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:

(a) Releases the parties from any obligation further to perform the treaty;

(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

B. Amendments

619. Amendments were submitted to article 67 by Finland (A/CONF.39/C.1/L.295), India (A/CONF.39/C.1/L.256) and Mexico (A/CONF.39/C.1/L.356).

620. These amendments were to the following effect:

(a) *India* (A/CONF.39/C.1/L.256):

Amend introductory sentence of paragraph 1 to read as follows:

In the case of a treaty void under *paragraph 1* of article 50 the parties shall: ...

Amend introductory sentence of paragraph 2 to read as follows:

In the case of a treaty which becomes void under *paragraph 2* of article 50, the *consequential* termination of the treaty: ...

[Withdrawn, see para. 622 below]

[NOTE: An amendment by India to article 50 (A/CONF.39/C.1/L.254) proposed to add to the text of article 50 a new paragraph 2 which contained the substance of article 61; see para. 462(ii)(a) above]

(b) *Finland* (A/CONF.39/C.1/L.295):

1. Add the words "or its provisions" to the title of the article between the words "treaty" and "conflicting".

2. Amend the text of the article as follows:

Paragraph 1. introductory phrase: In the case of a treaty or certain of its provisions void under article 50 the parties shall:

Paragraph 2. In the case of a treaty or certain of its clauses which become void and terminate under article 61, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty or under the conditions of article 50 (2), those of its provisions which are in conflict with a peremptory norm of general international law.

(b) [no alterations].

[Not put to the vote, see para. 624 below]

(c) *Mexico* (A/CONF.39/C.1/L.356):

Amend paragraph 1, sub-paragraph (b), to read as follows:

Bring their mutual relations *and their further conduct* into conformity with the peremptory norm of general international law. [Withdrawn, see para. 622 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

621. The Committee of the Whole discussed article 67, and the amendments thereto, at its 75th and 82nd meetings, on 17 and 23 May 1968.

(ii) CONSIDERATION

622. At the 52nd meeting of the Committee of the Whole, in connexion with the consideration of article 50, the amendment by *India* (A/CONF.39/C.1/L.256) to article 67, which was consequential upon an amendment by that State to article 50, was withdrawn (see para. 464 above). At the 82nd meeting, the amendment by *Mexico* (A/CONF.39/C.1/L.356) was withdrawn.

623. At its 75th meeting, the Committee of the Whole adopted article 67 in principle, without objection, but deferred its decision upon the amendments thereto, pending a final decision on the text of article 41 to be recommended by the Drafting Committee. The Committee again considered article 67, and the amendments thereto, at its 82nd meeting.

624. At its 82nd meeting, the Committee of the Whole adopted the text of article 67 recommended by the International Law Commission without formal vote.¹¹⁹ The amendment by *Finland* (A/CONF.39/C.1/L.275) was not put to the vote, having been disposed of by virtue of the vote upon an amendment by *Finland* (A/CONF.39/C.1/L.144) to article 41. The Committee of the Whole had rejected this amendment at its 82nd meeting (see para. 369(vi) and 377 above).

(iii) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

625. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 67:

Article 67

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

¹¹⁹ *Ibid.*

ARTICLE 68

A. International Law Commission text

626. The International Law Commission text provided as follows:

Article 68.—Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:

(a) Relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(b) Does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible.

B. Amendments

627. An amendment was submitted to article 68 by *Mexico* (A/CONF.39/C.1/L.357).

628. This amendment was to the following effect:

Amend paragraph 2 to read as follows:

During the period of the suspension the parties shall refrain from acts tending to render the resumption of the operation of the treaty impossible or to frustrate the object of the treaty.

[Orally amended, see para. 630 below; referred to the Drafting Committee, see para. 631 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

629. The Committee of the Whole initially discussed article 68, and the amendment thereto, at its 75th meeting, on 17 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

630. At the 75th meeting of the Committee of the Whole, *Australia* submitted an oral sub-amendment to the amendment by *Mexico* (A/CONF.39/C.1/L.357) to replace the word "frustrate" by the word "defeat", and to add the words "and purpose" after the word "object". This oral sub-amendment was accepted by the sponsor.

631. Also at its 75th meeting, the Committee of the Whole decided, without objection, to refer article 68 to the Drafting Committee, together with the amendment by *Mexico* (A/CONF.39/C.1/L.357) as orally amended.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

632. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 68 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 633 below). The Committee of the Whole adopted this text without formal vote.¹²⁰

¹²⁰ *Ibid.*

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE
633. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 68:

Article 68

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

- (a) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;
- (b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI. MISCELLANEOUS PROVISIONS

ARTICLE 69

A. International Law Commission text

634. The International Law Commission text provided as follows:

Article 69.—Cases of State succession and State responsibility

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

B. Amendments

635. Amendments were submitted to article 69 by Hungary and Poland (A/CONF.39/C.1/L.279), Japan (A/CONF.39/C.1/L.365) and Switzerland (A/CONF.39/C.1/L.359).

636. These amendments were to the following effect:

(a) *Hungary and Poland* (A/CONF.39/C.1/L.279):

Redraft article 69 by adding at the end of it the words "or from the outbreak of hostilities between States".

[Adopted, see para. 638(c) below]

(b) *Switzerland* (A/CONF.39/C.1/L.359):

Reword the article as follows:

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

[Adopted, see para. 638(c) below]

(c) *Japan* (A/CONF.39/C.1/L.365):

Reformulate the contents of the article as a paragraph in the preamble to the present Convention along the following lines:

Confirming that the provisions of the present Convention, embodying the general rules of international law applicable in the field of the law of treaties, are without prejudice to any question that may arise in regard to a treaty from a matter which relates to any other field of international law;

[Rejected, see para. 638(a) and (b) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

637. The Committee of the Whole initially discussed article 69, and the amendments thereto, at its 76th meeting, on 17 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

638. At its 76th meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) The proposal in the amendment by *Japan* (A/CONF.39/C.1/L.365), to replace article 69 by a paragraph in the preamble, was rejected by 64 votes to 4, with 20 abstentions.

(b) The formulation of the article contained in the amendment by *Japan* (A/CONF.39/C.1/L.365) was rejected by 45 votes to 22, with 20 abstentions.

(c) The principle contained in the amendments by *Hungary and Poland* (A/CONF.39/C.1/L.279) and *Switzerland* (A/CONF.39/C.1/L.359) was adopted by 72 votes to 5, with 14 abstentions.

639. At the same meeting, the Committee of the Whole decided, without objection, to refer article 69, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

640. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 69 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 641 below). The Committee of the Whole adopted this text without formal vote.¹²¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

641. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 69:

Article 69

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

ARTICLE 69bis

642. An amendment by *Chile* (A/CONF.39/C.1/L.341) to article 60 was adopted by the Committee of the Whole, which also accepted the recommendation of the Drafting Committee that this amendment should be incorporated into the text of the draft convention. The amendment is considered under article 60 in paragraphs 547 to 558 above.

¹²¹ *Ibid.*

ARTICLE 70

A. International Law Commission text

643. The International Law Commission text provided as follows:

Article 70.—Case of an aggressor State

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

B. Amendments

644. Amendments were submitted to article 70 by Japan (A/CONF.39/C.1/L.366) and Thailand (A/CONF.39/C.1/L.367).

645. These amendments were to the following effect:

(a) *Japan* (A/CONF.39/C.1/L.366):

Amend the article to read as follows:

The present Convention is without prejudice to any obligation in relation to a treaty which may arise for a State in consequence of a binding decision taken by the Security Council of the United Nations.

[Rejected, see para. 648(a) below]

(b) *Thailand* (A/CONF.39/C.1/L.367):

1. Replace the words "for an aggressor State in" by "as a".

2. Delete at the end of the sentence the words "with reference to that State's aggression".

[Rejected, see para. 648(b) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

646. The Committee of the Whole initially discussed article 70, and the amendments thereto, at its 76th meeting, on 17 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

647. At the 76th meeting of the Committee of the Whole, *Liberia* submitted an oral amendment to article 70 to add the words "or any other State" after the words "aggressor State" and the words "or any other activities contrary to the provisions of the Charter of the United Nations" at the end of the article.

648. At the same meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) The amendment by *Japan* (A/CONF.39/C.1/L.366) was rejected by 58 votes to 7, with 27 abstentions.

(b) The amendment by *Thailand* (A/CONF.39/C.1/L.367) was rejected by 54 votes to 4, with 30 abstentions.

649. Also at its 76th meeting, the Committee of the Whole decided, without objection, to refer article 70 to the Drafting Committee, together with the oral amendment by *Liberia*.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

650. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 70 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 651 below). The Committee of the Whole adopted this text without formal vote.¹²²

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

651. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 70:

Article 70

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

PART VII. DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

ARTICLES 71 AND 72

652. At its 77th meeting, on 20 May 1968, the Committee of the Whole decided, without objection, to discuss articles 71 and 72 together. In view of this decision of the Committee, and as certain of the amendments related to both the articles, they are considered together under a single heading.

A. International Law Commission text

653. The International Law Commission text provided as follows:

Article 71.—Depositaries of treaties

1. The depositary of a treaty, which may be a State or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.

Article 72.—Functions of depositaries

1. The functions of a depositary, unless the treaty otherwise provides, comprise in particular:

(a) Keeping the custody of the original text of the treaty, if entrusted to it;

(b) Preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the States entitled to become parties to the treaty;

(c) Receiving any signatures to the treaty and any instruments and notifications relating to it;

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

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

¹²² *Ibid.*

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

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

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

B. Amendments

654. Amendments relating to the text of both article 71 and article 72 were submitted by China (A/CONF.39/C.1/L.328) and Malaysia (A/CONF.39/C.1/L.290/Rev.1 and L.291).

655. Other amendments were submitted to article 71 by Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.236 and Add.1),¹²³ Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia (A/CONF.39/C.1/L.351), Finland (A/CONF.39/C.1/L.248) and Mexico (A/CONF.39/C.1/L.372).

656. In addition to the amendments mentioned in paragraph 654 above, amendments were submitted to article 62 by the Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.364), Finland (A/CONF.39/C.1/L.249), Mexico (A/CONF.39/C.1/L.373), Mongolia (A/CONF.39/C.1/L.368) and the United States of America (A/CONF.39/C.1/L.369).

657. The foregoing amendments, arranged under sub-headings relating to articles 71 and 72, paragraph 1 and paragraph 2 of article 71 and paragraph 1, new paragraph between paragraphs 1 and 2, and paragraph 2 of article 72, were to the following effect:

(i) Articles 71 and 72

(a) China (A/CONF.39/C.1/L.328):

1. In the first [phrase] of paragraph 1 of article 71, add the word "multilateral" before the word "treaty".

2. In paragraph 2 of article 71, add the word "multilateral" before the word "treaty".

3. Transfer paragraph 2 of article 71 to article 72 as paragraph 1 of the latter article.

[Rejected, see para. 660(b) and (e) below]

(b) Malaysia (A/CONF.39/C.1/L.290/Rev.1):¹²⁴

In paragraph 2 of article 71:

1. Delete the words "The functions of a depositary of a treaty are international in character and".

2. Substitute the word "the" for "their" . . .

3. Add the words "of its functions" after the word "performance".

[Withdrawn, see para. 659 below]

¹²³ Original sponsors Bulgaria and Sweden, co-sponsor Romania (Add.1).

¹²⁴ In its original form (A/CONF.39/C.1/L.290) this amendment formulated paragraph 2 of article 71 as follows: "2. The depositary is under an obligation to act impartially in the performance of his duties".

(c) Malaysia (A/CONF.39/C.1/L.291):

In paragraph 1 of article 72: Insert the words "of a treaty are international in character and" between the word "depositary" and the word "unless".

[Withdrawn, see para. 659 below]

(ii) Paragraph 1 of article 71

(a) Bulgaria, Romania and Sweden (A/CONF.39/C.1/L.236 and Add.1):

Substitute the following text [for paragraph 1]:

The negotiating States shall designate in the treaty or in some other manner a State or States or an international organization to perform the functions of depositary.

[Adopted, see para. 660(a) below]

(b) Finland (A/CONF.39/C.1/L.248):

Amend paragraph 1 to read as follows:

The depositary of a treaty, which may be *one or more States* or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

[Adopted, see para. 660(a) below]

(c) Mexico (A/CONF.39/C.1/L.372):

Word [paragraph 1] as follows:

The depositary of a treaty, which may be a State or an international organization or the chief administrative officer of the organization, shall be designated by the negotiating States in the treaty or in some other manner.

[Adopted, see para. 660(c) below]

(iii) Paragraph 2 of article 71

Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia (A/CONF.39/C.1/L.351):

Amend article 71, paragraph 2, to read as follows:

The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance, *irrespective of the state and character of the relations between the depositary State and the State transmitting the notifications and communications referred to in article 73.*

[Rejected, see para. 660(d) below]

(iv) Paragraph 1 of article 72

(1) Introductory phrase

United States of America (A/CONF.39/C.1/L.369):

Amend the introduction to read as follows:

1. The functions of a depositary, unless the treaty otherwise provides or *unless the contracting States otherwise agree*, comprise in particular:

[Adopted, see para. 660(f) below]

(2) New sub-paragraph before sub-paragraph (a)

United States of America (A/CONF.39/C.1/L.369):

Insert before the present sub-paragraph (a) a new sub-paragraph reading as follows:

(a) Preparing the original text for signature in the languages specified;

[Adopted, see para. 660(g) below, subsequently withdrawn, see para. 664 below]

(3) Sub-paragraph (a)

(a) *Finland* (A/CONF.39/C.1/L.249):

Amend sub-paragraph (a) to read as follows:

Keeping the custody of the original *and, if any, of the amended* text of the treaty, if entrusted to it;

[Adopted, see para. 660(o) below]

(b) *United States of America* (A/CONF.39/C.1/L.369):

Amend the present sub-paragraph (a) to read as follows:

Keeping the custody of the original text of the treaty *and of full powers, instruments of ratification, accession, acceptance or approval and notifications communicated to it*;

[Adopted, see para. 660(h) below]

(c) *Mexico* (A/CONF.39/C.1/L.373):

Amend [sub-paragraph (a)] to read as follows:

Keeping the custody of the original text of the treaty *and of any amendments thereto*, if entrusted to it;

[Adopted, see para. 660(o) below]

(4) *Sub-paragraph (d)*

Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.364):

Amend sub-paragraph (d) to read as follows:

Examining whether the documents relating to the treaty are correctly drawn up and, if need be, bringing the matter to the attention of the State in question;

[Adopted, see para. 660(i) below]

(5) *Sub-paragraph (e)*

Finland (A/CONF.39/C.1/L.249):

Amend sub-paragraph . . . (e) to read as follows:

Informing the *parties to the treaty* and the States entitled to become parties to it of acts, communications and notifications relating to the treaty.

[Adopted, see para. 660(j) below]

(6) *New sub-paragraph between sub-paragraphs (f) and (g)*

United States of America (A/CONF.39/C.1/L.369):

Add a new sub-paragraph between the present sub-paragraphs (f) and (g) reading as follows:

Registering the treaty with the Secretariat of the United Nations;

[Adopted, see para. 660(k) below]

(v) *New paragraph between paragraphs 1 and 2 of article 72*

Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.364):

Insert the following new paragraph [between paragraphs 1 and 2]:

2. If the treaty does not enter into force as between certain of the parties thereto, this shall not affect the obligation of the depositary to perform its functions in relation to all States parties to the treaty.

[Adopted, see para. 660(l) below]

(vi) *Paragraph 2 of article 72*

(a) *Mongolia* (A/CONF.39/C.1/L.368):

At the end of article 72, paragraph 2, add the following sentence:

The appearance of a difference shall not affect the impartial performance by the depositary of its functions as specified in paragraph 1 of this article.

[Adopted, see para. 660(m) below]

(b) *United States of America* (A/CONF.39/C.1/L.369):

Amend paragraph 2 to read as follows:

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

[Adopted, see para. 660(n) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

658. The Committee of the Whole initially discussed articles 71 and 72, and the amendments thereto, at its 77th and 78th meetings, on 20 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on these articles. At its 83rd meeting, on 24 May 1968, the Committee considered a further report of the Drafting Committee on article 71.

(ii) INITIAL CONSIDERATION

659. At the 78th meeting of the Committee of the Whole, the amendment by *Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia* (A/CONF.39/C.1/L.351) to article 71 was orally amended, by its sponsors, by substituting the words "between the latter" for the words "between the depositary State". At the same meeting, the amendments by *Malaysia* (A/CONF.39/C.1/L.290/Rev.1 and A/CONF.39/C.1/L.291) to articles 71 and 72 were withdrawn.

660. Also at the 78th meeting, the Committee of the Whole voted upon the remaining amendments before it. The results of the voting were as follows:

ARTICLE 71

(a) The principle contained in the amendments by *Bulgaria, Romania and Sweden* (A/CONF.39/C.1/L.236 and Add.1) and *Finland* (A/CONF.39/C.1/L.248) to paragraph 1 of article 71 was adopted by 77 votes to none, with 5 abstentions.

(b) That part of the amendment by *China* (A/CONF.39/C.1/L.328) which proposed to add the word "multilateral" before the word "treaty" in the opening phrase of paragraph 1 and in paragraph 2 of article 71 was rejected by 39 votes to 9, with 19 abstentions.

(c) The amendment by *Mexico* (A/CONF.39/C.1/L.372) to paragraph 1 of article 71 was adopted by 40 votes to 10, with 32 abstentions.

(d) The amendment by *Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia* (A/CONF.39/C.1/L.351), as orally amended, to paragraph 2 of article 71 was rejected by 25 votes to 23, with 28 abstentions.

(e) That part of the amendment by *China* (A/CONF.39/C.1/L.328) which proposed to transfer paragraph 2 of article 71 to article 72 was rejected by 35 votes to 8, with 27 abstentions.

ARTICLE 72

(f) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to the introductory phrase of

paragraph 1 of article 72 was adopted by 46 votes to 12, with 28 abstentions.

(g) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to add a new sub-paragraph before sub-paragraph (a) of paragraph 1 of article 72 was adopted by 45 votes to 4, with 32 abstentions.

(h) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to sub-paragraph (a) of paragraph 1 of article 72 was adopted by 71 votes to none, with 13 abstentions.

(i) The amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.364) to sub-paragraph (d) of paragraph 1 of article 72 was adopted by 32 votes to 24, with 27 abstentions.

(j) The amendment by *Finland* (A/CONF.39/C.1/L.249) to sub-paragraph (e) of paragraph 1 of article 72 was adopted by 64 votes to 2, with 18 abstentions.

(k) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to add a new sub-paragraph between sub-paragraphs (f) and (g) of paragraph 1 of article 72 was adopted by 59 votes to none, with 22 abstentions.

(l) The amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.364) to add a new paragraph between paragraphs 1 and 2 of article 72 was adopted by 35 votes to 16, with 33 abstentions.

(m) The amendment by *Mongolia* (A/CONF.39/C.1/L.368) to paragraph 2 of article 72 was adopted by 29 votes to 28, with 29 abstentions.

(n) The amendment by the *United States of America* (A/CONF.39/C.1/L.369) to paragraph 2 of article 72 was adopted by 55 votes to 1, with 29 abstentions.

(o) The principle contained in the amendments by *Finland* (A/CONF.39/C.1/L.249) and *Mexico* (A/CONF.39/C.1/L.373) to sub-paragraph (a) of paragraph 1 of article 72 was adopted without objection.

661. Finally, at its 78th meeting, the Committee of the Whole decided, without objection, to refer articles 71 and 72, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORTS OF THE DRAFTING COMMITTEE

662. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of articles 71 and 72 adopted by the Drafting Committee (A/CONF.39/C.1/12 and Corr.1).

663. The Committee of the Whole decided, without objection, to refer the text of article 71¹²⁶ to the Drafting

Committee for further consideration, in the light of comments made upon it during the 82nd meeting of the Committee of the Whole.

664. The text of article 72 recommended by the Drafting Committee (A/CONF.39/C.1/12 and Corr.1) incorporated the text of an amendment by the *United States of America* (A/CONF.39/C.1/L.369) to add a new sub-paragraph before sub-paragraph (a) of the International Law Commission's text of paragraph 1 of article 72. This amendment had been adopted by the Committee of the Whole (see para. 660(g) above). In the form recommended by the Drafting Committee (A/CONF.39/C.1/12 and Corr.1), this sub-paragraph read as follows:

“(a) preparing the original text for signature in the languages specified.”

In the light of comments made during the 82nd meeting, the *United States of America* stated it would not insist upon the maintenance of its amendment in the text. The Committee of the Whole agreed, without objection, to delete this sub-paragraph. The Committee of the Whole then adopted the text recommended by the Drafting Committee, as amended, without formal vote.¹²⁶

665. At the 83rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing a revised text of article 71 adopted by the Drafting Committee (A/CONF.39/C.1/14; for text, see para. 666 below). The Committee of the Whole adopted this text without formal vote.¹²⁷

(iv) TEXTS ADOPTED BY THE COMMITTEE OF THE WHOLE

666. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 71:

Article 71

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

667. It likewise recommends to the Conference for adoption the following text of article 72:

Article 72

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

- (a) keeping the custody of the original text of the treaty and of any full powers delivered to it;
- (b) preparing certified copies of the original text and any further text in such additional languages as may be required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;
- (c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

¹²⁶ This text (A/CONF.39/C.1/L.12 and Corr.1) read as follows:
“1. The depositary of a treaty, which may be one or more States or an international organization or the chief administrative officer of such an organization, is designated by the negotiating States in the treaty or in some other manner.

“2. The functions of a depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force as between certain parties or that a difference has appeared between a State and a depositary shall not affect this obligation of the depositary.”

¹²⁶ See para. 13 above.

¹²⁷ *Ibid.*

- (d) examining whether the signature, or any instrument, communication or notification relating to the treaty is in due and proper form, and if need be, bringing the matter to the attention of the State in question;
- (e) informing the parties and the States entitled to become parties to the treaty of acts, communications and notifications relating to the treaty;
- (f) informing the States entitled to become parties to the treaty when the number of signatures or of instruments of ratification, accession, acceptance or approval required for the entry into force of the treaty have been received or deposited;
- (g) registering the treaty with the Secretariat of the United Nations;
- (h) performing the functions specified in the other provisions of the present Convention.

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

ARTICLE 73

A. International Law Commission text

668. The International Law Commission text provided as follows:

Article 73.—Notifications and communications

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

- (a) If there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter;
- (b) Be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;
- (c) If transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1(e).

B. Amendments

669. No amendments were submitted to article 73.

C. Proceedings of the Committee of the Whole

(i) MEETINGS

670. The Committee of the Whole initially discussed article 73 at its 78th meeting, on 20 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

671. At its 78th meeting, the Committee of the Whole decided, without objection, to adopt article 73 and to refer it to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

672. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 73 adopted

by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 673 below). The Committee of the Whole adopted this text without formal vote.¹²⁸

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE 673. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 73:

Article 73

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

- (a) if there is no depositary, be transmitted directly to the States for which it is intended, or if there is a depositary, to the latter;
- (b) be considered as having been made by the State in question only upon its receipt by the State to which it was transmitted or, as the case may be, upon its receipt by the depositary;
- (c) if transmitted to a depositary, be considered as received by the State for which it was intended only upon the latter State's having been informed by the depositary in accordance with article 72, paragraph 1 (e).

ARTICLE 74

A. International Law Commission text

674. The International Law Commission text provided as follows:

Article 74.—Correction of errors in texts or in certified copies of treaties

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

- (a) By having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
- (b) By executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or
- (c) By executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

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

- (a) Shall notify the contracting States of the error and of the proposal to correct it if no objection is raised within a specified time-limit;
- (b) If on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text, and communicate a copy of it to the contracting States;
- (c) If an objection has been raised to the proposed correction, shall communicate the objection to the other contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the contracting States agree should be corrected.

4. (a) The corrected text replaces the defective text *ab initio*, unless the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the contracting States.

¹²⁸ *Ibid.*

B. Amendments

675. Amendments were submitted to article 74 by *Austria* (A/CONF.39/C.1/L.8/Rev.1 and L.9), *Congo (Brazzaville)* (A/CONF.39/C.1/L.375) and the *United States of America* (A/CONF.39/C.1/L.374).

676. These amendments, arranged under sub-headings relating to the article as a whole and to paragraph 1 and paragraph 2 of the article, were to the following effect:

(i) Article as a whole

United States of America (A/CONF.39/C.1/L.374):

Replace the words "contracting States" in the introductory clause in paragraph 1, and in paragraphs 2, 3, 4 and 5 by the words "signatory and contracting States".
[Adopted, see para. 678(b) below]

(ii) Paragraph 1

Introductory phrase

Congo (Brazzaville) (A/CONF.39/C.1/L.375):

Amend the first part of paragraph 1 to read as follows:
Where, after the authentication of the text of a treaty, the contracting States find that it contains an error, they shall proceed to correct it:.

[Rejected, see para. 678(c) below]

(iii) Paragraph 2

Sub-paragraph (a)

Austria (A/CONF.39/C.1/L.8/Rev.1):¹²⁹

Replace the words "if no objection is raised within a specified time-limit" by the words "and shall specify an appropriate time-limit within which objection may be raised";.

[Adopted, see para. 678(d) below]

Sub-paragraph (b)

Austria (A/CONF.39/C.1/L.9):

Replace the words "to the contracting States" by the words "to the States entitled to become parties".

[Adopted, see para. 678(a) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

677. The Committee of the Whole initially discussed article 74, and the amendments thereto, at its 78th meeting, on 20 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

678. At its 78th meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) The amendment by *Austria* (A/CONF.39/C.1/L.9) to sub-paragraph (b) of paragraph 2 was adopted by 27 votes to 7, with 43 abstentions.

¹²⁹ In its original form (A/CONF.39/C.1/L.8) the words to be replaced by this amendment included the words "and of the proposal to correct it".

(b) The amendment by the *United States of America* (A/CONF.39/C.1/L.374) to the article as a whole was adopted by 65 votes to none, with 14 abstentions.

(c) The amendment by *Congo (Brazzaville)* (A/CONF.39/C.1/L.375) to the introductory phrase of paragraph 1 was rejected by 21 votes to 13, with 48 abstentions.

(d) The amendment by *Austria* (A/CONF.39/C.1/L.8/Rev.1) to sub-paragraph (a) of paragraph 2 was adopted by 39 votes to 7, with 38 abstentions.

679. Also at its 78th meeting, the Committee of the Whole decided, without objection, to refer article 74, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

680. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 74 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 681 below). The Committee of the Whole adopted this text without formal vote.¹³⁰

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

681. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 74:

Article 74

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

- (a) by having the appropriate correction made in the text and causing the correction to be initialled by duly authorized representatives;
- (b) by executing or exchanging a separate instrument or instruments setting out the correction which it has been agreed to make; or
- (c) by executing a corrected text of the whole treaty by the same procedure as in the case of the original text.

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

- (a) shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection may be raised;
- (b) if on the expiry of the time-limit no objection has been raised, shall make and initial the correction in the text and shall execute a procès-verbal of the rectification of the text, and communicate a copy of it to the parties and to the States entitled to become parties to the treaty;
- (c) if an objection has been raised to the proposed correction, shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. (a) The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

¹³⁰ See para. 13 above.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the signatory States and to the contracting States.

ARTICLE 75

A. International Law Commission text

682. The International Law Commission text provided as follows:

Article 75.—Registration and publication of treaties

Treaties entered into by parties to the present articles shall as soon as possible be registered with the Secretariat of the United Nations. Their registration and publication shall be governed by the regulations adopted by the General Assembly of the United Nations.

B. Amendments

683. Amendments were submitted to article 75 by the Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.371), China (A/CONF.39/C.1/L.329 and Corr.1) and the United States of America and Uruguay (A/CONF.39/C.1/L.376).

684. These amendments were to the following effect:

(a) *China* (A/CONF.39/C.1/L.329 and Corr.1):

1. Amend the first sentence of the article to read:

Treaties entered into by *any party* to the *present Convention* shall as soon as possible be registered with the Secretariat of the United Nations in accordance with Article 102, paragraph 1, of the *Charter of the United Nations and such regulations adopted by the General Assembly of the United Nations as may be in force at the time of the registration*.

2. Delete the second sentence.

[Rejected, see para. 686(c) below]

(b) *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.371):

Amend article 75 to read as follows:

Treaties shall, after their conclusion, be transmitted to the United Nations Secretariat for registration, filing and recording and publication.

[Adopted, see para. 686(a) below]

(c) *United States of America and Uruguay* (A/CONF.39/C.1/L.376):

Add a new paragraph to article 75 reading as follows:

2. The designation of a State or of an international organization as depositary for a treaty shall constitute authorization by the States parties to the treaty for that State or international organization to register the treaty with the Secretariat of the United Nations.

[Adopted, see para. 686(b) below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

685. The Committee of the Whole initially discussed article 75, and the amendments thereto, at its 79th meeting, on 21 May 1968. At its 82nd meeting, on 23 May 1968, the Committee considered the report of the Drafting Committee on this article.

(ii) INITIAL CONSIDERATION

686. At its 79th meeting, the Committee of the Whole voted upon the amendments before it. The results of the voting were as follows:

(a) The principle in the amendment by the *Byelorussian Soviet Socialist Republic* (A/CONF.39/C.1/L.371) was adopted by 56 votes to 4, with 26 abstentions.

(b) The amendment by the *United States of America and Uruguay* (A/CONF.39/C.1/L.376) was adopted by 61 votes to none, with 25 abstentions.

(c) That part of the amendment by *China* (A/CONF.39/C.1/L.329 and Corr.1) which related to the first sentence of article 75 was rejected by 20 votes to 5, with 51 abstentions. As a result of this vote, the second part of the same amendment to delete the second sentence of the article was disposed of.

687. At the same meeting, the Committee of the Whole decided, without objection, to refer article 75, as amended, to the Drafting Committee.

(iii) CONSIDERATION OF THE REPORT OF THE DRAFTING COMMITTEE

688. At the 82nd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report containing the text of article 75 adopted by the Drafting Committee (A/CONF.39/C.1/12; for text, see para. 689 below). The Committee of the Whole adopted this text without formal vote.¹³¹

(iv) TEXT ADOPTED BY THE COMMITTEE OF THE WHOLE

689. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 75:

Article 75

1. Treaties shall, after their entry into force, be transmitted to the United Nations Secretariat for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the paragraph above.

ARTICLE 76

A. Proposed new article

690. Switzerland submitted an amendment (A/CONF.39/C.1/L.250) which was to the following effect:

After article 75 of the draft, add a new article 76 reading as follows:

1. Disputes arising out of the interpretation or application of the Convention lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Convention.

2. The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice, but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

¹³¹ *Ibid.*

3. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

[Deferred until the second session of the Conference, see para. 691 below]

B. Proceedings of the Committee of the Whole

(i) MEETINGS AND CONSIDERATION

691. At the 80th meeting of the Committee of the Whole, on 21 May 1968, *Switzerland* proposed that consideration of its amendment (A/CONF.39/C.1/L.250) be deferred until the second session of the Conference. The Committee accepted this proposal without objection.

(ii) DECISION

692. On the basis of the foregoing, the Committee of the Whole decided to defer consideration of the proposed new article 76 until the second session of the Conference (see document A/CONF.39/15, paras. 129-135).

Titles of parts and sections of the draft convention

693. As indicated in paragraph 16(b) of chapter I of the present report, the Drafting Committee decided early in the course of its work to defer decisions on the titles of the parts, sections and articles of the draft convention, because their wording would depend upon the actual contents of the articles themselves. Amendments to the titles of specific articles will be found in this chapter of the report, under the articles concerned.¹³² In addition to these amendments, certain amendments to the titles of parts and sections of the articles were submitted, and are listed together below. The texts of the parts and sections of the articles to which these refer are also given.

¹³² These amendments were as follows: *article 4*, Ceylon (A/CONF.39/C.1/L.53, see para. 51(g)), Gabon (A/CONF.39/C.1/L.42, see para. 51(e)), and Spain (A/CONF.39/C.1/L.35/Rev.1, see para. 51(c)); *article 5bis*, Algeria, Ceylon, Hungary, India, Mali, Mongolia, Romania, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia (A/CONF.39/C.1/L.74 and Add.1 and 2, see para. 67); *article 9bis*, Poland and United States of America (A/CONF.39/C.1/L.88 and Add.1, see para. 104(a)); *article 10bis*, Poland (A/CONF.39/C.1/L.89, see para. 127); *article 12bis*, Belgium (A/CONF.39/C.1/L.111, see para. 104(b)); *article 13*, Poland (A/CONF.39/C.1/L.93/Rev.1, see para. 151(a)); *article 15*, Byelorussian Soviet Socialist Republic (A/CONF.39/C.1/L.114, see para. 164(ii)(a)), Republic of Viet-Nam (A/CONF.39/C.1/L.124, see para. 164(ii)(b)); *articles 16 and 17*, Ceylon (A/CONF.39/C.1/L.139, see para. 177(i)(b)), France (A/CONF.39/C.1/L.169 and Corr.1, see para. 175(b)) and Union of Soviet Socialist Republics (A/CONF.39/C.1/L.115, see para. 175(a)); *article 25*, Ukrainian Soviet Socialist Republic (A/CONF.39/C.1/L.164, see para. 251(a)); *article 27*, Republic of Viet-Nam (A/CONF.39/C.1/L.199, see para. 269(i)(b)); *article 48*, United States of America (A/CONF.39/C.1/L.277, see para. 440(a)); *article 51*, Greece (A/CONF.39/C.1/L.314/Rev.1, see para. 473(d)) and Republic of Viet-Nam (A/CONF.39/C.1/L.222/Rev.1, see para. 473(a)); *article 60*, Hungary (A/CONF.39/C.1/L.334, see para. 549(b)); *article 62*, Switzerland (A/CONF.39/C.1/L.347, see para. 571(i)(b)); *article 63*, Switzerland (A/CONF.39/C.1/L.349 and Corr.1, see para. 587); and *article 67*, Finland (A/CONF.39/C.1/L.295, see para. 620(b)).

A. International Law Commission text

694. The titles of parts and sections of the International Law Commission's text to which amendments were submitted were the following:

Part II.—CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1: CONCLUSION OF TREATIES

SECTION 2: RESERVATIONS TO MULTILATERAL TREATIES

Part V.—INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 2: INVALIDITY OF TREATIES

B. Amendments

695. Amendments were submitted to the foregoing titles by Congo (Brazzaville) (A/CONF.39/C.1/L.79), Hungary (A/CONF.39/C.1/L.137) and Switzerland (A/CONF.39/C.1/L.120).

696. These amendments, in the order of the parts or sections of titles to which they relate, were to the following effect:

(a) *Congo (Brazzaville)* (A/CONF.39/C.1/L.79):

Add to the title of Section 1 [of Part II] the words "and conditions of validity".

[Referred to the Drafting Committee, see para. 698 below]

(b) *Hungary* (A/CONF.39/C.1/L.137):

Delete the words "to multilateral treaties" in the title of Section 2 of Part II.

[Referred to the Drafting Committee, see para. 699 below]

(c) *Switzerland* (A/CONF.39/C.1/L.120):

In the title of Part V and of Section 2 of Part V replace the word "invalidity" by the word "invalidation".

[Not voted upon, see para. 700 below]

C. Proceedings of the Committee of the Whole

(i) MEETINGS

697. The Committee of the Whole initially discussed the amendment to the title of Section 1 of Part II at its 11th meeting, on 3 April 1968. It discussed the amendment to the title of Section 2 of Part II at its 20th meeting, on 10 April 1968. The amendment to the title of Part V and Section 2 thereof was discussed at the 42nd and 75th meetings of the Committee of the Whole, on 29 April and 17 May 1968 respectively.

(ii) CONSIDERATION AND DECISIONS

698. At its 11th meeting, the Committee of the Whole decided, without objection, to refer the amendment by *Congo (Brazzaville)* (A/CONF.39/C.1/L.79) to the title of Section 1 of Part II to the Drafting Committee.

699. At its 20th meeting, the Committee of the Whole decided, without objection, to refer the amendment by *Hungary* (A/CONF.39/C.1/L.137) to the title of Section 2 of Part II to the Drafting Committee.

700. At its 42nd meeting, the Committee of the Whole decided, without objection, to defer a vote on the amendment by *Switzerland* (A/CONF.39/C.1/L.120) to the title

of Part V and Section 2 thereof, until it had considered all the articles in Part V. At its 75th meeting, it again decided, without objection, to defer a vote on this amendment until it had completed its consideration of article 62. At the 81st meeting, this amendment was disposed of by virtue of the rejection of the amendment by *Switzerland* (A/CONF.39/C.1/L.121) to article 39 (see para. 356(c) above).

CHAPTER III

TEXT OF THE ARTICLES ON THE LAW OF TREATIES AND OF DRAFT RESOLUTIONS ADOPTED BY THE COMMITTEE OF THE WHOLE

A. Draft Convention on the Law of Treaties

[Part I] [INTRODUCTION]

Article 1

*The scope of the present Convention*¹³³

The present Convention applies to treaties concluded between States.

Article 2 [Use of terms]

Deferred to the second session of the Conference (see para. 40).

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

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present Convention to which they would be subject, in accordance with international law, independently of the Convention;
- (c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.

Article 4

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

The present Convention applies to any treaty which is the constituent instrument of an international organization or to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

[Part II] [CONCLUSION AND ENTRY INTO FORCE OF TREATIES]

[SECTION 1: CONCLUSION OF TREATIES]

Article 5 [Capacity of States to conclude treaties]

1. Every State possesses capacity to conclude treaties.

¹³³ In the case of this article only, the title was considered by the Drafting Committee and its recommendation adopted by the Committee of the Whole. See para. 16(b).

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

[Article 5bis] [Proposed new article]

Deferred to the second session of the Conference (see para. 69)

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

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

- (a) he produces appropriate full powers; or
- (b) it appears from the practice of the States concerned or from other circumstances that their intention was to dispense with full powers.

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

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

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

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

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

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

Article 8 [Adoption of the text]

Deferred to the second session of the Conference (see para. 95)

Article 9 [Authentication of the text]

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

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

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

Article 9bis

[*New article*]

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, approval, acceptance or accession, or by any other means if so agreed.

Article 10

[*Consent to be bound by a treaty expressed by signature*]

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

(a) the treaty provides that signature shall have that effect;

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

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

2. For the purposes of paragraph 1:

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

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

Article 10bis

[*New article*]

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(a) the instruments provide that their exchange shall have that effect;

(b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

Article 11

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

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

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

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

(c) the representative of the State has signed the treaty subject to ratification; or

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

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

Article 12

[*Consent to be bound by a treaty expressed by accession*]

Deferred to the second session of the Conference (see para. 147)

Article 13

[*Exchange or deposit of instruments of ratification, acceptance, approval or accession*]

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

(a) their exchange between the contracting States;

(b) their deposit with the depositary; or

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

Article 14

[*Consent relating to a part of a treaty and choice of differing provisions*]

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

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

Article 15

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

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

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

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

[SECTION 2: RESERVATIONS TO MULTILATERAL TREATIES]

Article 16

[*Formulation of reservations*]

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

(a) the reservation is prohibited by the treaty;

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

(c) in cases other than those covered by paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 17

[Acceptance of and objection to reservations]

Deferred to the second session of the Conference (see para. 189)

Article 18

[Procedure regarding reservations]

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

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

3. An express acceptance of, or an objection to, the reservation made previously to confirmation of the reservation does not itself require confirmation.

Article 19

[Legal effects of reservations]

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

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

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

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

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

Article 20

[Withdrawal of reservations]

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

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

[SECTION 3: ENTRY INTO FORCE OF TREATIES]

Article 21

[Entry into force]

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

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

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

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty shall apply from the time of the adoption of its text.

Article 22

[Entry into force provisionally]

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or

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

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

[Part III]

[OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES]

[SECTION 1: OBSERVANCE OF TREATIES]

Article 23

[Pacta sunt servanda]

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

Article 23bis

[New article]

No party may invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 43.

[SECTION 2: APPLICATION OF TREATIES]

Article 24

[Non-retroactivity of treaties]

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

*Article 25**[Application of treaties to territory]*

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

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

Deferred to the second session of the Conference (see para. 263)

[SECTION 3: INTERPRETATION OF TREATIES]*Article 27**[General rule of interpretation]*

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

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

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

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

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

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

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

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

*Article 28**[Supplementary means of interpretation]*

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

(a) leaves the meaning ambiguous or obscure; or

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

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

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each

language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

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

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except in the case mentioned in paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 27 and 28 does not remove, a meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

[SECTION 4: TREATIES AND THIRD STATES]*Article 30**[General rule regarding third States]*

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

*Article 31**[Treaties providing for obligations for third States]*

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

*Article 32**[Treaties providing for rights for third States]*

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

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

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

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

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

Article 34

[Rules in a treaty becoming binding through international custom]

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

[Part IV]

**[AMENDMENT AND MODIFICATION
OF TREATIES]**

Article 35

[General rule regarding the amendment of treaties]

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

Article 36

[Amendment of multilateral treaties]

Deferred to the second session of the Conference (see para. 334)

Article 37

[Agreements to modify multilateral treaties between certain of the parties only]

Deferred to the second session of the Conference (see para. 341)

Article 38

[Modification of treaties by subsequent practice]

Deleted (see para. 348)

[Part V]

**[INVALIDITY, TERMINATION AND SUSPENSION
OF THE OPERATION OF TREATIES]**

[SECTION 1: GENERAL PROVISIONS]

Article 39

[Validity and continuance in force of treaties]

1. The validity of a treaty or the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

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

Article 40

[Obligations under other rules of international law]

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

Article 41

[Separability of treaty provisions]

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

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

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

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

(b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to the treaty as a whole; and

(c) continued performance of the remainder of the treaty would not be unjust.

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

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

Article 42

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

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

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

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

[SECTION 2: INVALIDITY OF TREATIES]

Article 43

[Provisions of internal law regarding competence to conclude a treaty]

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

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

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

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

*Article 45**[Error]*

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

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

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

*Article 46**[Fraud]*

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

*Article 47**[Corruption of a representative of the State]*

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

*Article 48**[Coercion of a representative of the State]*

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

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

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

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

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international

law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

[SECTION 3: TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES]*Article 51**[Termination of or withdrawal from a treaty by consent of the parties]*

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

(a) in conformity with the provisions of the treaty allowing such termination or withdrawal; or

(b) at any time by consent of all the parties after consultation with the other contracting States.

*Article 52**[Reduction of the parties to a multilateral treaty below the number necessary for its entry into force]*

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

*Article 53**[Denunciation of a treaty containing no provision regarding termination]*

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied from the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1 of this article.

*Article 54**[Suspension of the operation of a treaty by consent of the parties]*

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

(a) in conformity with the provisions of the treaty allowing such suspension;

(b) at any time by consent of all the parties.

*Article 55**[Temporary suspension of the operation of a multilateral treaty by consent between certain of the parties only]*

Deferred to the second session of the Conference (see para. 511)

Article 56

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

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty, or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall be considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 57

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

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

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty or to terminate it either:

- (i) in the relations between themselves and the defaulting State, or
- (ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any other party to suspend the operation of the treaty with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of the present article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

Article 58

[Supervening impossibility of performance]

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is tem-

porary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

Article 59

[Fundamental change of circumstances]

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

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked:

(a) as a ground for terminating or withdrawing from a treaty establishing a boundary;

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation of the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty, it may also invoke that ground for suspending the operation of the treaty.

Article 60

[Severance of diplomatic relations]

The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 61

[Emergence of a new peremptory norm of general international law]

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

[SECTION 4: PROCEDURE]

Article 62

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

1. A party which, under the provisions of the present Convention, invokes either a defect in its consent to be

bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 63 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 42, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

[Article 62bis]

[Proposed new article]

Deferred to the second session of the Conference (see para. 584)

Article 63

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

1. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 62 shall be carried out through an instrument communicated to the other parties.

2. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

Article 64

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

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

SECTION 5: CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 65

[Consequences of the invalidity of a treaty]

1. A treaty the invalidity of which is established under the present Convention is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(a) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(b) acts performed in good faith before the nullity was invoked are not rendered unlawful by reason only of the nullity of the treaty.

3. In cases falling under articles 46, 47, 48 or 49, paragraph 2 does not apply with respect to the party to which the fraud, coercion or act of corruption is imputable.

4. In the case of the invalidity of a particular State's consent to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State and the parties to the treaty.

Article 66

[Consequences of the termination of a treaty]

Deferred to the second session of the Conference (see para. 617)

Article 67

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

1. In the case of a treaty void under article 50 the parties shall:

(a) eliminate as far as possible the consequences of any act done in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 61, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 68

[Consequences of the suspension of the operation of a treaty]

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

(a) relieves the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

[Part VI]
[MISCELLANEOUS PROVISIONS]

Article 69

[Cases of State succession and State responsibility]

The provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States.

Article 69bis
[New article]

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between those States. The conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 70
[Case of an aggressor State]

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

[Part VII]
[DEPOSITARIES, NOTIFICATIONS,
CORRECTIONS AND REGISTRATION]

Article 71
[Depositaries of treaties]

1. The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

2. The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance. In particular, the fact that a treaty has not entered into force between certain of the parties or that a difference has appeared between a State and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 72
[Functions of depositaries]

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:

- (a) keeping the custody of the original text of the treaty and of any full powers delivered to it;
- (b) preparing certified copies of the original text and any further text in such additional languages as may be

required by the treaty and transmitting them to the parties and to the States entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature, or any instrument, communication or notification relating to the treaty is in due and proper form, and if need be, bringing the matter to the attention of the State in question;

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

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

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in the other provisions of the present Convention.

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

Article 73
[Notifications and communications]

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

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

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

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

Article 74
[Correction of errors in texts or in certified copies of treaties]

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

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

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

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

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

(a) shall notify the signatory States and the contracting States of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection may be raised;

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

(c) if an objection has been raised to the proposed correction, shall communicate the objection to the signatory States and to the contracting States.

3. The rules in paragraphs 1 and 2 apply also where the text has been authenticated in two or more languages and it appears that there is a lack of concordance which the signatory States and the contracting States agree should be corrected.

4. (a) The corrected text replaces the defective text *ab initio*, unless the signatory States and the contracting States otherwise decide.

(b) The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

5. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy to the signatory States and to the contracting States.

Article 75

[Registration and publication of treaties]

1. Treaties shall, after their entry into force, be transmitted to the United Nations Secretariat for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the paragraph above.

[Article 76]

[Proposed new article]

Deferred to the second session of the Conference (see para. 692)

B. Draft resolutions

1. *Draft resolution adopted by the Committee of the Whole in connexion with its consideration of article 1* [See para 32]

The United Nations Conference on the Law of Treaties,

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations.

2. *Draft Declaration on the Prohibition of the Threat or Use of Economic or Political Coercion in Concluding a Treaty* [adopted by the Committee of the Whole in connexion with its consideration of article 49, see para. 459]

The United Nations Conference on the Law of Treaties,

Upholding the principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith,

Reaffirming the principle of sovereign equality of States,

Convinced that States must have complete freedom in performing any act relating to the conclusion of a treaty,

Mindful of the fact that in the past instances have occurred, where States have been forced to conclude treaties under pressures in various forms exercised by other States,

Deprecating the same,

Expressing its concern at the exercise of such pressure and anxious to ensure that no such pressures in any form are exercised by any State whatever in the matter of conclusion of treaties,

1. *Solemnly condemns* the threat or use of pressure in any form, military, political, or economic, by any State, in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of sovereign equality of States and freedom of consent;

2. *Decides* that the present declaration shall form part of the Final Act of the Conference on the Law of Treaties.

3. *Draft resolution on arrangements for the second session of the Conference* [adopted by the Committee of the Whole at its last (83rd) meeting of the first session, see para.14]

The United Nations Conference on the Law of Treaties,

Having held its first session in Vienna from 26 March to 24 May 1968 in accordance with General Assembly resolutions 2166 (XXI) of 5 December 1966 and 2287 (XXII) of 6 December 1967,

Expressing gratitude to the Federal Government and people of the Republic of Austria for the generous hospitality and facilities which have been extended to the Conference at its first session,

Desirous of making arrangements for the second session of the Conference in 1969,

Recalling that the General Assembly, in its resolution 2166 (XXI), decided that the Conference should be held in Geneva or any other appropriate place for which an invitation was received before the twenty-second session of the General Assembly, and that the Government of Austria extended such an invitation for both sessions to be held in Vienna,

1. *Requests* the Secretary-General to make all necessary arrangements for the Conference to hold its second session in Vienna from 9 April to 21 May 1969, with

sufficient staff and facilities for overlapping meetings of a plenary body and of the Drafting Committee;

2. *Further requests* the Secretary-General to prepare appropriate additional documentation for the second session;

3. *Invites the attention* of States participating in the second session of the Conference to the desirability of sending as far as possible the same representatives who have participated in the first session.

ANNEX

Check list of documentation submitted during the first session of the Conference to the Committee of the Whole by States participating in the Conference

[In the chronological list which follows, the reference under the heading "Para." is to the paragraph or paragraphs of this report in which the text of the document may be found.]

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.1 and Add.1	Austria and Spain	2	35(v)
A/CONF.39/C.1/L.2	Austria	5	60(iii)(a)
A/CONF.39/C.1/L.3	Austria	17	179(iv)(a)
A/CONF.39/C.1/L.4 and Add.1	Austria and Finland	20	207(i)(a) and 207(iii)(a)
A/CONF.39/C.1/L.5 and Add.1	Austria and Greece	24	243(a)
A/CONF.39/C.1/L.6 and Add.1 and 2	Austria, Finland and Poland	55	505(iii)
A/CONF.39/C.1/L.7	Austria	56	514(i)(a)
A/CONF.39/C.1/L.8/Rev.1	Austria	74	676(iii)
A/CONF.39/C.1/L.9	Austria	74	676(iii)
A/CONF.39/C.1/L.10	Sweden	1	24(a)
A/CONF.39/C.1/L.11	Sweden	2	35(vi)(a)
A/CONF.39/C.1/L.12	Ukrainian Soviet Socialist Republic	4	51(a)
A/CONF.39/C.1/L.13	China	2	35(ii)(a), 35(vi)(b) and 35(x)
A/CONF.39/C.1/L.14	China	3	43(a)
A/CONF.39/C.1/L.15	United States of America	1	24(b)
A/CONF.39/C.1/L.16	United States of America	2	35(i)(a), 35(iii) and 35(vi)(c)
A/CONF.39/C.1/L.17	Ceylon	2	35 (under heading "Paragraph 2")
A/CONF.39/C.1/L.18	Hungary	1	24(c)
A/CONF.39/C.1/L.19 Add.1-2, and Rev.1	Congo (Democratic Republic of), Czechoslovakia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, United Arab Republic and United Republic of Tanzania	2	35(ii)(b)
A/CONF.39/C.1/L.20	United States of America	3	43(b)
A/CONF.39/C.1/L.21	United States of America	4	51(b)
A/CONF.39/C.1/L.22	Chile	2	35(i)(b) and 35 (vi)(d)
A/CONF.39/C.1/L.23	Hungary	2	35(vi)(e)
A/CONF.39/C.1/L.24	France	2	35(iv), (vii) and 35(viii)(a)
A/CONF.39/C.1/L.25	Ecuador	2	35(i)(c)
A/CONF.39/C.1/L.26	Switzerland	3	43(c)
A/CONF.39/C.1/L.27	Republic of Viet-Nam	1	24(d)
A/CONF.39/C.1/L.28	Spain	2	35(i)(d)
A/CONF.39/C.1/L.29	Republic of Viet-Nam	2	35(vi)(f)
A/CONF.39/C.1/L.30	France	8	91(ii)(a)
A/CONF.39/C.1/L.31 and Add.1	France	17	179(iii)(a)
A/CONF.39/C.1/L.32	Congo (Brazzaville)	1	24(e)
A/CONF.39/C.1/L.33 and Add.1	Malaysia and Mexico	2	35(i)(e)
A/CONF.39/C.1/L.34	Spain	3	43(d)
A/CONF.39/C.1/L.35/Rev.1	Spain	4	51(c)
A/CONF.39/C.1/L.36	Spain	6	72(i)(a)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.37	Spain	7	82(a)
A/CONF.39/C.1/L.38 and Add.1 and 2	Czechoslovakia, Sweden and Poland	10	112(i)
A/CONF.39/C.1/L.39	United Kingdom of Great Britain and Northern Ireland	4	51(d)
A/CONF.39/C.1/L.40	India	2	35(viii)(b)
A/CONF.39/C.1/L.41	Gabon	3	43(e)
A/CONF.39/C.1/L.42	Gabon	4	51(e)
A/CONF.39/C.1/L.43	Ceylon	8	91(iii)
A/CONF.39/C.1/L.44	France	26	259(iv)(a)
A/CONF.39/C.1/L.45	France	36	330(a)
A/CONF.39/C.1/L.46	France	37	337(a)
A/CONF.39/C.1/L.47	France	55	505(ii)(a)
A/CONF.39/C.1/L.48	France	65	601(iv)
A/CONF.39/C.1/L.49	France	66	613
A/CONF.39/C.1/L.50	Federal Republic of Germany	6	72(i)(b)
A/CONF.39/C.1/L.51 and Rev.1	Ukrainian Soviet Socialist Republic	8	91(ii)(c)
A/CONF.39/C.1/L.52 and Add.1	Philippines and Sweden	4	51(f)
A/CONF.39/C.1/L.53	Ceylon	4	51(g)
A/CONF.39/C.1/L.54/Rev.1 and Corr.1	Finland	5	60(ii)(a) and 60(iii)(c)
A/CONF.39/C.1/L.55	France	4	51(h)
A/CONF.39/C.1/L.56	United States of America	7	82(b)
A/CONF.39/C.1/L.57 and Corr.1	Ethiopia	3	43(f)
A/CONF.39/C.1/L.58	Peru	4	51(i)
A/CONF.39/C.1/L.59	New Zealand	5	60(iii)(d)
A/CONF.39/C.1/L.60	Finland	11	134(a)
A/CONF.39/C.1/L.61 and Add.1-4	Belgium, Federal Republic of Germany, Finland, Guinea and Japan	15	164(iv)(a)
A/CONF.39/C.1/L.62	Australia	5	60(iii)(e)
A/CONF.39/C.1/L.63	Iran	3	43(g)
A/CONF.39/C.1/L.64 and Add.1	Iran and Mali	6	72(ii)(a)
A/CONF.39/C.1/L.65	Mexico	3	43(h)
A/CONF.39/C.1/L.66 and Add.1	Malaysia and Mexico	5	60(i)(a)
A/CONF.39/C.1/L.67/Rev.1/ Corr.1	Afghanistan, Algeria, Bolivia, Congo (Brazzaville), Ecua- dor, Ghana, Guinea, India, Iran, Kenya, Kuwait, Mali, Pakistan, Sierra Leone, Syria, United Arab Republic, United Republic of Tanzania, Yugoslavia and Zambia	49	449(a)
A/CONF.39/C.1/L.68/Rev.1	Sweden and Venezuela	6	72(ii)(b)
A/CONF.39/C.1/L.69	Venezuela	7	82(c)
A/CONF.39/C.1/L.70	Venezuela	10	119(ii)(a)
A/CONF.39/C.1/L.71	Venezuela	11	112(ii)(a)
A/CONF.39/C.1/L.72 and Add.1	Greece and Venezuela	15	164(iv)(b)
A/CONF.39/C.1/L.73	Zambia	4	51(j)
A/CONF.39/C.1/L.74 and Add.1 and 2	Algeria, Ceylon, Hungary, India, Mali, Mongolia, Roma- nia, Syria, Ukrainian Soviet Socialist Republic, United Arab Republic and Yugoslavia	5bis	67
A/CONF.39/C.1/L.75	Jamaica and Trinidad and Tobago	4	51(k)
A/CONF.39/C.1/L.76	Congo (Brazzaville)	4	51(l)
A/CONF.39/C.1/L.77/Rev.1	Nepal	5	60(ii)(b) and 60(iii)(f)
A/CONF.39/C.1/L.78 and Add.1	Hungary and Poland	6	72(ii)(c) and 72(iii)(a)
A/CONF.39/C.1/L.79	Congo (Brazzaville)	Title of Part II, Section 1	696(a)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.80	Congo (Brazzaville)	5	60(ii)(c) and 60(iii)(g)
A/CONF.39/C.1/L.81	Italy	10	119(ii)(b)
A/CONF.39/C.1/L.82	Republic of Viet-Nam	5	60(i)(b)
A/CONF.39/C.1/L.83	Italy	6	72(iii)(b)
A/CONF.39/C.1/L.84	Czechoslovakia	17	179(ii)(a)
A/CONF.39/C.1/L.85	Czechoslovakia	17	179(v)(a)
A/CONF.39/C.1/L.86	Czechoslovakia	19	199(iv)(a)
A/CONF.39/C.1/L.87	Switzerland	11bis	112(iii)
A/CONF.39/C.1/L.88 and Add.1	Poland and United States of America	9bis	104(a)
A/CONF.39/C.1/L.89	Poland	10bis	127
A/CONF.39/C.1/L.90	United States of America	6	72(ii)(d), 72(iii)(c) and 72(iv)
A/CONF.39/C.1/L.91	Finland	24	243(b)
A/CONF.39/C.1/L.92	Byelorussian Soviet Socialist Republic	5	60(iii)(b)
A/CONF.39/C.1/L.93/Rev.1	Poland	13	151(a)
A/CONF.39/C.1/L.94	Syria	17	179(v)(b)
A/CONF.39/C.1/L.95	Syria	19	199(iv)(b)
A/CONF.39/C.1/L.96	Singapore	7	82(d)
A/CONF.39/C.1/L.97	Switzerland	17	179(ii)(b), 179(iv)(b) and 179(v)(c)
A/CONF.39/C.1/L.98	Japan	7	82(e)
A/CONF.39/C.1/L.99	Malaysia	7	82(f)
A/CONF.39/C.1/L.100	Belgium	10	119(iii)
A/CONF.39/C.1/L.101 and Corr.1	Peru	8	91(i) and 91(ii)(d)
A/CONF.39/C.1/L.102	Czechoslovakia	8	91(ii)(b)
A/CONF.39/C.1/L.103	United Republic of Tanzania	8	91(ii)(e)
A/CONF.39/C.1/L.104	Czechoslovakia	12	142
A/CONF.39/C.1/L.105	Bolivia, Chile, Colombia, Guatemala, Honduras, Mexico, Peru, Uruguay and Venezuela	11	112(ii)(b)
A/CONF.39/C.1/L.106	Syria	34	312(a)
A/CONF.39/C.1/L.107	Bolivia, Chile, Colombia, Dominican Republic, Guate- mal, Honduras, Mexico, Peru and Venezuela	10	119(ii)(c)
A/CONF.39/C.1/L.108	Spain	10	119(i)
A/CONF.39/C.1/L.109	Spain	11	134(b)
A/CONF.39/C.1/L.110	Canada	13	151(b)
A/CONF.39/C.1/L.111	Belgium	12bis	104(b)
A/CONF.39/C.1/L.112	Switzerland	15	164(iv)(c)
A/CONF.39/C.1/L.113	France and Tunisia	17	179(ii)(c), 179(iii)(a) and 179(iv)(c)
A/CONF.39/C.1/L.114	Byelorussian Soviet Socialist Republic	15	164(ii)(a), 164(iii)(a) and 164(iv)(d)
A/CONF.39/C.1/L.115	Union of Soviet Socialist Republics	16 & 17	175(a)
A/CONF.39/C.1/L.116	Union of Soviet Socialist Republics	18	192(ii)(a)
A/CONF.39/C.1/L.117	Union of Soviet Socialist Republics	19	199(iv)(c)
A/CONF.39/C.1/L.118	Bolivia, Czechoslovakia, Ecuador, Spain and United Republic of Tanzania	23	233(a)
A/CONF.39/C.1/L.119	Switzerland	20	207(ii)(a)
A/CONF.39/C.1/L.120	Switzerland	Title of Part V and of Section 2 of Part V	696(c)
A/CONF.39/C.1/L.121	Switzerland	39	351(ii)(a)
A/CONF.39/C.1/L.122	Malaysia	15	164(iv)(e) and (v)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.123	Canada	21	214(iii)
A/CONF.39/C.1/L.124	Republic of Viet-Nam	15	164(ii)(b) and 164(iii)(b)
A/CONF.39/C.1/L.125	Republic of Viet-Nam	16	177(v)(a)
A/CONF.39/C.1/L.126 and Add.1	Colombia and United States of America	16	177(iv)(a) and 177(v)(b)
A/CONF.39/C.1/L.127	United States of America	17	179(iii)(b), 179(iv)(d), 179(v)(d) and 179 (vi)(a)
A/CONF.39/C.1/L.128	Federal Republic of Germany	16	177(iv)(b)
A/CONF.39/C.1/L.129	Australia	15	164(iii)(c) and 164(iv)(f)
A/CONF.39/C.1/L.130	United Republic of Tanzania	15	164(iv)(g)
A/CONF.39/C.1/L.131 and Add.1	Argentina, Ecuador and Uruguay	15	164(vi)
A/CONF.39/C.1/L.132	Peru	16	177(vi)
A/CONF.39/C.1/L.133/ Add.1 and 2	Japan, Philippines and Republic of Korea	16	177(i)(a)
A/CONF.39/C.1/L.133/Rev.1			
A/CONF.39/C.1/L.134	United States of America	15	164(iii)(d)
A/CONF.39/C.1/L.135	United Kingdom of Great Britain and Northern Ireland	15	164(i)
A/CONF.39/C.1/L.136	Poland	16	177(iv)(c)
A/CONF.39/C.1/L.137	Hungary	Title of Section 2 of Part II	696(b)
A/CONF.39/C.1/L.138	Hungary		18 192(iii) and 192(iv)(a)
A/CONF.39/C.1/L.139	Ceylon	16	177(i)(b)
A/CONF.39/C.1/L.140	Ceylon	17	179(i)(a)
A/CONF.39/C.1/L.141	Finland	32	294(ii)(a)
A/CONF.39/C.1/L.142	Finland	34	312(b)
A/CONF.39/C.1/L.143	Finland	38	344(a)
A/CONF.39/C.1/L.144	Finland	41	369(iii)(a) and 369(vi)
A/CONF.39/C.1/L.145	Congo (Brazzaville)	15	164(iv)(h)
A/CONF.39/C.1/L.146	Cuba	24	243(c)
A/CONF.39/C.1/L.147	Spain	16	177(i)(c)
A/CONF.39/C.1/L.148	Spain	17	179(i)(b)
A/CONF.39/C.1/L.149	Spain	18	192(i)
A/CONF.39/C.1/L.150	Thailand	17	179(ii)(d), 179(v)(e) and 179(vi)(b)
A/CONF.39/C.1/L.151	Ceylon	18	192(iv)(b)
A/CONF.39/C.1/L.152	Ceylon	19	199(v)
A/CONF.39/C.1/L.153	Ceylon	35	321(a)
A/CONF.39/C.1/L.154 and Add.1	Republic of Korea, Republic of Viet-Nam and United States of America	22	224(i)(a)
A/CONF.39/C.1/L.155	United States of America	24	243(d)
A/CONF.39/C.1/L.156	United States of America	27 & 28	269(i)(a)
A/CONF.39/C.1/L.157 and Add.1	Bulgaria, Romania and Sweden	19	199(ii)(a)
A/CONF.39/C.1/L.158	Canada	18	192(ii)(b)
A/CONF.39/C.1/L.159	Canada	19	199(ii)(b)
A/CONF.39/C.1/L.160	Cuba	53	487(a)
A/CONF.39/C.1/L.161	China	16	177(ii)
A/CONF.39/C.1/L.162	China	17	179(iv)(e)
A/CONF.39/C.1/L.163	Malaysia	16	177(iv)(d) and 177(v)(c)
A/CONF.39/C.1/L.164	Ukrainian Soviet Socialist Republic	25	251(a)
A/CONF.39/C.1/L.165	Philippines	22	224(iii)(a)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.166	Australia	17	179(v)(f), 179(vi)(c) and 179(vii)
A/CONF.39/C.1/L.167	Union of Soviet Socialist Republics	20	207(iii)(b)
A/CONF.39/C.1/L.168	Mongolia	31 & 32	294(i)
A/CONF.39/C.1/L.169 and Corr.1	France	16 & 17	175(b)
A/CONF.39/C.1/L.170	France	19	199(i)
A/CONF.39/C.1/L.171	United States of America	20	207(i)(b) and 207(ii)(b)
A/CONF.39/C.1/L.172	China	19	199(ii)(c)
A/CONF.39/C.1/L.173	Cuba	23	233(b)
A/CONF.39/C.1/L.174	Philippines	27	269(ii)
A/CONF.39/C.1/L.175	Republic of Viet-Nam	21	214(i)(a) and 214(ii)(a)
A/CONF.39/C.1/L.176	Republic of Viet-Nam	22	224(ii)(a)
A/CONF.39/C.1/L.177	Hungary	19	199(ii)(d) and 199(iii)
A/CONF.39/C.1/L.178	Hungary	20	207(i)(c)
A/CONF.39/C.1/L.179	Republic of Viet-Nam	24	243(e)
A/CONF.39/C.1/L.180	Republic of Viet-Nam	25	251(b)
A/CONF.39/C.1/L.181	Pakistan	23	233(c)
A/CONF.39/C.1/L.182	Pakistan	27	269(v)(a)
A/CONF.39/C.1/L.183	Pakistan	40	362(a)
A/CONF.39/C.1/L.184 and Add.1	Japan and Pakistan	43	394(a)
A/CONF.39/C.1/L.185 and Add.1	Czechoslovakia and Yugoslavia	22	224(ii)(b) and 224(iii)(b)
A/CONF.39/C.1/L.186	United Kingdom of Great Britain and Northern Ireland	21	214(i)(b) and 214(iv)
A/CONF.39/C.1/L.187	Mexico: Note on organization of work		[Document not reproduced in the report]
A/CONF.39/C.1/L.188	Congo (Brazzaville)	21	214(i)(c)
A/CONF.39/C.1/L.189	Congo (Brazzaville)	23	233(d)
A/CONF.39/C.1/L.190	Chile	21	214(ii)(b)
A/CONF.39/C.1/L.191	Japan	24	243(f)
A/CONF.39/C.1/L.192	Greece	22	224(i)(b)
A/CONF.39/C.1/L.193	India	22	224(ii)(c)
A/CONF.39/C.1/L.194	Belgium	22	224(iv)(a)
A/CONF.39/C.1/L.195	Bulgaria and Romania	22	224(ii)(d)
A/CONF.39/C.1/L.196	Thailand	23	233(e)
A/CONF.39/C.1/L.197	United States of America	29	278(i), 278(iii)(a) and 278(iv)(a)
A/CONF.39/C.1/L.198	Hungary and Poland	22	224(iv)(b)
A/CONF.39/C.1/L.199	Republic of Viet-Nam	27 & 28	269(i)(b)
A/CONF.39/C.1/L.200	Japan	38	344(b)
A/CONF.39/C.1/L.201	Ukrainian Soviet Socialist Republic	27	269(iii)(a)
A/CONF.39/C.1/L.202	Union of Soviet Socialist Republics	26	259(v)
A/CONF.39/C.1/L.203	Romania	27	269(iv)(a)
A/CONF.39/C.1/L.204	Romania and Sweden	26	259(iv)(b)
A/CONF.39/C.1/L.205/Rev.1	Venezuela	30, 31, 32 & 33	285(a)
A/CONF.39/C.1/L.206	Venezuela	38	344(c)
A/CONF.39/C.1/L.207	Japan	26	259(ii)
A/CONF.39/C.1/L.208	Cambodia	26	259(iv)(c)
A/CONF.39/C.1/L.209	Republic of Viet-Nam	29	278(iii)(b)
A/CONF.39/C.1/L.210	Australia	27	269(v)(b)
A/CONF.39/C.1/L.211	Philippines	33	304(a)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.212	Ceylon	27	269(iv)(b)
A/CONF.39/C.1/L.213	Greece	27	269(iv)(c)
A/CONF.39/C.1/L.214	Federal Republic of Germany	27	269(v)(c)
A/CONF.39/C.1/L.215	United Republic of Tanzania	28	269(vi)(a)
A/CONF.39/C.1/L.216	Spain	27	269(iii)(b)
A/CONF.39/C.1/L.217	Spain	28	269(vi)(b)
A/CONF.39/C.1/L.218	Japan	32	294(ii)(b)
A/CONF.39/C.1/L.219	Australia	29	278(iv)(b)
A/CONF.39/C.1/L.220	Republic of Viet-Nam	38	344(d)
A/CONF.39/C.1/L.221	United Republic of Tanzania	30	285(b)
A/CONF.39/C.1/L.222/Rev.1	Republic of Viet-Nam	51	473(a)
A/CONF.39/C.1/L.223	Venezuela	34	312(c)
A/CONF.39/C.1/L.224	Netherlands	32	294(ii)(c)
A/CONF.39/C.1/L.225	Netherlands	33	304(b)
A/CONF.39/C.1/L.226	Mexico	34	312(d)
A/CONF.39/C.1/L.227	Peru	39	351(ii)(b)
A/CONF.39/C.1/L.228 and Add.1	Peru and Ukrainian Soviet Socialist Republic	43	394(b)
A/CONF.39/C.1/L.229	Peru	47	432(a)
A/CONF.39/C.1/L.230	Peru	49	449(b)
A/CONF.39/C.1/L.231	Peru	51	473(b)
A/CONF.39/C.1/L.232	Netherlands	36	330(b)
A/CONF.39/C.1/L.233	Republic of Viet-Nam	39	351(ii)(c) and 351(iii)(a)
A/CONF.39/C.1/L.234/Rev.1	Republic of Viet-Nam	46	422(a)
A/CONF.39/C.1/L.235	Chile	35	321(b)
A/CONF.39/C.1/L.236 and Add.1	Bulgaria, Romania and Sweden	71	657(ii)(a)
A/CONF.39/C.1/L.237	Australia	37	337(b)
A/CONF.39/C.1/L.238	Czechoslovakia	37	337(c)
A/CONF.39/C.1/L.239	Philippines	43	394(c)
A/CONF.39/C.1/L.240	Bulgaria, Romania and Syria	37	337(d)
A/CONF.39/C.1/L.241	France	38	344(e)
A/CONF.39/C.1/L.242	China	39	351(ii)(d)
A/CONF.39/C.1/L.243	China	40	362(b)
A/CONF.39/C.1/L.244	Argentina	41	369(ii), 369(iii)(b), 369(iv)(a), 369(v) and 369(vi)(b)
A/CONF.39/C.1/L.245	Australia	39	351(ii)(e) and 351(iii)(b)
A/CONF.39/C.1/L.246	Hungary	41	369(iii)(c)
A/CONF.39/C.1/L.247 and Add.1	Czechoslovakia and Finland	42	382(i)(a)
A/CONF.39/C.1/L.248	Finland	71	657(ii)(b)
A/CONF.39/C.1/L.249	Finland	72	657(iv)(3)(a) and 657(iv)(5)
A/CONF.39/C.1/L.250	Switzerland	76	690
A/CONF.39/C.1/L.251 and Add.1-3	Bolivia, Byelorussian Soviet Socialist Republic, Colombia, Congo (Brazzaville), Dominican Republic, Guatemala, Union of Soviet Socialist Republics and Venezuela	42	382(i)(b)
A/CONF.39/C.1/L.252	Venezuela	43	394(d)
A/CONF.39/C.1/L.253	India	41	369(vi)(c)
A/CONF.39/C.1/L.254	India	50	462(ii)(a)
A/CONF.39/C.1/L.255	India	61	561(a)
A/CONF.39/C.1/L.256	India	67	620(a)
A/CONF.39/C.1/L.257 and Corr.1	United Kingdom of Great Britain and Northern Ireland	41	369(i)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.258/Corr.1	Romania and Union of Soviet Socialist Republics	50	462(i)(a)
A/CONF.39/C.1/L.259 and Add.1	Congo (Brazzaville) and Venezuela	46	422(b)
A/CONF.39/C.1/L.260	United States of America	41	369(iv)(b)
A/CONF.39/C.1/L.261 and Add.1	Congo (Brazzaville) and Venezuela	47	432(b)
A/CONF.39/C.1/L.262	United States of America	40	362(c)
A/CONF.39/C.1/L.263 and Add.1	Chile and Malaysia	46	422(c)
A/CONF.39/C.1/L.264 and Add.1	Chile, Japan and Mexico	47	432(c)
A/CONF.39/C.1/L.265	Mexico	44	403(a)
A/CONF.39/C.1/L.266	Mexico	50	462(ii)(b)
A/CONF.39/C.1/L.267 and Add.1	Guyana and United States of America	42	382(ii)(a)
A/CONF.39/C.1/L.268	Guyana	42	382(i)(c)
A/CONF.39/C.1/L.269	Japan	44	403(b)
A/CONF.39/C.1/L.270	Singapore	39	351(i)
A/CONF.39/C.1/L.271/Rev.1	Australia	43	394(e)
A/CONF.39/C.1/L.272	Spain	42	382(i)(d)
A/CONF.39/C.1/L.273	Cambodia	42	382(i)(e)
A/CONF.39/C.1/L.274	United Kingdom of Great Britain and Northern Ireland	43	394(f)
A/CONF.39/C.1/L.275	United States of America	45	412(a)
A/CONF.39/C.1/L.276	United States of America	46	422(d)
A/CONF.39/C.1/L.277	United States of America	48	440(a)
A/CONF.39/C.1/L.278	Bulgaria and Poland	65	601(iii)(a)
A/CONF.39/C.1/L.279	Hungary and Poland	69	636(a)
A/CONF.39/C.1/L.280	Iran	43	394(g)
A/CONF.39/C.1/L.281	Australia	45	412(b)
A/CONF.39/C.1/L.282	Australia	46	422(e)
A/CONF.39/C.1/L.283	Australia	47	432(d)
A/CONF.39/C.1/L.284	Australia	48	440(b)
A/CONF.39/C.1/L.285	Canada	56	514(i)(b)
A/CONF.39/C.1/L.286	Canada	55	505(i)(a)
A/CONF.39/C.1/L.287	Ukrainian Soviet Socialist Republic	44	403(c)
A/CONF.39/C.1/L.288	Spain	44	403(d)
A/CONF.39/C.1/L.289 and Add.1	Bulgaria, Ceylon, Congo (Democratic Republic of), Cuba, Cyprus, Czechoslovakia, Ecuador, Finland, Greece, Guatemala, Kuwait, Mexico, Spain and Ukrainian Soviet Socialist Republic	49	449(c)
A/CONF.39/C.1/L.290/Rev.1	Malaysia	71	657(i)(b)
A/CONF.39/C.1/L.291	Malaysia	72	657(i)(c)
A/CONF.39/C.1/L.292	Byelorussian Soviet Socialist Republic	56	514(i)(c) and 514(ii)(a)
A/CONF.39/C.1/L.293	Finland	50	462(ii)(c)
A/CONF.39/C.1/L.294	Finland	61	561(b)
A/CONF.39/C.1/L.295	Finland	67	620(b)
A/CONF.39/C.1/L.296	Australia	49	449(d)
A/CONF.39/C.1/L.297	Australia	65	601(i)(a)
A/CONF.39/C.1/L.298 and Add.1	Japan and Republic of Viet-Nam	49	449(e)
A/CONF.39/C.1/L.299	Republic of Viet-Nam	59	540(iii)(a)
A/CONF.39/C.1/L.300	France	48	440(c)
A/CONF.39/C.1/L.301	China	49	449(f)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.302	United States of America	50	462(i)(b)
A/CONF.39/C.1/L.303	Peru	53	487(b)
A/CONF.39/C.1/L.304	Peru	54	498(a)
A/CONF.39/C.1/L.305	Peru	55	505(ii)(b)
A/CONF.39/C.1/L.306 and Add.1 and 2	Finland, Greece and Spain	50	462(i)(c)
A/CONF.39/C.1/L.307 and Add.1 and 2	Colombia, Spain and Venezuela	53	487(c)
A/CONF.39/C.1/L.308	Romania	56	514(i)(d) and 514(ii)(b)
A/CONF.39/C.1/L.309	Finland	57	522(iii)(a)
A/CONF.39/C.1/L.310	United Kingdom of Great Britain and Northern Ireland	52	480
A/CONF.39/C.1/L.311	United Kingdom of Great Britain and Northern Ireland	53	487(d)
A/CONF.39/C.1/L.312	United Kingdom of Great Britain and Northern Ireland	50	462(ii)(d)
A/CONF.39/C.1/L.313	Netherlands	51	473(c)
A/CONF.39/C.1/L.314/Rev.1	Greece	51	473(d)
A/CONF.39/C.1/L.315	Greece	53	487(e)
A/CONF.39/C.1/L.316	Greece	54	498(b)
A/CONF.39/C.1/L.317	Greece	55	505(ii)(c)
A/CONF.39/C.1/L.318	Venezuela	57	522(i)(a), 522(ii)(a) and 522(iii)(b)
A/CONF.39/C.1/L.319	Venezuela	59	540(i)
A/CONF.39/C.1/L.320	Canada	59	540(ii)(a)
A/CONF.39/C.1/L.321 and Add.1	Austria, Canada, Finland, Poland, Romania and Yugo- slavia	55	505(i)(b)
A/CONF.39/C.1/L.322	Italy and Switzerland	60	549(a)
A/CONF.39/C.1/L.323	Netherlands	49	450 and 459
		(Draft declaration)	
A/CONF.39/C.1/L.324	Australia	55	505(ii)(d)
A/CONF.39/C.1/L.325	United States of America	57	522(i)(b) and 522(ii)(b)
A/CONF.39/C.1/L.326	Spain	57	522(iii)(c)
A/CONF.39/C.1/L.327	China	56	514(i)(e)
A/CONF.39/C.1/L.328	China	71 & 72	657(i)(a)
A/CONF.39/C.1/L.329 and Corr.1	China	75	684(a)
A/CONF.39/C.1/L.330	Mexico	58	531(a)
A/CONF.39/C.1/L.331	Netherlands	58	531(b)
A/CONF.39/C.1/L.332/Rev.1	Ecuador	58	531(c)
A/CONF.39/C.1/L.333	Finland	59	540(ii)(b)
A/CONF.39/C.1/L.334	Hungary	60	549(b)
A/CONF.39/C.1/L.335	United States of America	59	540(iii)(b)
A/CONF.39/C.1/L.336	Japan	59	540(ii)(c)
A/CONF.39/C.1/L.337	Japan	60	549(c)
A/CONF.39/C.1/L.338	Japan	62	571(iii)(I)(a) and 571(iii)(2)(a)
A/CONF.39/C.1/L.339	Japan	62	571(ii)(a)
A/CONF.39/C.1/L.340	Switzerland	42	382(i)(f)
A/CONF.39/C.1/L.341	Chile	60	549(d)
A/CONF.39/C.1/L.342	France	62	571(iii)(I)(b)
A/CONF.39/C.1/L.343	Uruguay	62	571(i)(a)
A/CONF.39/C.1/L.344	[Text of article 17 provisionally adopted by the Drafting Committee]	17	185
A/CONF.39/C.1/L.345	Central African Republic and Gabon	62	571(ii)(b)
A/CONF.39/C.1/L.346	Colombia, Finland, Lebanon, Netherlands, Peru, Sweden and Tunisia	62	571(ii)(c)

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.39/C.1/L.347	Switzerland	62	571(i)(b)
A/CONF.39/C.1/L.348	Switzerland	62bis	583(a)
A/CONF.39/C.1/L.349 and Corr.1	Switzerland	63	587
A/CONF.39/C.1/L.350	United States of America	41	369(iii)(d) and 369(vii)
A/CONF.39/C.1/L.351	Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Guinea, Mali and Mongolia	71	657(iii)
A/CONF.39/C.1/L.352/Rev.1 and Corr.1	Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia	62	571(ii)(d)
A/CONF.39/C.1/L.352/Rev.2	Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia	62bis	583(b)
A/CONF.39/C.1/L.353	Cuba	62	571(iii)(3)
A/CONF.39/C.1/L.354	Australia	42	382(ii)(b)
A/CONF.39/C.1/L.355	United States of America	62	571(ii)(e) and 571(iii)(2)(b)
A/CONF.39/C.1/L.356	Mexico	67	620(c)
A/CONF.39/C.1/L.357	Mexico	68	628
A/CONF.39/C.1/L.358	Switzerland	65	601(i)(b) and 601 (iii)(b)
A/CONF.39/C.1/L.359	Switzerland	69	636(b)
A/CONF.39/C.1/L.360	United States of America	65	601(i)(c), 601(ii), and 601 (iii)(c)
A/CONF.39/C.1/L.361	Ceylon and Czechoslovakia	62	572(a)
		(Draft resolution)	
A/CONF.39/C.1/L.362	Central African Republic, Colombia, Dahomey, Denmark, Finland, Gabon, Ivory Coast, Lebanon, Madagascar, Netherlands, Peru, Sweden and Tunisia	62	572(b)
		(Draft resolution)	
A/CONF.39/C.1/L.363	France	65	601(i)(d)
A/CONF.39/C.1/L.364	Byelorussian Soviet Socialist Republic	72	657(iv)(4) and 657(v)
A/CONF.39/C.1/L.365	Japan	69	636(c)
A/CONF.39/C.1/L.366	Japan	70	645(a)
A/CONF.39/C.1/L.367	Thailand	70	645(b)
A/CONF.39/C.1/L.368	Mongolia	72	657(vi)(a)
A/CONF.39/C.1/L.369	United States of America	72	657(iv)(1), 657(iv)(2), 657(iv)(3)(b), 657(iv)(6) and 657(vi)(b)
A/CONF.39/C.1/L.370 and Add.1 to 7	[Draft report of the Committee of the Whole on its work at the first session of the Conference]		
A/CONF.39/C.1/L.371	Byelorussian Soviet Socialist Republic	75	684(b)
A/CONF.39/C.1/L.372	Mexico	71	657(ii)(c)
A/CONF.39/C.1/L.373	Mexico	72	657(iv)(3)(c)
A/CONF.39/C.1/L.374	United States of America	74	676(i)
A/CONF.39/C.1/L.375	Congo (Brazzaville)	74	676(ii)
A/CONF.39/C.1/L.376	United States of America and Uruguay	75	684(c)
A/CONF.39/C.1/L.377	Switzerland	62bis	583(c)
A/CONF.39/C.1/L.378	Nigeria: draft resolution on arrangements for the second session of the Conference		See chap. III, sect. B, draft resolution 3