Document:-

A/CN.4/SR.1740

Summary record of the 1740th meeting

Topic:

Treaties concluded between States and international organizations or between two or more international organizations

Extract from the Yearbook of the International Law Commission:-

1982, vol. I

all injury was actual (*ibid.*, para. 35). In that connection, he noted that in paragraph 27 of his third report the Special Rapporteur described the occurrence of loss or injury as "a pure question of fact", whereas in paragraph 34, he referred to loss or injury as being "material or non-material". In his own view, what distinguished liability from responsibility was, precisely, that liability was concerned with material loss or injury, whereas responsibility was concerned, first and foremost, with a legal loss or injury resulting from the breach of an obligation. With those reservations, he found the definition of the scope of the topic proposed by the Special Rapporteur generally acceptable.

53. In section 2 of his schematic outline, the Special Rapporteur proposed a regime for prevention. Paragraph 1 of that section contained a reference to loss or injury: it should be made clearer that whereas a regime of compensation applied if a loss or injury actually occurred, a regime of prevention could apply only with respect to continuation of the activity concerned. In the same paragraph, the Special Rapporteur had emphasized the duty of the acting State to take remedial or preventive measures in order to avoid future loss or injury. While that was an essential part of any regime of prevention, the Special Rapporteur had perhaps given too much prominence to the procedures to be followed in adopting such measures. It was most important to recognize that the international responsibility of a State was not engaged if it failed to follow the recommended procedures. It might, in fact, be possible for a State to determine the remedial measures to be taken without any reference to those procedures.

54. In section 3, paragraph 3, of the outline, the Special Rapporteur referred to the rights and obligations of the States parties under the draft articles. In that context it would be more appropriate to speak of satisfying interests than of satisfying rights and obligations. The regime of reparation proposed by the Special Rapporteur in section 4 appeared somewhat limited. In paragraph 3 of that section, it was stated that the reparation due was to be ascertained in accordance with the shared expectations of the States concerned and the principles set out in section 5, taking into account the factors set out in sections 6 and 7. The concept of shared expectations was unsatisfactory. In section 4, paragraph 4, it was defined as a sort of consensus between the States concerned, expressed in exchanges between them or implied by common legislative or other standards or patterns of conduct observed by the States concerned or even by the international community. That definition raised the problem of the different stages of development of different countries. The standards applied in industrialized countries might not be applicable in developing countries. In any event, the concept of shared expectations contributed little to a regime of reparation.

55. One of the main principles set out in section 5, to be applied in ascertaining the reparation due to the affected State, was that an innocent victim should not be left to bear his loss or injury. While he considered the word "innocent" to be more literary than legal, the principle itself was essential. However, a number of other concepts referred to, such as those of adequate protection, freedom of choice compatible with adequate protection and liberal recourse to inferences to establish whether an activity did, or might, give rise to loss or injury, seemed somewhat questionable.

56. It was difficult to see what role could be played by the factors set out in sections 6 and 7 in determining reparations. A number of the provisions in those sections could be better developed as specific provisions of the regimes of prevention or compensation, or as general principles to be placed at the beginning of the draft. Alternatively, if they were to serve merely as guidelines, they could be included in an annex to the articles. Part II of section 7, for example, could be developed as an aspect of the regime of reparation or compensation.

57. He found the schematic outline proposed by the Special Rapporteur generally acceptable.

The meeting rose at 6.10 p.m.

1740th MEETING

Tuesday, 6 July 1982, at 10 a.m.

Chairman: Mr. Paul REUTER

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*)* (A/CN.4/L.341)

[Agenda item 2]

DRAFT ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE

ARTICLE 2, subparas. 1 (*c bis*) and (*h*), ARTICLE 5, ARTICLE 7, para. 4, ARTICLE 20, para. 3, ARTICLES 27 to 36, 36 *bis*, 37 to 80 and ANNEX.[1]

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts of article 2, subparagraphs 1 (*c bis*) and (*h*); article 5; article 7, paragraph 4; article 20, paragraph 3; articles 27 to 36, 36 *bis* and 37 to 80 and the annex, as well as the titles of the corresponding parts and sections of the draft, adopted by the Drafting Committee (A/CN.4/L.341).

2. The texts and titles proposed by the Drafting Committee were the following:

* Resumed from the 1728th meeting.

[1] For the texts of draft articles 2, 7 and 20, adopted on second reading, and the original text of draft article 5, see *Yearbook ... 1981*, vol. II (Part Two), pp. 120 *et seq.* For the text of draft articles 27 to 80 and the annex, adopted on first reading, see *Yearbook ... 1980*, vol. II (Part Two), pp. 71 *et seq.*

[PART I

INTRODUCTION

...]

Article 2. Use of terms

1. For the purposes of the present articles:

...

(*c bis*) "powers" means a document emanating from the competent organ of an international organization and designating a person or persons to represent the organization for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the organization to be bound by a treaty or for accomplishing any other act with respect to a treaty;

...

(*h*) "third State" and "third organization" mean respectively:

(i) a State, or

(ii) an international organization,

not a party to the treaty;

...

Article 5. Treaties constituting international organizations and treaties adopted within an international organization

The present articles apply to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

[PART II

CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1. CONCLUSION OF TREATIES

...]

Article 7. Full powers and powers

...

4. A person is considered as representing an international organization for the purpose of expressing the consent of that organization to be bound by a treaty if:

(*a*) he produces appropriate powers; or

(*b*) it appears from the practice of the competent organs of the organization or from other circumstances that that person is considered as representing the organization for such purpose without having to produce powers.

...

[SECTION 2. RESERVATIONS

...]

Article 20. Acceptance of and objection to reservations

...

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

...

[PART III

OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

...]

Article 27. Internal law of States, rules of international organizations and observance of treaties

1. A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.

2. An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty.

3. The rules contained in the preceding paragraphs are without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28. Non-retroactivity of treaties

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

Article 29. Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty between one or more States and one or more international organizations is binding upon each State party in respect of its entire territory.

Article 30. Application of successive treaties relating to the same subject-matter

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

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

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

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

(*a*) as between two parties, each of which is a party to both treaties, the same rule applies as in paragraph 3;

(*b*) as between a party to both treaties and a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State or for an international organization from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State or an organization or, as the case may be, towards another organization or a State not party to that treaty, under another treaty.

6. The preceding paragraphs are without prejudice to Article 103 of the Charter of the United Nations.

SECTION 3. INTERPRETATION OF TREATIES

Article 31. General rule of interpretation

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

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

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

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

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

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

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

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

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

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

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

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

Article 33. Interpretation of treaties authenticated in two or more languages

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

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

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES OR THIRD ORGANIZATIONS

Article 34. General rule regarding third States and third organizations

A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.

Article 35. Treaties providing for obligations for third States or third organizations

1. An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

2. An obligation arises for a third organization from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third organization expressly accepts that obligation in writing. Acceptance by the third organization of such an obligation shall be governed by the relevant rules of that organization.

Article 36. Treaties providing for rights for third States or third organizations

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

2. A right arises for a third organization from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third organization, or to a group of international organizations to which it belongs, or to all organizations, and the third organization assents thereto. Its assent shall be governed by the relevant rules of the organization.

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

Article 36 bis. Obligations and rights arising for States members of an international organization from a treaty to which it is a party

Obligations and rights arise for States members of an international organization from the provisions of a treaty to which that organization is a party when the parties to the treaty intend those provisions to be the means of establishing such obligations and according such rights and have defined their conditions and effects in the treaty or have otherwise agreed thereon, and if:

(*a*) the States members of the organization, by virtue of the constituent instrument of that organization or otherwise, have unanimously agreed to be bound by the said provisions of the treaty; and

(*b*) the assent of the States members of the organization to be bound by the relevant provisions of the treaty has been duly brought to the knowledge of the negotiating States and negotiating organizations.

Article 37. Revocation or modification of obligations or rights of third States or third oganizations

1. When an obligation has arisen for a third State in conformity with paragraph 1 of article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When an obligation has arisen for a third organization in conformity with paragraph 2 of article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third organization, unless it is established that they had otherwise agreed.

3. When a right has arisen for a third State in conformity with paragraph 1 of article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

4. When a right has arisen for a third organization in conformity with paragraph 2 of article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third organization.

5. The consent of an international organization party to the treaty or of a third organization, as provided for in the foregoing paragraphs, shall be governed by the relevant rules of that organization.

Article 38. Rules in a treaty becoming binding on third States or third organizations through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State or a third organization as a customary rule of international law, recognized as such.

PART IV

AMENDMENT AND MODIFICATION OF TREATIES

Article 39. General rule regarding the amendment of treaties

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

2. The consent of an international organization to an agreement provided for in paragraph 1 shall be governed by the relevant rules of that organization.

Article 40. Amendment of multilateral treaties

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

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States and contracting organizations or, as the case may be, to all the contracting organizations, 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 or international organization 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 party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (*b*), applies in relation to such a party.

5. Any State or international organization 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 or organization:

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

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

Article 41. Agreement to modify multilateral treaties between certain of the parties only

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

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

(*b*) the modification in question is not prohibited by the treaty and:

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

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

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

PART V

INVALIDITY, TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42. Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State or an international organization to be bound by a treaty may be impeached only through the application of the present articles.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present articles. The same rule applies to suspension of the operation of a treaty.

Article 43. Obligations imposed by international law independently of a treaty

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

Article 44. Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty, may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

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

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

(*b*) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(*c*) continued performance of the remainder of the treaty would not be unjust.

4. In cases falling under articles 49 and 50, the State or the international organization entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.

5. In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted.

Article 45. Loss of a right to invoke a ground for invalidating, terminating withdrawing from or suspending the operation of a treaty

1. A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

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

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

2. An international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

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

(*b*) it must by reason of the conduct of the competent organ be considered as having renounced the right to invoke that ground.

SECTION 2. INVALIDITY OF TREATIES

Article 46. Provisions of internal law of a State and rules of an international organization regarding competence to conclude treaties

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

2. In the case of paragraph 1, a violation is manifest if it would be objectively evident to any State or any international organization referring in good faith to normal practice of States in the matter.

3. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

4. In the case of paragraph 3, a violation is manifest if it is or ought to be within the knowledge of any contracting State or any contracting organization.

Article 47. Specific restrictions on authority to express the consent of a State or an international organization

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

Article 48. Error

1. A State or an international organization 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 or that organization to exist at the time when the treaty was concluded and formed an essential basis of the consent of that State or that organization to be bound by the treaty.

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

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

Article 49. Fraud

A State or an international organization induced to conclude a treaty by the fraudulent conduct of a negotiating State or a negotiating organization may invoke the fraud as invalidating its consent to be bound by the treaty.

Article 50. Corruption of a representative of a State or of an international organization

A State or an international organization the expression of whose consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by a negotiating State or a negotiating organization may invoke such corruption as invalidating its consent to be bound by the treaty.

Article 51. Coercion of a representative of a State or of an international organization

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

Article 52. Coercion by the threat or use of force

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

Article 53. Treaties conflicting with a peremptory norm of general international law
(jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

SECTION 3. TERMINATION AND SUSPENSION OF THE OPERATION OF TREATIES

Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties, after consultation with the other contracting States and the other contracting organizations or, as the case may be, with the other contracting organizations.

Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

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

Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties

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

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties, after consultation with the other contracting States and the other contracting organizations or, as the case may be, with the other contracting organizations.

Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

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

(*b*) the suspension in question is not prohibited by the treaty and:

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

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

Article 59. Termination or suspension of the operation of a treaty implied by conclusion of a later treaty

1. A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(*a*) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(*b*) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.

2. The earlier treaty shall he considered as only suspended in operation if it appears from the later treaty or is otherwise established that such was the intention of the parties.

Article 60. Termination or suspension of the operation of a treaty as a consequence of its breach

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

2. A material breach of a multilateral treaty by one of the parties entitles:

(*a*) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State or international organization, or

(ii) as between all the parties;

(*b*) a party especially 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 or international organization;

(*c*) any party other than the defaulting State or international organization to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(*a*) a repudiation of the treaty not sanctioned by the present 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.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61. Supervening impossibility of performance

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

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62. Fundamental change of circumstances

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

(*a*) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(*b*) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations, if the treaty establishes a boundary.

3. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

4. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty, it may also invoke the change as a ground for suspending the operation of the treaty.

Article 63. Severance of diplomatic or consular relations

The severance of diplomatic or consular relations between States parties to a treaty between two or more States and one or more international organizations does not affect the legal relations established between those States by the treaty except in so far as the existence of diplomatic or consular relations is indispensable for the application of the treaty.

Article 64. Emergence of a new peremptory norm of general international law (jus cogens)

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

SECTION 4. PROCEDURE

Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present articles, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. When an objection is 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. The notification or objection made by an international organization shall be governed by the relevant rules of that organization.

5. 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.

6. Without prejudice to article 45, the fact that a State or an international organization has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

Article 66. Procedures for arbitration and conciliation

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(*a*) any one of the parties to a dispute concerning the application or the interpretation of article 53 or article 64 may, by written notification to the other party or parties to the dispute, submit it to arbitration in accordance with the provisions of the annex to the present articles, unless the parties by common consent agree to submit the dispute to another arbitration procedure;

(*b*) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in part V of the present articles may set in motion the conciliation procedure specified in the annex to the present articles by submitting a request to that effect to the Secretary-General of the United Nations, unless the parties by common consent agree to submit the dispute to another conciliation procedure.

Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument emanating from a State 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. If the instrument emanates from an international organization, the representative of the organization communicating it may be called upon to produce powers.

Article 68. Revocation of notifications and instruments provided for in articles 65 and 67

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

SECTION 5 CONSEQUENCES OF THE INVALIDITY, TERMINATION OR SUSPENSION OF THE OPERATION OF A TREATY

Article 69. Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present articles is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the act of corruption or the coercion is imputable.

4. In the case of the invalidity of the consent of a particular State or a particular international organization to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State or that organization and the parties to the treaty.

Article 70. Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present 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 or an international organization denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State or that organization and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

Article 71. Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:

(*a*) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(*b*) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(*a*) releases the parties from any obligation further to perform the treaty;

(*b*) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

Article 72. Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:

(*a*) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension;

(*b*) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

PART VI

MISCELLANEOUS PROVISIONS

Article 73. Cases of succession of States, responsibility of a State or of an international organization, outbreak of hostilities, termination of the existence of an organization and termination of participation by a State in the membership of an organization

1. The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty between one or more States and one or more international organizations from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States parties to that treaty.

2. The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty from the international responsibility of an international organization, from the termination of the existence of the organization or from the termination of participation by a State in the membership of the organization.

Article 74. Diplomatic and consular relations and the conclusion of treaties

The severance or absence of diplomatic or consular relations between two or more States does not prevent the conclusion of treaties between two or more of those States and one or more international organizations. The conclusion of such a treaty does not in itself affect the situation in regard to diplomatic or consular relations.

Article 75. Case of an aggressor State

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

PART VII

DEPOSITARIES, NOTIFICATIONS, CORRECTIONS AND REGISTRATION

Article 76. Depositaries of treaties

1. The designation of the depositary of a treaty may be made by the negotiating States and the negotiating organizations or, as the case may be, the negotiating organizations, 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 or an international organization and a depositary with regard to the performance of the latter's functions shall not affect that obligation.

Article 77. Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations or, as the case may be, by the contracting organizations, comprise in particular:

(*a*) keeping custody of the original text of the treaty, of any full powers and powers delivered to the depositary;

(*b*) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States and international organizations or, as the case may be, to the organizations entitled to become parties to the treaty;

(*c*) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(*d*) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State or international organization in question;

(*e*) informing the parties and the States and international organizations or, as the case may be, the organizations entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(*f*) informing the States and international organizations or, as the case may be, the organizations entitled to become parties to the treaty when the number of signatures or of instruments of ratification, instruments relating to an act of formal confirmation, or instruments of acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(*g*) registering the treaty with the Secretariat of the United Nations;

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

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

(*a*) the signatory States and organizations and the contracting States and contracting organizations; or

(*b*) where appropriate, the competent organ of the organization concerned.

Article 78. Notifications and communications

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

(*a*) if there is no depositary, be transmitted direct to the States and organizations or, as the case may be, to the organizations for which it is intended, or if there is a depositary, to the latter;

(*b*) be considered as having been made by the State or organization in question only upon its receipt by the State or the organization 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 or organization for which it was intended only when the latter State or organization has been informed by the depositary in accordance with article 77, paragraph 1 (*e*).

Article 79. Correction of errors in texts or in certified copies of treaties

1. Where, after the authentication of the text of a treaty, the signatory States and international organizations and the contracting States and contracting organizations are agreed that it contains an error, the error shall, unless the said States and organizations decide upon some other means of correction, be corrected:

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

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

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

2. Where the treaty is one for which there is a depositary, the latter shall notify the signatory States and international organizations and the contracting States and contracting organizations of the error and of the proposal to correct it and shall specify an appropriate time-limit within which objection to the proposed correction may be raised. If, on the expiry of the time-limit:

(*a*) no objection has been raised, the depositary shall make and initial the correction in the text and shall execute a *procès-verbal* of the rectification of the text and communicate a copy of it to the parties and to the States and organizations entitled to become parties to the treaty;

(*b*) an objection has been raised, the depositary shall communicate the objection to the signatory States and organizations and to the contracting States and contracting organizations.

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 international organizations and the contracting States and contracting organizations agree should be corrected.

4. The corrected text replaces the defective text *ab initio*, unless the signatory States and international organizations and the contracting States and contracting organizations otherwise decide.

5. The correction of the text of a treaty that has been registered shall be notified to the Secretariat of the United Nations.

6. Where an error is discovered in a certified copy of a treaty, the depositary shall execute a *procès-verbal* specifying the rectification and communicate a copy of it to the signatory States and international organizations and to the contracting States and contracting organizations.

Article 80. Registration and publication of treaties

1. Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.

2. The designation of a depositary shall constitute authorization for it to perform the acts specified in the preceding paragraph.

ANNEX

Arbitration and conciliation procedures established in application of article 66

I. Establishment of the Arbitral Tribunal or Conciliation Commission

1. A list consisting of qualified jurists, from which the parties to a dispute may choose the persons who are to constitute an arbitral tribunal or, as the case may be, a conciliation commission, shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a State party to the present articles and any international organization to which the present articles have become applicable shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list, a copy of which shall be transmitted to the President of the International Court of Justice. The term of a person on the list, including that of any person nominated to fill a casual vacancy, shall be five years and may be renewed. A person whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraphs.

2. When notification has been made under article 66, paragraph (*a*), the dispute shall be brought before an arbitral tribunal. When a request has been made to the Secretary-General under article 66, paragraph (*b*), the Secretary-General shall bring the dispute before a conciliation commission. Both the arbitral tribunal and the conciliation commission shall be constituted as follows:

The States and international organizations which constitute one of the parties to the dispute shall appoint by common consent:

(*a*) one arbitrator or, as the case may be, one conciliator, who may or may not be chosen from the list referred to in paragraph 1; and

(*b*) one arbitrator or, as the case may be, one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute.

The States and international organizations which constitute the other party to the dispute shall appoint two arbitrators or, as the case may be, two conciliators, in the same way.

The four persons chosen by the parties shall be appointed within sixty days following the date on which the other party to the dispute receives notification under article 66, paragraph (*a*), or on which the Secretary-General receives the request for conciliation.

The four persons so chosen shall, within sixty days following the date of the last of their own appointments, appoint from the list a fifth arbitrator or, as the case may be, conciliator, who shall be chairman.

If the appointment of the chairman, or of any of the arbitrators or, as the case may be, conciliators, has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General of the United Nations within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute. If the United Nations is a party or is included in one of the parties to the dispute, the Secretary-General shall transmit the above-mentioned request to the President of the International Court of Justice, who shall perform the functions conferred upon the Secretary-General under this subparagraph.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

The appointment of arbitrators or conciliators by an international organization provided for in paragraphs 1 and 2 shall be governed by the relevant rules of that organization.

II. Functioning of the Arbitral Tribunal

3. Unless the parties to the dispute otherwise agree, the Arbitral Tribunal shall decide its own procedure, assuring to each party to the dispute a full opportunity to be heard and to present its case.

4. The Arbitral Tribunal, with the consent of the parties to the dispute, may invite any interested State or international organization to submit to it its views orally or in writing.

5. Decisions of the Arbitral Tribunal shall be adopted by a majority vote of the members. In the event of an equality of votes, the chairman shall have a casting vote.

6. When one of the parties to the dispute does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to make its award. Before making its award, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

7. The award of the Arbitral Tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. Any member of the Tribunal may attach a separate or dissenting opinion to the award.

8. The award shall be final and without appeal. It shall be complied with by all parties to the dispute.

9. The Secretary-General shall provide the Tribunal with such assistance and facilities as it may require. The expenses of the Tribunal shall be borne by the United Nations.

III. Functioning of the Conciliation Commission

10. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

11. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

12. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

13. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

14. 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.

Consideration by the Commission of the draft articles

3. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the Drafting Committee was submitting, in document A/CN.4/L.341, the text of the draft articles it had adopted on the law of treaties between States and international organizations or between international organizations, which had been referred to it by the Commission during the current session, namely article 2, subparagraph 1 (*h*), articles 27 to 36, 36 *bis*, 37 to 80 and the annex. Pursuant to a decision of the Commission, the Drafting Committee had also examined article 5, which had been added to the draft only at the previous session, as well as its consequential effects on article 20. The document therefore included the texts of article 5 and of a new paragraph 3 to be added to article 20. Furthermore, in its consideration of certain of the articles referred to it at the current session, in particular article 47, the Committee had seen fit, taking into account the debate in the Commission on those articles, to recommend that changes should be made to two of the articles which had been adopted on second reading at the preceding session of the Commission, relating to the "powers" of the representative of an international organization. Therefore new versions of article 2, subparagraph 1 (*c bis*), and article 7, paragraph 4, were included in the document for the consideration of the Commission.

4. He thanked all the members of the Drafting Committee, and in particular the Special Rapporteur, Mr. Reuter, for their co-operation, which had enabled the Committee to complete its work on the topic in virtually record time. That might make it possible for the Commission to finish the second reading of the draft articles at its present session, as requested by the General Assembly in its resolution 36/114.

5. The Committee had been guided in its work by a number of criteria, which explained many of the drafting changes made. First, as the Commission itself had done throughout its work on the topic, the Committee had kept constantly in mind the intention to preserve as far as possible the spirit of the 1969 Vienna Convention

on the Law of Treaties,[2] and in particular, in the wording of the articles, to reproduce the Convention's precision and flexibility while at the same time making the adjustments required because of the specific characteristics of treaties to which international organizations were parties. In some cases, however, especially with regard to the Spanish version of the articles, slight changes had been introduced for purely linguistic and grammatical reasons. In other cases minor stylistic alterations had been made or punctuation modified in order to align the texts more closely with the corresponding articles of the Vienna Convention. Secondly, the Committee had followed the method adopted by the Commission at the preceding session, when it had begun the second reading of the articles, of endeavouring to simplify the texts without sacrificing the clarity and precision needed to facilitate the application and interpretation of the rules embodied in the articles. That was in keeping with the proposals of the Special Rapporteur, the comments made by members of the Commission and the concerns expressed by representatives in the Sixth Committee of the General Assembly and by Governments in their written comments.

6. The Drafting Committee had also sought to achieve terminological consistency throughout the draft. For example, it had included or deleted the word "international" before the word "organization" according to the circumstances; as a general rule, "international" had been placed before "organization" the first time that term appeared in a given paragraph, whereas in the remainder of the paragraph the word "organization" appeared alone. The same rule had been followed with regard to subparagraphs unless the term "international organization" appeared in the introductory wording. That general technique did not apply when the word "international" was part of a full description of the treaty in question, as happened in one or two instances. Furthermore, when terms defined in article 2 were used elsewhere in the draft, irrespective of where they were situated in a paragraph or subparagraph, it was not appropriate to use the adjective "international" unless it formed part of the defined term. The terms "negotiating organization", "contracting organization" and "third organization" were used systematically throughout the draft without the adjective "international".

7. In a further attempt to achieve terminological consistency, the Drafting Committee had seen to it that the reference in an article to States or to a treaty between States and international organizations always preceded the reference to international organizations or to a treaty between international organizations. That drew attention to the principal subject-matter of the article, paragraph or phrase.

8. At its preceding session, the Commission had attempted to make the text somewhat neater by deleting the words "between one or more States and one or more international organizations" in those cases where it was clear from the contents of the paragraph that only that type of treaty was referred to. The same had been done in the case of the articles at present before the Commission. The words in question had been deleted from article 27, paragraph 1, article 45, paragraph 1, and article 46, paragraph 1. Also, following the practice begun by the Commission last year, the Committee had deleted throughout the draft any square brackets which had been inserted in texts adopted on first reading.

9. In accordance with a decision taken at the thirty-second session and endorsed by the Commission,[3] the Drafting Committee had deleted the word "concluded" from the phrase "treaty concluded between" throughout the draft. Lastly, the Committee had considered the question of the final numbering of the draft articles and of the designations to be given to certain subparagraphs of article 2. He recalled that, in accordance with its general approach to the topic, the Commission had given each draft article the same number as that of the corresponding article of the Vienna Convention. For articles which had no equivalent in that Convention, the Commission had used the designation *bis* or *ter*. Thus, an article 36 *bis* appeared in the draft adopted on first reading, as well as subparagraphs 1 (*b bis*), (*b ter*) and (*c bis*) of article 2. For ease of reference to the corresponding article of the Vienna Convention, the Drafting Committee had decided to maintain those designations for the final draft rather than to renumber articles and subparagraphs. Similarly, it had not altered the general structure of the draft as far as parts and sections and their respective titles were concerned.

10. Before concluding his general remarks, he wished to draw the attention of the Commission to paragraph 105 of the report on the work of its thirty-third session, in which the Commission stated that it reserved the possibility of making minor adjustments to articles 1 to 26 of the draft, which had been adopted on second reading at that session, if in the interests of clarity and consistency it was so required.[4] The Drafting Committee had therefore reviewed those twenty-six articles and recommended that minor modifications be made to them so as to achieve consistency in presentation and terminology with the articles now before the Commission. The changes in question were merely consequential to the general considerations he had just put forward with regard to the use of the word "international", the employment of defined terms, the deletion of the word "concluded", the order in which States and international organizations were mentioned and the deletion of the treaty description where it was found unnecessary. If the Commission approved the general considerations and drafting techniques he had described, which were incorporated in the articles now before it, he suggested that, in drafting the Commission's report, the Special Rapporteur and the Commission's Rapporteur should

[2] Hereinafter called the Vienna Convention.

[3] *Yearbook ... 1980*, vol. I, p. 209, 1624th meeting, para. 32.

[4] *Yearbook ... 1981*, vol. II (Part Two), pp. 120 *et seq.*

modify the articles adopted at the preceding session accordingly, so that in their final form the articles would all be consistent in pattern and identically presented from the point of view of terminology, language and drafting. When the draft report was submitted to the Commission, the final text of each article would be accompanied by a draft commentary explaining in detail the substantive considerations which had led the Commission to adopt the article.

11. The document submitted by the Drafting Committee contained new texts for article 2, subparagraphs 1 (*c bis*) and (*h*), and article 7, paragraph 4. Since those texts resulted from decisions taken with regard to subsequent articles, he proposed to revert to them when introducing the articles in question.

ARTICLE 5[5] (Treaties constituting international organizations and treaties adopted within an international organization) *and*

ARTICLE 20[6] (Acceptance of and objection to reservations), paragraph 3

12. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, after carefully considering the text of article 5 included in the draft at the preceding session of the Commission, the Committee had decided to maintain the text unchanged, in spite of the questions raised concerning the appropriateness of keeping the reference to "any treaty which is the constituent instrument of an international organization". The Committee had therefore found it necessary to use for paragraph 3 of article 20 the text of the corresponding paragraph of the same article of the Vienna Convention. That paragraph did not appear in the text of article 20 adopted on second reading, in view of the Commission's earlier decision not to include an article 5 in its draft. Following the inclusion of the new paragraph 3 in article 20, the remaining paragraph of the article had been renumbered accordingly.

Article 5 and Article 20, paragraph 3, were adopted.

ARTICLE 27[7] (Internal law of States, rules of international organizations and observance of treaties)

13. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in the title of the article, the plural had been used instead of the singular for the terms "State" and "organization". In paragraph 2, the Drafting Committee, in the light of the lengthy debate held in the Commission, had chosen the first solution proposed by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 17), namely to delete from paragraph 2 the exception contemplated in the clause "unless performance of the treaty, according to the intention of the parties, is subject to the exercise of the functions and powers of the organization". In paragraph 3, to conform with the corresponding text of the Vienna Convention, the Committee had added a proviso concerning article 46.

14. Mr. YANKOV said that, while he understood the Drafting Committee's desire to avoid repetition of the expression "between one or more States and one or more international organizations", he felt that paragraph 1 of draft article 27, as it stood, was too general. While he did not wish to make a formal proposal to amend the paragraph, he suggested that the point should be explained in the commentary.

Article 27 was adopted.

SECTION 2 (Application of treaties)

The title of section 2 was adopted.

ARTICLE 28[8] (Non-retroactivity of treaties)

Article 28 was adopted.

ARTICLE 29[9] (Territorial scope of treaties)

Article 29 was adopted.

ARTICLE 30[10] (Application of successive treaties relating to the same subject-matter)

15. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in the light of the discussion in the Commission, the Drafting Committee had decided to replace the text of paragraph 4 of the article by the text proposed by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 19), with minor drafting changes. In paragraph 5, the Committee had used the formula "another State or an organization or, as the case may be, ... another organization or a State", which had been employed throughout the draft.

Article 30 was adopted.

SECTION 3 (Interpretation of treaties)

The title of section 3 was adopted.

ARTICLE 31[11] (General rule of interpretation)

Article 31 was adopted.

ARTICLE 32[12] (Supplementary means of interpretation)

Article 32 was adopted.

ARTICLE 33[13] (Interpretation of treaties authenticated in two or more languages)

Article 33 was adopted.

[5] For consideration of the text initially submitted by the Special Rapporteur, see 1727th meeting, paras. 14-20.

[6] *Idem.*

[7] For the text submitted by the Special Rapporteur and consideration of the text by the Commission, see 1699th meeting, paras. 27-31, and 1700th meeting.

[8] *Idem*, 1701st meeting, paras. 2-10.

[9] *Idem*,. paras. 11-21.

[10] *Idem*, paras. 22-31; 1702nd meeting, paras. 1-29; 1727th meeting, paras. 21-31.

[11] *Idem*, 1702nd meeting, paras. 30-33.

[12] *Idem*, paras. 34-35.

[13] *Idem*, paras. 36-37.

SECTION 4 (Treaties and third States or third organizations)

The title of section 4 was adopted.

ARTICLE 34[14] (General rule regarding third States and third organizations) *and*

ARTICLE 2, subpara. 1(*h*)[15] (Use of terms: "third State" and "third organization")

16. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in the light of the discussion in the Commission, the Drafting Committee had replaced the text of article 34 adopted on first reading, which had consisted of two paragraphs, by the single paragraph proposed by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 24).

17. In connection with article 34, the Drafting Committee had adopted the text of article 2, subparagraph 1 (*h*), which defined the terms "third State" and "third organization", and it had given that definition the same structure as the other definitions in article 2.

Article 34 and article 2, subparagraph 1 (h), were adopted.

ARTICLE 35[16] (Treaties providing for obligations for third States or third organizations) *and*

ARTICLE 36[17] (Treaties providing for rights for third States or third organizations)

18. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, as suggested in the debate in the Commission, the Drafting Committee had simplified the text of the two articles by combining paragraphs 2 and 3. In addition, the introductory phrase in paragraph 1 of each article, "subject to article 36 *bis*", which had been placed in square brackets, had been deleted as unnecessary. Finally, in article 35, the expression "in the sphere of its activities", which did not appear to reflect the general sentiment of the Commission, had been deleted.

Articles 35 and 36 were adopted.

19. Mr. KOROMA asked whether, at the present stage of the deliberations, members of the Commission could speak on the substance of draft articles or whether they should limit themselves to commenting on the changes made by the Drafting Committee.

20. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that members of the Commission were at liberty to speak on the substance of a draft article at any time. Usually, however, once draft articles had been proposed by the Drafting Committee, that was no longer considered necessary.

ARTICLE 36 *bis*[18] (Obligations and rights arising for States members of an international organization from a treaty to which it is a party)

21. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the text proposed for article 36 *bis* had been adopted unanimously by the Drafting Committee after it had been drafted by a working group of the Committee. In the light of the very extensive debate on the article in the Commission, and bearing in mind the observations of Governments and international organizations, the Committee had felt that there was justification for having a separate article dealing with the obligations and rights arising for States members of an international organization from a treaty concluded by that organization.

22. In the text adopted on first reading, article 36 *bis* had been placed in square brackets. Certain aspects of the same question had been dealt with in paragraphs 5 and 6 of article 37, and those paragraphs had also been placed in square brackets. The Drafting Committee had decided to deal with the entire matter in a single provision. Consequently, the present text of article 36 *bis*, from which the brackets had been removed, had meant the deletion of paragraphs 5 and 6 of article 37.

23. The proposed text referred to both obligations and rights, in order to conform with the wording of articles 35 and 36. The introductory wording reflected in a more precise manner part of the provisions originally in subparagraph (*b*), by the use of the formula "when the parties to the treaty intend those provisions to be the means of establishing such obligations and according such rights", which had been borrowed from articles 35 and 36. The words "and have defined their conditions and effects in the treaty or have otherwise agreed thereon" in the introductory part of the article reproduced the substance of the former paragraphs 5 and 6 of article 37, in a manner that was more succinct and extended the applicability of the rule, as appropriate, under the draft. Finally, the expression "third States which are members of an international organization" had been simplified to read "States members of an international organization".

24. Subparagraph (*a*) had been redrafted to highlight even further the fundamental element of the consent of the States members of an international organization. Subparagraph (*b*) spelt out the other aspect of former subparagraph (*b*) not incorporated in the introductory wording, namely the requirement that the negotiating States and negotiating organizations should be duly informed of the assent of States members of an international organization to be bound by the relevant provisions of a treaty concluded by that organization.

25. Sir Ian SINCLAIR thanked the members of the Drafting Committee and its working group for having produced a text which, he hoped, would secure a consensus in the Commission. The key element of the text

[14] *Idem*, paras. 38-50 and 1703rd meeting, paras. 2-13.

[15] *Idem*.

[16] *Idem*, 1704th meeting, paras. 1-31.

[17] *Idem*, paras. 32-41.

[18] *Idem*, paras. 42-51; 1705th to 1707th meetings; 1718th meeting, paras. 40-46; 1719th meeting, paras. 1-25.

proposed by the Drafting Committee was the expression "and have defined their conditions and effects in the treaty". It would be extremely helpful, not only to the Commission but also to the Sixth Committee of the General Assembly and to lawyers, if an explanation of that wording similar to the explanation just provided by the Chairman of the Drafting Committee could be included in the commentary to the article.

26. Mr. OGISO said that the words "when the parties to the treaty intend those provisions to be the means of establishing such obligations and according such rights" seemed redundant, since it was difficult to imagine a situation in which an international organization could become a party to a treaty the intention of which was not to establish obligations or accord rights for that organization.

27. Referring to the word "unanimously" in subparagraph (*a*), he said that cases existed where the constituent instrument of an international organization provided that the organization could become a party to a treaty by a decision of an organ of the organization taken by a majority vote, unanimous agreement being unnecessary. That was so in the case of IAEA, for example. He wondered how subparagraph (*a*) would become applicable in such cases. It might be preferable to state in the article that unanimity was required only in cases where the constituent instrument of an international organization did not provide for any specific decision-making procedure.

28. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the words "when the parties to the treaty intend those provisions to be the means of establishing such obligations and according such rights" could not be considered redundant, since the States members of an international organization were not themselves parties to a treaty concluded by the organization. Accordingly, the intention of the parties to the treaty to create obligations for non-parties or directly grant them rights would seem highly relevant.

29. Referring to the word "unanimously", he said that article 36 *bis* was not designed to exclude the possibility of creating obligations for States members of an international organization whose constituent instrument clearly provided for some other kind of procedure. However, Mr. Ogiso might be thinking of the obligation of States members of IAEA to be bound by treaties concluded in the future by the Agency. That kind of obligation applied to the organization itself and not to non-member States. For example, the headquarters agreement of ASEAN was, by unanimous agreement of the member States, binding on all of them. All the same, article 36 *bis* had given rise to many delicate political questions and perhaps was not expected to cover all possible situations.

30. The CHAIRMAN, speaking as Special Rapporteur, said that he wished to expand on the reply given by the Chairman of the Drafting Committee. Mr. Ogiso seemed to him to have interpreted subparagraph (*a*) correctly: the States concerned were required to have given their assent unanimously. If they were members of the organization they were bound to have done so. The circumstance envisaged was that in which the assent had been given not in the constituent instrument but in a separate act which might have preceded the conclusion of the treaty; in such a case, unanimity was clearly required. The Commission had thus excluded from article 36 *bis* the case of treaties which had not been concluded unanimously; the highly complex situations to which that gave rise were not of interest, although they were still germane to the draft articles, and in particular to the rules set forth in article 30 (Application of successive treaties relating to the same subject-matter).

31. He wished to point out that the text of article 36 *bis* proposed by the Drafting Committee had nothing in common with the text which the Commission had discussed initially; in fact, it was very closely related to the work of the Third United Nations Conference on the Law of the Sea. In substance, in regard to the circumstance envisaged, it gave States complete freedom to do as they wished, provided they all wished the same thing and wished it clearly; in other words, provided they expressed the consequences of their wishes for the benefit of those whom the consequences would affect and who must therefore give their assent incontrovertibly. It was really a kind of warning.

32. Regarding Sir Ian Sinclair's suggestion that the "conditions and effects" mentioned in the article should be explained, he said that in the French version of the text the term "*régime*" had been envisaged at that point; it was a broader expression and fully appropriate to designate the rules which governed the rights and obligations concerned. He anticipated that it would be an arduous task to draft the commentary to article 36 *bis*.

33. Mr. KOROMA observed that the article as it stood seemed to establish more than one set of rules. The introductory part seemed to apply to new members of an organization and to their agreement to be bound by a treaty concluded by the organization on their behalf. Was it conceivable that an international organization would decide to conclude a treaty without the agreement of the member States? And would the treaty cease to have any object if the parties did not intend its provisions to be the means of establishing obligations and according rights? Personally, he could not imagine that an organization would conclude a treaty without the prior assent of its members.

34. Subparagraph (*a*) seemed to establish another set of rules for the initial members of an international organization, whereby they must agree unanimously to be bound by a treaty. Although that was understandable, he feared that such a provision would induce parties negotiating a treaty to look beyond the ostensible capacity of an international organization to conclude treaties on behalf of its member States. It would be sufficient for the article to provide that such ostensible capacity should exist.

35. Mr. USHAKOV said that he was perfectly satisfied with the proposed new text; it dispelled ambiguities and did away with the obstacles inherent in the earlier wording. Although some provisions of a treaty concluded by an international organization necessarily bound all the States members of that organization, it was right that all member States should assent expressly to be bound by them and that the States and organizations which had negotiated the treaty should be duly informed of that unanimous assent.

36. Mr. OGISO, referring to subparagraph (*a*), said that the constituent instrument of an international organization might either remain silent on the procedure whereby the organization could conclude treaties, or make some provision about that procedure. The draft article should indicate that, in the latter case, the States members of the organization would be bound by the relevant provisions of the constituent instrument, whereas, in the former case, their agreement to be bound by the provisions of the treaty must be unanimous.

37. Mr. FRANCIS said that he was entirely satisfied with the text proposed by the Drafting Committee. The crucial provision of the draft article was in subparagraph (*a*). The constituent instrument of an international organization might omit to provide for the circumstances in which its member States could be bound by the provisions of a treaty concluded by the organization. In that case, a member State would be justified in refusing to be bound by those provisions on the grounds that such was not the original intention of the organization. Nevertheless, there was nothing to prevent members from agreeing unanimously to be bound by a treaty concluded by the organization.

38. Mr. KOROMA said that the word "unanimously" in subparagraph (*a*) appeared superfluous, because if the States members of an international organization had agreed to be bound by the provisions of a treaty concluded by the organization, there was no need to investigate the way in which that agreement had been reached. Moreover, a requirement of that kind might create a loophole in treaties of that kind.

39. Mr. SUCHARITKUL (Chairman of the Drafting Committee), referring to the observation made by Mr. Koroma, said that the draft article was not designed to negate other provisions regarding the capacity of organizations to conclude treaties or the requirement of authorization to conclude them. The requirement of unanimity was in no way related to the capacity of an international organization to conclude treaties, since international organizations could always conclude treaties which would be binding on the organization itself and possibly even on its members, since the treaty might have been approved either unanimously or otherwise. However, unanimity was required if the constituent instrument of the organization so provided. If the instrument stipulated clearly that the provisions of treaties concluded by the organization would be binding on its member States, the intention to create obligations was evident. That concerned something rather different from the capacity of organizations to conclude treaties or the validity of treaties concluded without unanimous approval.

40. Mr. FRANCIS, also referring to the comment made by Mr. Koroma, said that the deletion of the word "unanimously" would not solve the problem of organizations in which unanimous agreement to be bound by the provisions of a treaty was unnecessary. However, unanimous agreement would be needed before third party States could be bound by the provisions of a treaty in the context of draft article 35.

Article 36 bis *was adopted.*

ARTICLE 37[19] (Revocation or modification of obligations or rights of third States or third organizations)

41. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, as he had explained earlier (para. 22 above), paragraphs 5 and 6 of the text had been deleted. Former paragraph 7 had been renumbered accordingly.

Article 37 was adopted.

ARTICLE 38[20] (Rules in a treaty becoming binding on third States or third organizations through international custom)

42. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that no comment was needed from him on article 38 as no change had been made.

Article 38 was adopted.

PART IV (Amendment and modification of treaties)

The title of part IV was adopted.

ARTICLE 39[21] (General rule regarding the amendment of treaties)

43. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that at the end of paragraph 1, in accordance with the suggestion made by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 33), the Committee had added the words "except in so far as the treaty may otherwise provide", which existed in the corresponding provision of the Vienna Convention. In accordance with its decision to delete the word "concluded", the Committee had also decided to delete the words "the conclusion of an" in paragraph 1.

Article 39 was adopted.

ARTICLE 40[22] (Amendment of multilateral treaties) *and*

ARTICLE 41[23] (Agreement to modify multilateral treaties between certain of the parties only)

[19] *Idem*, 1719th meeting, paras. 26-36.

[20] *Idem*, paras. 37-43.

[21] *Idem*, paras. 44-45.

[22] *Idem*, paras. 56-58.

[23] *Idem*, paras. 59-62.

44. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that articles 40 and 41 required no comment from him as no changes had been made.

Articles 40 and 41 were adopted.

PART V (Invalidity, termination and suspension of the operation of treaties)

The title of part V was adopted.

SECTION 1 (General provisions)

The title of section 1 was adopted.

ARTICLE 42[24] (Validity and continuance in force of treaties)

45. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in the light of the Commission's discussions and as proposed by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 35), the Drafting Committee had combined former paragraphs 1 and 2. Paragraph 3 as adopted on first reading had thus become paragraph 2.

Article 42 was adopted.

ARTICLE 43[25] (Obligations imposed by international law independently of a treaty)

46. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the words "of any international organization or, as the case may be," had been deleted because they had been found unnecessary within the context of the article.

Article 43 was adopted.

ARTICLE 44[26] (Separability of treaty provisions)

47. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that no comment from him was needed on article 44 as no change had been made.

Article 44 was adopted.

ARTICLE 45[27] (Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty)

48. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, after careful consideration, the Drafting Committee had decided to preserve the difference in wording between subparagraphs 1 (*b*) and 2 (*b*) which had existed in the text adopted on first reading. In subparagraph 2 (*b*), the Committee had seen fit to replace the words "its conduct" by the more precise words "the conduct of the competent organ". It had also decided to delete paragraph 3 as being superfluous.

Article 45 was adopted.

SECTION 2 (Invalidity of treaties)

The title of section 2 was adopted.

ARTICLE 46[28] (Provisions of internal law of a State and rules of an international organization regarding competence to conclude treaties)

49. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the title of article 46 had been brought into line with the title of article 46 of the Vienna Convention. In paragraph 2, the words "or any international organization" had been added after the words "if if would be objectively evident to any State" in order to take account of the views expressed in the Commission's discussions. To make the text of paragraph 2 clearer and more precise, the words "conducting itself in the matter in accordance with normal practice and in good faith" had been replaced by the words "referring in good faith to normal practice of States in the matter".

50. In paragraph 3, the Drafting Committee had added the words "and concerned a rule of fundamental importance", which were similar to the words "and concerned a rule of its internal law of fundamental importance" in paragraph 1.

51. In paragraph 4 of the English version, the word "cognizance" had been replaced by the more appropriate word "knowledge". Lastly, at the beginning of paragraphs 2 and 4, the words "referred to in" had been replaced by the word "of".

Article 46 was adopted.

ARTICLE 47[29] (Specific restrictions on authority to express the consent of a State or an international organization)

ARTICLE 7 (Full powers and powers), para. 4, *and*

ARTICLE 2, subpara. 1 (*c bis*) (Use of terms: "powers")

52. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in the light of the Commission's discussions, the Drafting Committee had concluded that the verb "to express", which had been used exclusively for the consent of the representative of a State, could also be used for the consent of the representative of an international organization. It had therefore replaced the verb "to communicate" by the verb "to express" in article 47, article 7, paragraph 4, and article 2, subparagraph 1 (*c bis*). That change, which had made it possible to combine the former paragraphs 1 and 2 of article 47 into the single paragraph now before the Commission, had meant that the title of article 47 could be brought into line with the title of the corresponding provision of the Vienna Convention.

53. The Committee had introduced a further change in article 7, paragraph 4, by replacing the ambiguous word "practice" by the more precise words "the practice of the competent organs of the organization".

[24] *Idem*, paras. 63-65, and 1720th meeting, para. 1.

[25] *Idem*, 1720th meeting, paras. 2-4.

[26] *Idem*, paras. 5-7.

[27] *Idem*, paras. 8-35.

[28] *Idem*, paras. 36-46, and 1721st meeting, paras. 1-14.

[29] *Idem*, 1721st meeting, paras. 15-27.

Article 47, article 7, paragraph 4, and article 2, sub-para. 1 (c bis), *were adopted.*

ARTICLE 48[30] (Error)

54. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that article 48 required no comment from him, as no change had been made.

Article 48 was adopted.

ARTICLE 49[31] (Fraud) *and*

ARTICLE 50[32] (Corruption of a representative of a State or of an international organization)

55. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the Drafting Committee had made articles 49 and 50 clearer and more precise by wording them affirmatively instead of conditionally.

Articles 49 and 50 were adopted.

ARTICLE 51[33] (Coercion of a representative of a State or of an international organization)

56. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that no comment was needed on article 51 since no change had been made.

Article 51 was adopted.

ARTICLE 52[34] (Coercion by the threat or use of force)

57. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in order to bring the title of article 52 into line with the text, the Drafting Committee had deleted the words "of a State or of an international organization" from the title.

Article 52 was adopted.

ARTICLE 53[35] (Treaties conflicting with a peremptory norm of general international law (*jus cogens*)),

SECTION 3 (Termination and suspension of the operation of treaties),

ARTICLE 54[36] (Termination of or withdrawal from a treaty under its provisions or by consent of the parties),

ARTICLE 55[37] (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force),

ARTICLE 56[38] (Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal),

ARTICLE 57[39] (Suspension of the operation of a treaty under its provisions or by consent of the parties),

ARTICLE 58[40] (Suspension of the operation of a multilateral treaty by agreement between certain of the parties only),

ARTICLE 59[41] (Termination or suspension of the operation of a treaty implied by conclusion of a later treaty),

ARTICLE 60[42] (Termination or suspension of the operation of a treaty as a consequence of its breach) *and*

ARTICLE 61[43] (Supervening impossibility of performance)

58. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that article 53, the title of section 3 and articles 54 to 61 required no comments from him as no changes had been made.

Article 53, the title of section 3 and articles 54 to 61 were adopted.

ARTICLE 62[44] (Fundamental change of circumstances)

59. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, after careful consideration of the views expressed during the Commission's discussions, the Drafting Committee had decided, apart from two drafting changes, to maintain the text of article 62 adopted on first reading. The words "by a party" after the word "invoked" in paragraphs 2 and 3 had been regarded as unnecessary and had been deleted. In order to bring the text of paragraph 2 into line with the corresponding provision of the Vienna Convention, the paragraph had further been reworded to read:

> "A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations, if the treaty establishes a boundary".

Article 62 was adopted.

ARTICLE 63[45] (Severance of diplomatic or consular relations) *and*

ARTICLE 64[46] (Emergence of a new peremptory norm of general international law (*jus cogens*))

60. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that no comments from him were needed on articles 63 and 64, as no changes had been made.

Articles 63 and 64 were adopted.

SECTION 4 (Procedure)

The title of section 4 was adopted.

[30] *Idem*, paras. 28-33.
[31] *Idem*, paras. 34-38.
[32] *Idem*, paras. 39-46, and 1722nd meeting, paras. 1-5.
[33] *Idem*, 1722nd meeting, paras. 6-8.
[34] *Idem*, paras. 9-26.
[35] *Idem*, paras. 27-28.
[36] *Idem*, paras. 29-37.
[37] *Idem*, paras. 38-39.
[38] *Idem*, paras. 40-43.
[39] *Idem*, paras. 44-54 and 1723rd meeting, para. 1.
[40] *Idem*, 1723rd meeting, paras. 2-6.
[41] *Idem*, paras. 7-8.
[42] *Idem*, paras. 9-10.
[43] *Idem*, paras. 11-12.
[44] *Idem*, paras. 13-35.
[45] *Idem*, paras. 36-39.
[46] *Idem*, paras. 40-42.

ARTICLE 65[47] (Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty)

61. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the Committee had decided to retain the text of article 65 adopted on first reading, with one change in paragraph 3, in which the words "If, however, objection has been raised" had been replaced by the words "When an objection is raised".

Article 65 was adopted.

ARTICLE 67[48] (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty)

62. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, in accordance with a suggestion made by the Special Rapporteur (1724th meeting, para. 39) during the Commission's discussion of article 67, the Drafting Committee had decided to replace the words "shall produce appropriate powers" at the end of paragraph 2 by the words "may be called upon to produce powers".

Article 67 was adopted.

ARTICLE 68[49] (Revocation of notifications and instruments provided for in articles 65 and 67),

SECTION 5 (Consequences of the invalidity, termination or suspension of the operation of a treaty),

ARTICLE 69[50] (Consequences of the invalidity of a treaty),

ARTICLE 70[51] (Consequences of the termination of a treaty),

ARTICLE 71[52] (Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law),

ARTICLE 72[53] (Consequences of the suspension of the operation of a treaty),

PART VI (Miscellaneous provisions),

ARTICLE 73[54] (Cases of succession of States, responsibility of a State or of an international organization, outbreak of hostilities, termination of the existence of an organization and termination of participation by a State in the membership of an organization),

ARTICLE 74[55] (Diplomatic and consular relations and the conclusion of treaties),

ARTICLE 75[56] (Case of an aggressor State),

PART VII (Depositaries, notifications, corrections and registration) *and*

ARTICLE 76[57] (Depositaries of treaties)

63. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that article 68, the title of section 5, articles 69 to 72, the title of part VI, articles 73 to 75, the title of part VII and article 76 required no comments from him, since no changes had been made in any of them.

Article 68, the title of section 5, articles 69 to 72, the title of part VI, articles 73 to 75, the title of part VII and article 76 were adopted.

ARTICLE 77[58] (Functions of depositaries)

64. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that article 77 had been maintained as adopted on first reading, with the exception of changes in subparagraph 1 (*f*) and subparagraphs 2 (*a*) and 2 (*b*). In subparagraph 1 (*f*), the words "instruments of ratification, formal confirmation, acceptance, approval, or accession" had been replaced by the words "instruments of ratification, instruments relating to an act of formal confirmation, or instruments of acceptance, approval or accession". In subparagraph 2 (*a*), the words "or, as the case may be, the signatory organizations and the contracting organizations" had been deleted in order to make the text less cumbersome. In subparagraph 2 (*b*) of the English version, the word "of" following the words "where appropriate" should be deleted.

Article 77 was adopted.

ARTICLE 78[59] (Notifications and communications)

65. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that no comment from him was needed on article 78, as no change had been made.

Article 78 was adopted.

ARTICLE 79[60] (Correction of errors in texts or in certified copies of treaties)

66. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the Drafting Committee had deleted the words "or, as the case may be, the signatory organizations and contracting organizations" in paragraph 1; the words "or, as the case may be, to the organizations" in subparagraph 2 (*a*); and the words "or, as the case may be, to the signatory organizations and contracting organizations" in subparagraph 2 (*b*).

Article 79 was adopted.

ARTICLE 80[61] (Registration and publication of treaties)

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[47] *Idem*, paras. 43-56.

[48] *Idem*, 1724th meeting, paras. 34-43.

[49] *Idem*, paras. 44-45.

[50] *Idem*, paras. 46-47.

[51] *Idem*, paras. 48-49.

[52] *Idem*, paras. 50-52.

[53] *Idem*, paras. 53-54.

[54] *Idem*, paras. 55-56, and 1725th meeting, para. 1.

[55] *Idem*, 1725th meeting, paras. 2-4.

[56] *Idem*, paras. 5-6.

[57] *Idem*, paras. 7-9.

[58] *Idem*, paras. 10-25.

[59] *Idem*, paras. 26-27.

[60] *Idem*, paras. 28-31.

[61] *Idem*, paras. 32-39, and 1727th meeting, paras. 1-13.

67. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that the text of article 80 adopted on first reading had been maintained.

68. Mr. USHAKOV said that, although he had not objected to the text of article 80 in the Drafting Committee, he continued to believe that it would be best to split paragraph 1 of the article into two paragraphs; one would establish an obligation to transmit to the United Nations Secretariat treaties to which States were parties, and the other would establish a faculty to do so for treaties concluded between international organizations. Since the United Nations Charter did not attach any consequences to the registration of treaties in the latter category, it would be preferable to use the term "faculty" in connection with those treaties. His suggestion should at least be mentioned in the commentary to article 80.

Article 80 was adopted.

ARTICLE 66[62] (Procedures for arbitration and conciliation) *and*

ANNEX[63] (Arbitration and conciliation procedures established in application of article 66)

69. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that article 66 as adopted on first reading had drawn a distinction regarding the procedures to be followed if, under paragraph 3 of article 65, no solution had been reached within a period of twelve months following the date on which the objection had been raised. If the dispute concerned the application or interpretation of articles 53 or 64, article 66 had provided that, if the objection had been raised by a State against another State, the dispute could be submitted to the International Court of Justice, but if an international organization was involved and the dispute concerned any of the articles in part V, the procedure that could be set in motion was the conciliation procedure specified in the annex. Any dispute involving a State concerning any of the articles of part V other than articles 53 or 64 could also be submitted to conciliation. That distinction had been made in the three paragraphs which had constituted the original text of article 66.

70. Taking into account the views expressed during the Commission's discussions of article 66 at its present session, the Drafting Committee had, with the exception of one member, decided that there were not sufficient grounds for maintaining the distinction between the procedures open respectively to States *inter se* and to international organizations, regarding disputes involving the application or interpretation of articles 53 to 64. Since, however, it would not have been correct to provide for international organizations to submit disputes to the International Court of Justice on the same footing as States, it had been necessary for the Drafting Committee, in order to give States and international organizations equal status with regard to the settlement of disputes, to eliminate the possibility under article 66 of recourse to the International Court of Justice, to offer States and organizations the possibility of recourse to arbitration, and to retain the possibility of recourse to conciliation.

71. It had thus been possible to simplify the text of article 66, which had been reduced to two paragraphs, namely subparagraph (*a*) dealing with arbitration as the means of settling disputes concerning articles 53 or 64—regardless of whether the parties to them were States or international organizations—and subparagraph (*b*) dealing with conciliation. It had then been logical to adjust the text of the annex accordingly by adding a reference to arbitration wherever appropriate. The Drafting Committee had also decided to add a new section 11, which related to the functioning of the arbitral tribunal and was based on the corresponding provisions of annex VII to the Convention on the Law of the Sea.[64]

72. Mr. USHAKOV said that in the Drafting Committede he had objected to subparagraph (*a*) of article 66, under which any one of the parties to a dispute, including an international organization, could submit the dispute to arbitration. Even as far as States were concerned it was unrealistic to provide for compulsory arbitration, since not all States were prepared to limit themselves to that particular means of settlement of disputes. Moreover, the practice of international organizations offered no example of recourse to arbitration, either in the case of a dispute between an international organization and a State or in the case of a dispute between organizations; nor did it offer any example of organizations which, in a treaty, appeared to have given their consent in advance to recourse to arbitration. He therefore preferred that the draft articles should provide for a compulsory conciliation procedure only in regard to treaties to which international organizations were parties. It was true that practice did not show any examples of compulsory conciliation for treaties of that kind either, but provision for it would nevertheless represent the progressive development of international law. He therefore favoured the deletion of subparagraph (*a*) of article 66 and the retention of subparagraph (*b*).

73. Mr. RIPHAGEN, referring to the first sentence of paragraph 10 of the annex, asked whether the Drafting Committee had taken account of the fact that annex V of the Convention on the Law of the Sea provided in article 13 that:

> A disagreement as to whether a conciliation commission acting under this section has competence shall be decided by the commission.

He also asked whether the Drafting Committee considered that the idea embodied in that provision was implicit in the idea of compulsory conciliation.

74. Mr. SUCHARITKUL (Chairman of the Drafting Committee) said that, although the Drafting Committee

[62] *Idem*, 1724th meeting, paras. 1-33.

[63] *Idem*, and 1725th meeting, paras. 40-50, and 1726th meeting, paras. 1-27.

[64] See 1699th meeting, footnote 7.

had not specifically considered the point raised by Mr. Riphagen, he himself felt that the idea that the Conciliation Commission should be able to decide on its own competence was implicit in the idea of compulsory conciliation.

75. Mr. USHAKOV said that he found the annex unacceptable. First of all, since he opposed the compulsory arbitration procedure, he could not accept the provisions in the annex which related to it. What was more, even the provisions concerning the conciliation procedure were not entirely appropriate. It would be better for the draft to be based on the example provided by the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. Article 85 of that instrument made no mention of a list of conciliators and the conciliation commission for which it provided consisted of only three members. Moreover, under paragraph 2 of the annex under consideration, the important question of the choice of the members of the Conciliation Commission was not dealt with in a fully satisfactory manner. That paragraph read: "The States and international organizations which constitute one of the parties to the dispute shall appoint by common consent ... one conciliator, who may or may not be chosen from the list referred to in paragraph 1"; that said nothing about the nationality of the members of the Conciliation Commission, whereas paragraph 2 of the annex to the 1969 Vienna Convention on the Law of Treaties provided that the State or States constituting one of the parties to the dispute should appoint one conciliator of the nationality of that State or of one of those States. Even as far as international organizations were concerned, the nationality of the conciliator appointed by an international organization was of great importance; the conciliator, if he was a national of a State member of the organization, would be inclined to favour that organization.

76. In addition, under paragraph 2 of the annex under discussion, the States and international organizations which constituted one of the parties to the dispute must appoint by common consent "one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute". That provision did bring in the nationality of the conciliator, although it seemed peculiar to speak of a conciliator who "shall not be of the nationality of any of the States", an expression which seemed to refer to a stateless person. Also, the words "which constitute that party to the dispute" seemed to relate to the organizations alone, whereas they also referred to the States mentioned earlier in the phrase.

77. With regard to the procedure provided for in the case in which the chairman of the Conciliation Commission or any of the conciliators had not been appointed within the period prescribed, it was not absolutely necessary to call on the Secretary-General of the United Nations or the President of the International Court of Justice to make the appointment. The 1975 Vienna Convention laid down a different procedure.

78. In conclusion, he pointed out that paragraph 1 of the annex under consideration was a totally unexpected innovation in that it provided for the establishment of a list of qualified jurists who could be both arbitrators and conciliators. Previously, no international convention which had provided for the establishment of such a list had stipulated that the jurists on the list could act in two capacities. That innovation was due to the fact that the Drafting Committee, in going about amending the wording of the annex, had touched on questions of substance.

The meeting rose at 1.05 p.m.

1741st MEETING

Wednesday, 7 July 1982, at 10.05 a.m.

Chairman: Mr. Paul REUTER

Question of treaties concluded between States and international organizations or between two or more international organizations (*concluded*) (A/CN.4/L.341)

[Agenda item 2]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*concluded*)

CONSIDERATION BY THE COMMISSION

ARTICLE 66 (Procedures for arbitration and conciliation) *and*

ANNEX (Arbitration and conciliation procedures established in application of article 66) (*concluded*)

1. Mr. LACLETA MUÑOZ said that the changes made by the Drafting Committee in the texts of article 66 and the annex had been based on amendments which he had proposed. Those amendments had been intended not only to preserve the parallelism between the provisions under consideration and the corresponding provisions of the Vienna Convention on the Law of Treaties, particularly with regard to the settlement of disputes which concerned rules of *jus cogens*, but also to provide, in so far as possible, for the submission of disputes to the International Court of Justice. However, when article 66 and the annex had been discussed in the Commission and in the Drafting Committee, it had been agreed that, in view of the requirements for submission of disputes to the International Court of Justice, recourse to an arbitral tribunal should be substituted for recourse to the Court. He had no difficulty in supporting the texts of article 66 and the annex proposed by the Drafting Committee.