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LAW OF TREATIES

Report of the Secretary-General

Addendum

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1/ For the comments from the Governments of Belgium, Botswana, Cambodia, Cyprus, Czechoslovakia, Denmark, Finland, Japan, Poland, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and Yugoslavia see A/6827.

COMMENTS ON THE FINAL DRAFT ARTICLES ON THE LAW OF TREATIES PREPARED BY THE INTERNATIONAL LAW COMMISSION

A. MEMBER STATES

AFGHANISTAN

Transmitted by a note verbale of 29 August 1967
from the Permanent Mission to the United Nations

[Original: English]

The Government of Afghanistan, in the last five years, followed with close attention and supported the activities of the United Nations International Law Commission in the field of codification and progressive development of International Law and greatly appreciates the progress achieved by the Commission in regard to the codification of the norms and principles relating to the vital question of the law of treaties.

The Government of Afghanistan considers that the conclusion of a convention next year on this vital problem undoubtedly contributes to friendly relations among nations and may place the law of treaties upon the widest and most secure foundation.

Among the articles of the draft, the Government of Afghanistan considers that article 2 (Use of terms), article 5 (Capacity of States to conclude treaties), articles 30, 31, 32 (General rule regarding third States), article 40 (Fraud), article 47 (Corruption of a representative of the State), article 49 (Coercion of a State by the threat or use of force), article 50 (Treaties conflicting with a peremptory norm of general international law), article 59 (Fundamental change of circumstances) are the basic principles of the draft which should be maintained by the future conference, and the Government of Afghanistan submits its views on these articles as follows:

Article 2

The Government of Afghanistan notes that the term "treaty" has been used throughout the draft convention as a generic term to include all forms of

international treaties concluded between States. But the term should be widened and broadened in order to include the definition of treaties in simplified form, because this kind of treaty is very common and its use is increasing daily.

Articles 30, 31 and 32

The Government of Afghanistan fully supports the principles underlying these articles in regard to the rights and obligations of third States, with the understanding that these rules are based on "pacta tertiis nec nocent nec prosunt" and thus agreements neither impose obligations nor confer rights upon third parties and that a right for a third State cannot arise from a treaty which makes no provision for such a right.

Articles 40, 47 and 49

The Government of Afghanistan notes with satisfaction that these draft articles have laid down the principles of justice and declare that international treaties concluded through personal coercion of representatives of a State or through coercion of a State by the threat or use of force are null and void.

It is understood that the act of coercion too by a State against another State or its representative, in order to procure the signature, ratification, acceptance or approval of a treaty, will unquestionably nullify that treaty. In the view of the Government of Afghanistan the draft article 49 should be broadened in order that coercion as defined in this article should include not only "the threat or use of force" but also other pressures such as economic pressure including economic blockade.

Article 50

The Government of Afghanistan shares the view of the International Law Commission that there exist peremptory norms of international law called jus cogens.

The States must respect these norms of jus cogens, such as the right of self-determination; generally the treaties should not be incompatible with these norms, and the States who are taking part in creating these norms as international order are obliged to respect them.

Article 59

The Government of Afghanistan supports the formulation of this article, with the understanding that in conformity with rebus sic stantibus, any treaty may become inapplicable through a fundamental change of circumstance. The Government of Afghanistan fully agrees that a treaty, when concluded between the parties, has a definite object, and when the purposes, object, and circumstances are changed, the treaty certainly becomes inapplicable.

These were the general remarks on the draft articles of the convention that the Government of Afghanistan makes on this occasion and hopes that they will be circulated for the information of the participants of the conference.

BULGARIA

Transmitted by a note verbale of 17 August 1967
from the Permanent Mission to the United Nations

[Original: French]

The Government of the People's Republic of Bulgaria considers that, on the whole, the draft articles on the law of treaties are a valuable contribution and could serve as a satisfactory basis for the preparation of a convention on international treaties. In this connexion it should be noted that the draft articles reflect efforts both to codify existing rules in this field and to introduce new rules reflecting the progressive development of contemporary international law.

However, some essential amendments, deleting inadequate provisions and supplying omissions, should be made in order to improve the draft.

The Bulgarian Government considers it its duty, in compliance with resolution 2166 (XXI), to submit the following comments, which it reserves the right to explain at the forthcoming discussions on the draft convention concerning the law of treaties:

Object of the convention

The Government of the People's Republic of Bulgaria considers that, at the present stage, the codification of the law of treaties should relate to treaties concluded between States, and notes that the draft convention has been drawn up on those lines. The fact that the scope of application of this draft has been restricted to treaties concluded between States in written form is also to be commended.

It is essential, however, that the draft convention should provide at the outset, and specifically in article 2, paragraph 1 (a), that silence under certain conditions ("qualified silence") may produce legal effects. The draft itself contains some particular applications of this principle (article 17, paragraph 5; article 38; article 62, paragraph 1). This general idea, on which these provisions are based, should be stated at the beginning of the draft convention.

It would also be desirable to have at the beginning a statement of the principle that nothing in the convention may be considered as precluding the application of the customary rules of international law in a field not regulated by this convention. In the present draft of the convention, this principle is expressed only partially in article 34 and might be inferred from the text of article 3.

The reference in article 4 to treaties which are constituent instruments of an international organization does not seem to be warranted. Until the organization has been formed its constituent instrument cannot be applied, and therefore when that stage is reached it is essential that the constituent instrument in question should automatically be subject to the rules laid down by the convention.

Application of the principle of universality and the participation of States in general multilateral treaties

The Bulgarian Government notes that the final text of the draft convention proposed by the General Assembly of the United Nations at its twenty-first session no longer includes article 8 of the 1962 draft on the participation of all States in general multilateral treaties.

The absence of such a provision constitutes a set-back to the trend towards the adoption of the principle of universality in respect of the conclusion of and

accession to general international treaties. The adoption of this principle would eliminate the possibility of discrimination against certain States which wish to participate in treaties and in international relations in accordance with the principle of the sovereign equality of States and the needs of genuine international co-operation.

Formulation of reservations

The Government of the People's Republic of Bulgaria considers that a greater number of States should participate in multilateral treaties, especially those closely affecting their legitimate interests and the interests of the international community. A more flexible system concerning reservations would make it possible for States to achieve wider participation in international treaties and to promote international co-operation on a larger scale in the most varied fields.

It would be desirable to expand the definition of the term "reservation" by providing, in article 2 (d), that a reservation purports not only to exclude or to vary, but also "to limit", the legal effect of certain provisions of the treaty in their application to the State making the reservation.

Conformity of international treaties with the generally accepted norms of international law which have acquired the status of the jus cogens

The provision in draft article 50 that "A treaty is void if it conflicts with a peremptory norm of general international law..." states one of the most important rules of contemporary international law.

The effectiveness of this rule will depend on the precision with which its scope of application is defined.

In the Bulgarian Government's view, the peremptory norms of general international law mentioned in the draft convention should embrace, above all, the fundamental principles of the United Nations Charter. Hence, the legal principles of sovereign equality of States, self-determination of peoples, non-intervention in matters within the domestic jurisdiction of States, prohibition of the use of force against the territorial integrity or political independence of States, the fulfilment in good faith of international obligations and so forth, should be considered peremptory norms of general international law.

The convention should also provide expressly that all treaties which had been concluded, or which might be concluded after, its entry into force, and which conflicted with these principles of international law would be void. There should be a similar provision referring specifically to unequal treaties, as they would per se conflict with the aforesaid peremptory norms.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Transmitted by a note verbale of 29 August 1967 from the Permanent Mission to the United Nations

[Original: Russian]

The competent authorities of the Byelorussian SSR have examined the draft articles on the law of treaties, and consider them a suitable basis for discussion at the international conference on the law of treaties. They note that the draft articles on the law of treaties contain a number of articles (48, 49, 50, 62 and 70) which are of great importance for the progressive development of international law, since they establish the invalidity of unequal and colonial treaties and of treaties concluded by means of the threat or use of force, and uphold the principle of international responsibility in respect of aggression.

At the same time, the draft articles on the law of treaties contain a number of articles which require further refinement and modification.

The draft articles on the law of treaties lay down the legal norms to which States should adhere in concluding, not all treaties without exception, but those treaties only which are international in character. However, the title of the document does not reflect this situation and goes beyond the scope of the subject dealt with by the instrument. It would therefore seem more correct to entitle the document: "Draft articles on the law of international treaties".

In article 2, the term "treaty" should be defined more precisely and a definition of the term "general multilateral treaty" should be included, together with a stipulation that all States may beomce parties to such treaties without discrimination of any kind.

In article 2 (d) it should be specified that reservations must be formulated in writing.

It is possible that a State which has entered into negotiations for the conclusion of a multilateral international treaty may, at a particular stage of the negotiations, refuse to continue them. The negotiations may continue among other parties. In this case, it seems clear that the State which has refused to continue the negotiations will, from the time of its refusal, be free of obligations in respect of the object of the treaty. The text of article 15 does not allow for this eventuality.

It would be advisable to delete paragraph 3 of article 17, and accordingly to leave the definition of the procedure for acceptance of reservations to a treaty which is a constituent instrument of an international organization as a matter to be dealt with by the organizations themselves.

International treaties may also be entered into or acceded to by States which will not be parties to a future convention on the law of treaties or to the "present articles", as stated in the draft. This point should be taken into consideration in article 75.

Since the above comments are not exhaustive or final, the competent authorities of the Byelorussian SSR reserve the right to make further comments on the draft articles at a later stage.

NIGERIA

Transmitted by a note verbale of 11 September 1967 from the Permanent Mission to the United Nations

[Original: English]

Certain preliminary comments and observations of the Government of the Federal Republic of Nigeria on the draft articles on the law of treaties have orally been put on record in proceedings of the General Assembly at previous sessions. Similarly, the Government of Nigeria wishes to reserve its right to make further comments and observations which it considers pertinent at this stage, on the final draft articles, during the debate of the relevant item in the course of the twenty-second regular session of the General Assembly. It is not, however, intended that any such comments and observations will prejudge the specific views and detailed

comments which the Nigerian Government will ultimately put forward at the International Conference of Plenipotentiaries scheduled for the spring of 1968 for the purpose of concluding an international convention on the law of treaties.

B. SECRETARY-GENERAL OF THE UNITED NATIONS

/Original: English/

The Secretary-General welcomes the work undertaken for the progressive development and codification of the law of treaties, and is gratified that the future conference on the subject will have for consideration as its basic text the draft of impressive quality which has been prepared by the International Law Commission.

There are, however, a few points, involving the interests of the United Nations or the technical aspects of depositary functions, to which the Secretary-General would like to invite the attention of Governments. These points are set out below.

Article 4

This article provides that "The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization". It would be desirable to replace the underlined words by the words "concluded under the auspices of or deposited with an international organization".

The commentary on article 4 explains that "This phrase is intended to exclude treaties merely drawn up under the auspices of an organization or through use of its facilities and to confine the reservation to treaties the text of which is drawn up and adopted within an organ of the organization".

This limitation of the scope of the article will have the effect of altering the existing legal situation. It has been established in practice that the United Nations under the Charter, and certain of the specialized agencies under their constitutions, have the authority to make rules concerning a broad range of treaties which are associated with their work, and not merely those adopted within their organs. Examples of such rule-making are found in General Assembly resolutions 598 (VI) of 12 January 1952 and 1452 B (XIV) of 7 December 1959, whereby the General Assembly laid down directives for the Secretary-General to follow in his practice as depositary of conventions concluded under the auspices of the United Nations; many of those conventions were of course adopted by conferences held under the auspices of the Organization rather than by United Nations organs. General Assembly

resolutions 1903 (XVIII) of 18 November 1963 and 2021 (XX) of 5 November 1965 lay down rules concerning extended participation in general multilateral treaties concluded under the auspices of the League of Nations; these treaties were of course not even adopted under the auspices of the United Nations, though the Secretary-General acts as depositary of them. From the standpoint of the United Nations it would be sufficient to add to the existing text of draft article 4 only a reference to treaties "deposited with an international organization", but under the practice of certain other organizations a State which is the depositary of a treaty concluded under the auspices of an organization may ask the latter's guidance in the performance of depositary functions, and hence it seems desirable to include also a reference to treaties concluded "under the auspices of an international organization".

Draft article 4 recognizes the existing legal situation with regard to constituent instruments of international organizations, in regard to which it allows freedom to adopt rules at variance with those applicable to treaties in general. Thus the draft articles do not conflict with the Charter and rules adopted under it, as would be the case without draft article 4, for example, in regard to acquisition of membership, which takes place in the United Nations in accordance with Article 4 of the Charter, rules 135-139 of the rules of procedure of the General Assembly and rules 58-60 of the provisional rules of procedure of the Security Council, rather than in accordance with articles 10-12 of the draft articles on the law of treaties. Draft article 4 should, however, be broadened to leave unchanged the existing legal situation with regard to treaties of international organizations other than constituent instruments.

A restrictive innovation respecting the powers of international organizations in regard to such treaties like that proposed in draft article 4 seems likely to create both legal complications and practical difficulties. International organizations have in the past made certain rules about treaties concluded under their auspices or deposited with them. If draft article 4 becomes part of a convention, what is the effect of that convention, once it is brought into force, on the future applicability of those rules, on the one hand in respect of States parties to the new convention, and, on the other, in respect of non-parties?

Could the old rules of an international organization continue to apply to States not parties to the new convention, while the convention alone, and not the rules, would apply to parties?

States members of international organizations should retain the freedom they now have to make and apply rules to treaties in which those organizations have a legitimate interest, even though the treaties were not adopted within their organs. The draft articles are in general based on the present practice of States, and on typical cases; but the rapid evolution of international organizations and their treaty practice may continue, as in the past, to give rise to new problems requiring new solutions. Though the future convention will do much to clarify the law of treaties, serious problems may still arise where its provisions are not well adapted to the special circumstances of an organization, or where the convention gives no clear solution, or where the convention is not binding of its own force on all parties to a dispute and thus does not settle the problem. In any of these circumstances, rule-making by an international organization may prove a more practical and readily available method of overcoming difficulties than any of the other means of settling disputes, and such rule-making should not be restricted more narrowly than at present.

Moreover, problems arise in depositary practice which an international depositary should be able to submit to a deliberative body of his organization for the establishment of rules for his guidance; if such problems are not settled, the functions of the depositary may be involved in continuous controversy and become impossibly onerous. The Secretary-General, for example, has twice been obliged to submit to the General Assembly the problem of reservations to multilateral conventions, and the Assembly has also had to deal with the problem of extended participation in multilateral treaties concluded under the auspices of the League of Nations. Even after a convention on the law of treaties has been adopted, a long period will elapse before all States become parties to it, and serious problems may arise which it would be desirable to settle by the same method as has been used in the past. Paragraph 2 of draft article 72 provides that where a difference arises between a State and a depositary concerning the performance of the latter's functions, the depositary must bring the dispute, "where appropriate, /to the attention/ of the competent organ of the organization

concerned". Under draft article 4 as now worded, it appears that the General Assembly would no longer be competent to make rules settling differences regarding treaties concluded under the auspices of the League of Nations, or treaties like the Convention of the Inter-governmental Maritime Consultative Organization (concerning which a problem was brought before the General Assembly[2/] in 1959), as they were not adopted within an organ of the United Nations. Differences concerning such treaties could, under paragraph 2 of draft article 72, be brought "to the attention of the other States entitled to become parties", but it is not clear how those States, without acting within the framework of an organization, could jointly lay down a rule for the depositary to follow.

The future convention on the law of treaties is likely to involve ultimately some changes in the depositary practice of the Secretary-General, as of most depositaries. If any of those changes should give rise to controversy, a rule established by the international organization concerned might be an appropriate means of authorizing the depositary to act in accordance with the convention in respect of States not yet parties to it; thus recognition in the future convention of the present extent of the rule-making authority of international organizations may well contribute to the effectiveness of the convention rather than detracting from it.

The distinction made in draft article 4 and its commentary between treaties adopted "within an organ" of an organization and treaties "merely drawn up under the auspices of an organization or through use of its facilities" is not very clear, as there are doubtful cases when a conference may or may not be an organ. But even where the distinction is clear, it is arbitrary, as adoption by an organ or by a separate conference is often a mere matter of convenience and should not serve as the basis for a legal distinction. For example, article 23 of the Statute of the International Law Commission provides that when the Commission submits draft articles to the General Assembly, it may recommend that the Assembly should, inter alia, recommend the draft to Members with a view to the conclusion of a convention, or that the Assembly should convoke a conference to conclude a

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2/ See Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 65, document A/4188.

convention. One course or another might be taken in practice for various reasons concerning the degree of complexity of the draft, the political urgency of a convention, financial considerations, etc. If for any such reasons the Assembly sends the draft to a conference, and assuming that in either case the Secretary-General is the depositary, why should the Assembly lose the power, which it would have had if it adopted the draft itself, to make rules applicable to the resulting convention?

The purpose of the change of wording suggested at the beginning of these comments on draft article 4 is not to add to the rule-making competence of international organizations, but simply to avoid prejudicing the competence which some of them, notably the United Nations, possess at present under their constitutional systems, and the competence which States may consider it desirable to confer on international organizations in the future. That competence will no doubt be exercised as cautiously and infrequently as it has been in the past. Reassurance is given by the word "rules" in the present text of draft article 4, which implies a requirement that they be legally valid rules, adopted and applied in accordance with the constitutions of the organizations concerned. The authority of each organization and of particular organs within it to make rules regarding treaties may sometimes be a complicated question, but the requirement of constitutional validity gives assurance of careful consideration and eliminates any danger of capricious decisions of minor bodies or minor officials. It can thus be anticipated that exercise of the rule-making authority will be limited to a few cases of genuine need of States or of depositaries, as in the past, and that the general international law of treaties as embodied in the future convention will apply to the vast majority of problems concerning the treaties connected with international organizations.

Article 8

Paragraph 2 of draft article 8 is not in accordance with the practice of United Nations conferences, under which the adoption and amendment of the rules of procedure, including the rules relating to voting, normally takes place by a simple majority of representatives present and voting. This difference, however, will not create any difficulty if, as suggested above, article 4 is broadened to

recognize the possibility that some international organizations have the authority to adopt special rules at variance with the provisions of the draft articles in regard to treaties concluded under their auspices.

Article 9

This article again shows the need for leaving some flexibility to international organizations in regard both to the procedures of their organs and to those of conferences under their auspices. There are cases in which, without any demonstrable agreement of the States participating in the drawing up of the treaty in accordance with sub-paragraph (a), and also without the signatures of representatives in accordance with sub-paragraph (b), the establishment of the authentic text is necessarily left to the secretariat of the conference. The commentary refers to a comparable case where authentication takes the form of a resolution of an international organization or of an act of authentication by a competent authority of an organization. Even where there is a signing ceremony at the end of a conference or of the deliberations of an organ of an international organization, reasons of time frequently prevent representatives from having any opportunity to verify the text, and in that case also the real authentication of the text is performed by the secretariat. But draft article 9 creates no difficulty provided that draft article 4 is altered as suggested above.

Article 15

There are two instances in the practice of the Secretary-General where, before the entry into force of a treaty, instruments of acceptance or accession have been withdrawn by the States concerned. Under sub-paragraph (c) of this draft article, however, instruments once deposited could presumably not be withdrawn, even before the treaty enters into force, and for at least as long as "such entry into force is not unduly delayed". The decision upon the date at which delay in entry into force of a treaty becomes undue may be a difficult matter, upon which a depositary, confronted by a request for withdrawal of an instrument, might have to seek guidance from a competent organ in accordance with article 72, paragraph 2. One way of avoiding the problem would be to modify sub-paragraph (c) so as to allow freedom to withdraw instruments before the treaty enters into force, possibly by

modifying the final phrase to read: "... and provided that such consent has not been withdrawn and that such entry into force is not unduly delayed".

Article 17

The relation between this article and the practice of the Secretary-General regarding entry into force of treaties is not quite clear. The Secretary-General, in accordance with General Assembly resolutions 598 (VI) and 1452 B (XIV), is precluded from passing upon the legal effects of instruments containing reservations or of objections to them. The situation, for depositaries as well as States, will be somewhat clarified by paragraph 4 (c) of draft article 17, which provides that an act expressing a State's consent to be bound is effective as soon as at least one other contracting State has accepted the reservation, but it may be anticipated that, in the future as in the past, express acceptances of reservations will be rare, and that much will continue to depend upon tacit acceptance. In the situation that has thus far existed, the practice of the Secretary-General, when required to make notification of the entry into force of a convention to which reservations have been made, has been as follows. When he has received the number of instruments specified in the treaty as required for entry into force (whether or not reservations in those instruments have been objected to or expressly accepted), the Secretary-General makes a notification referring to the entry into force clause of the treaty, to the receipt of the number of instruments specified therein, and to any objections that have been made to the reservations. Ninety days after such notification, if no objection to entry into force has been received, the Secretary-General proceeds with the registration of the treaty as having entered into force on the date of receipt of the necessary number of instruments. No objection has ever been received either to entry into force or to the ninety-day period allowed for States to express their views.

Article 17, paragraph 5, states that a State is not considered to have tacitly accepted a reservation until "the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later". Is the effect of this time-limit, in the absence of any express acceptance of a reservation, to prevent an instrument containing that reservation from being counted towards entry into force until

twelve months after notification has been given of the reservation? If so, there may be considerably more delay in the entry into force of treaties than under the present practice of the Secretary-General. Should this be considered undesirable, a remedy could be found by shortening the period of twelve months specified in paragraph 5.

Article 44

It is suggested that the end of this article be modified to read as follows: "... his omission to observe that restriction may not be invoked as invalidating a consent expressed by him unless the restriction was brought to the knowledge of the other negotiating States or of the depositary prior to his expressing such consent". A common way of making specific restrictions in regard to the expression of consent of a State to be bound is in the full powers of its representative. In the circumstances of modern multilateral conventions, the full powers of a representative can hardly ever be brought to the notice of the other States concerned, but only of the depositary. If a State, in drawing up full powers to authorize its representative to make a binding signature or to execute and deposit an instrument expressing consent to be bound, makes specific restrictions upon his authority, it seems only just to allow that State to invoke those restrictions if its representative fails to observe them and if the depositary has examined the full powers. Indeed, a number of cases have occurred where representatives have had full powers to sign a treaty only subject to acceptance, and by mistake they signed without mentioning the need of acceptance. In such cases the Secretary-General has not considered that the States were bound unless they confirmed it, and has taken the initiative to clarify the matter before making notification of the signature.

Article 71

In the practice of the United Nations the depositary is the Secretary-General and not the Organization itself. While this does not make much practical difference, in view of the context of the draft articles and in particular of article 72, paragraph 2, it might possibly be desirable to specify in article 71, paragraph 1, that the depositary may be "a State or an international organization or the chief administrative officer of such an organization".

Article 74

In connexion with paragraph 2 (a), it may be pointed out that the practice of the Secretary-General is to notify all States entitled to become parties (including, of course, the contracting States as well) of a proposal to correct an error, rather than simply "the contracting States". It is noted that this practice is not excluded by the present wording.

C. SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Transmitted by a letter of 7 July from the Legal Counsel of the Food and Agriculture Organization of the United Nations

[Original: English]

General observations

The rules applied by FAO, as regards the Constitution of the Organization and conventions and agreements concluded within the framework of FAO, are laid down in articles II, XIV, XVII, XIX and XX of the Constitution and rules XIX and XXI of the General Rules of the Organization and in the Principles and Procedures adopted by the FAO Conference with respect to conventions and agreements concluded under articles XIV and XV of the Constitution.3/

While the rules applied by FAO with respect to international instruments are generally in line with those laid down in the draft articles of the law of treaties, they do differ from the latter in certain respects. A brief comparison between the two sets of rules, indicating both similarities and differences, is made below.

It may not be inappropriate to add one general observation concerning the scope of the draft articles on the law of treaties and their delimitation in relation to the scope of the proposed codification of relations between Governments and inter-governmental organizations. The draft articles on the law of treaties are to apply only to treaties concluded between States; it is clear from the text of, and the commentary on, articles 1 and 2 that treaties between States and international organizations are excluded from the scope of the draft articles. There appears to be a certain tendency towards the conclusion of treaties between States to which one or more international organizations may also be parties.

3/ For the texts of the Constitution and of the General Rules of the Organization see Basic Texts, vol. I, published by the Food and Agriculture Organization of the United Nations, and of the text of Principles and Procedures which Should Govern Conventions and Agreements Concluded under articles XIV and XV of the Constitution, ibid., vol. II, section VII.

Within the framework of FAO, the Agreement for the Establishment on a Permanent Basis of a Latin-American Forest Research and Training Institute[4/] may be a pertinent example since in addition to States, FAO is also a party to the Agreement. There are other examples such as the Indus Water Treaty - 1960, between India, Pakistan and the International Bank for Reconstruction and Development, as well as an ever increasing number of agreements relating to regional projects, particularly in the field of activities of the United Nations Development Programme and the Bank group. It is not clear whether international instruments of this type would fall within the scope of the draft articles on the law of treaties or the rules under consideration by the International Law Commission with respect to relations between Governments and inter-governmental organizations; this problem may well deserve further consideration prior to - and possibly during - the proposed diplomatic conference on the law of treaties. In our opinion, it would be desirable to avoid a situation in which two different sets of rules would be applied to one and the same international instrument, the choice depending on whether a given problem arising in connexion with the instrument concerns relations between States or between States and international organizations.

Observations on individual articles

Article 4

Pursuant to this article, the relevant rules adopted by international organizations would seem to prevail over the draft articles on the law of treaties as regards the constituent instruments of, and treaties adopted within, the international organizations concerned. As pointed out in the commentary on this article, the above rule was originally intended to apply also to treaties drawn up "under the auspices" of international organizations. In addition to the conventions and agreements concluded within the framework of FAO under articles XIV and XV of its Constitution, at least two other treaties have been drawn up under the auspices or with the assistance of FAO, with the approval of its governing bodies, and there may be more international treaties of this type in the not too distant

4/ United Nations, Treaty Series, vol. 390, No. 5610.

future. To the extent that an international organization acts as depositary and possibly assumes certain functions concerning the implementation of such treaties it may also have to follow the relevant rules of the organization in carrying out such functions. Accordingly the term "adopted within an international organization" may have to be given a liberal interpretation, bearing in mind, of course, the observations set out in paragraph (3) of the commentary to article 4.

We presume that the "relevant rules of the organization" referred to in this article comprise both existing rules and rules that may be introduced in the future.

Article 5

This article limits the capacity to conclude treaties to States - including members of a federal union subject to certain qualifications. At an earlier stage, the International Law Commission considered, concurrently with the category of federations or other unions of states, the capacity of "dependent States" to enter into treaties. Thus it had been suggested that a dependent State may possess international capacity to enter into treaties, inter alia, where "the other contracting parties accept its participation in the treaty in its own name separately from the State which is responsible for the conduct of its international relations".[5/] It is not entirely clear whether the omission of a reference to dependent States in article 5 precludes dependent States from becoming parties to international treaties. As far as FAO is concerned, Associate Members which by definition are Territories which are not responsible for the conduct of their international relations (article II-3 of the Constitution) can be admitted to FAO and thereby assume certain rights and obligations provided for in the Constitution. Moreover they can also become parties to conventions and agreements adopted under article XIV of the Constitution. Although in both cases the instruments of acceptance are submitted by the Member Nation that is responsible for the conduct of the international relations of the Territory concerned, the exercise of the rights and duties connected with associate membership is vested in such Associate

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5/ Yearbook of the International Law Commission, 1962, vol. II, document A/CN.4/144.

Member as far as membership in FAO is concerned. Similarly, Associate Members may be in a position to exercise rights and carrying out obligations under a convention or agreement if by virtue of constitutional arrangements between an Associate Member and the country responsible for its international relations the former has been endowed with the authority to become a party to international treaties. (See article II, paragraphs 3-4, article XIV, paragraph 5 of the Constitution, rule XXI, paragraphs 1-a (ii), b, c, and 3 of the General Rules of the Organization, paragraphs 7, 14-a (ii) of the Principles and Procedures Governing Conventions and Agreements Concluded under Articles XIV and XV of the Constitution.) In view of the provisions of article 4 of the draft articles, the special status of Associate Members within FAO would not seem to present any particular problems; the above observations should therefore not be construed as a suggestion for reintroducing specifically the concept of "dependent States" in the draft articles.

Articles 6 to 8

Generally speaking, the rules adopted by FAO with regard to full powers and the adoption of instruments are in conformity with the relevant articles of the law of treaties. Both draft amendments to the FAO Constitution and conventions and agreements under article XIV of the Constitution have to be included in the draft agenda of the Conference or Council, as the case may be, and texts have to be circulated well in advance of the opening of the Conference or Council session. Accordingly, Member Governments may be presumed to have taken cognizance of the texts, and no credentials other than those empowering the members of delegations to represent their Governments at the session are required for the purpose of adopting an amendment to the Constitution or a convention or agreement.

The problem of subsequent confirmation of an act performed by a representative of a Member Nation without credentials in the formal sense has arisen in connexion with the signing of, or acceding to, conventions and agreements, for which specific full powers are required. This situation is now regulated by a provision similar to that appearing in article 7 of the law of treaties (rule XXI-4 of the General Rules of the Organization).

The principle of adoption of a text by a two-thirds majority, as reflected in article 8, paragraph 2, of the draft articles, has also been incorporated in articles XIV and XX of the FAO Constitution but the criteria for calculating that majority are not uniform in all cases. Thus, amendments to the Constitution can be adopted by the Conference by a two-thirds majority of the votes cast, provided that such majority is more than one half of the Member Nations of the Organization (article XX-1); conventions and agreements may be adopted by the Conference by a two-thirds majority of the votes cast (article XIV-1), while the majority required for adoption by the FAO Council is two-thirds of the membership of the Council (article XIV-2).

Article 9

The rule governing authentication of conventions and agreements is laid down in article XIV-7 of the FAO Constitution, which is at variance with article 9 of the draft articles.

Articles 10 to 13

The practice of FAO is reflected in paragraph 4 of the Principles and Procedures governing Conventions and Agreements. Thus, both the traditional system, i.e. that of signature, signature subject to ratification, and accession, as well as the simplified system of acceptance by deposit of an instrument of acceptance are being applied with respect to conventions and agreements concluded under article XIV of the Constitution.

Articles 16 to 20

The FAO Constitution does not contain any provision permitting or prohibiting reservations. Since a State wishing to make a reservation to the Constitution would have to do so in applying for membership, the question of acceptance of such reservation would - if it did arise - presumably be decided by the Conference when it examines the application for membership; this would also be in line with article 17, paragraph 3, of the draft articles. Of course, the Conference could also, in accordance with article XVI of the Constitution, refer to the International Court of Justice the question of admissibility and/or the legal effects of such reservations.

The question of reservations to conventions and agreements concluded under article XIV of the Constitution is regulated by paragraph 10 of the Principles and Procedures governing Conventions and Agreements. The practice of the Organization in this respect has been communicated to the United Nations by a letter dated 29 March 1963.6/

Articles 21 and 22

Pursuant to paragraph 9 of the Principles and Procedures governing Conventions and Agreements, all texts shall indicate the method of determining the effective date of participation. The conditions for entry into force of a convention or agreement are also invariably specified in the text of the instrument. However, no provision has been made so far for a provisional entry into force, as referred to in article 22 of the draft articles.

Article 25

The presumption expressed in this article, to the effect that the application of a treaty extends to the entire territory of each party, applies to the FAO Constitution. It likewise applies to conventions and agreements concluded under article XIV of the FAO Constitution, it being understood that contracting States may on signature, ratification, accession or acceptance, make a declaration regarding territorial application. In addition, it is specified in the Principles and Procedures governing Conventions and Agreements that each instrument should contain a clause regarding its territorial application, i.e. its geographical scope.

Articles 27 to 29

The interpretation of the FAO Constitution and of the conventions and agreements concluded under article XIV of the Constitution is dealt with in article XVII of the Constitution and in paragraphs 13 and 16 of the principles,

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6/ Yearbook of the International Law Commission, 1965, vol. II, doc. A/5687. Depositary practice in relation to reservations. Report of the Secretary-General, Introduction, paragraph 5, part I, questions 1-20.

respectively. The first two provisions place the emphasis on procedural aspects (with special reference to settlement of disputes) rather than on the substantive criteria for interpretation. Paragraph 16 of the Principles states that the languages in which the conventions and agreements are drawn up shall be equally authentic. It may be presumed that the methods of interpretation laid down in articles 27 to 29 of the law of treaties could also be applied in regard to treaties concluded within the FAO.

Articles 35 to 36

The provisions of the draft articles relating to the methods for amending, and the legal effect of amendments to, multilateral treaties apply only "unless the treaty otherwise provides".

The amendment of the FAO Constitution is covered by the provisions of article XX thereof. While these provisions generally follow the procedure and criteria laid down in article 36 of the law of treaties, there is at least one important difference: if an amendment of the FAO Constitution does not involve any new obligation for Member Nations, all Member Nations and Associate Members become bound as soon as the amendment has been adopted by the Conference without any subsequent positive act such as ratification or acceptance being required; Member Nations become bound by the amendment in these circumstances even if they have voted against the amendment.

As regards the amendments to conventions and agreements concluded under article XIV of the Constitution, paragraph 8 of the Principles and Procedures governing such instruments contains detailed provisions concerning the procedure and criteria for, and legal effect of, amendments. As in the case of amendments of Constitution, a distinction is made between amendments involving new obligations and other amendments; it may be noted, however, that in any event, amendments have to be approved by at least two-thirds of the parties to the convention or agreement concerned before they can be submitted to the Conference or Council for approval.

Articles 39 to 68

To the extent that any problems relating to the subject matters covered by these articles (invalidity, termination, and suspension of operation of treaties)

may arise in connexion with the FAO Constitution or instruments adopted within the Organization, there are good reasons to believe that the relevant articles on the law of treaties would be applied, subject to any rules adopted by the Organization with respect to any of these subject matters. At present, specific rules are in force with regard to the withdrawal from the Organization and the withdrawal from, or termination of, conventions and agreements concluded under article XIV of the Constitution. The procedure for, and effects of, withdrawal from the Organization are governed by the provisions of article XIX of the Constitution. Detailed provisions concerning withdrawal from or denunciation of conventions and agreements are contained in paragraph 14 of the Principles, while the termination of conventions and agreements is dealt with in paragraph 15 of the Principles.

Articles 71 to 75

The exercise of the depositary functions of FAO is governed by article XIV-7 of the Constitution, rule XXI-3 of the General Rules of the Organization, and paragraph 17 of the Principles and Procedures governing Conventions and Agreements. To the extent that these provisions cover the same ground as the above-mentioned articles on the law of treaties, they are in harmony with those articles.

It may be noted, however, that article 72, paragraph 1 (a), refers only to the original text of the treaty; amendments are not mentioned in this sub-paragraph, nor in any of the subsequent provisions. This might be regarded as a lacuna, and consideration might therefore be given to the desirability of inserting the words "and of any amendments thereto" after the words "of the treaty" in article 72, paragraph 1 (a).

As regards the registration of treaties provided for in article 75 of the draft articles, FAO has consistently complied with the provisions of Article 102 of the United Nations Charter and the regulations issued thereunder. It may be noted that the registration of conventions and agreements is specifically prescribed by article XIV-7 of the Constitution, and that FAO practice in this respect has been developed in the light of the regulations to give effect to Article 102 of the United Nations Charter.[7/]

7/ United Nations, Treaty Series, vol. 76, pp. xviii-xxix; Yearbook of the International Law Commission, 1962, vol. II, doc. A/5209, annex.

INTERNATIONAL LABOUR ORGANISATION

Transmitted by a letter of 18 May 1967 from the Director-General of the International Labour Office

[Original: English]

The rules applied by the ILO, as depository both of the constituent instrument of the Organisation and of instruments adopted within the Organisation, differ in certain respects from those laid down in the draft articles.

First, certain procedures differing from those set forth in the draft articles are laid down in the Constitution of the ILO. Thus it is the Constitution which provides for the procedure of authentication of international labour conventions by the signature of the President of the International Labour Conference and of the Director-General of the International Labour Office - a procedure which is applied also to instruments of amendment to the Constitution.

Second, certain procedures are provided for in standard articles of international labour conventions. Thus, since 1927, international labour conventions have contained provisions concerning their revision and the effects of such revision which are more far-reaching than the rules concerning amendment and modification of treaties contained in part IV of the draft articles.

Third, certain constitutional practices, derived from the particular structure of the Organisation, have been evolved. Thus, the International Law Commission pointed out in its report on the work of its third session (1951) that "because of its constitutional structure, the established practice of the International Labour Organisation, as described in the written statement dated 12 January 1951 of the Organisation submitted to the International Court of Justice in the case of reservations to the Convention on Genocide, excludes the possibility of reservations in international labour conventions".[8/] Again that practice is applied also to acceptance of the obligations of the Constitution of the Organisation.

It is our understanding of article 4 of the draft articles that it is recognized that these various categories of rules will continue to apply to the Constitution of the Organisation and instruments adopted within the International

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8/ Yearbook of the International Law Commission, 1951, vol. II, document A/1858, paragraph 20.

Labour Organisation, including international labour conventions, even where they differ from the draft articles on the law of treaties and the relevant articles do not expressly provide for possible variations.

INTERNATIONAL TELECOMMUNICATION UNION

Transmitted by a letter of 24 July 1967 from the Secretary-General ad interim of the International Telecommunication Union

[Original: English]

Article 4

1.1 The constituent instrument of the International Telecommunication Union (ITU) is the International Telecommunication Convention, which is revised by the ITU Plenipotentiary Conference, meeting at periodic intervals (usually every five years). The first of these conventions was that of Madrid (1932)[9] whereby the "Telegraph Union" was replaced by the "Telecommunication Union". The Members of the Union were the Governments which signed and ratified the treaty or adhered to it afterwards under arrangements specified. All subsequent conventions (Atlantic City 1947,[10] Buenos Aires 1952,[11] Geneva 1959,[12] Montreux 1965[13]) have contained an annex listing the members and have made provision for the admittance of new members. Countries listed as Members have continued to appear as Members in the lists annexed

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9/ League of Nations, Treaty Series, vol. 151, No. 3479; International Bureau of the Telegraph Union, International Telecommunication Convention, Madrid, 1932, Bern (1933).

10/ United Nations, Treaty Series, vols. 193, 194, 195, No. 2616; International Telecommunication Union, Final Acts of the International Telecommunication and Radio Conferences, Atlantic City, 1947, Atlantic City (1947).

11/ International Telecommunication Union, International Telecommunication Convention, Buenos Aires, 1952, Geneva (1953).

12/ The General Secretariat of the International Telecommunication Union, International Telecommunication Convention, Geneva, 1959, Geneva.

13/ The General Secretariat of the International Telecommunication Union, International Telecommunication Convention (Montreux, 1965), Geneva.

to successive conventions even though they have not ratified any since the first that they ratified or to which they acceded. They continue, however, to be treated in all respects as Members, except that since the 1952 convention the right to vote is lost:

(a) By a signatory Government two years after the convention has come into force if it has not deposited an instrument of ratification;

(b) When the new convention comes into force, by a country listed as a Member which has not signed or acceded.

1.2 Thus, from a formal juridical point of view, there can be more than one "constituent instrument" in relations between ITU Members although in practice, e.g. choice of contributory unit, the provisions of the current convention are applied.

1.3 It is assumed that where there are inconsistencies between the provisions of the ITU "constituent instrument" (or "instruments") and those of the law of treaties, the former prevail except in cases in which article 50 of the law of treaties operates.

"treaties... adopted within international organizations"

1.4 Some further clarification of the meaning to be attached to "treaties... adopted within international organizations" is desirable so that it can be decided to what extent article 4 is to be applied to the different categories of treaties concluded in the telecommunications field.

I. The regulations

1.5 The provisions of the International Telecommunication Convention (Montreux 1965) are completed by the following sets of administration regulations:

Telegraph regulations

Telephone regulations

Radio regulations

Additional radio regulations

1.6 Ratification of the convention or accession involves acceptance of the regulations in force at the time (a number of Members, however, have made reservations in this regard).

1.7 The Montreux Convention (article 7) makes provision for the convening of administrative conferences of a world-wide character to revise these regulations or part of them or to discuss any other telecommunication question of a world-wide character.

1.8 Delegates attending such conferences must be formally accredited by credentials that confer full powers, or authorize them to represent their Governments without restrictions, or give the right to sign the Final Acts.

1.9 The regulations are drafted without a preamble containing a list of participating countries; they contain a statement that they are annexed to the Telecommunication Convention; and they are signed in a single copy which remains with the inviting Government or in the ITU archives as the case may be, certified copies being delivered to all Members.

1.10 Amendments to the regulations made by administrative conferences appear as final acts, either in the form of amended appendices to the regulations concerned or of a partial revision of the main body of the regulations. Such final acts are signed in a single copy, certified copies being delivered to Members. They contain a proviso that Members must inform the ITU Secretary-General of their approval and that he in turn will communicate this information to the membership.

1.11 As the regulations and amendments to them complete the International Telecommunication Convention, it would seem that they should be regarded as being part of a "constituent instrument" for the purposes of article 4.

II. Regional arrangements

(a) Under article 7 of the Montreux Convention

1.12 Under article 7 of the Montreux Convention regional administrative conferences may be called to consider telecommunication questions of a regional nature but the decisions must not conflict with the interests of other regions or the prescriptions of the administrative regulations. The expenses are a charge against all the Members of the region concerned whether participating or not.

1.13 The final acts of these conferences have been entitled variously "agreement" or "special agreement". They are usually drawn up as treaties with a preamble referring to article 7 of the Montreux Convention (or the equivalent article in

earlier conventions) and listing the participating countries which are referred to as "contracting administrations". The final acts are signed in a single copy which may be deposited with the host Government or the ITU, as the case may be. Certified copies are sent to the signatory Governments which must notify their approval to the Secretary-General of the ITU.

1.14 It would seem logical that regional agreements made by conferences convened under article 7 of the Montreux Convention (or similar articles in earlier conventions) should be considered, for the purposes of article 4, as being "adopted within" the ITU.

(b) Under article 45 of the Montreux Convention

1.15 Article 45 of the Montreux Convention gives Members the right to conclude regional agreements on telecommunication questions susceptible of being treated on a regional basis provided that they are not in conflict with the convention. Such agreements are usually drawn up in very much the same way as the instruments mentioned in the preceding paragraph. They have been called "regional agreement", "regional arrangement" or "convention" or "regional convention". Reference is usually made to the fact that the conference has been convened or the agreement made by virtue of the provisions of article 45 (or the equivalent article in earlier conventions). In some cases ratification rather than approval is required. The conferences are sometimes serviced by the ITU Secretariat but the expenses are charged against the participants only and not against the membership of the region as a whole. The custom has been, where ratification is required, for the instruments to be deposited with the host Government which informs the ITU Secretary-General. Where only approval is required, however, signatories notify the Secretary-General direct.

1.16 There is so much variation in the texts of agreements reached under article 45 that it cannot be determined of them as a category whether or not they can be held to be "adopted within" the ITU. Rather, each agreement and its surrounding circumstances would have to be examined to see to what extent it was the intention of the parties that the agreement be subject to the rules of the ITU.

(c) Other regional agreements

1.17 There seems to be only one regional agreement in the telecommunication field that does not fall within the two preceding categories since no reference is made in it to the relevant articles of the International Telecommunication Convention. Under its terms the inviting Government receives acceptances and there is no provision that these be communicated to the ITU. The instrument appears, however, in the official list of acts of the Union published by the ITU.

III. Special agreements on telecommunication matters

1.18 By article 44 of the Montreux Convention the Members of the Union reserve the right to make special agreements on telecommunication matters which do not concern other Members, provided they do not conflict with the terms of the convention or of the regulations as far as concerns harmful interference to the radio services of other countries.

1.19 The right to make special agreements is qualified by the regulations.

1.20 It is recognized in the telegraph and telephone regulations that derogation from their provisions may be made by special arrangements.

1.21 The radio regulations prescribe that special arrangements may be made as follows:

(i) By two or more Members regarding sub-allocation of bands of frequencies to the appropriate services of the participating countries.

(ii) By two or more Members regarding assignment of frequencies below or above those covered by the table of frequency allocations to stations in one or more specific services provided all Members affected have been invited to the conference.

(iii) By Members on a world-wide basis regarding assignment of frequencies covered by the table of frequency allocations to stations participating in a specific service provided that all Members are invited to the conference.

(iv) Between neighbouring countries regarding stations operating on frequencies above 41 MHz to be located in the territory of one country and intended to improve the national coverage of the other country.

1.22 In cases (i)-(iii) the ITU Secretary-General must be informed in advance of the intention to convene the conference. In all cases contents of the arrangements made must be communicated to him so that he may inform the membership as a whole.
1.23 The radio regulations also provide that special arrangements shall determine the conditions of operation of stations in the fixed and mobile services in order to protect those services from harmful interference, having regard to the difficulties of operation of stations of the maritime mobile service.
1.24 Provision has also been made in various regional agreements for further special regional arrangements.
1.25 It is felt that each special agreement and its surrounding circumstances would have to be examined to see to what extent it was the intention of the parties that the agreement be subject to the rules of the ITU.

Article 5

2.1 Under the Monteaux Convention the Members of the Union are:

(i) Any country or group of territories listed in annex 1 to the Convention. In this list are included States members of federal unions and groups of territories.

(ii) Countries not listed which become Members of the United Nations and accede.

(iii) Any sovereign country not listed which accedes after its application for membership has been approved by two-thirds of the Members of the Union.

2.2 Provision is made for associate membership in which may be included countries, territories and groups of territories the application of which is approved by a majority of the Members and any Trust Territory on behalf of which the United Nations has acceded to the convention and which is sponsored by the United Nations. Associate Members have the same rights and obligations as Members except the right to vote.

Article 6

3.1 Accreditation to ITU plenipotentiary conferences can be given by Heads of State or Government or the Minister for Foreign Affairs. The same persons and the Minister responsible for questions dealt with during the conference can accredit

delegates to ITU administrative conferences. The Secretary-General of the United Nations may accredit the delegation representing a Trust Territory. The head of a diplomatic mission, or the head of the permanent delegation to the European Office of the United Nations for ITU conferences held in Geneva, may accredit a delegation subject to confirmation prior to signature of the final acts by the Head of State or Government, the Minister for Foreign Affairs or (for administrative conferences) the Minister responsible.

Article 7

4.1 No provision is made in the Montreux Convention for confirmation after signature.

Article 8

5.1 The only cases where a special majority is specifically required under ITU rules are:

(a) In connexion with the admission to membership of countries not Members of the United Nations; in this case the approval of two-thirds of the Members of the Union is required;

(b) In connexion with the determination of the agenda of conferences, their date and place of meeting and changes thereto (see paragraphs 13.1 and 13.2 below).

Article 9

6.1 The ITU has no rules on this point.

Article 11

7.1 Ratification is required for signatories to the International Telecommunication Convention: non-signatories may accede. For most other ITU agreements approval only is required.

Articles 16-20

8.1 The general regulations annexed to the Montreux Convention contain the following provision "745: However, if any decision appears to a delegation to be of such a

nature as to prevent its Government from ratifying the convention or from approving the revision of the regulations, the delegation may make reservations, final or provisional, regarding this decision."

8.2 It has been the practice for all telecommunication conventions since that of Madrid (1932) to incorporate reservations made at the time of signature in a final protocol which has been signed by all the parties. Present practice is to refuse instruments of accession containing reservations.

8.3 It is provided in the regulations and amendments thereto that should an administration make reservations about the application of any provision, no other administration shall be obliged to observe that provision in its relations with that particular administration.

8.4 Practice varies as regards regional and special agreements. In a few cases there is a final protocol containing reservations, signed by all the parties. There are no reservations to most of these treaties, however, and nearly all prescribe that accession by non-signatories must be made without reservation.

Article 25

9.1 The ITU membership includes groups of territories which are described variously as:

"group of territories represented by..."

"... provinces in Africa"

"... overseas provinces"

"territories of..."

"overseas territories for the international relations of which the... are responsible".

9.2 Some of the signatories provide at the time of ratification a list of the territories included which is published by the ITU Secretariat.

9.3 There is one case of a federal union where some members, but not all, sign separately and have the right to vote. It has alsays been assumed that the signature of the union as a whole is for all the constituent parts except those members which sign separately.

Article 26

10.1 The Montreux Convention contains the following provisions:

> "266. This Convention shall abrogate and replace, in relations between the Contracting Governments, the International Telecommunication Convention (Geneva, 1959).
>
> "267. The administrative regulations referred to in 203[14/] are those in force at the time of signature of this Convention. They shall be regarded as annexed to this Convention and shall remain valid, subject to such partial revisions as may be adopted in consequence of the provisions of 52 [15/] until the time of entry into force of new regulations drawn up by the competent world administrative conferences to replace them as annexes to this Convention."

10.2 All the countries or groups of territories listed as Members in the Montreux Convention either signed and ratified or acceded to the previous convention (Geneva 1959) except for five. Of these five: one is still bound by the Madrid Convention (1932), one by the Atlantic City Convention (1947), and three by the Buenos Aires Convention (1952). Three of them have signed some or all of the regulations all of which were completely revised after 1952.

10.3 As has been mentioned above, in practice the rules of the current convention are applied to these Members, e.g., choice and value of unit of contribution.

10.4 In one regional agreement it is provided that it and its plan shall be abrogated between all the contracting parties from the entry into force of a new plan. In the event of a contracting Government not approving the new plan the agreement shall be abrogated in relation to such Government as from the entry into force of the new plan.

Articles 27, 28 and 29

11.1 The Montreux Convention contains the following provisions:

> "234. The official languages of the Union shall be Chinese, English, French, Russian and Spanish.

14/ See paragraph 1.5 above.

15/ See paragraph 1.7 above.

"235. The working languages of the Union shall be English, Franch and Spanish.

"236. In case of dispute, the French text shall be authentic.

"237. The final documents of the plenipotentiary and administrative conferences, their final acts, protocols, resolutions, recommendations and opinions, shall be drawn up in the official languages of the Union, in versions equivalent in form and content."

Articles 30-34

12.1 The Montreux Convention provides as follows:

"268. Each Member and Associate Member reserves to itself and to the recognized private operating agencies the right to fix the conditions under which it admits telecommunications exchanged with a State which is not a party to this Convention.

"269. If a telecommunication originating in the territory of such a non-contracting State is accepted by a Member or Associate Member, it must be transmitted and, in so far as it follows the telecommunication channels of a Member or Associate Member, the obligatory provisions of the Convention and regulations and the usual charges shall apply to it."

12.2 The telegraph regulations (Geneva Revision, 1958) contain the following:

"1036. When telegraphic relations are opened with countries which are neither Members nor Associate Members or with recognized private operating agencies in regard to which the provisions of paragraph 2 of article 19 of the Convention have not been applied by a Member or Associate Member, the provisions of these regulations shall invariably be applied to correspondence in the section of the route which lies within the territories of Members or Associate Members, or which are operated by a recognized private operating agency.

"1037. The administrations concerned shall fix the rate applicable to this part of the route. This rate shall be added to that of the non-participating administrations."

Articles 35-39

13.1 The Montreux Convention provides:

"51. Administrative conferences shall normally be convened to consider specific telecommunication matters. Only items included in their agenda may be discussed by such conferences. The decisions of such conferences must in all circumstances be in conformity with the provisions of the Convention.

"52. The agenda of a world administrative conference may include:

(a) The partial revision of the administrative regulations listed in 203; 16/

"53. (b) Exceptionally, the complete revision of one or more of those regulations;

"56. (1) The agenda of an administrative conference shall be determined by the Administrative Council with the concurrence of a majority of the Members of the Union in the case of a world administrative conference, or of a majority of the Members belonging to the region concerned in the case of a regional administrative conference, subject to the provisions of 76.

"57. (2) This agenda shall include any question which a plenipotentiary conference has directed to be placed on the agenda.

"70. (1) The agenda, or date or place of an administrative conference may be changed:

(a) At the request of at least one-quarter of the Members and Associate Members of the Union, in the case of a world administrative conference, or of at least one quarter of the Members and Associate Members of the Union belonging to the region concerned in the case of a regional administrative conference. Their requests shall be addressed individually to the Secretary-General, who shall transmit them to the Administrative Council for approval; or

"71. (b) on a proposal of the Administrative Council.

"72. (2) In cases specified in 70 and 71, the changes proposed shall not be finally adopted until accepted by a majority of the Members of the Union, in the case of a world administrative conference, or of a majority of the Members of the Union belonging to the region concerned, in the case of a regional administrative conference, subject to the provisions of 76.

"74. (2) The convening of such a preparatory meeting and its agenda must be approved by a majority of the Members of the Union in the case of a world administrative conference, or by a majority of the Members of the Union belonging to the region concerned in the case of a regional administrative conference, subject to the provisions of 76.

16/ See paragraph 1.5 above.

"76.9 In the consultations referred to in 56, 64, 69, 72 and 74, Members of the Union who have not replied within the time limits specified by the Administrative Council shall be regarded as not participating in the consultations, and in consequence shall not be taken into account in computing the majority. If the number of replies does not exceed one-half of the Members consulted, a further consultation shall take place."

13.2 The general regulations annexed to the convention contain the following:

"CHAPTER 4

"Time-limits for presentation of proposals to conferences and conditions of submission

"624.1. Immediately after the invitations have been despatched, the Secretary-General shall ask Members and Associate Members to send him, within four months, their proposals for the work of the Conference.

"625.2. All proposals, the adoption of which will involve revision of the text of the convention or regulations, must carry references identifying by their marginal numbers those parts of the text which will require such revision. The reasons for the proposal must be given, as briefly as possible, in each case.

"626.3. The Secretary-General shall communitate the proposals to all Members and Associate Members as they are received.

"627.4. The Secretary-General shall assemble and coordinate the proposals received from administrations and from the Plenary Assemblies of the International Consultative Committees and shall communicate them, at least three months before the opening of the conference, to Members and Associate Members. The General Secretariat and the specialized secretariats shall not be entitled to submit proposals."

Articles 39-68

14.1 The Montreux Convention makes the following provisions for denunciation:

"262 1. Each Member and Associate Member which has ratified, or acceded to, this convention shall have the right to denounce it by a notification addressed to the Secretary-General by diplomatic channel through the intermediary of the government of the country of the seat of the Union. The Secretary-General shall advise the other Members and Associate Members thereof."

"263 2. This denunciation shall take effect at the expiration of a period of one year from the day of the receipt of notification of it by the Secretary-General.

"264 1. The application of this convention to a country, territory or group of territories in accordance with article 20 may be terminated at any time, and such country, territory or group of territories, if it is an Associate Member, ceases upon termination to be such.

"265 2. The declaration of denunciation contemplated in the above paragraph shall be notified in conformity with the conditions set out in 262; it shall take effect in accordance with the provisions of 263."

14.2 Similar provisions are contained in a number of ITU regional and special agreements.

14.3 All such regional and special agreements so far concluded have been concerned with the use of radio. Their basic purpose is to ensure, as far as practicable, that there is an equitable division of the parts of the frequency spectrum with which they are concerned between the relevant services of the parties and that harmful interference is reduced to a minimum. In a number of these agreements the parties undertake not to change the characteristics of emissions covered by the agreement nor to establish new stations except under certain conditions. They also undertake to endeavour to agree on the action required to reduce any harmful interference caused by the application of the agreement. It is further provided that in the event of failure to agree on action to reduce harmful interference, the dissenting administrations may resort to procedures established in the radio regulations for dealing with cases of harmful interference, which involve addressing reports to any specialized agency concerned with the service concerned or a request to the International Frequency Registration Board of the ITU to act. These administrations may also use the procedures for settlement of differences laid down in the International Telecommunication Convention, namely, resort to diplomatic channels or to any special procedures established in treaties concluded between them for the settlement of international disputes or, alternatively, to arbitration according to certain procedures contained in the Convention.

14.4 In one agreement the foregoing procedure is to be adopted in case of failure to agree on action to reduce harmful interference but is made mandatory, not permissive. Another contains a special arbitration procedure which must be followed

should one party to a dispute request it, but the right to denounce is not affected by this provision.

14.5 The Montreux Convention contains no stipulations as to the manner in which instruments for denouncing an agreement shall be validated but provides that they shall be forwarded to the Secretary-General of the Union by the diplomatic channel through the intermediary of the Government of the country of the seat of the Union.

Articles 71-75

15.1 It is the custom in the case of ITU conferences held outside Switzerland for the texts of the convention or agreement to be deposited with the host Government. In the case of conferences held in Switzerland, however, the texts are deposited with the ITU Secretary-General. In most cases it is provided that ratifications, accessions, notifications etc. shall be communicated to the ITU Secretary-General, either direct or by the diplomatic channel through the intermediary of the Government of the country of the seat of the Union. The Secretary-General is charged with the duty of informing the Members. In the few cases where communications are to be made to the depositary Government it is provided that that Government shall inform all parties and the ITU Secretary-General.

15.2 It has not been the custom formally to register each ITU treaty with the Secretariat of the United Nations after it has been agreed. Mention of them is made however in the answers to a questionnaire for the United Nations Juridical Yearbook received every year from the United Nations Secretariat.

15.3 The ITU treaties are published in accordance with ITU rules.

WORLD HEALTH ORGANIZATION

Transmitted by a letter of 13 July 1967 from the Head of the Legal Office of the World Health Organization

[Original: French]

It must be first of all pointed out that the draft articles deal with a subject on which WHO has little to say. Articles 1, 2 and 3 state that the draft articles relate only to treaties concluded between States. Accordingly, treaties to which

the World Health Organization could be a party are excluded. Moreover, article 4 makes the application of treaties which are constituent instruments of an international organization or are adopted within an international organization subject to the relevant rules of the organization. It is therefore only when an organization has no rule relevant to a given case that the draft articles would apply. In other words, in the case of a treaty which is the constituent instrument of an international organization or is adopted within it, the provisions of the draft articles have only a secondary application. Consequently, WHO will confine its observations to such basic articles as relate to cases for which it has no relevant rules.

In this connexion WHO has noted two important points. The first concerns the provisions for withdrawal in draft articles 51 and 53. WHO feels that there is an apparent contradiction between these two articles. The first states in sub-paragraph (b) that a party may withdraw from a treaty at any time by consent of all the parties. The second stipulates that if a treaty does not provide for withdrawal, withdrawal is not allowed unless it is established that the parties intended to admit the possibility of withdrawal. It is clear from the commentaries that it is felt that, in the absence of proof of the parties' intention to admit the possibility of withdrawal, withdrawal is still possible "by consent of all the parties". The text of the articles read in isolation, however, could give rise to confusion. For this reason WHO believes that the wording of these articles should be amended. Moreover, it may not be out of place to mention how this question of withdrawal arose and how WHO dealt with it. In 1949 and 1950 certain countries announced their wish to withdraw from WHO and, in the absence of relevant provisions in the Constitution, the Director-General declared that he could not consider these communications as withdrawals, since the Constitution contained no provision for withdrawal. The Health Assembly, when the matter was put before it by the Executive Board, did not deal with the question of the validity of withdrawal and took no decision expressing its consent or lack of consent to the withdrawal. The attitude it took subsequently, however, when these States resumed active participation would indicate that the Assembly did not believe it was possible for a State to withdraw from WHO in the absence of constitutional provisions covering such action. Accordingly, the provisions of draft article 51 to the effect that withdrawal can take place on certain conditions are not applicable where WHO is concerned.

WHO also has some observations to make on the draft articles concerning reservations. No comment is required on the formulation of reservations, their acceptance, the procedure or their legal effects in the case of regulations which WHO, under article 21 of its Constitution, is authorized to adopt. Article 22 of the Constitution, and the provisions of regulations Nos. 1 and 2 adopted within WHO, contain specific provisions concerning reservations, so that, in accordance with draft article 4, the provisions on reservations in the draft articles are inapplicable. This does not apply to the conventions or agreements covered by article 19 of the Constitution, which the Health Assembly also has authority to adopt, because there is no provision in the Constitution dealing with reservations to those conventions or agreements. Although no such text has yet been adopted, the likelihood is that, in view of the absence of constitutional provisions, the relevant draft articles would be applicable to reservations to such conventions or agreements. Nevertheless, without anticipating what attitude the Health Assembly might take, it can be assumed that such conventions or agreements would contain provisions concerning reservations and the procedure for the acceptance of reservations would be similar to that laid down in the regulations. This procedure does not leave it to the individual States to accept or object to a reservation express or impliedly, as stipulated in draft article 17 (4), but makes the Health Assembly responsible for deciding on the validity of any reservations formulated, its decision being binding on member States, irrespective of how they voted on any particular reservation.

The question of the legal effects of reservations, which is dealt with in article 19 (1), also requires some comment. As WHO has no relevant rules concerning reciprocity, it believes that article 19 (1) should be applicable only in so far as the nature of the treaty makes reciprocity possible. In purely administrative questions WHO might agree to one of its members invoking a reservation against another member on a basis of reciprocity. It is an entirely different matter, however, when questions of health are concerned. In WHO's view, the requirements of public health are paramount. It should be noted in this connexion that the ad hoc committee established by the Executive Board at its ninth session to consider the reservations made by member States to the International Sanitary Regulations included the following paragraphs in its report:[17]

/...

17/ Official records, World Health Organization, 42, 360.

"5.1 The Committee examined whether a reservation accepted by the World Health Assembly under the provisions of article 107 of the International Sanitary Regulations may be applied reciprocally, that is to say, that such a reservation, may be applied not only by the State making the reservation, but also by any other State party to the Regulations in its relationships with the reserving State.

"5.2 The right of a State to claim reciprocity as a condition of acceptance of a reservation to an international instrument is well established. There appears, however, to be serious doubt whether the right to claim reciprocity will exist in all instances, unless the condition of reciprocity is made at the time that the reservation is accepted.

"5.3 With a view to avoiding possible subsequent dissatisfaction and confusion with respect to the rights of the States party to the International Sanitary Regulations, the committee recommends to the Health Assembly that in accepting a reservation to the Regulations under article 107 such acceptance shall be with the specific understanding that the reservation may be applied, not only by the State making the reservation, but also by each other State party to the Regulations in its relations with the reserving State, unless the reservation is such that it does not lend itself to reciprocal treatment."

The World Health Organization therefore believes that draft article 19 should be interpreted as authorizing reciprocity only to the extent to which it is compatible with the nature of the treaty and of the reservation.

INTERNATIONAL ATOMIC ENERGY AGENCY

Transmitted by a letter of 26 June 1967 from the Director of the Legal Division of the International Atomic Energy Agency

[Original: English]

Some recent treaties such as the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water, and the Treaty on Outer Space provide for several depositaries instead of the traditional one depositary. If it would seem desirable to take account of this novel practice in international law, article 71 "Depositaries and treaties" could read as follows:

1. The depositary or depositaries of a treaty, which may be one or several States or an international organization, shall be designated by the negotiating States in the treaty or in some other manner.

2. Unchanged.
