

Among these, as I have already implied, are Articles 50 and 61 concerning jus cogens. Canada is wholly in agreement with the important and significant principles embodied in these two articles. However, in the absence of any provision for the adjudication of differences relating to the application of these articles in particular cases, the conference will either have to attempt to define criteria for applying jus cogens or to consider carefully the implications of failure to do so. Here I would ^{also} like especially to refer to Article 62, and to the relationship which, in the Canadian view, exists between this article and certain other draft articles. A number of articles and sub-articles, including Article 10(2)(a); 11(1)(b); 12(b); 24, 25, 27(4); 33(1) and 33(2); 39(1); 53(1); 56(1(a) and 56(2); and 61 all require that a certain fact or facts be "established" before the provision of the article in question takes effect. Indeed, in this respect, Article 39 extends the requirement for establishing the fact in question to all the articles in Part V, which deals with the invalidity of treaties.

As might be inferred from my earlier remarks relating to the jus cogens articles my Delegation wonders whether the concept of establishing a fact or facts, as is contemplated by these articles, ought not necessarily to mean something more than the assertion of a given fact by only one party to a treaty. Might it imply instead some form of objective determination of the fact that is to be established? It will be for consideration at the conference whether the requirement to establish facts, in the articles to which I have referred, implies that, until the particular fact in question has been determined, it may not necessarily be considered