

STATEMENT No. 58
OCTOBER 20, 1967

U. N. G. A. XXII

SIXTH COMMITTEE

AGENDA ITEM 86: LAW OF TREATIES



Statement to be made by the Representative of Canada, MR ALAN GOTLIB
on Friday, October 20, 1967.

Mr. Chairman,

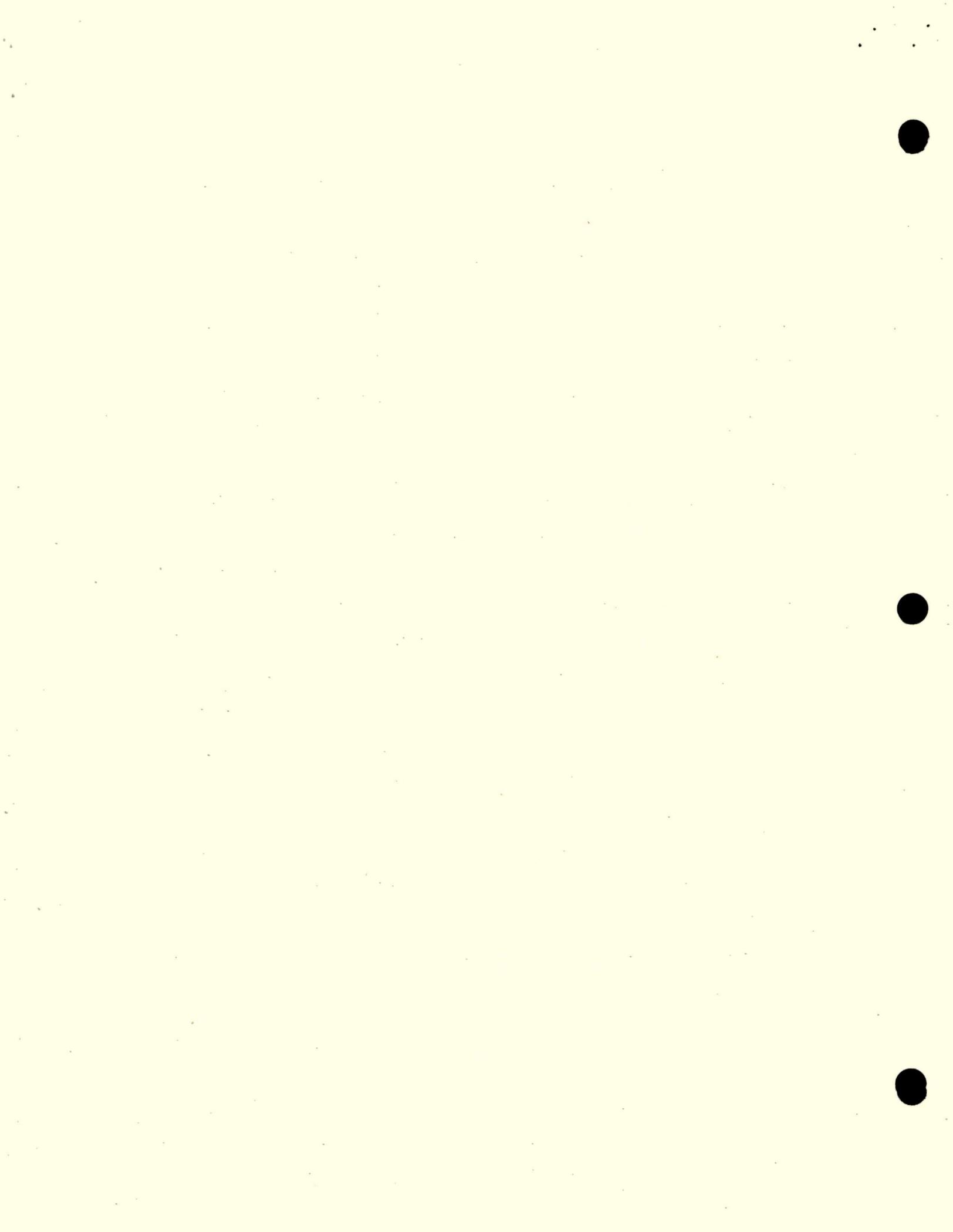
As we all know, the preparation of the draft articles on the Law of Treaties was the result of extraordinary efforts on the part of the International Law Commission, and in particular the Special Rapporteur, Sir Humphrey Waldock, who combined brilliant scholarship, great drafting skill, an exceptional gift of seeking out compromise as well as a capacity for painstaking and continuing hard work. The draft articles represent the culmination of almost two decades of effort on the part of the Commission, and the international community must be very grateful to the Commission for its outstanding work. It is the view of the Canadian Delegation that it now becomes the responsibility of governments, to whom the task of codification has now been assigned, to devote serious efforts of their own to the continuation of this work through the drafting of a successful International Convention. Such a Convention could constitute not only an extremely important further stage in the codification of international law but moreover make a significant contribution to world order by the regulation of inter-state relationships in the central field of their activities.

It would not be, in our view, appropriate at this time to go into any great detail on matters of substance. The Canadian Delegation believes that detailed comments can better be covered in written submissions,

for consideration by member states in advance of and also during the proposed conference. I might add, in this respect, that the Canadian Government itself may well be submitting further comments on the draft articles.

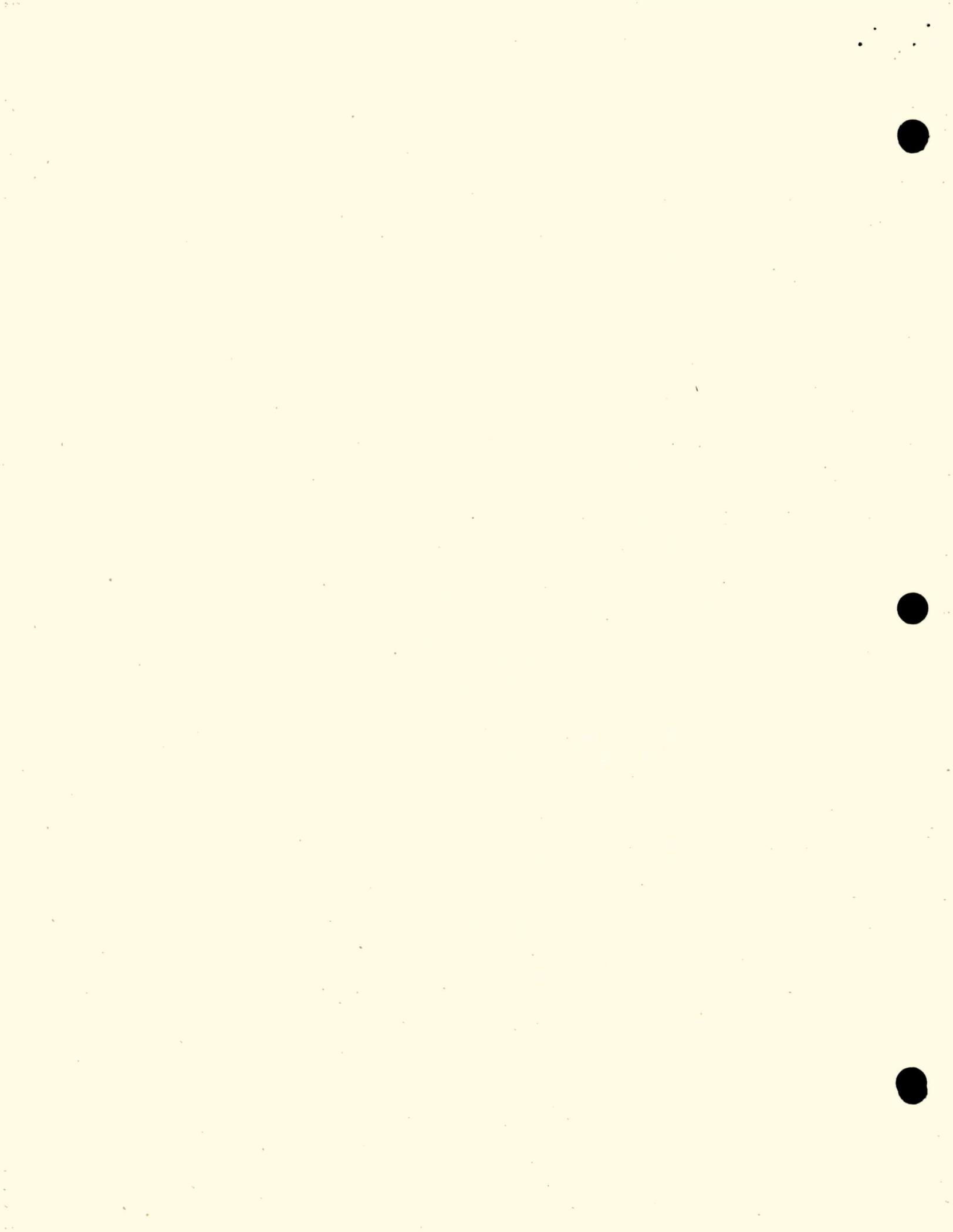
Nevertheless, there are certain more general matters of a broad nature arising from the draft articles on which I would like to comment at this time. In particular there is one important question of principle on which my Delegation wishes to make some observations.

It seems very clear to us that if the proposed Vienna Conference is to produce broad international agreement on the rules of law and the procedures which are in future to govern treaty relationships the conference must succeed in producing a Convention which will make a positive contribution to the orderly conduct by states of their treaty relationships and to the observance by them of their treaty obligations. This is not going to be an easy task, for the Special Rapporteur has already pointed out to us, in his statement on October 9, that divergent views exist even on the most basic questions. I think this fact may also be seen both from the debate in this Committee and from comments of governments. As the Canadian Representative on this Committee, speaking on this subject last year on October 6, 1966, and as other representatives both then and this year have also emphasized, the consequences of a failure - of an unsuccessful outcome - of the forthcoming plenipotentiary Conference on the Law of Treaties would be extremely serious. However, the fact that governments are prepared to join together in a conference for the purpose of drawing up an effective treaty is itself encouraging,



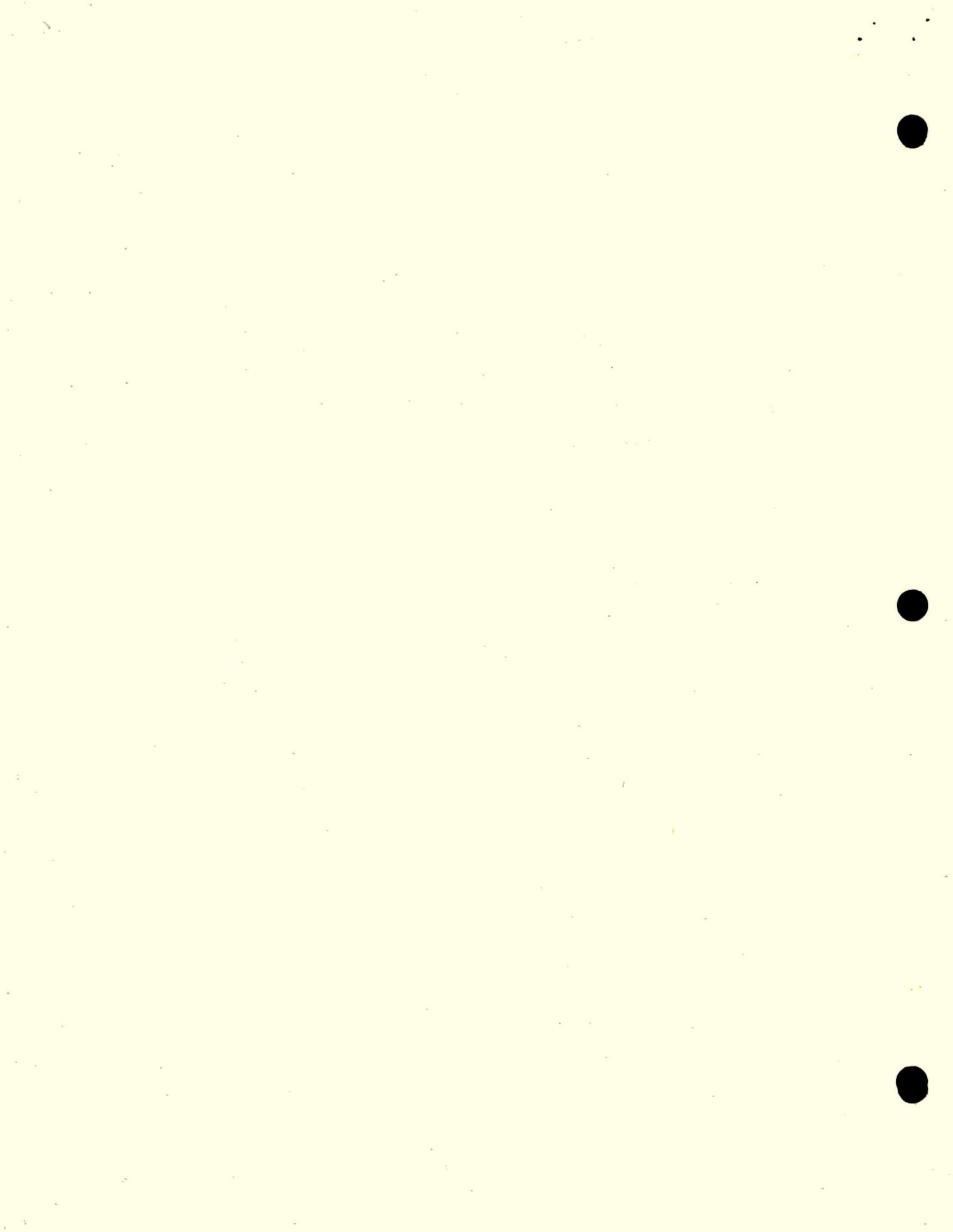
since it indicates that, despite the risks to which I have referred, they are confident that the challenge can be met.

In the draft, so painstakingly prepared by the International Law Commission, there are many articles which, in the view of my Delegation, enunciate desirable legal principles which will be difficult to apply in practice in the absence of parallel provisions for compulsory settlement of disputes. The articles dealing, for example, with peremptory norms of international law and with the effect of change of circumstances are among the most important but by no means the only examples of articles requiring in their application highly subjective judgements. It is the Canadian view that perhaps the greatest challenge that will face governments at the forthcoming conference will be to discover a satisfactory method of applying the principles of international law enunciated in the draft articles to the every-day treaty activities of states. This, after all, is surely the purpose of the Convention -- not merely to enunciate the law in the abstract but to enunciate it in such a manner that it will gain wide acceptability, receive effective application and keep to a minimum the possibility of disputes. Nothing is more likely to hold the international legal community up to disrepute than a series of disputes over a treaty intended to prevent treaty-disputes. Yet the one thing missing is a provision for effective means of settling such disputes. Perhaps it would be helpful if I were to indicate briefly at least some of the points on which, in the view of my Delegation, the conference will have to exercise particular care.



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.

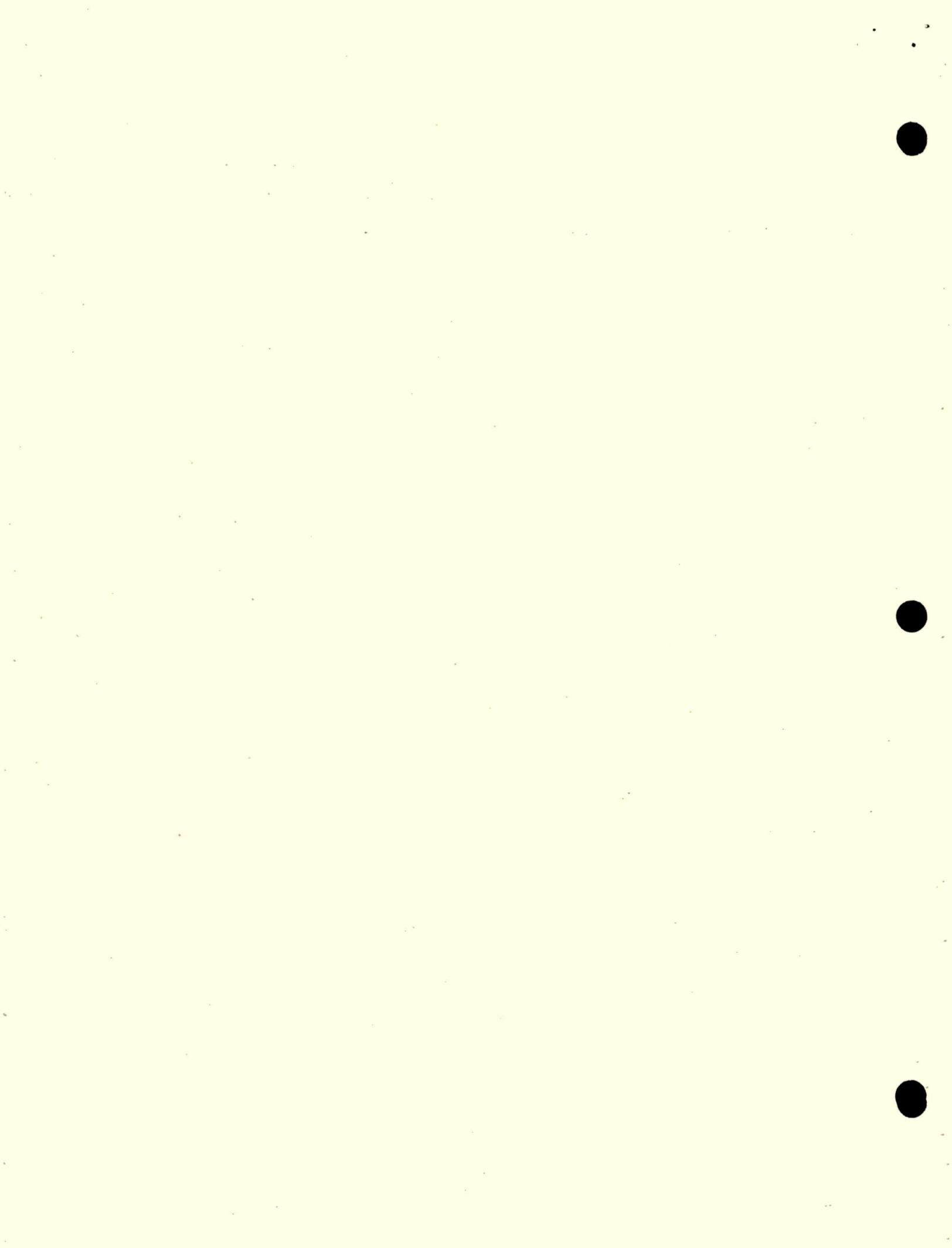
As might be inferred from my earlier remarks relating to the jus cogens articles my Delegation wonders whether the concept of establishing a fact or facts, as is contemplated by these articles, ought not necessarily to mean something more than the assertion of a given fact by only one party to a treaty. 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



to have been "established" and thus, that the provisions of the article concerned would not take effect before such time. Thus, at the very least, it will be necessary at the conference to consider carefully the relationship between Article 62 and the other articles referred to above.

There are other articles where problems of a different order exist, susceptible of solution by drafting changes. Articles 16 and 17, for example, dealing with reservations and objections to such reservations are also, in the view of my Government, articles requiring further clarification if they are not to prove a source of future difficulties. In our view, the language of Article 16(c) and related articles on treaties which contain no provisions for reservations, is not sufficiently clear as to whether a reservation, which is incompatible with the object and purpose of a particular treaty, has any legal effect, for example in connection with the coming into force of a multilateral treaty. Further clarification also appears desirable in relation to the problem which would arise in the case of a multilateral treaty, containing no provision *for reservations,* concerning the legal consequences of an objection by one state to a reservation made by another. Is there a treaty relation between the reserving state and the objecting state or does the existence of the treaty relation depend upon the consent of the objecting state.

There are a number of other articles which may be found in the discussions at the Vienna Conference to be a source of substantial difficulties of interpretation or to require further elaboration. I might mention in passing, as an example, Article 5, on Capacity. This Article, as a number of states have pointed out in their comments, appears

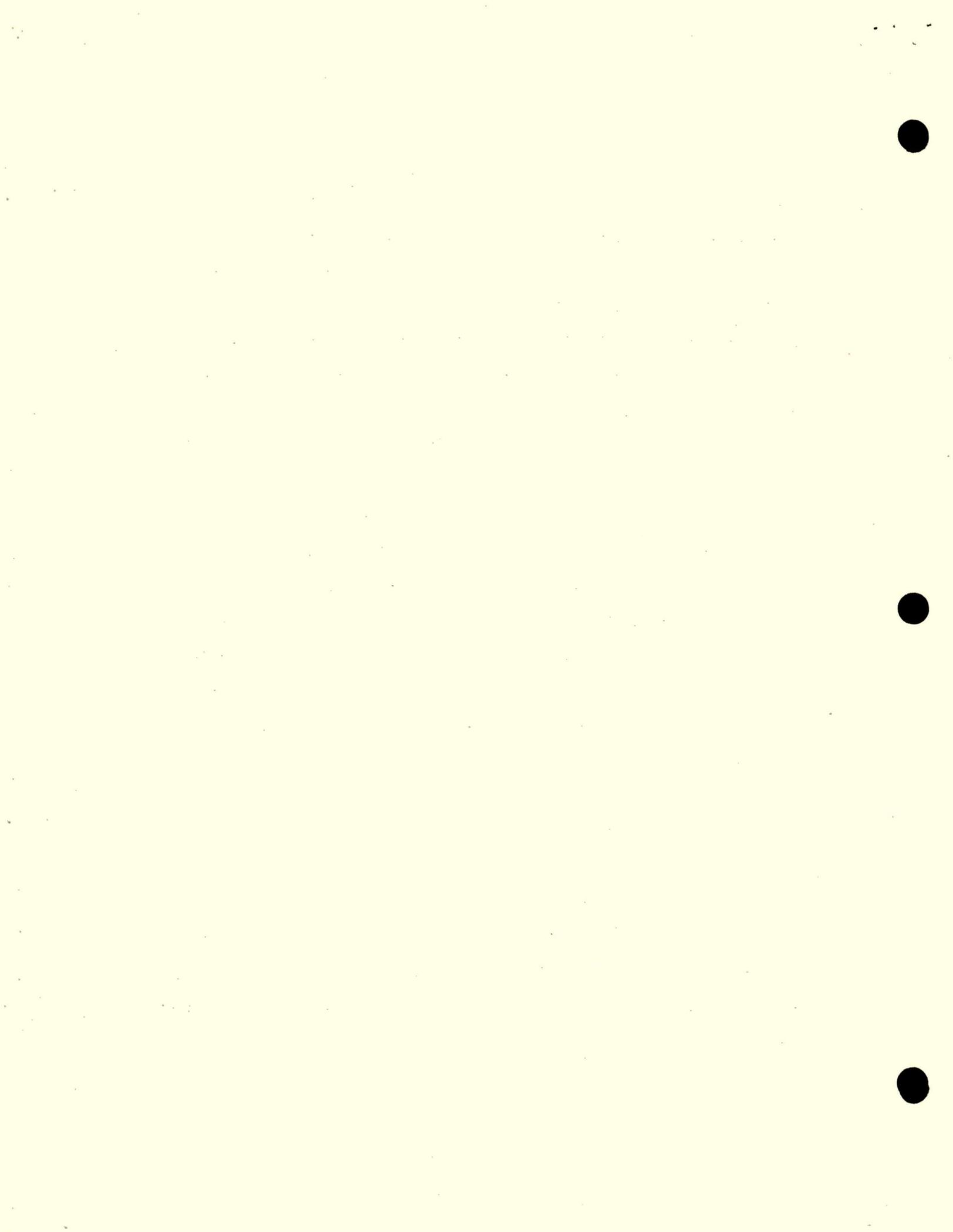


incomplete. It ignores such elements as recognition and state responsibility. Moreover, in its use of such a fundamental term as "state", it appears not wholly consistent with other articles in this same part of the draft convention.

Other articles may require further drafting or clarification. I might, for example mention that some clarification may be necessary with respect to the relationship between the provisions of Article 62(3) and Article 33 of the Charter, which in itself applies only to disputes likely to endanger international peace and security. While we appreciate that Article 62(3) refers to the means indicated in Article 33 of the Charter, it might also be desirable to make unmistakably clear that it is not the intention to limit the application of Article 62(3) itself only to disputes likely to endanger international peace and security.

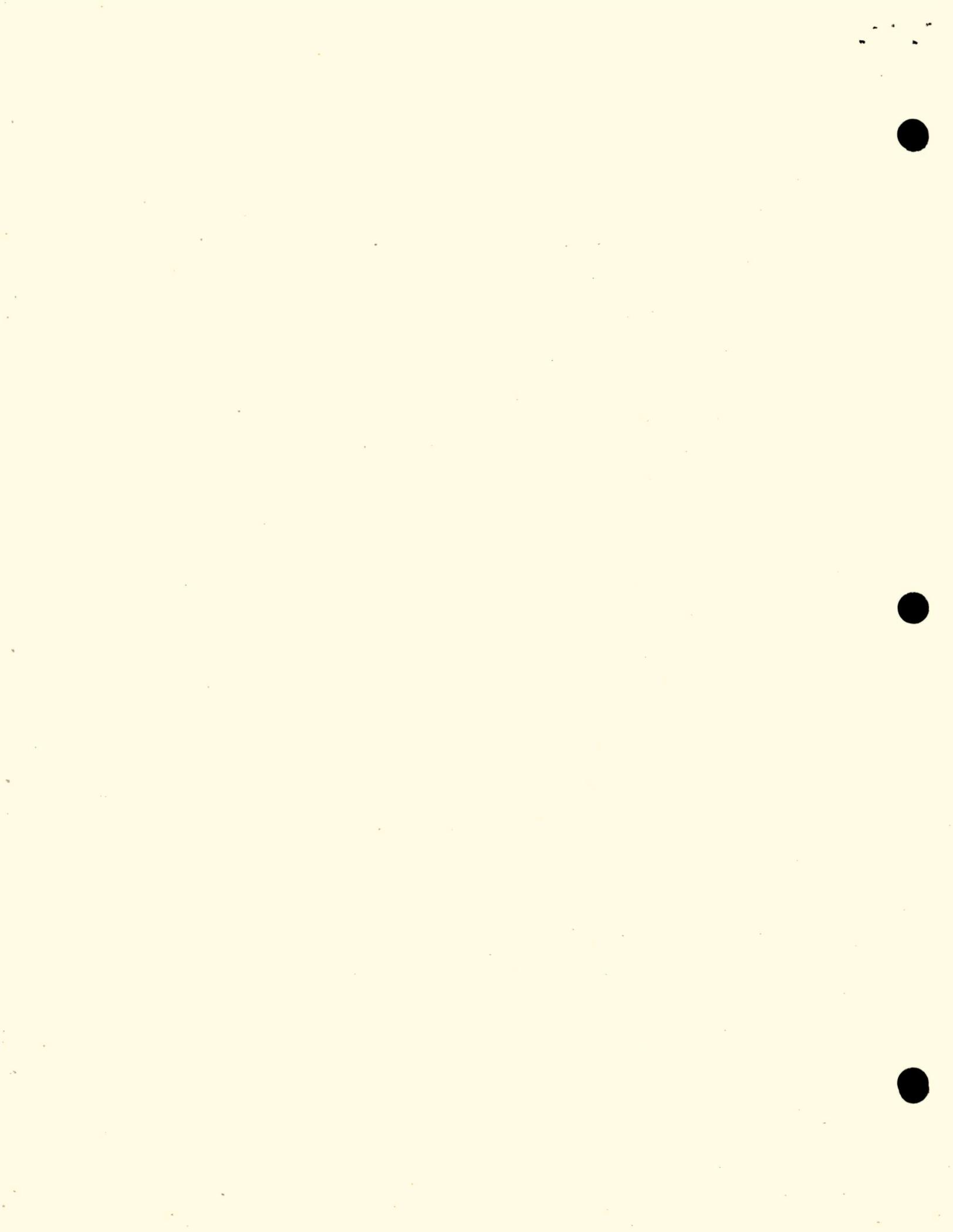
Considerations such as these emphasize the unique nature of the forthcoming conference, which will have to deal in detail not only with all the more hum-drum and routine aspects of treaty making procedures as such but also with some of the great and fundamental doctrinal issues in international law. Articles which may at first appear only to deal with formalities are often seen in part to raise issues of substance.

Mr. Chairman, before I end my remarks I would like to warmly welcome the invitation of the Government of Austria to hold our forthcoming conference in Vienna. As to the dates which have been proposed by the Secretariat for the first session of the conference, which is to say, from



late March through May of 1968, we will give careful consideration to the views already expressed and to those which may yet be expressed by other states on them, and we are prepared to associate ourselves with the wishes of the majority of the Committee in this regard. It will be particularly important for the conference to adopt workman-like procedures, so as to ensure that it will be able to get through its herculean task of reviewing 75 articles in less than as many days, that is, at the rate of more than one a day.

Mr. Chairman, in closing I would again like to stress that in the view of my Delegation this forthcoming conference on the Law of Treaties is assuredly going to be one of the most important of all the international *legal* conferences which have so far been held. Canadian authorities have taken the warning of Sir Humphrey Waldock, and have no illusions as to the formidable nature of the task which will confront the delegates to the conference, where they will have to deal with matters not only technically difficult but in many points controversial. Although the International Law Commission has now, as a body, carried out its own task to the full, work on the Law of Treaties itself is by no means yet completed and those at the conference are certainly going to have no easy task. The price that we will all have to pay if we are to succeed in forging a viable convention is hard work; hard work and willingness to compromise in purely doctrinal issues. But surely, if we are eventually successful, it will have been well worth the effort. This Treaty, if and when it comes into being, will not in any sense be like most others. It will indeed be a major event in the history of International Law. It will serve as a hand book and a navigation



guide to all of us, both to the ^{other}~~other~~ states, whose treaty practices may need updating and ^rrationalizing, and to those newer states which have only recently entered into formalized international relationships, as they are expressed in treaty form. Canada will certainly do everything in its power to ensure that the forthcoming conference is a success.

