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Fourth report on the question of Treaties concluded between States and international organizations or between two or more international organizations by Mr. Paul Reuter, Special Rapporteur, draft articles [articles 7 to 33], with commentaries (continued)

Topic:

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

Extract from the Yearbook of the International Law Commission:-

1975, vol. II

QUESTION OF TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

[Agenda item 4]

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Fourth report on the question of treaties concluded between States and international organizations, or between two or more international organizations by Mr. Paul Reuter, Special Rapporteur

Draft articles with commentaries* (continued)

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* For draft articles 1–4 and 6, see the third report (*Yearbook... 1974*, vol. II (Part One), p. 135, document A/CN.4/279.

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ABBREVIATIONS

[1975] 1 C.M.L.R.	*Common Market Law Reports*, vol. XV (1975) (London)
EEC	European Economic Community
FAO	Food and Agriculture Organization of the United Nations
IAEA	International Atomic Energy Agency
UPU	Universal Postal Union

Preface

1. At the twenty-ninth session of the General Assembly, the Sixth Committee devoted 14 meetings to consideration of the report of the International Law Commission on the work of its twenty-sixth session.[1] About 20 delegations, accounting for the majority of those which took part in the discussion of the report, mentioned in terms which were an encouragement to the Special Rapporteur the work of the Commission on the articles concerning treaties concluded between States and international organizations or between two or more international organizations.[2] In these statements, suggestions and recommendations were made which will undoubtedly assist the future work of the International Law Commission on this subject. Following this discussion, the Sixth Committee recommended that the International Law Commission should *inter alia*:

> (*d*) Proceed with the preparation of draft articles on treaties concluded between States and international organizations or between international organizations.

2. The General Assembly, in its turn, adopted the same recommendation in its resolution 3315 (XXIX) of 14 December 1974. The Special Rapporteur therefore considered that it was his duty to present in this fourth report the continuation of the draft articles, the first five articles having been adopted by the Commission in 1974.[3] The draft articles presented in this report cover the questions dealt with in articles 7 to 34 of the Vienna Convention on the Law of Treaties (1969);[4] in addition, provisions have been added corresponding to three subparagraphs in article 2, paragraph 1 of the 1969 Convention, study of which had been postponed until certain articles to which they seemed to be related were considered.

3. Five articles involve no change in relation to the provisions of the 1969 Convention: article 26 (*Pacta sunt servanda*), article 28 (Non-retroactivity of treaties) and the whole of part III, section 3, of the Convention (articles 31, 32 and 33) concerning interpretation of treaties. These are very general rules relating to the very essence of the conventional mechanism. Most of the other articles of the 1969 Convention—and in particular articles 8, 10, 12, 13, 15, 17, 18, 19 to 23, 24 and 25—required only purely drafting changes, of which the most important sometimes consisted in distinguishing for the sake of clarity, as had already been done previously, between treaties between one or more States and one or more international organizations, and treaties between two or more international organizations. In certain cases, however (for example articles 16, 27 or 29), the drafting changes—or even the lack of drafting changes—pose more difficult problems.

4. Finally, a small number of substantive problems have been raised by the articles submitted to the Commission.

5. In the first place, mention must be made of the question of full powers (article 7); in fact there is in practice considerable freedom with regard to full powers of international organizations and the problem arises of how to respect this practice while at the same time establishing a general principle.

6. Secondly, articles 9 and 10 concerning adoption and authentication require clarification of the role of international organizations. When such organizations intervene as potential parties to a treaty, with a position entirely comparable to that of a State, the rules of the 1969 Convention may apply. But sometimes international organizations play, with regard to a treaty, a role which is not that of a potential party, or it is not intended to give them all the rights of a party to a treaty: in this case, the rules of the Convention should not apply.

7. Thirdly, article 11 of the 1969 Convention raises the question, in the wording which evolved during the discussion at the United Nations Conference on the Law of Treaties, of the entire system of the Convention regarding the various forms of conclusion of treaties. The significance of this system must be analysed before it can be transposed to agreements concluded by international organizations. In fact, although the 1969 Convention is extremely flexible regarding the substance and name of the procedures, the question of "ratification" in the case of international organizations requires further study.

8. Fourthly, while articles 19 *et seq.* concerning reservations may be extended to agreements of international organizations with no difficulty, attention must be drawn to two important points. The first is that such an extension is for the time being of hardly any practical consequence, because international organizations do not in fact participate in open multilateral conventions for which the question of reservations is important. Secondly, if in the future multilateral conventions were in fact to be opened to international organizations, it would be necessary in general to draw a clear distinction between the competence of the organizations and that of the member States; otherwise inextricable difficulties would arise with regard to reservations.

9. Lastly, both territorial scope (article 29) and application of successive treaties relating to the same subject-matter (article 30) must be entirely reconsidered in the light of specific factors, the most important of which is the relationship between the organization and its member States.

10. These are the general features of the draft articles submitted in the present report for the consideration of the Commission.

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[1] *Yearbook... 1974*, vol. II (Part One), p. 157, document A/9610/Rev.1.

[2] See *Official Records of the General Assembly, Twenty-ninth Session, Annexes*, agenda item 87, document A/9897, paras. 136–157.

[3] See *Yearbook... 1974*, vol. II (Part One), p. 135 *et seq.*, document A/CN.4/279, and p. 292, document A/9610/Rev.1, para. 134.

[4] For the text of the Convention, see *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 289. The Convention will be referred to hereafter as "the 1969 Convention".

Draft articles and commentary

PART II. CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1. CONCLUSION OF TREATIES

Article 7. Full powers[5]

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

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States and international organizations concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

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

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

(*b*) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ or of a treaty with that organization.

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

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States and international organizations concerned or from other circumstances that their intention was to consider that person as representing the organization for such purposes and to dispense with full powers.

COMMENTARY

(1) The first two paragraphs of this draft article deal with the powers of representatives of States and the third paragraph deals with the powers of representatives of international organizations.

(2) It was necessary to reproduce the essence of the provisions of the 1969 Convention concerning representatives of States; this is because such representatives are called upon to take part in all treaties covered by these draft articles which are concluded between one or more States and one or more international organizations. It would not have been sufficient simply to include a reference to article 7 of the 1969 Convention, since the present draft must constitute an autonomous text in which all the provisions are self-sufficient. Paragraphs 1 and 2 of the present draft article involve only minor changes in relation to the text of the 1969 Convention, which do not seem to raise difficulties.

(3) In the first place, reference is made in paragraph 1(*b*) to the practice not only of the States but also of the organizations concerned. Secondly, paragraph 2(*b*) of article 7 of the 1969 Convention has not been included, because it deals exclusively with the case of a bilateral treaty between States, which is necessarily outside the scope of these draft articles. Thirdly, the enumeration in paragraph 2(*c*) of article 7 of the 1969 Convention, which has become paragraph 2(*b*) of the present draft article, has been supplemented by a reference to the special case of a treaty concluded between the permanent representative of a State to an organization and that organization itself.[6]

[5] Corresponding provision of the 1969 Convention:

"*Article 7. Full powers*

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

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

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

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

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

(*c*) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ".

[6] The term "accredited representative", taken from the 1969 Convention, seems to be equivalent to the term "head of mission" employed in the Vienna Convention of 14 March 1975 on the Representation of States in Their Relations with International Organizations of a Universal Character,[a] article 12 of which adopts the same solution as is proposed above. Article 12 of that Convention reads as follows:

"1. The head of mission, by virtue of his functions and without having to produce full powers, is considered as representing his State for the purpose of adopting the text of a treaty between that State and the Organization.

"2. The head of mission is not considered by virtue of his functions as representing his State for the purpose of signing a treaty, or signing a treaty *ad referendum*, between that State and the Organization unless it appears from the practice of the Organization, or from other circumstances, that the intention of the parties was to dispense with full powers".

(See the International Law Commission's commentary on article 12 of its draft articles on the representation of States in their relations with international organizations (*Yearbook... 1971*, vol. II (Part One), p. 284, document A/8410/Rev.1, chap. II, Sect. D).)

[a] For the text of the Convention, see *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16. The Convention will be referred to hereafter as "the Convention on the representation of States".

(4) With regard to representatives of international organizations, with whom paragraph 3 of this draft article is concerned, the practice may be summarized as follows:[7]

(*a*) In general, international organizations do not issue full powers to their representatives;

(*b*) The proof that a person is empowered to perform certain acts relating to the conclusion of a treaty sometimes derives simply from his functions, or from a deliberation of an organ concerning the conclusion of a treaty, or from a specific instrument; in the latter case, this is usually an informal instrument, such as a simple letter, rather than a formal instrument properly so called;

(*c*) The main reasons why in practice explicit powers are infrequently used seem to be the following. The treaties concluded by organizations are, with very few exceptions, bilateral treaties[8] which are only the last phase of lengthy contacts and consultations during which it has been established clearly, and usually in writing, which person is to represent the organization; moreover, it is the heads of the international secretariats or their immediate colleagues who in fact usually play the essential role, and the heads of secretariats are reluctant to resort to powers because it is difficult to imagine that they could issue the powers to themselves or that they could find a person more suitable than themselves to issue them.[9]

(5) In the opinion of the Special Rapporteur, one should clearly avoid any proposal which might impose upon practice servitudes which have so far not proved necessary in practice; but one should not go to the opposite extreme and dismiss the solution of principle whereby an organization would be able to issue full powers, since the development of organizations—either through access to open multilateral conventions or through the conclusion of treaties which bind more complicated administrative structures—[10] will make recourse to powers useful. The Special Rapporteur is therefore in favour of retaining a provision on the full powers of representatives of international organizations and would consider it inadvisable to try to tone down the term "full powers" by using any other expression which would indicate that these powers are not necessarily given in a very solemn form; the same is true of the powers of representatives of States and it was on the basis of comment by Governments that the International Law Commission unified the terminology of the texts which were to become the 1969 Convention by adopting the term "full powers".[11]

(6) There are ultimately two possible solutions. In a resolution adopted at its session in Rome, from 5 to 15 September 1973, the Institute of International Law gave its approval to the following formulation:

> Unless he is dispensed from doing so by his function or by practice, a person representing an organization for the purpose of adopting or authenticating the text of an agreement or for the purpose of expressing the consent of the organization to be bound by the agreement shall provide the other party with proof of his status, if that party so requests.[12]

(7) This formulation establishes the principle that the general solution is non-production of powers, since it establishes the right of "the other party" to demand them, with certain exceptions linked to practice or to the functions of the representative. While there is no objection in principle to a solution of this kind, there is perhaps no need to give a ruling on the freedom—proper solely to bilateral agreements—to request or not request that powers be produced, but simply to decide whether or not a representative needs powers. It would seem possible only to establish the rule that every representative needs powers, while leaving as much margin as is desired for exceptions. It may be asked whether, among the exceptions, special treatment should be given to the "functions" of the representative. This is the method followed in the 1969 Convention with regard to representatives of States; but that Convention refers—quite rightly—to very specific functions. If one cannot define these functions—as is indeed the case with representatives of international organizations—nothing is in fact added to the simple reference to "practice". It has not yet been established that functions can be defined either by their purpose or by the rank of the person con-

[7] See "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat" (*Yearbook... 1967*, vol. II, p. 154, document A/CN.4/L.118 and Add.1 and 2); H. Chiu, *The Capacity of International Organizations to conclude Treaties, and the Special Legal Aspects of the Treaties so Concluded* (The Hague, Nijhoff, 1966) p. 100; J.W. Schneider, *Treaty-Making Power of International Organizations* (Geneva, Droz, 1959) pp. 32 and 63; R.-J. Dupuy, "*L'application des règles du droit international général des traités aux accords conclus par les organisations internationales*", *Annuaire de l'Institut de droit international, 1973* (Basle), vol. 55, pp. 287, 366 and 718.

[8] Emphasis has repeatedly been placed in the past on the real and political obstacles which still stand in the way of the participation of international organizations in open multilateral treaties. See *Yearbook... 1972*, vol. II, pp. 172, 175, 183, 185 and 191–194, document A/CN.4/258, paras. 3, 12, 42, 48 and 64–75; and *Yearbook...* 1973, vol. II, pp. 79-81 and 86–87, document A/CN.4/271, paras. 23–33 and 69–77.

[9] In addition to the Secretariat study mentioned in foot-note 7 above, reference may be made to the replies from international organizations to the Special Rapporteur's questionnaire. See also *Yearbook... 1973*, vol. II, pp. 84–85, document A/CN.4/271, paras. 56–64; and the information given by Paul C. Szasz, *The Law and Practices of the International Atomic Energy Agency*, Legal Series No. 7, (STI/PUB/250) (Vienna, IAEA, 1970), pp. 910 *et seq.*

[10] In the European Communities, powers are used, for instance, when the Council of Ministers of the European Economic Community has decided to conclude an agreement and the President of the Council is then "authorized to designate the persons empowered to sign the Agreement and to confer upon them the necessary powers to bind the Community" (for an example, see the Council decision of 9 August 1974 concerning an Agreement between the European Economic Community and the World Food Programme, *Official Journal of the European Communities Legislation* (Luxembourg), 17th year, No. L307 (18 November 1974), p. 10.

[11] Compare the first report of Sir Humphrey Waldock, article 4 and commentary (*Yearbook .. 1962*, vol. II, pp. 38 *et seq.*, document A/CN.4/144) and the fourth report by the same author, article 1, para. 1 (*e*), and article 4 (*Yearbook .. 1965*, vol. II, pp. 15 and 18 *et seq.*, document A/CN.4/177 and Add.1 and 2).

[12] *Annuaire de l'Institut de droit international, 1973* (Basle), vol. 55, p. 792.

cerned, so as to evolve a formulation which would be valid for all organizations whatsoever.[13]

(8) One can therefore accept a second solution, which in the opinion of the Special Rapporteur has the advantage of being closer to the formulation used for representatives of States in article 7 of the 1969 Convention. No reference is made to the representative's functions and the necessary drafting change is made in article 7, paragraph 1, of the 1969 Convention to make it applicable to representatives of organizations. Thus the principle of full powers is retained, but the way is left open in a very general and flexible manner for all the waivers which in fact currently represent the usual practice.

Article 2. Use of terms

***Paragraph 1* (c)[14]**

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

COMMENTARY

The adoption of the definition included in the 1969 Convention, with purely drafting changes, is a necessary consequence of the adoption of draft article 7.

Article 8. Subsequent confirmation of an act performed without authorization[15]

An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State or international organization for that purpose is without legal effect unless afterwards confirmed by that State or organization.

COMMENTARY

Except for drafting changes, the text of this article is the same as that of the corresponding article of the 1969 Convention.

Article 9. Adoption of the text[16]

1. The adoption of the text of a treaty concluded between one or more States and one or more international organizations takes place by the consent of the State or States and the organization or organizations participating as potential parties in its drawing up.

2. The adoption of the text of a treaty between several international organizations takes place by the consent of the organizations participating as potential parties in its drawing up.

3. The adoption of the text of a treaty at an international conference admitting, in addition to States, one or more international organizations possessing the same rights as States at that conference, takes place by the vote of two thirds of the States and organizations present and voting, unless by the same majority the States and organizations shall decide to apply a different rule.

COMMENTARY

(1) The preparation of a draft article corresponding to article 9 of the 1969 Convention involved the resolution of a drafting difficulty and a substantive problem.

(2) From the standpoint of drafting, it seemed that the text would be clearer if, as in the case of some other articles, a separate paragraph was devoted to each of the two main categories of treaties dealt with in article 1 of the draft articles,[17] namely treaties concluded between one or more States and one or more international organizations, and treaties concluded between international organizations, even though the rule embodied in the two paragraphs is the same.

(3) With regard to substance, although no problem arises in referring to the States participating in the drawing up of the text of a treaty, the same is not true in the case of international organizations. As is well known, it is perfectly possible for an international organization to "participate in the drawing up of the text of a treaty" even though it is not expected to become a party to that treaty; this is the case for many treaties between States concluded under the auspices of an international organization, especially the draft treaties prepared by the International

[13] A reference to the "chief administrative officer of the Organization", using the wording of article 85 of the Convention on the Representation of States, would not only be difficult to apply to *all* organizations, but would not reflect the practice regarding full powers, since the immediate colleagues of secretaries-general are also exempt from producing full powers.

[14] Corresponding provision of the 1969 Convention:

"*Article 2. Use of terms*

"1. For the purposes of the present Convention

"...

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

[15] Corresponding provision of the 1969 Convention:

"*Article 8. Subsequent confirmation of an act performed without authorization*

"An act relating to the conclusion of a treaty performed by a person who cannot be considered under article 7 as authorized to represent a State for that purpose is without legal effect unless afterwards confirmed by that State."

[16] Corresponding provision of the 1969 Convention:

"*Article 9. Adoption of the text*

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

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

[17] See *Yearbook... 1974*, vol. II (Part One), p. 294, document A/9610/Rev.1, Chap. IV, sect. B.

Law Commission. Would it be possible for an organization thus to participate in the drawing up of the text of a treaty although it was not expected to become a party to that treaty, while other organizations were destined to become parties and participated in that capacity in the negotiation on the same footing as States? The Special Rapporteur felt that he should not disregard that eventuality,[18] of which the following example could be imagined: the United Nations might participate in the drawing up of the text of an economic agreement on a given product and the text would serve as a starting-point for an agreement concluded between two States and a regional organization administering a customs union. In order to avoid all ambiguity it is necessary to introduce—as has been done in paragraphs 1 and 2—the idea that the requirement relating to the consent ot the organizations which participated in the drawing up of the text concerns only the organizations which so participated *as potential parties*. If it should seem preferable not to use this form of wording it would also be possible to say "which participated in that drawing up *during the negotiation*", but this wording is less precise.

(4) The difficulty seems to disappear in the case of negotiation at a *conference*, but another difficulty immediately arises, involving the concept of a "party" to a treaty. This is a point which has been discussed at length in earlier reports.[19] In preparing its draft articles on the law of treaties the International Law Commission never considered whether the complex of rights and obligations which might belong to a State as "party" to a treaty could, setting aside the case of reservations, be attenuated; but once other subjects of law, especially international organizations, are introduced into the treaty machinery, the problem can no longer be avoided. In fact, the reasons justifying the hesitation of States to admit international organizations as full and complete "parties", especially in the case of multilateral treaties, may lead to the provision of a special status for organizations, especially with regard to the basic rights to participate in the drawing up, adoption, entry into force, modification and revision of the treaty. It would probably be for the States concerned to define in the case of each treaty, should they so desire, the particular conditions to be extended to organizations which were to become "parties" to the treaty under a special régime, and the Special Rapporteur does not think that the time has come to propose a general framework for this topic. But in the case of a rule as important as that of the two-thirds majority at international conferences, the vote of international organizations should not be placed on the same footing as the vote of States unless the organizations have the same rights as States at that conference: organizations accorded only some of the rights of the parties to a treaty cannot be included when calculating the two-thirds majority.

[18] A similar problem was previously set aside in connexion with article 2, para. 1 (*e*) (see *Yearbook... 1974*, vol. II (Part One), p. 294, document A/9610/Rev.1, chap. IV, sect. B).

[19] Especially the second report (*Yearbook... 1973*, vol. II, pp. 80–81, document A/CN.4/271, paras. 29 *et seq.*); and the first report (*Yearbook... 1972*, vol. II, p. 193, document A/CN.4/258, para. 73).

Article 2. Use of terms

Paragraph 1 **(g)**[20]

(*g*) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force; in the same conditions it means an international organization when its position with regard to the treaty is identical to that of a State party;

COMMENTARY

In the light of the considerations discussed above in connexion with draft article 9, the status of "party" to a treaty should be accorded only to international organizations whose relations with the treaty are in every respect comparable to those of the States parties. Organizations which are not in this position cannot *ipso facto* be accorded the full status of "party to a treaty"; their rights and obligations must be established on a case-by-case basis according to the particular régime to which they are subject.

Article 10. Authentication of the text[21]

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

(*a*) by such procedure as may be provided for in the text or agreed upon by the States and international organizations participating as potential parties in its drawing up; or

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

COMMENTARY

The changes are prompted by the same consideration as that set out in paragraph 3 of the commentary on draft article 9.

[20] Corresponding provision of the 1969 Convention:

"*Article 2. Use of terms*

"1. For the purposes of the present Convention

"...

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

[21] Corresponding provision of the 1969 Convention:

"*Article 10. Authentification of the text*

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

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

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

Article 11. Means of expressing consent to be bound by a treaty[22]

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

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

COMMENTARY

(1) Should article 11 of the 1969 Convention form the basis of a corresponding article in the present draft articles? This question raises first of all the matter of the scope of this article within the 1969 Convention. In fact, it serves as an introduction to articles 12, 13, 14 and 15, and its value is primarily descriptive. However, this character appears much more marked when one considers the evolution of article 11. First, in the original proposals of the Special Rapporteur, Sir Humphrey Waldock,[23] all the terms used were defined (article 1 (*g*), (*i*), (*j*), (*k*)) and generally speaking the articles dealing with each of the procedures enumerated were very long. After the debate in the Commission, however, the definitions had virtually disappeared from article 1 and merely followed from the commentaries.[24] In 1965, the observation made by a number of Governments showed that the lack of definitions resulted in a certain obscurity; the Special Rapporteur noted those observations[25] but proposed no remedy other than stressing that the terms were used in the sense given them in international law, irrespective of the meaning which they might be given in a specific national law. In its final report on the work of its eighteenth session[26] the International Law Commission maintained its general position, especially in the definitions contained in article 2. The position of the Commission may be summarized as follows: there are international acts designed to establish on an international plane the consent of a State to be bound by a treaty and these acts are the subject of a diversified and partially uncertain terminology. The presentation of the subject-matter was greatly modified by the proposals made by Poland and the United States at the United Nations Conference on the Law of Treaties, which were the origin of the existing article 11.[27] This new article introduced the articles which were to follow, completed as far as the exchange of instruments constituting a treaty was concerned by a new article 13, but it also stressed the purely descriptive character of all those provisions. In fact, it added "any other means if so agreed" to the list of procedures still undefined by which a State expresses its consent to be bound by a treaty. Consequently, the import of articles 11–15 was tantamount to saying the expression of consent is effected by any means, designated by any term, provided that this procedure has in one way or another been provided for or accepted by the States concerned. The purpose of this set of articles thus became largely descriptive; although the nature of signature (article 12), exchange of instruments constituting a treaty (article 13) and accession (article 15) raise few difficulties, the same as cannot be said of ratification, acceptance or approval (article 14); the nuances introduced into the way in which States can reach agreement on recourse to one or other of the procedures for expression of consent to be bound merely illustrate the sovereign freedom of States.

(2) The impression is thus given that this set of articles was included in the 1969 Convention primarily to reassure Governments by mentioning a terminology which was familiar to them and by demonstrating through many examples the wide freedom which they possessed. Another solution, consisting of formulating a more simple general principle in abstract terms, would probably not have had the same advantages, although from a theoretical point of view it would have been more intellectually satisfying.

(3) These considerations, which tend to define the precise scope of article 11 and the following articles of the 1969 Convention, dispose one to remain faithful, in the case of treaties to which international organizations are parties, to the method established by the United Nations Conference on the Law of Treaties and the 1969 Convention which it prepared. Some of the imprecisions of the Convention are thus incorporated in the present draft articles, but are not aggravated. One example is that of "approval"; it has been pointed out,[28] it is true, that in the practice of certain organizations the term "approval" has quite a different meaning from that which seems to follow from article 2, paragraph 1 (*b*) and article 11 of the 1969 Convention, but it should be remembered that in adopting article 2, paragraph 2, of the present draft articles the Commission adopted a general principle which eliminates all possibility of misunderstanding.[29]

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[22] Corresponding provision of the 1969 Convention:

"*Article 11. Means of expressing consent to be bound by a treaty*

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

[23] *Yearbook... 1962*, vol. II, p. 31, document A/CN.4/144.

[24] *Ibid.*, p. 161, document A/5209, chap. II, sect. II, article 1.

[25] *Yearbook... 1965*, vol. II, pp. 14–15, document A/CN.4/177 and Add.1 and 2, article 1, para. 1 (*d*); and *ibid.*, p. 158, document A/6009, para. 22.

[26] *Yearbook... 1966*, vol. II, A/6309/Rev.1, part two, chap. II, sect. C, para. 9 of the commentary to article 2.

[27] *Yearbook... 1972*, vol. II, p. 188, document A/CN.4/258, para. 55 and foot-note 141.

[28] K. Zemanek, "Agreements concluded by international organizations and the Vienna Convention on the Law of Treaties, *University of Toledo Law Review* (Toledo, Ohio), 1971, Nos. 1 and 2, p. 176. It was, apparently, both the uncertainty of the terminology and the doubts that might be raised by the term "ratification" which led the representative of Thailand to observe quite rightly at the 1496th meeting of the Sixth Committee of the General Assembly that the term "acceptance" could be used to include ratification as well as accession and that the terminology should be flexible (*Official Records of the General Assembly, Twenty-ninth Session, Sixth Committee*, 1496th meeting, para. 5).

[29] "The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State or by the rules of any international organization" (*Yearbook... 1974*, vol. II (Part One), p. 295, document A/9610/Rev.1, chap. IV, sect. B).

(4) It would thus be possible to propose a draft article 11 which would differ only by a simple drafting change from the corresponding provision of the 1969 Convention and would read as follows:

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

The Special Rapporteur was, however, deterred from adopting that course by a scruple concerning *ratification*. Whatever the uncertainties surrounding that term, which the International Law Commission did not define in the 1969 Convention, it remains closely linked to a lengthy tradition according to which the Head of State is the highest representative of the State on the international plane and in the case of formal treaties expresses his will on two occasions: first, through negotiators or diplomats holding full powers issued in his name and second, by the ratification of the agreement concluded by those representatives. Such concepts, whose monarchical origins are obvious, are foreign to international organizations which, by virtue of a general rule, have no recognized representative in international relations. It was noted long ago that the term "ratification" was not used in the practice of organizations;[30] despite an example (which is moreover subject to interpretation)[31] that is frequently cited (although the references are not always given), it seems that practice clearly runs counter to this example and that it is preferable not to use the term "ratification", but rather "approval" or any other term "if so agreed" in the case of international organizations.

(5) That is why draft article 11 has been divided into two paragraphs, the first relating to States and reproducing article 11 of the Vienna Convention, and the second relating to international organizations and omitting the term "ratification", which was used in the first paragraph.

Article 2. Use of terms

Paragraph (1b)[32]

(*b*) "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State or international organization establishes on the international plane its consent to be bound by a treaty; "ratification" means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

COMMENTARY

The change with respect to the corresponding provision of the 1969 Convention is justified by the comments made on ratification in the commentary on article 11 of the present draft articles.

Article 12. Consent to be bound by a treaty expressed by signature[33]

1. The consent of a State or international organization to be bound by a treaty is expressed by the signature of the representative of that State or organization when:

(*a*) the treaty provides that signature shall have that effect;

(*b*) it is otherwise established that the negotiating States or organizations were agreed that signature should have that effect; or

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

2. For the purposes of paragraph 1:

(*a*) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States and organizations so agreed;

(*b*) the signature *ad referendum* of a treaty by a representative of a State or organization, if confirmed by his State or organization, constitutes a full signature of the treaty.

COMMENTARY

The only changes made are drafting changes designed to extend the corresponding article of the 1969 Convention to cover international organizations.

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[30] H. Blix, "The requirement of ratification", *The British Year Book of International Law 1953* (London), vol. 30 (1954), p. 352.

[31] J.W. Schneider, *op. cit.* p. 54; H. Chiu *op. cit.*, p. 105; the example cited, (following *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II, (United Nations publication, Sales No. 61.V.3), p. 187) is the agreement of 30 October 1950 between Italy and FAO (FAO document CL 10/7), which mentions a resolution of the Conference authorizing the Director-General to negotiate an agreement provided that it was referred to the Council "for ratification"; but "ratification" here merely means "adoption", since the agreement was to come into force (art. XVIII) following an exchange of notes between the Director-General, duly authorized by a resolution of the Council, and the authorized representative of the Italian Government.

[32] Corresponding provision of the 1969 Convention:

"*Article 2. Use of terms*

"1. For the purposes of the present Convention

"...

"(*b*) 'ratification', 'acceptance', 'approval' and 'accession' mean in each case the international act so named whereby a State establishes on the international plane its consent to be' bound by a treaty."

[33] Corresponding provision of the 1969 Convention:

"*Article 12. Consent to be bound by a treaty expressed by signature*

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

"(*a*) the treaty provides that signature shall have that effect;

"(*b*) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

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

"2. For the purposes of paragraph 1:

"(*a*) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States so agreed;

"(*b*) the signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty."

Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty[34]

1. The consent of a State or international organization to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect; or

(*b*) it is otherwise established that that State and that organization were agreed that the exchange of instruments should have that effect.

2. The consent of two international organizations to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect; or

(*b*) it is otherwise established that those organizations were agreed that the exchange of instruments should have that effect.

COMMENTARY

There are two differences, relating solely to drafting questions, between the wording of this draft article and that of the corresponding article of the 1969 Convention. First, for the sake of clarity, the two fundamental cases, namely treaties between States and organizations and treaties between organizations, are dealt with in separate paragraphs. Second, the proposed wording is based on the fact that in practice treaties concluded by an exchange of instruments constituting a treaty operate only as bilateral conventions. This simplification does not present any problems, because in the unlikely event that a tripartite agreement should be concluded by an exchange of letters, such exchange would in effect establish three sets of bilateral relations.

Article 14. Consent to be bound by a treaty expressed by acceptance, approval or ratification[35]

1. The consent of a State or international organization to be bound by a treaty is expressed by acceptance or approval when:

(*a*) the treaty provides for such consent to be expressed by means of acceptance or approval;

(*b*) it is otherwise established that the negotiating States and organizations were agreed that acceptance or approval should be required;

(*c*) the representative of the State or organization has signed the treaty subject to acceptance or approval; or

(*d*) the intention of the State or organization to sign the treaty subject to acceptance or approval appears from the full powers of its representative or was expressed during the negotiation.

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

COMMENTARY

As regards acceptance and approval, cases involving States and cases involving international organizations can be dealt with simultaneously; ratification, however, must be limited to cases involving States, in order to take into account the considerations on which draft article 11 is based.[36] The order followed in article 14 of the 1969 Convention has therefore been reversed; thus, the draft article deals first with acceptance and approval and then with ratification.

Article 15. Consent to be bound by a treaty expressed by accession[37]

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

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

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

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[34] Corresponding provision of the 1969 Convention:

"*Article 13. Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty*

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

"(*a*) the instruments provide that their exchange shall have that effect; or

"(*b*) it is otherwise established that those States were agreed that the exchange of instruments should have that effect."

[35] Corresponding provision of the Vienna Convention:

"*Article 14. Consent to be bound by a treaty expressed by ratification, acceptance or approval*

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

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

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

"(*c*) the representative of the State has signed the treaty subject to ratification; or

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

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

[36] See above, para. 4 of the commentary to article 11.

[37] Corresponding provision of the 1969 Convention:

"*Article 15. Consent to be bound by a treaty expressed by accession*

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

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

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

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

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

COMMENTARY

Compared with the corresponding text of the 1969 Convention, this draft article contains only the drafting changes required to take account of international organizations.

Article 16. Exchange, deposit or notification of instruments of ratification, acceptance, approval or accession[38]

Unless the treaty otherwise provides or it is otherwise agreed, instruments of ratification, acceptance, approval or accession establish the consent of a State or international organization, as the case may be, to be bound by a treaty upon:

(a) their exchange between a contracting State and a contracting international organization, or between two contracting international organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting States and international organizations or to the depositary, if so agreed.

COMMENTARY

Article 16 of the 1969 Convention is basically designed to establish the moment at which the consent to be bound by a treaty is established and in operation with respect to other contracting parties.[39] There is no reason why the rules it establishes should not apply to international organizations. Some drafting changes have been made with respect to the corresponding draft article:

(a) The title of the article has been completed by including a reference to notification, which was inexplicably omitted from the 1969 Convention.

(b) The reservation "unless the treaty otherwise provides", at the beginning of article 16 of the 1969 Convention, has been completed by the phrase "unless it is otherwise agreed", which appears in so many articles of that Convention. Indeed, the international organizations should be allowed as much latitude as possible on this point. The existence of practices that differ considerably from those relating to treaties between States has already been noted.[40] It is becoming increasingly common for each party to notify the other of the completion of all the procedures required under the legal rules applicable for each party for the establishment of definitive consent to be bound by a treaty.

(c) The inclusion of the words "as the case may be" makes it possible to take into account what was said above concerning non-recourse by international organizations to the ratification procedure.[41]

(d) The wording of draft article 13 was taken into account in drafting subparagraph (a).

Article 17. Consent to be bound by part of a treaty and choice of differing provisions[42]

1. Without prejudice to articles 19 to 23, the consent of a State or international organization to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States or international organizations so agree.

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

COMMENTARY

Compared with the corresponding text of the 1969 Convention, this draft article contains only the drafting changes required to take account of international organizations.

[38] Corresponding provision of the 1969 Convention:

"*Article 16. Exchange or deposit of instruments of ratification, acceptance, approval or accession*

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

"(a) their exchange between the contracting States;

"(b) their deposit with the depositary; or

"(c) their notification to the contracting States or to the depositary, if so agreed."

[39] See *Yearbook... 1966*, vol. II, p. 201, document A/6309/Rev.1, part two, chap. II, commentary to article 13.

[40] Thus, Chiu (*op. cit.*, p. 104), points out that sometimes bilateral agreements between two international organizations come into force upon the latest approval by the competent collective organ, although it is not always clear how the approval is communicated to the other organization. Occasionally, a protocol of entry into force is signed after the actual entry into force. In this regard, see R.J. Dupuy, *op. cit.*, p. 300. In the case of a bilateral agreement between a State and an international organization which is subject to ratification by the State, the organization goes through a corresponding formality which is called "adoption", "approval" or some other name. Thus, the parties follow a formula according to which the treaty is concluded on the date on which they notify each other of the completion of the required procedures. Another example, with one difference, is the procedure followed for the agreement between the European Economic Community and the People's Republic of Bangladesh (*Official Journal of the European Communities—Legislation* (Luxembourg), 3 December 1974, 17th year, No. L.323, p. 18 *et seq.*

[41] See above, para. 4 of the commentary to article 11.

[42] Corresponding provision of the 1969 Convention:

"*Article 17. Consent to be bound by part of a treaty and choice of differing provisions*

"1. Without prejudice to articles 19 and 23, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

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

Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force[43]

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

(*a*) the State or organization has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, as the case may be, until the State or organization shall have made its intention clear not to become a party to the treaty; or

(*b*) the State or organization has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

COMMENTARY

Compared with the corresponding text of the 1969 Convention, this draft article contains only the drafting changes required to take account of international organizations.

SECTION 2. RESERVATIONS

General commentary on section 2

(1) Articles 19 to 23 of the 1969 Convention dealing with reservations, are clearly one of the principal parts of the Convention, on account of both their technical preciseness and the great flexibility which they have introduced into the régime of multilateral conventions. It must therefore be admitted at the outset that analogous provisions prepared with the object of the present draft articles in mind are only of limited immediate practical interest. It has been said, and should be constantly repeated, that treaties concluded by international organizations are almost always bilateral treaties, for which reservations may come into play in theory but are of no interest in practice. The few multilateral treaties to which international organizations are parties are all treaties which fall under the provisions of article 20, paragraph 2; in other words, they only allow a very limited play to the reservations mechanism. Multilateral treaties open to a large number of signatories constitute the area in which reservations have a real practical function, and it is well-known that at present there are still very serious obstacles to the accession of international organizations to such treaties. To devote draft articles to reservations, therefore, meets a logical need which is only beginning to emerge in concrete form.

(2) Given this qualification, there is no reason to put international organizations in a situation different from that of States in the matter of reservations. It is the quality of being a "party" to a treaty which governs the whole system of reservations. It follows from the definition previously retained[44] that an organization is described as a "party" to a treaty only if it has been admitted to a treaty régime in exactly the same conditions as a State. This means that the reservations régime established for States may be extended to international organizations only if, by definition, the organization is placed on exactly the same footing as the State. It is therefore clearly a question of making a choice of a political nature which is for the time being entirely in the hands of States; they may refuse access to a treaty to one organization or to all organizations; they may also admit an organization to partial enjoyment of the treaty régime; it is only in a third case, when the organization is fully admitted to the treaty régime as a "party", that the general reservations régime will apply.

(3) Some may perhaps remain open to the idea that reservations to a treaty are an evil which cannot be entirely proscribed and must be accepted as a concession to the sovereignty of States, but should be restricted as much as possible. From this viewpoint, one may perhaps come to think that organizations, which cannot claim the same sovereignty (and to which a kind of natural disinterestedness is sometimes attributed), should not enjoy the same freedom as States. Arguments of this kind are, however, highly questionable in every respect. Reservations cannot be qualified at the ethical level; they reflect a fact, namely that there are minorities whose interests are as respectable as those of majorities; organizations whose activity as often as not reflects that of a majority of their members may be in a minority in a broader perspective; there is therefore no reason to be stricter towards them than towards States.

(4) There may also be a fear that if an organization is admitted as a party to a treaty at the same time as the States which are members of that organization, all sorts of complications may arise from the play of reservations and objections which might cause an organization to be divided and opposed to its own members. This objection is not wholly unrealistic, but it goes well beyond the problem of reservations; it only draws attention to the fact that if an organization and its members may be admitted as separate parties to a treaty, it is on condition that the respective areas of competence of the organization and of its members should be clearly separate. If this were not the case, the majority of member States of an organization would have a twofold participation in the treaty, as States and as an organization, and a contradiction might arise between the commitments of the organization and those of its members which were not parties to the treaty

[43] Corresponding provision of the 1969 Convention:

"*Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force*

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

"(*a*) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

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

[44] See above, article 2, para. 1(*g*).

or which, being parties to the treaty, by means of their own reservations had defined their obligations in a different way from the organization. That is why it cannot be accepted without precautions that an organization should be party to a treaty at the same time as its own members; either a situation of this kind must be governed by special rules, or else it must be ensured that the areas of competence of the organization and of its member States are clearly defined, and that the rules of the treaty will apply in different situations for the organization and for its member States. This, for instance, would occur in the case of a copyright convention, to which an organization acceded solely to protect its own publications, while its member States acceded to the Convention in respect of publications (excluding those of the organization) issued in their respective territories. These considerations shed further light on the reasons why multilateral treaties have not hitherto been open to international organizations and probably will become so only in certain specific cases. If, however, for the sake of argument, it is assumed that the organization has become a party to such a convention, to defend and promote its own specific interests, there is no reason to treat that organization differently from a State.

(5) It is in this spirit and in the light of these considerations that draft articles which extend the rules embodied in articles 19 to 23 of the 1969 Convention to the agreements to which international organizations are parties will be submitted. These draft articles will contain only minor drafting changes in relation to the corresponding texts of the 1969 Convention; no special commentary will be made.

Article 19. Formulation of reservations[45]

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

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(*c*) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

[45] Corresponding provision of the 1969 Convention:

"*Article 19. Formulation of reservations*

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

"(*a*) the reservation is prohibited by the treaty;

"(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

"(*c*) in cases not falling under sub-paragraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty."

Article 20. Acceptance of and objection to reservations[46]

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

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

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

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(*a*) acceptance by another contracting State or international organization of a reservation constitutes the reserving party a party to the treaty in relation to that other contracting party if or when the treaty is in force for those contracting parties;

(*b*) an objection by another contracting State or international organization to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving contracting parties unless a contrary intention is definitely expressed by the objecting contracting party;

(*c*) an act expressing the consent of a contracting State or international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State or international organization has accepted the reservation.

[46] Corresponding provision of the 1969 Convention:

"*Article 20. Acceptance of and objection to reservations*

"1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting State unless the treaty so provides.

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

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

"4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

"(*a*) acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

"(*b*) an objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving State unless the contrary intention is definitely expressed by the objecting State;

"(*c*) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

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

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a contracting State or international organization if it shall have raised no objection to the reservation by the end of a period of 12 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.

Article 21. Legal effects of reservations and of objections to reservations[47]

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(*a*) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(*b*) modifies those provisions to the same extent for that other party in its relations with the reserving party.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a contracting State or international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving contracting party, the provisions to which the reservation relates do not apply as between the two contracting parties to the extent of the reservation.

Article 22. Withdrawal of reservations and of objections to reservations[48]

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(*a*) the withdrawal of a reservation becomes operative in relation to another contracting State or international organization only when notice of it has been received by that State or international organization;

(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the reserving party.

Article 23. Procedure regarding reservations[49]

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and international organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization, as the case may be, when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

SECTION 3. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF TREATIES

Article 24. Entry into force[50]

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States and international organizations may agree.

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[47] Corresponding provision of the 1969 Convention:

"*Article 21. Legal effects of reservations and of objections to reservations*

"1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

"(*a*) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

"(*b*) modifies those provisions to the same extent for that other party in its relations with the reserving State.

"2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

"3. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation."

[48] Corresponding provision of the 1969 Convention:

"*Article 22. Withdrawal of reservations and of objections to reservations*

"1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

"2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

"3. Unless the treaty otherwise provides, or it is otherwise agreed:

"(*a*) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

"(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State which formulated the reservation."

[49] Corresponding provision of the 1969 Convention:

"*Article 23. Procedure regarding reservations*

"1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

"2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

"3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

"4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing."

[50] Corresponding provision of the 1969 Convention:

"*Article 24. Entry into force*

"1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States and international organizations.

3. When the consent of a State or international organization to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State or organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States and international organizations to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

COMMENTARY

It was pointed out earlier[51] that, particularly in the case of bilateral treaties between international organizations, varied and frequently original formulas are found in practice; however, the text of article 24 of the Convention is extremely flexible and is perfectly suitable, with a few changes of a purely drafting character, for treaties to which international organizations are parties.

Article 25. Provisional application[52]

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(*a*) the treaty itself so provides; or

(*b*) the negotiating States or international organizations have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating States or international organizations have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or organization shall be terminated if that State or organization notifies the other States or organizations between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

COMMENTARY

This text differs from article 25 of the 1969 Convention only with respect to the drafting changes needed in order to take account of international organizations.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26. Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.[53]

Article 27. Internal law of a State, rules of an international organization and observance of treaties[54]

Without prejudice to article 46, failure to perform a treaty may not be justified

(*a*) in the case of a State, by the provisions of its internal law;

(*b*) in the case of an international organization, by the rules of the organization.

COMMENTARY

(1) The general principle underlying article 27 of the 1969 Convention is certainly valid also in the case of international organizations. In this latter instance, however, it requires some basic clarification and a terminological choice.

(2) The question was touched on earlier, with regard to article 2, paragraph 2, by the International Law Commission at its twenty-sixth session.[55] The Commission finally drafted that paragraph as follows:

"2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

"3. When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides.

"4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text."

[51] See foot-note 40 above.

[52] Corresponding provision of the 1969 Convention:

"*Article 25. Provisional application*

"1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

"(*a*) the treaty itself so provides; or

"(*b*) the negotiating States have in some other manner so agreed.

"2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty".

[53] The titles of part III, of section 1 of this part, and of article 26, and the text of article 26 reproduce unchanged the wording of the 1969 Convention on the Law of Treaties.

[54] Corresponding provision of the 1969 Convention:

"*Article 27. Internal law and observance of treaties*

"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

[55] See *Yearbook... 1974*, vol. II (Part One), pp. 296–297, document A/9610/Rev.1, chap. IV, sect. B. paras. 14–16 of the commentary to article 2.

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

Draft article 27 uses the same expression for the purposes of consistency with article 2.

(3) It is doubtless of no purpose to revert to a question which, as the Special Rapporteur noted in his first report,[56] has long held the Commission's attention in the past. By adopting the expression "rules of the organization" the Commission remains faithful to the wording of texts which have already been approved by international conferences, namely article 5 of the 1969 Convention which provides that:

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

and article 3 of the Convention on the Representation of States, which reads as follows:

The provisions of the present Convention are without prejudice to any relevant rules of the Organization or to any relevant rules of procedure of the conference.

As the Commission stated in the report on its twenty-sixth session: "Other expressions such as 'internal law of an organization', 'law proper to an organization' and the like were discarded for substantive reasons or for the sake of simplicity".[57]

(4) The expression "rules of the organization" is to be understood in a broad sense and includes the constituent instrument of the organization, such written rules as it may have been able to elaborate in the exercise of its powers, and the unwritten rules resulting from the practices established by the organization.[58]

There should also, it seems, be included among these rules of the organization such rules as derive from other treaties concluded by the organization; it would be unreasonable for an organization to be able, for example, to invoke the provisions of a headquarters agreement as a pretext for failing to perform a treaty of co-operation which it has concluded with another international organization.[59] This latter extension of the concept of "rules of the organization" should, however, be understood as being subject to the special provisions provided for under draft article 30, which will be considered at a later stage.

SECTION 2. APPLICATION OF TREATIES

Article 28. Non-retroactivity of treaties[60]

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

COMMENTARY

It will always be possible to criticize any wording which attempts to reduce a rule on the subject to a few simple formulas. The Special Rapporteur therefore felt that, in accordance with a general line of conduct endorsed previously, he should refrain from any attempt to improve on the Convention, independently of specific problems relating to international organizations.

Article 29. Territorial scope of treaties[61]

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each State Party in respect of its entire territory.

COMMENTARY

(1) Article 29 is one of those articles which, if we refer to the work of the Commission and of the United Nations Conference on the Law of Treaties, might give rise to misunderstandings. In order to avoid such misunderstandings and to show what specific problems arise with regard to treaties concluded by international organizations, it might be useful to consider the origins of article 29 of the 1969 Convention.

(2) In its original proposal, the International Law Commission sought to regulate fundamentally the *territorial scope* of rules established by a treaty, in the absence of any indication resulting from the treaty or from any other circumstance; it in no way intended to exclude or resolve questions relating to extra-territorial application, or to take sides on questions relating to constitutional structure such as those which exist above all (but not exclusively) in

[56] See *Yearbook... 1972*, vol. II, pp. 178–182, document A/CN.4/258, paras. 25–36.

[57] *Yearbook... 1974*, vol. II (Part One), p. 297, document A/9610/Rev.1, chap. IV, sect. B, para. 16 of the commentary to article 2.

[58] The Convention on the Representation of States, in article 1, paragraph 1, sub-paragraph 34, defines the expression "rules of the Organization" as follows:

"1. For the purposes of the present Convention:

"...

"(34) 'rules of the Organization' means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the Organization."

[59] In the case of an organization which has centralized institutions and, in particular, a court of justice, the rules of the organization tend to be organized in a *system* which necessarily includes the rules deriving from treaties which it has concluded; see the judgement of the Court of Justice of the European Communities of 30 April 1974, R. and V. Haegeman v. Belgian State, Case 181/73, [1975] 1 C.M.L.R., p. 515).

[60] The text of art. 28 of the 1969 Convention is identical with draft art. 28.

[61] Corresponding provision of the 1969 Convention:

"*Article 29. Territorial scope of treaties*

"Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory."

federations, and still less to refer, even by name, to what was, at one time, called the "colonial clause" in treaties.[62]

(3) Before and during the Conference, objections were voiced again and were reflected, *inter alia*, in an amendment submitted by the Ukrainian Soviet Socialist Republic; but in accepting that amendment, the Drafting Committee regarded it only as a drafting change and the text, thus modified, was adopted without opposition, both in the Committee of the Whole and in the plenary meeting, and became the present article 29 of the 1969 Convention.[63] It therefore seems that the idea behind article 29 is that a distinction must be made between the treaty and the application of some of the rules established by the treaty. The treaty binds the State and the whole State, since, from the point of view of international law, the State is indivisible, while the application of the rules which it establishes, although it extends to the entire territory unless there is an indication to the contrary, may be limited to certain parts of it. Without going into the question of whether the idea is as certain as it appears at first sight, it must be recognized that it is difficult to express and cannot perhaps be translated entirely satisfactorily.

(4) In any event, it is certain that if the formula of the article is to be retained with regard to States parties to treaties to which the present draft articles apply, article 29 of the 1969 Convention must be modified along the lines indicated in the draft article 29 set out above, as the Special Rapporteur proposes.

(5) This solution, however, which only resolves a drafting problem, by no means exhausts the question. In fact, it might be wondered whether it would not be permissible to accept the concept of "territory of an organization". It would not be difficult to give examples of international organizations in whose proceedings use is made of formulas which refer to the notion of territory in connexion with the organization: "single postal territory" (UPU)[64], "single territory", "territory of the Community".[65] However, it must be recognized that in most cases the use of such terminology is not intended to imply a claim that the international organization in question has seen itself as having been assigned a territory similar to the territory of a State. When, for example, the régime of a customs union X is being defined and mention is made of the "customs territory of X", the intention is only to define the spatial extent of the régime of the customs union, and, in a more general way, the term "territory" refers only to the spatial scope of application of given rules. Taken in that narrow sense, it does not give rise to any objections from the legal standpoint. However, in the current state of evolution of international law, it is probable that many Governments would raise objections to any reference to the notion of territory in connexion with an international organization.

(6) It is true that any reference to the territory of an organization could be avoided by referring simply to the territory of its member States. If a solution of that kind was adopted, draft article 29 should include a second paragraph worded as follows:

> Unless a different intention appears from the treaty or is otherwise established, the scope of application of a treaty extends, in the case of an international organization which is a party to the treaty, to the entire territory of the States members of that organization.

However, a formula of that kind represents a considerable departure from article 29 of the 1969 Convention in the use which it makes of the term "scope of application" ("*champ d'application*"), which gives rise to difficulties of translation into other languages; in any event, the text of the first paragraph would have to be changed in order to bring it into line with this second paragraph. Moreover, such wording would inevitably raise, at least apparently, the question of the effects of treaties concluded by an international organization with regard to States which are members of that organization, a very difficult question which the Special Rapporteur will have to study in his next report in connexion with draft articles 34 *et seq.* For all these reasons, he relies on the judgement of the Commission on this point.

(7) In reality, the application of article 29 of the 1969 Convention to the case of treaties to which one or more international organizations are parties might give rise to a quite different problem, but one which does not arise for a State. Whereas the unitary structure of the modern State is very pronounced at the international level, the same is not necessarily true of all international organizations. As has been observed on several occasions,[66] apart from their statutory organs, organizations often comprise subsidiary organs, based on a decision by the organization, and "connected organs", whose existence rests on an inter-State convention but which find themselves, with the consent of the organization, connected with the latter; it might be wondered to what extent, as far as external relations are concerned, subsidiary organs or connected organs enjoy genuine autonomy. To what extent do agreements concluded by such an organ or on its behalf commit the whole organization? To what extent do agreements concluded by the organization bind the "subsidiary organs" and the "connected organs"? These two questions are complementary and the second is probably of greater interest to organizations than that of determining the *spatial* scope of application of treaties concluded by an organization.

(8) This point is, however, mentioned only to show that the question of the spatial scope of application of rules established by a treaty to which an organization is a

[62] The final report of the International Law Commission gives a summary of the difficulties which the Commission encountered and which were emphasized by certain Governments (*Yearbook... 1966*, vol. II, commentary on art. 25, p. 213).

[63] For complete references to all the preparatory work, see S. Rosenne, *The Law of Treaties, A Guide to the Legislative History of the Vienna Convention* (Leiden, Sijthoff, 1970), pp. 206 *et seq.*

[64] Constitution of UPU, article 1 (United Nations, *Treaty Series*, vol. 611, p. 64).

[65] For instance, one might quote the following extract from the judgement handed down on 12 December 1974 in case 36–74 by the Court of Justice of the European Communities:

> "The rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or of the place where they take effect, can be located within the territory of the Community." ([1975] 1 C.M.L.R., p. 335.)

[66] For instance, in the second report (*Yearbook... 1973*, vol. II, pp. 85–86, document A/CN.4/271, paras. 65–68).

party is not the most important question for the organization. But the Special Rapporteur will not propose any article on the extension to the subsidiary organs and connected organs of international organizations of rules established by treaties concluded by the latter because it did not seem to the International Law Commission that the matter was sufficiently ripe to be a subject for codification.[67]

Article 30. Application of successive treaties relating to the same subject-matter[68]

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States and organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

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

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

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

(*a*) as between States or international organizations parties to both treaties the same rule applies as in paragraph 3;

(*b*) as between a State or international organization party to both treaties and a State or international organization party to only one of the treaties, the treaty which binds the two parties in question governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State or another international organization under another treaty.

COMMENTARY

(1) With the exception of a few essential drafting changes in paragraphs 1, 4 and 5, no change is proposed from the corresponding provisions of the 1969 Convention. This does not mean that the draft article gives rise to no difficulties and calls for no commentary.

(2) Mention should first of all be made of a few features of article 30 of the 1969 Convention. The Convention establishes, in respect of relations between successive treaties relating to the same subject-matter, a differentiated system which comprises a general régime, represented by article 30, and covers particular cases, such as the amendment and modification of treaties (arts. 39, 40, 41) and the termination and suspension of operation of treaties (arts. 54, 57, 58, 59). Moreover, as is reflected in article 30, paragraph 5, this provision is not intended to recognize or deal with questions relating to legality or responsibility which might arise in connexion with successive treaties relating to the same subject-matter; its sole purpose is to regulate a question of priority of application.[69] But it was perhaps difficult to be more specific; if, for instance, reference had been made to what was meant by "the same subject-matter", many questions might have been asked; in order to fulfil the condition of relating to "the same subject-matter", is it sufficient for two successive treaties, although dealing with a different general subject, to raise the same point in a particular provision? Or must the general subject be identical? On this latter question, the Expert Consultant, at the request of one delegation, made the following reply at the United Nations Conference on the Law of Treaties:

> [The words "relating to the same subject-matter"] should not be held to cover cases where a general treaty impinged indirectly on the content of a particular provision of an earlier treaty; in such cases, the question involved such principles as *generalia specialibus non derogant*.[70]

As the 1969 Convention does not deal elsewhere with problems relating to a conflict between successive treaties which include incompatible provisions and which would require an analysis questioning their general or specialized character, it must be concluded that, despite its apparent complexity, the Convention by no means examined all aspects of the problem.

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[67] See *Yearbook... 1973*, vol. II, p. 224, docum ent A/9010/Rev.1 para. 131.

[68] Corresponding provision of the 1969 Convention:

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

"1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

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

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

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

"(*a*) as between States parties to both treaties the same rule applies as in paragraph 3;

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

"5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty."

[69] See *Yearbook... 1966*, vol. II, pp. 214–217, document A/6309/Rev. 1, part II, chap. II, commentary to article 26.

[70] *Official Records of the United Nations Conference on the Law of Treaties, Second Session, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.70.V.6), p. 253, 91st meeting of the Committee of the Whole, para. 41.

(3) It is possible to give another example, which is similar to the previous one. By referring in paragraph 1 to Article 103 of the Charter of the United Nations, the Committee showed not only that on occasion it interpreted the concept of "treaties relating to the same subject-matter" fairly broadly (what treaty could relate to the same subject-matter as the Charter?), but that it neglected to make generally applicable the case thus provided for. In fact, the 1969 Convention extends to the constituent charters of international organizations and should it not, at least in respect of treaties concluded between the States members of each international organization, establish the principle of the priority of the constituent charters in respect of treaties concluded between States members of those organizations? But since neither the International Law Commission nor the United Nations Conference on the Law of Treaties wished to consider the matter extensively, the Special Rapporteur will not attempt to consider in connexion with the present draft articles all the specific cases which might come to mind, particularly those resulting from the fact that perhaps a distinction should be made as to whether or not the parties to the successive treaties in question include States which are States members of the international organizations concerned.

(4) In the very first paragraph, article 30 raises a question of principle. Without discussing here the interpretation of Article 103 of the Charter, it raises the question of the possible effects of Article 103 with regard to States which are not Members of the United Nations.[71] But the effect of Article 103 with regard to *international organizations* presents specific questions. To take first the case of the United Nations itself, although it is not a party to the Charter, the Organization is not a third party in relation to its constituent charter[72] and it is quite clear that if the United Nations was to conclude an international treaty which was contrary to the provisions of the Charter, there would be not merely a question of priority, but a question of nullity since it seems—and this is a question which will be discussed later in connexion with a draft article corresponding to article 46 of the 1969 Convention—that such a treaty might be null and void.

(5) If the problem is considered in a more general way, can it be said that international organizations are third parties in relation to the Charter of the United Nations not only because they cannot be members of the Organization but because this is so under the rules of the 1969 Convention itself (arts. 34 *et seq.*)? The Special Rapporteur has received no mandate to discuss such a question, which falls within the subject-matter covered by the Convention, since the latter relates also to the constituent charters of international organizations. However, he felt that it would be rather difficult to accept that international organizations, the vast majority of whose members are States Members of the United Nations, could disregard the rules of the Charter.

(6) However, if it is considered preferable to keep more closely to the text of Article 103 (which deals with the "obligations of the Members of the United Nations" and with nothing else), and to make a distinction between the general principles of the Charter, which have today acquired a customary value for all members of the international community, and the specific provisions, which would only bind Member States, article 30, paragraph 1, should be worded as follows:

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject-matter shall, subject, in respect of States, to Article 103 of the Charter of the United Nations, be determined in accordance with the following paragraphs.

SECTION 3. INTERPRETATION OF TREATIES

General commentary to section 3

(1) Part III, section 3, of the 1969 Convention consists of three articles which are, on the conventional plane, the exact translation, for the purposes of interpretation, of the provisions governing a general agreement, whoever the parties to it might be; moreover, these three articles have been drafted without using the word "State". They can therefore be transferred as they stand, without any substantive or drafting changes, to the present set of draft articles.

(2) There is indirect confirmation of this conclusion. Never, to the knowledge of the Special Rapporteur, has it been suggested that the interpretation of treaties to which one or more international organizations are parties presents special features. The same does not apply to treaties which are the constituent instrument of an international organization. In fact, by consulting international judicial practice, it is possible to hold that the interpretation of the constituent charters of international organizations presents particular characteristics, for instance because of the importance which should be attached to teleological factors.[73] However, the question has never been raised either in the International Law Commission or at the Conference on the Law of Treaties; it was no doubt felt that the provisions in part III, section 3, of the 1969 Convention allowed those factors to be given their proper place, in so far as was necessary. In any event, the constituent charters present more original features, by comparison with treaties between States, than do treaties to which international organizations are parties.

Article 31. General rule of interpretation[74]

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms

[71] L.M. Goodrich, E. Hambro, A.P. Simons, *Charter of the United Nations*, 3rd ed. (New York, Columbia University Press, 1969), p. 614. At the United Nations Conference on the Law of Treaties, the representative of Switzerland indicated that his country would be obliged to make a reservation to the future Convention with regard to the proposed article (see *Official Records of the United Nations Conference on the Law of Treaties, First Session, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.68.V.7), p.164, 31st meeting of the Committee of the Whole, para. 9).

[72] See *Yearbook... 1973*, vol. II, p. 90, document A/CN.4/271, para. 91.

[73] For instance, Ch. de Visscher, *Problèmes d'interprétation judiciaire en droit international public* (Paris, Pédone, 1963), p. 140.

[74] Text identical with the corresponding provision of the 1969 Convention.

of the treaty in their context and in the light of its object and purpose.

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

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

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

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

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

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

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

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

Article 32. Supplementary means of interpretation[75]

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

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

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

Article 33. Interpretation of treaties authenticated in two or more languages[76]

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

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

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

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

[75] Text identical with the corresponding provision of the 1969 Convention.

[76] Text identical with the corresponding provision of the 1969 Convention.