

Document:-  
**A/CN.4/L.327**

**Texts proposed by the Drafting Committee: articles 1, 2 (except for para. 1, subparas. (d) and (h)), 3, 4, and 6 to 18) - reproduced in A/CN.4/SR.1681, paras. 6 et seq**

Topic:  
**Treaties concluded between States and international organizations or between two or more international organizations**

Extract from the Yearbook of the International Law Commission:-  
**1981, vol. I**

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**Co-operation with other bodies**

[Item 11 of the agenda]

**WELCOME TO THE OBSERVER FOR THE  
INTER-AMERICAN JURIDICAL COMMITTEE**

16. The CHAIRMAN welcomed Mr. Aja Espil, Observer for the Inter-American Juridical Committee.

17. Mr. BARBOZA welcomed Mr. Aja Espil as the representative of a venerable organ embodying the Latin-American legal tradition, which had contributed so much to international law in general, as a distinguished compatriot and as a friend and collaborator.

18. Mr. PINTO said that, as the Commission's representative to the January 1981 session of the Inter-American Juridical Committee, he had not merely had the good fortune to meet Mr. Aja Espil and his distinguished colleagues, but had been able to see at first hand that their work was of the highest order. The Commission should avail itself of Mr. Aja Espil's presence to discuss the many ideas which he knew Mr. Aja Espil had for strengthening the relationship between it and his Committee.

19. Mr. AJA ESPIL thanked the Commission for its welcome and associated himself with the tribute paid to Mr. Raton.

*The meeting rose at 4 p.m.*

**1681st MEETING**

*Tuesday, 30 June 1981, at 10.15 a.m.*

*Chairman: Mr Doudou THIAM*

*Present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Suchar-itkul, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.*

**Questions of treaties concluded between States and international organizations or between two or more international organizations (continued)\*  
(A/CN.4/339 and Add.1-7, A/CN.4/341 and Add.1, A/CN.4/L.327)**

[Item 3 of the agenda]

**DRAFT ARTICLES PROPOSED BY THE  
DRAFTING COMMITTEE<sup>1</sup>**

1. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that he had the honour to introduce the draft articles proposed by the Committee, contained in document A/CN.4/L.327.

2. In order to highlight the relationship between the draft articles and the corresponding provisions of the Vienna Convention,<sup>2</sup> the Drafting Committee had retained the numbering adopted on first reading, which was the same as for the Convention. Provisions of the draft which had no equivalent in the Convention were designated *bis, ter*, etc., as appropriate. The Committee had borne in mind that it was not the intention of the Commission to complete the second reading of the draft articles at the present session. The question of the final numbering and the title of the articles could be dealt with after the second reading, at which stage the Drafting Committee would, in accordance with past practice, also undertake the final polishing of the draft as a whole. In that respect, the Committee had sought to do everything possible for the time being. For example, square brackets had been eliminated wherever they appeared in the draft adopted on first reading.

3. In reviewing the draft articles referred to it, the Committee had considered whether it was possible, in specific instances, to consolidate the text of individual articles, as had been suggested in the observations of Governments and in comments made in the Commission, and as had been proposed by the Special Rapporteur in his tenth report (A/CN.4/341 and Add.1). Whenever the characteristics of the types of treaty so warranted, the Drafting Committee had decided to maintain the textual distinctions made in the articles adopted on first reading, with a view to achieving clarity and precision and thus facilitating the application and interpretation of the rules concerned. On the other hand, when repetition was deemed less justified, the Committee had proceeded to simplify the text as far as possible by merging two paragraphs into one paragraph, which was applicable to all the treaties that were the subject-matter of the draft. That had been done in the case of articles 13, 15 and 18.

4. In drafting the various language versions of the articles, the Committee had attempted to reflect the Commission's intention to maintain to the maximum the spirit and language of the Vienna Convention. In some instances it had therefore reverted to the language of that Convention. The titles of parts I and II and of part II, section 1, reproduced those found in the Vienna Convention.

5. The Drafting Committee proposed that the title of part I should read: "Part I. Introduction".

*The title of Part I was adopted.*

**ARTICLE 1<sup>3</sup> (Scope of the present articles) and**

\* Resumed from the 1679th meeting.

<sup>1</sup> For the initial discussion at the present session of the draft articles, see 1644th to 1652nd, and 1673rd to 1679th meetings.

<sup>2</sup> See 1644th meeting, footnote 3.

<sup>3</sup> For the initial consideration of the text by the Commission at the present session, see 1644th meeting, paras. 28 to 36.

ARTICLE 2<sup>4,5</sup> (Use of terms)

6. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following texts for articles 1 and 2:

*Article 1. Scope of the present articles*

The present articles apply to:

- (a) treaties concluded between one or more States and one or more international organizations, and
- (b) treaties concluded between international organizations.

*Article 2. Use of terms*

1. For the purposes of the present articles:

(a) "treaty" means an international agreement governed by international law and concluded in written form:

- (i) between one or more States and one or more international organizations;
- or
- (ii) between international organizations, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "ratification" means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(b bis) "act of formal confirmation" means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its consent to be bound by a treaty;

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

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

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

...

(e) "negotiating State" and "negotiating organization" mean respectively:

- (i) a State
- (ii) an international organization

which took part in the drawing-up and adoption of the text of the treaty;

(f) "contracting State" and "contracting organization" mean respectively:

- (i) a State
- (ii) an international organization

<sup>4</sup> Except for subparagraphs (d) and (h) of paragraph 1.

<sup>5</sup> For the initial consideration of the text by the Commission at the present session, see 1644th meeting, paras. 28 *et seq.*, 1645th meeting, paras. 3 *et seq.*, 1646th meeting, paras. 1-35 and 47-71, and 1648th meeting, para. 23.

which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) "party" means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force;

...

(i) "international organization" means an intergovernmental organization;

(j) "rules of the organization" means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the organization.

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 meaning which may be given to them in the internal law of any State or in the rules of any international organization.

7. The Drafting Committee had not made any changes in the text of article 1.

8. In the case of article 2, it had decided to consider the meanings attributed to the terms included in paragraph 1 in conjunction with the draft articles in which those terms were first employed. However, it would decide on subparagraphs (d) and (h) of paragraph 1 at a later stage. The text of the article remained unchanged, except for some minor amendments to subparagraphs 1 (c) and (c bis) of the English version, where the words "the purpose of" had been deleted and the word "performing" had been replaced by "accomplishing", in order to make it consistent with the other language versions and with the corresponding article of the 1969 Vienna Convention. Similarly, in paragraph 2, the word "by" in the English text had been replaced by "in" and, in the Spanish text, the word "*normas*" had been replaced by "*reglas*", which was used in subparagraph 1 (j) and in subparagraph 1 (34) of the corresponding article of the 1975 Vienna Convention.<sup>6</sup>

9. Mr. USHAKOV proposed that, in article 1, subparagraph (a), the comma after the words "international organizations" should be replaced by a semi-colon and that, in article 2, subparagraph 1 (a) (i), the semi-colon after the words "international organisations" should be replaced by a comma.

10. Mr. REUTER (Special Rapporteur) said that United Nations practice regarding punctuation had always been uncertain, and the text of the Vienna Convention was extremely erratic in that respect. In his view, it would be better if the reply came from a member of the Secretariat.

11. Mr. ROMANOV (Secretary to the Commission) said he thought it would be preferable, in view of the structure of the provision, to retain the comma in article 1, subparagraph (a), to replace the semi-colon in article 2, subparagraph 1 (a) (i) by a comma, and then to add a semi-colon after the words "international organizations" in subparagraph 1 (a) (ii) of the same article.

<sup>6</sup> See 1644th meeting, footnote 7.

12. Mr. CALLE Y CALLE, referring to the comments by Mr. Reuter, said that individual subparagraphs of an article normally ended with a semi-colon, but subdivisions of subparagraphs were normally separated only by commas.

13. Sir Francis VALLAT noted that the punctuation used in the English version of the Convention differed from that used in the French version.

14. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to replace the semi-colon at the end of article 2, paragraph 1 (a) (i), by a comma.

*It was so decided.*

*Articles 1 and 2 were adopted.*

ARTICLE 3<sup>7</sup> (International agreements not within the scope of the present articles)

15. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 3:

*Article 3. International agreements not within the scope of the present articles*

The fact that the present articles do not apply:

- (i) to international agreements to which one or more international organizations and one or more subjects of international law other than States or international organizations are parties; or
- (ii) to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or international organizations are parties; or
- (iii) to international agreements not in written form concluded between one or more States and one or more international organizations, or between international organizations;

shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present articles to which they would be subject under international law independently of the articles;
- (c) the application of the present articles to the relations between States and international organizations or to the relations of international organizations as between themselves, when those relations are governed by international agreements to which other subjects of international law are also parties.

16. In the light of the discussion in the Commission, the Drafting Committee had replaced the word "entities" in subparagraphs (i) and (ii) of the introductory paragraph and in subparagraph (c) by the expression "subjects of international law", which was used in the Vienna Convention.

*Article 3 was adopted.*

ARTICLE 4<sup>8</sup> (Non-retroactivity of the present articles)

<sup>7</sup> For the initial discussion of the draft articles at the present session, see 1646th meeting, paras. 1–35.

<sup>8</sup> *Idem.*

17. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 4:

*Article 4. Non-retroactivity of the present articles*

Without prejudice to the application of any rules set forth in the present articles to which treaties between one or more States and one or more international organizations or between international organizations would be subject under international law independently of the articles, the articles apply only to such treaties concluded after the entry into force of the present articles with regard to those States and those organizations.

18. The only change made in the draft article was in the English version, where the words "the said articles as regards" had been replaced by "the present articles with regard to", which was the wording used in the Vienna Convention.

*Article 4 was adopted.*

19. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed that the titles of Part II and of Part II, Section 1, should read: "Part II. Conclusion and entry into force of treaties", and "Section 1. Conclusion of treaties".

*The titles of Part II and of Section 1 were adopted.*

ARTICLE 6<sup>9</sup> (Capacity of international organizations to conclude treaties)

20. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to the text of article 7, which read: by the Commission on first reading, which read:

*Article 6. Capacity of international organizations to conclude treaties*

The capacity of an international organization to conclude treaties is governed by the relevant rules of that organization.

*Article 6 was adopted.*

ARTICLE 7<sup>10</sup> (Full powers and powers)

21. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to the text of article 7, which read:

*Article 7. Full powers and powers*

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty between one or more States and one or more international organizations or for the purpose of expressing the consent of the State to be bound by such a treaty if:

- (a) he produces appropriate full powers; or
- (b) it appears from practice or from other circumstances that that person is considered as representing the State for such purposes without having to produce full powers.

<sup>9</sup> *Idem.*, paras. 36–46.

<sup>10</sup> *Idem.*, paras. 47–60.

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 between one or more States and one or more international organizations;

(b) heads of delegations of States to an international conference, for the purpose of adopting the text of a treaty between one or more States and one or more international organizations;

(c) heads of delegations of States to an organ of an international organization, for the purpose of adopting the text of a treaty between one or more States and that organization;

(d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between one or more States and that organization;

(e) heads of permanent missions to an international organization, for the purpose of signing, or signing *ad referendum*, a treaty between one or more States and that organization, if it appears from practice or from other circumstances that those heads of permanent missions are considered as representing their States for such purposes without having to produce full powers.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty if:

(a) he produces appropriate powers; or

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

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

(a) he produces appropriate powers; or

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

*Article 7 was adopted.*

ARTICLE 8<sup>11</sup> (Subsequent confirmation of an act performed without authorization)

22. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 8:

*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 or an international organization for that purpose is without legal effect unless afterwards confirmed by that State or that organization.

23. The word "that" had been inserted before "organization" in the English version for the purposes of consistency with the other language versions.

*Article 8 was adopted.*

ARTICLE 9<sup>12</sup> (Adoption of the text)

24. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 9:

*Article 9. Adoption of the text*

1. The adoption of the text of a treaty takes place by the consent of all the international organizations or, as the case may be, all the States and organizations participating in its drawing-up except as provided in paragraph 2.

2. The adoption of the text of a treaty between States and one or more international organizations at an international conference of States in which one or more organizations participate takes place by the vote of two-thirds of the States and organizations present and voting, unless by the same majority they shall decide to apply a different rule.

25. In order to achieve greater precision, the word "participants" in paragraph 1 had been replaced by "international organizations or, as the case may be, all the States and organizations participating", which corresponded more closely to the terminology used in article 9 of the Vienna Convention.

26. In paragraph 2, the word "participants" had been replaced by "States and organizations", which also corresponded more closely to the relevant article of the Vienna Convention. The reason why different expressions were used in paragraphs 1 and 2 to replace the noun "participants" was that, in paragraph 1, the word "treaty" covered the two kinds of treaties that were the subject-matter of the draft, whereas paragraph 2 related to only one kind of treaty. Also, paragraph 2 further specified that the international conference was a conference of States in which one or more international organizations participated. In the English version, the words "the latter" had been replaced by "they", which was used in the corresponding provision of the Vienna Convention, and the equivalent term was used in the other language versions of the article.

27. Finally, in keeping with the drafting technique used throughout most of the draft, the term "international organization" was used only the first time that it appeared in a paragraph or subparagraph, the word "international" having been deleted when it recurred. The technique was not intended to be unalterable; it might not be applicable in certain cases—for example, when two types of treaty were described—and its uniform use could more appropriately be reviewed after consideration of all the draft articles had been completed.

28. Mr. JAGOTA, referring to paragraph 2, wondered whether texts were to be adopted by the vote of two-thirds of the States and two-thirds of the organizations present and voting, or by a majority of two-thirds of the States and organizations present and voting combined.

29. Mr. REUTER (Special Rapporteur) said that the answer to Mr. Jagota's question was provided by the syntax of the French text as proposed by the Drafting Committee: the two-thirds majority was calculated in terms of all the States and international organizations,

<sup>11</sup> *Idem*, paras. 61–71.

<sup>12</sup> *Idem*.

since the adjectives “*présents*” and “*votants*” were in the masculine plural. That was indeed the solution which the Drafting Committee had had in mind when it had taken its decision.

30. The French text did not call for any change, but he would not comment on whether the other language versions were also an accurate reflection of the solution sought by the Drafting Committee.

31. Mr. BARBOZA said that he agreed with the Special Rapporteur’s interpretation of paragraph 2. It might be advisable to include a brief reference to that interpretation in the commentary to the draft article.

*Article 9 was adopted.*

ARTICLE 10<sup>13</sup> (Authentication of the text)

32. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 10:

*Article 10. Authentication of the text*

1. The text of a treaty between one or more States and one or more international organizations 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 organizations participating in its drawing-up; or

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

2. The text of a treaty between international organizations is established as authentic and definitive:

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

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

33. The only change was in the English version, in which the word “those” should be inserted before the word “organizations” in paragraph 1 (b).

*Article 10 was adopted.*

ARTICLE 11<sup>14</sup> (Means of expressing consent to be bound by a treaty)

34. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 11:

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

1. The consent of a State to be bound by a treaty between one or more States and one or more international organizations 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, act of formal confirmation, acceptance, approval or accession, or by any other means if so agreed.

35. The Committee had concluded that there was no convincing reason for maintaining the distinction implied by the use of the words “express” and “establish” and had therefore replaced “established”, in paragraph 2, by “expressed”. Furthermore, in both paragraphs 1 and 2, the word “is” had been replaced by “may be” to align the text with that of article 11 of the Vienna Convention.

*Article 11 was adopted.*

ARTICLE 12<sup>15</sup> (Consent to be bound by a treaty expressed by signature)

36. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 12:

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

1. The consent of a State to be bound by a treaty between one or more States and one or more international organizations is expressed by the signature of the representative of that State when:

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

(b) it is otherwise established that the negotiating States and negotiating organizations 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. The consent of an international organization to be bound by a treaty is expressed by the signature of the representative of that organization when:

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

(b) it is otherwise established that the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations were agreed that signature should have that effect; or

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

3. For the purposes of paragraphs 1 and 2:

(a) the initialling of a text constitutes a signature when it is established that the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations so agreed;

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

37. For the reasons already given in connection with article 11, the Committee had decided to replace, in

<sup>13</sup> *Idem.*

<sup>14</sup> *Idem.*

<sup>15</sup> *Idem.*, 1647th meeting, paras. 1–33.

paragraph 2, the word "established" by "expressed" when referring to the consent of an international organization to be bound by a treaty.

38. In addition, in subparagraphs 1 (b) and 3 (a) the words "participants in the negotiation", which had been considered ambiguous, had been replaced by a reference to the negotiating States and negotiating organizations, as appropriate, in keeping with the wording of the Vienna Convention.

39. Finally, a new subparagraph on the lines of subparagraph 1 (b) had been inserted as 2 (b), so that paragraph 2 now paralleled paragraph 1. The Committee had found no justification for maintaining the distinction that had been drawn between the situation of international organizations and of States in respect of expression of consent by signature.

*Article 12 was adopted.*

ARTICLE 13<sup>16</sup> (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty)

40. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 13:

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

The consent of international organizations or, as the case may be, of States and 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 or, as the case may be, those States and those organizations were agreed that the exchange of instruments should have that effect.

41. The Drafting Committee had decided to merge the two paragraphs of article 13 adopted on first reading, as proposed by the Special Rapporteur and as suggested by Governments and members of the Commission. The article did not describe the type of treaty involved, for the term "treaty" was already defined in article 2. The title and text had been aligned with those of the corresponding article of the Vienna Convention by replacing the word "established" by "expressed", and also by inserting the phrase "it is otherwise established".

*Article 13 was adopted.*

ARTICLE 14<sup>17</sup> (Consent to be bound by a treaty expressed by ratification, act of formal confirmation, acceptance or approval)

42. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 14:

*Article 14. Consent to be bound by a treaty expressed by ratification, act of formal confirmation, 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 and negotiating organizations 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 an international organization to be bound by a treaty is expressed by an act of formal confirmation when:

(a) the treaty provides for such consent to be expressed by means of an act of formal confirmation;

(b) it is otherwise established that the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations were agreed that an act of formal confirmation should be required;

(c) the representative of the organization has signed the treaty subject to an act of formal confirmation; or

(d) the intention of the organization to sign the treaty subject to an act of formal confirmation appears from the powers of its representative or was expressed during the negotiation.

3. The consent of a State or of an international organization to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification or, as the case may be, to an act of formal confirmation.

43. The Committee had made changes similar to those made in earlier articles, for the purpose of uniformity. As in article 13, the description of the type of treaty had simply been replaced by the term "treaty". In that connection, one member of the Committee had expressed reservations about the simplified formula and had taken the view that the saving of a few words did not compensate for the loss of precision. In paragraph 3, the words "or as the case may be" had been added, between commas, for greater clarity.

44. Mr. USHAKOV said that it might be better to replace the expression "an act of formal confirmation", in subparagraphs 2 (a), (b) and (c), by "the act of formal confirmation".

45. Mr. REUTER (Special Rapporteur) said that retention of the expression "an act of formal confirmation" was justified for reasons of substance. In modern practice, ratification was a well-established procedure which had the same significance for all States, and the Commission had not wished to extend that concept to the case of international organizations. For the latter, therefore, it had decided to use the concept of formal confirmation; accordingly, article 14 provided for a category of legal acts having the effect

<sup>16</sup> *Idem*, paras. 34-38.

<sup>17</sup> *Idem*, para. 3, and 1648th meeting, paras. 1-4.

of formal confirmation, and the international organization was left free to choose the form of act that would have the requisite effects. Consequently, the indefinite article was essential.

*Article 14 was adopted.*

ARTICLE 15<sup>18</sup> (Consent to be bound by a treaty expressed by accession)

46. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 15:

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

The consent of a State or of an 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 that organization by means of accession;

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

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

47. The article had been simplified by merging the two original paragraphs. As a result, no description was given of the types of treaty involved, since the same rule applied to both types. One member of the Committee had abstained in the decision to adopt the consolidated text on the grounds that it was not possible to contemplate a treaty between international organizations that would allow for subsequent accession by States; such a situation could not be dealt with in the draft, for the reverse situation, namely, treaties between States that provided for accession later on by international organizations, had not been covered by the Vienna Convention.

48. Changes similar to those already made in preceding articles had also been introduced.

49. Mr. USHAKOV said that he had never favoured the wording adopted by the Drafting Committee for article 15. For instance, subparagraph (c) meant that, even in the case of a treaty between international organizations, the parties alone could agree that a State could accede to it, whereas such a possibility always existed, once the parties decided accordingly. The article seemed to be superfluous and had the disadvantage of not specifying which categories of treaty were covered. If the Commission adopted it, the wording might give rise to difficulties of interpretation and application, particularly in respect of settlement of disputes.

*Article 15 was adopted.*

<sup>18</sup> *Idem*, 1647th meeting, para. 3, and 1648th meeting, paras. 5–10.

ARTICLE 16<sup>19</sup> (Exchange or deposit of instruments of ratification, formal confirmation, acceptance, approval or accession)

50. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 16:

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

1. Unless the treaty otherwise provides, instruments of ratification, formal confirmation, acceptance, approval or accession establish the consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations upon:

(a) their exchange between the contracting States and the contracting organizations;

(b) their deposit with the depositary; or

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

2. Unless the treaty otherwise provides, instruments of formal confirmation, acceptance, approval or accession establish the consent of an international organization to be bound by a treaty between international organizations upon:

(a) their exchange between the contracting organizations;

(b) their deposit with the depositary; or

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

51. The text of the article remained basically unchanged, except for the deletion of the words “or notification” from the title, which thus corresponded exactly to the title of the relevant article of the Vienna Convention. In addition, the terms “contracting international organizations” and “*les États et les organisations internationales contractantes*” had been replaced by “contracting organizations” and “*les États contractants et les organisations contractantes*”, in the English and French texts respectively.

52. Mr. USHAKOV proposed that, in the title and in paragraphs 1 and 2, the words “formal confirmation” should be replaced by “an act of formal confirmation”.

53. Mr. REUTER (Special Rapporteur) supported that proposal.

*Article 16, as amended, was adopted.*

ARTICLE 17<sup>20</sup> (Consent to be bound by part of a treaty and choice of differing provisions)

54. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 17:

<sup>19</sup> *Idem*, 1647th meeting, paras. 2 and 4, and 1648th meeting, paras. 11–17.

<sup>20</sup> *Idem*, 1648th meeting, paras. 18–20.



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

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

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

3. The consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

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

55. As in article 16, use had been made of the term "contracting organization", and the word "*contractants*" had therefore been inserted after the word "*États*" in the French version of the last part of paragraph 1.

*Article 17 was adopted.*

ARTICLE 18<sup>21</sup> (Obligation not to defeat the object and purpose of a treaty prior to its entry into force)

56. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 18:

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

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

(a) that State or that organization has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, an act of formal confirmation, acceptance or approval, until that State or that organization shall have made its intention clear not to become a party to the treaty; or

(b) that State or that 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.

57. The changes in the article were similar to those made in articles 13 and 15.

58. Mr. USHAKOV said he was not certain whether the words "or has exchanged", in subparagraph (a), made it sufficiently clear that the State and the organization covered by the article acted separately and were not regarded as partners.

59. Mr. REUTER (Special Rapporteur) said that the State or the organization in question were viewed individually. He suggested that Mr. Ushakov's point could be met by using the words "has proceeded to

exchange instruments". He would, however, point out that only the Drafting Committee could, if need be, embark on a further detailed discussion of the matter.

60. Mr. CALLE Y CALLE said that, since the obligation in question was of a general nature, the article should be stated in general terms throughout, rather than in specific terms, as in subparagraphs (a) and (b).

61. Mr. ŠAHOVIĆ, referring to the amendment to article 16, said that he had some doubt about the need to change the wording of paragraph 1 of that article by underlining the concept of an act of formal confirmation as defined in article 2, subparagraph 1 (*b bis*), which referred to ratification and described the legal content of the two concepts. Article 16, on the other hand, dealt with the documents—the physical medium—and hence there was no need to alter the wording of paragraph 1 or that of the later articles, since article 2 gave a precise meaning to the concept of an act of formal confirmation and ratification was itself described as an international act. Consequently, the Commission could have retained the text proposed by the Drafting Committee.

62. He was not asking for the decision already reached on the amendment to be revoked, but he would none the less like the matter to be clarified in the commentary, with a view to forestalling any questions that would inevitably arise when it came to applying the articles.

63. Mr. JAGOTA said that the wording of article 18, subparagraph (a), and of article 16, paragraph 1, should be harmonized, since one referred to "an act of formal confirmation", whereas the other referred to "instruments of formal confirmation". He would prefer the latter wording, used in article 16, paragraph 1.

64. Mr. REUTER (Special Rapporteur) said that the difficulties stemmed from the fact that, in French, the word "*acte*" could mean both the legal operation and the instrument itself. The Commission had, however, made it clear in article 2 that it was using the concept of an act of formal confirmation in the sense of a legal act and not of an instrument. It was therefore not superfluous to speak of the instrument of an act of formal confirmation, for the legal act had to be reflected in a physical instrument.

65. He therefore hoped that the Commission would keep the two forms of wording: "act of formal confirmation" and "instrument of an act of formal confirmation", and while he understood the doubts expressed, he would prefer the Commission to retain the amendment it had made to articles 16 *et seq.* He also hoped that the text of article 18 would remain unchanged, since it was perfectly logical.

66. Sir Francis VALLAT recalled that, in defining an act of formal confirmation, the Committee had been careful to avoid using the word "instrument". Consequently, the Commission should adopt article 16 in

<sup>21</sup> *Idem*, paras. 21–22.

its amended form and retain article 18 as proposed by the Drafting Committee.

67. The CHAIRMAN noted that the Commission decided to retain the amendment to article 16, on the understanding that the article would be accompanied by an appropriate commentary to reflect the doubts expressed by some members.

68. If there were no objections, he would take it that the Commission agreed to adopt the text of article 18 proposed by the Drafting Committee.

*It was so decided.*

*The meeting rose at 11.55 a.m.*

## 1682nd MEETING

*Wednesday, 1 July 1981, at 10.10 a.m.*

*Chairman:* Mr. Doudou THIAM

*Present:* Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

### **Question of treaties concluded between States and international organizations or between two or more international organizations (continued) (A/CN.4/339 and Add.1-7, A/CN.4/341 and Add.1, A/CN.4/L.327)**

[Item 3 of the agenda]

#### **DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)**

#### **ARTICLE 2, SUBPARA. 1, (c), AND ARTICLES 7, 9, 10 AND 17 (continued)<sup>1</sup>**

1. Mr. USHAKOV said that he wished to make a few comments that had come to mind on reading the Russian version of the articles the Commission had adopted at the previous meeting further to the proposals by the Drafting Committee (A/CN.4/L.327).

2. Under article 7, subparagraph 2 (d), heads of permanent missions to an international organization were considered as representing their State “for the purpose of adopting the text of a treaty between one or more States and that organization”. However, under the terms of article 7, subparagraph 2 (b), of the Vienna Convention,<sup>2</sup> heads of diplomatic missions

were considered as representing their State only “for the purpose of adopting the text of a treaty between the accrediting State and the State to which they are accredited”. As they were competent only to adopt the text of a treaty concluded by the States which had accredited them, it would be advisable to replace the last part of draft article 7, subparagraph 2 (d), by the words “for the purpose of adopting the text of a treaty between the accrediting States and that organization”.

3. Similarly, in the case provided for in article 7, subparagraph 2 (e), heads of permanent missions to an international organization should only be considered as representing their State for the purpose of signing or signing *ad referendum* a treaty “between the accrediting States and that organization” and the clause should be amended accordingly.

4. Under article 7, subparagraph 2 (c), heads of delegations of States to an organ of an international organization were considered as representing their State “for the purpose of adopting the text of a treaty between one or more States and that organization”. If the Commission adopted draft article 5, which the Drafting Committee had prepared after the previous meeting and which was modelled on article 5 of the Vienna Convention, the last part of article 7, subparagraph 2 (c), should be replaced by the words “for the purpose of adopting the text of a treaty within that organization”.

5. The phrase “The adoption of the text of a treaty between States and one or more international organizations at an international conference of States in which one or more international organizations participate”, at the beginning of article 9, paragraph 2, could be replaced by “The adoption of the text of a treaty between States and international organizations at an international conference of States in which international organizations participate”, wording which would clearly cover cases in which only one international organization was involved.

6. If that amendment were adopted, it would be necessary to specify that the international conference contemplated under article 7, subparagraph 2 (b) was an international conference of States in which international organizations participated, and even if it were not adopted, to specify that it was an international conference of States in which one or more organizations participated. In the latter part of the provision, the words “between one or more States” should be replaced by “between States”, in line with the wording of article 9, paragraph 2, the words “and one or more international organizations” being replaced, if necessary, by “and international organizations”.

7. As to article 10, subparagraph 2 (b), he wondered whether it would be advisable to provide for the unlikely case of the adoption of a treaty of a universal character by international organizations. In that connection, he pointed out that article 9, paragraph 2, laid down a procedural rule for the adoption of the text

<sup>1</sup> Resumed from the 1681st meeting.

<sup>2</sup> See 1644th meeting, footnote 3.