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Summary record of the 1129th meeting

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

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58. Mr. CASTRÉN said he thought the Commission should show its interest in the question of international watercourses by at least placing it on its general programme of work and, if possible, on the agenda for its next session. It should also indicate that it considered it desirable to consult governments.

The meeting rose at 1.20 p.m.

1129th MEETING

Monday, 5 July 1971, at 3.10 p.m.

Chairman: Mr Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Question of treaties concluded between States and international organizations or between two or more international organizations

(A/CN.4/250; A/CN.4/L.161 and Add.1 and 2)

[Item 5 of the agenda]

1. The CHAIRMAN invited the Commission to consider item 5 of the agenda. It now had before it the report of the Sub-Committee, set up at the previous session, on treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/250). He called on the Chairman of the Sub-Committee to introduce the report.

2. Mr. REUTER (Chairman of the Sub-Committee) said that the Sub-Committee had held two meetings during the present session. In accordance with the decisions taken by the Commission at its previous session,¹ it had had before it a working paper by the Secretariat containing a short bibliography, an historical survey of the question and a preliminary list of the relevant treaties published in the United Nations *Treaty Series* (A/CN.4/L.161 and Add.1 and 2); a questionnaire prepared by the Chairman of the Sub-Committee; members' replies to that questionnaire; and an introduction prepared by the Chairman of the Sub-Committee.

3. Examination of that material had shown the Sub-Committee to be agreed on several points. In the first

place, the Commission itself and the Vienna Conference on the Law of Treaties had thought of including treaties concluded by international organizations in the general study of international treaties, but had finally decided against doing so, partly no doubt because of drafting difficulties, but mainly, it appeared, because of their uncertainty about a problem whose full extent they could not gauge. It had been generally accepted in the Sub-Committee that the future study should be confined to a certain number of points, and in particular that the question of unwritten agreements as such should not be taken up directly, for the same reasons as had led the Commission and the Vienna Conference on the Law of Treaties to leave them aside in dealing with treaties between States, though that would not preclude appropriate consideration of the element of tacit consent as part of the general law of treaties.

4. In addition, the Sub-Committee had thought it advisable to observe the same discretion as the Vienna Convention in regard to questions concerning international responsibility, State succession and the outbreak of hostilities.

5. With regard to the general method to be recommended to the Commission, the members of the Sub-Committee had agreed that the Vienna Convention on the Law of Treaties provided a model for identifying general problems of treaty law and should be taken as a basis, at least in the preliminary exploration of the subject. That did not mean that the Commission would have to confine itself to borrowing the solutions adopted by the Vienna Conference; it must be recognized from the outset that the subject-matter was difficult, that it raised unexpected problems and that the Commission would have to try to identify those elements which distinguished the rules applicable to treaties between States from those applicable to treaties to which international organizations were parties.

6. The Sub-Committee had considered it too early to discuss certain substantive problems raised in the questionnaire, for instance the question of who could be a third party in relation to a treaty concluded by an international organization. Hence those problems were not discussed in the report.

7. With regard to the question what international organizations the study should include, the general opinion in the Sub-Committee had been in favour of establishing rules applicable to all international inter-governmental organizations, though it had fully realized the considerable difficulties that would involve with regard to information and hence the time that would be required; if the future study had to be limited, it would be because of the time factor, rather than anything else.

8. The very title of the subject was already based on a distinction between kinds of treaty. Although it was only a way of describing the subject-matter of the study, it nevertheless raised the question whether a classification of treaties would be desirable. The Sub-Committee had agreed, in general, that the spirit of the Vienna Convention should be followed and that, leaving aside unnecessarily theoretical considerations, an attempt

¹ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter V, para. 89.

should be made to formulate principles which were valid for all treaties.

9. With a view to speeding up that work, the Sub-Committee recommended the Commission: first, to appoint a special rapporteur for the topic; secondly, to confirm the request made to the Secretary-General concerning the preparation of documents for the use of members of the Commission, asking the Secretariat to phase and select items for study in consultation with the special rapporteur within the general framework laid down by the Commission at its previous session;² and thirdly, to request that the working paper prepared by the Secretariat on the question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.161 and Add.1 and 2), in particular the part containing the historical survey of the question, be published as a Commission document.

10. Mr. USHAKOV said he approved of the Sub-Committee's conclusions and recommendations. Although at the present stage the Commission should maintain a very general approach to the subject, some questions needed clarification for the guidance of the future special rapporteur.

11. The most important question was what international organizations the future study should include: should it cover not only general organizations, sometimes called "political" organizations, but also organizations that were of more limited scope, though still universal, and "mixed" international organizations of States and non-governmental bodies? The special rapporteur would need precise guidance on that point.

12. The Sub-Committee had expressed the opinion that the work should be confined to written agreements, but it was open to question whether unwritten agreements existed in the case of international organizations. Perhaps the arrangements concluded between States and international organizations were not agreements in international law.

13. He proposed that Mr. Reuter, who was a leading expert on international institutions, should be appointed special rapporteur.

14. Mr. YASSEEN said it was clearly necessary to speed up the work on the subject under consideration, in order to complete the codification of the law of treaties.

15. He approved of the Sub-Committee's preliminary recommendations. In deciding to base its work on the Vienna Convention, the Commission would be emphasizing the link between the law of treaties concluded between States, the law of treaties between international organizations and the law of treaties between States and international organizations. He shared the Sub-Committee's view that the Commission should investigate the essential differences between international treaties and treaties between international organizations, which justified separate treatment of the latter in the codification

of the law of treaties. He also supported the Sub-Committee's recommendation that the Secretariat should continue to collect the necessary information and that in doing so it should co-operate with the special rapporteur to be appointed by the Commission.

16. He warmly supported Mr. Ushakov's proposal of the appointment of Mr. Reuter as special rapporteur. No one was better qualified for the task than that eminent jurist.

17. Mr. AGO said that the task awaiting the Special Rapporteur was far more difficult and delicate than appeared at first sight. As he progressed in his study, he would probably find that it was often necessary to depart from the Vienna system, since the characteristics of treaties concluded between States and of treaties concluded between international organizations or between international organizations and States were very different, not only with respect to the formation of the treaties, but also with respect to the question of their validity and nullity. Consequently, a special rapporteur of exceptional ability was required, and Mr. Reuter was the ideal choice.

18. He approved of the Sub-Committee's recommendations relating to technical details. He wished to thank the Secretariat for the excellent work it had done and would undoubtedly continue to do in the future; the documentation required for the new topic was of particular importance and needed to be as full as possible.

19. He would like next to comment on certain points which had been dealt with in the questionnaire (A/CN.4/250, annex I). In his view, there were unwritten agreements between international organizations and States and, like the members of the Sub-Committee, he thought that they should be excluded from the field of research, as they had been from the codification of treaties between States, since they had not the same importance as written agreements.

20. On the question what international organizations the Commission's proposals would apply to, both the Sub-Committee and its Chairman were of the opinion that it might be better not to make any distinction between organizations. The Vienna Convention made no such distinction and, if the draft articles on relations between States and international organizations applied only to organizations of a universal character, it was because it had been necessary to settle the question of representatives to organizations. In the case of treaties, no distinction should be made between organizations unless practice showed that there were profound differences between the different types of organization; if it was found that the rules were the same in all cases, it would be better to prepare a more ambitious report and to complete what had been done at Vienna, so that the codification might comprise treaties concluded between all sorts of subjects of international law, provided, of course, that the organizations concerned possessed the capacity to conclude treaties.

21. He did not think it would be very useful to deal expressly with certain matters which the Vienna Convention had left aside. That Convention was an excellent starting point, but as he had said at the beginning, the

² See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, chapter V, para. 89.

Commission would certainly find that it had to depart from it and that the task was more delicate than might be supposed.

22. Mr. KEARNEY said that he agreed with the conclusions set forth in the Sub-Committee's excellent report and he was glad to support Mr. Ushakov's proposal that Mr. Reuter be appointed Special Rapporteur for the topic of treaties between States and international organizations. He was confident that under Mr. Reuter's guidance the Commission would be able to make a substantial contribution to the development of international law on a topic which presented many novel ramifications.

23. Sir Humphrey WALDOCK said that he also supported the proposal that Mr. Reuter be appointed Special Rapporteur.

24. At the present stage, he could agree with Mr. Ago that the codification of the law of the treaties of international organizations might involve more departures from the 1969 Vienna Convention on the Law of Treaties than some people had contemplated. On the other hand, he thought that for the most part the similarities would be found to be very close. Thus, there were many parallels with the provisions of the Vienna Convention, even in regard to the procedures of organizations for the conclusion of treaties. In that connexion it was worth noting that article 11 of the Convention, on means of expressing consent to be bound by a treaty, provided that "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"; the concluding provision of that article was completely open-ended and left room for any special techniques used in the treaties of organizations.

25. With regard to the other parts of the Vienna Convention, there would clearly be occasion for some supplementary and even divergent rules. As the Chairman of the Sub-Committee had pointed out, the question of treaties involving third States was a branch of international law to which particular attention would have to be paid, and some points might arise even in connexion with questions of invalidity.

26. He agreed with Mr. Ago that the important question of the organizations to be covered should be decided empirically in the light of the study by the future special rapporteur. In principle, he thought that the Commission should aim at a general work of codification like the Vienna Convention, and should therefore cover all organizations; in particular, it would be a pity if regional organizations possessing a considerable body of practice, such as the Organization of American States, the Council of Europe, the Council for Mutual Economic Assistance and the Organization of African Unity, were regarded as being outside the scope of the Commission's study.

27. Lastly, as a member of the Sub-Committee, he hoped to produce a supplementary memorandum which could, if the Commission so decided, be annexed to the Sub-Committee's report.

28. The CHAIRMAN suggested that the Commission

agree to include Sir Humphrey Waldock's supplementary memorandum in the Sub-Committee's report.

It was so agreed.

29. Mr. EUSTATHIADES said that the Commission could not appoint a special rapporteur more highly qualified than Mr. Reuter and he joined the previous speakers in supporting his nomination.

30. On the question of parallels between the draft to be prepared and the Vienna Convention on the Law of Treaties, he endorsed the comments of Sir Humphrey Waldock and Mr. Ago. In the last analysis, there were general principles of law and of logic which emerged from the subject of treaties, whether concluded between States or between international organizations or between States and international organizations, but it would certainly be necessary to depart from the Vienna Convention on some points.

31. As to the organizations to be covered by the study, there was no need to distinguish between organizations of a universal character and regional organizations. It was rather the functions and aims of the organizations which defined the categories from the viewpoint of the law of treaties. Some articles of the future draft would apply to certain organizations only and would have no relevance for others.

32. Mr. BARTOŠ said that Mr. Reuter, who was a specialist on international institutions, particularly European organizations, would be an ideal special rapporteur for the present topic. For more than ten years, Mr. Reuter had been studying the very thorny question, generally neglected by jurists, of the effects on third States of agreements concluded between international organizations and their member States—for example, the effects which the entry of the United Kingdom into the Common Market would have on Australia. Moreover, he had already given proof of his experience in the matter by drafting the questionnaire submitted to the members of the Sub-Committee and he had the realistic approach which was one of the essential qualities of a special rapporteur. He therefore warmly supported Mr. Reuter's nomination for the post.

33. Mr. EL-ERIAN said that he wished to place on record his appreciation of the work done by the Chairman of the Sub-Committee and of the studies prepared by the Secretariat. He, too, supported Mr. Ushakov's proposal that Mr. Reuter be appointed special rapporteur for the important, intricate and difficult topic of treaties between States and international organizations.

34. He agreed with Mr. Ago that the Commission should not limit its work to international organizations of a universal character, but should attempt to formulate rules which would apply to all international organizations, including regional organizations, and thus complement and complete the Vienna Convention on the Law of Treaties.

35. Mr. USTOR said he warmly supported the nomination of Mr. Reuter for the office of special rapporteur for the present topic.

36. The leading principle of contemporary international law was the principle that States had a duty to co-operate with one another in accordance with the Charter of the United Nations. Treaties were the tool most frequently employed for the purposes of such co-operation, whence the importance of the codification of the law of treaties achieved by the Commission and the 1968-1969 Vienna Conference. From the principle of the duty of States to co-operate with one another, solemnly proclaimed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, annexed to General Assembly resolution 2625 (XXV), it followed that States were bound to establish only international organizations intended for purposes of real co-operation between them, and not organizations directed against other States.

37. The time would soon come when it would be possible to speak of the duty of States to co-operate with organizations established in the general interest of humanity, and also of the duty of organizations to co-operate with each other. Seen in that light, the topic of treaties concluded between States and international organizations, or between two or more international organizations, acquired a special significance. The Commission's decision to deal with the topic was therefore very timely and, for his part, he had been particularly glad to participate in the preparatory work of the Sub-Committee.

38. Mr. RUDA said he too welcomed the nomination of Mr. Reuter for the office of special rapporteur for the new topic. His appointment would ensure that the Commission's work on the topic would be fruitful and would lead to concrete conclusions within a reasonable time.

39. He had only a few preliminary comments to offer on the Sub-Committee's report. First, there was an obvious need for an extensive study of the voluminous existing practice. The topic was a new one and it was desirable that the Commission should cover not only organizations of a universal character, but also regional organizations. The task was not easy, but the Commission's work should apply to all intergovernmental organizations.

40. On the question of method, he agreed that the Vienna Convention on the Law of Treaties should constitute the basis for the Commission's work on the topic. As he understood it, that did not mean that the work would consist of a mere adaptation of the provisions of the Vienna Convention; moreover, the work undertaken should not weaken that Convention in any way.

41. He also agreed that it would be premature to consult international organizations before a preliminary study had been submitted by the special rapporteur.

42. Mr. ELIAS said he associated himself with the remarks of previous speakers regarding the proposed appointment of Mr. Reuter.

43. At the Vienna Conference on the Law of Treaties, the discussion in the Committee of the Whole on draft

article 4, on "treaties which are constituent instruments of international organizations or which are adopted within international organizations"³ had shown that there was general agreement on the need for separate treatment of the subject of treaties concluded between States and international organizations or between two or more international organizations. The article had been adopted by the Conference as article 5 of the Vienna Convention on the Law of Treaties, entitled "Treaties constituting international organizations and treaties adopted within an international organization".⁴

44. When the Commission had considered the topic at its previous session,⁵ it had been decided to set up a sub-committee, with Mr. Reuter as Chairman, rather than appoint a special rapporteur at that stage. He was glad to see that the plan then adopted had worked out satisfactorily and he congratulated the members of the Sub-Committee who had helped to formulate its report.

45. He endorsed the Sub-Committee's recommendation (A/CN.4/250, paragraph 8) that the study should include all organizations and not be confined to organizations of a universal character.

46. The hard core of the law of treaties had been codified in the 1969 Vienna Convention. In the work on the new topic, careful attention would have to be paid to the delicate balance achieved on many questions by that Convention. The codification of the law of treaties achieved at Vienna had gained very wide acceptance and the work on the new topic would complete that codification. It was therefore difficult to overestimate the importance of the undertaking. The Commission would be fortunate to be guided by Mr. Reuter, who had done such outstanding work on European organizations.

47. Mr. ALCÍVAR said that as he had been a member of the Sub-Committee he would confine his remarks to placing on record his warm support for the nomination of Mr. Reuter as special rapporteur and his full concurrence with the conclusions contained in the Sub-Committee's report.

48. Mr. BEDJAOUÏ said that he associated himself with the well-deserved tribute which previous speakers had paid to the Sub-Committee and its Chairman for their valuable work, which had gone far beyond an exploratory approach. Everything pointed to Mr. Reuter, with his wide theoretical knowledge and practical experience as a jurist, as the ideal special rapporteur for the topic.

49. Mr. ROSENNE said that the work of the Sub-Committee and the present discussions confirmed that the Commission had been right, in its work on the law of treaties, to confine itself to treaties concluded between States.

³ *United Nations Conference on the Law of Treaties, First session, 1968, Official Records*, pp. 42-58 and 147-148 (United Nations publication, Sales No.: E.68.V.7).

⁴ *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference*, p. 290.

⁵ See *Yearbook of the International Law Commission, 1970*, vol. I, pp. 146-147, paras. 82-85.

50. The present discussion had also confirmed his belief that item 5 of the agenda was an entirely new topic, neither the scope nor the implications of which were as yet clearly discernible. The work to be done would not consist merely of adapting the provisions of the Vienna Convention on the Law of Treaties to other types of agreement. Much applied research would be necessary and many difficulties would have to be faced and surmounted. It would take a great deal of time and the rate of progress would depend on the availability of information, as was stressed in the penultimate sentence of paragraph 8 of the Sub-Committee's report, for what the Commission was now taking up was an independent topic, not a mere appendix to something else.

51. Having been a member of the Sub-Committee under the able guidance of Mr. Reuter, it gave him great pleasure to see his unanimous nomination for the office of special rapporteur—the second occasion in the history of the International Law Commission on which a prominent representative of French legal culture had been selected for such a post.

52. The CHAIRMAN suggested that the Commission approve the report of the Sub-Committee (A/CN.4/250).

The Sub-Committee's report was approved.

53. The CHAIRMAN suggested that the Commission appoint Mr. Reuter special rapporteur for the topic of treaties concluded between States and international organizations or between two or more international organizations.

Mr. Reuter was appointed by acclamation.

54. Mr. REUTER (Chairman of the Sub-Committee) said he assumed that approval of the Sub-Committee's report implied approval of the recommendations in paragraph 15, sub-paragraphs (ii) and (iii).

55. He willingly accepted the post of special rapporteur, provided always that he was re-elected to the Commission after the expiry of his present term. In any event, he wished to thank the members of the Commission for the friendship and esteem they had shown him.

56. He was quite willing to adopt an empirical approach to the question of the scope of the work. He thought it would be normal, however, for the special rapporteur to start with the United Nations and its specialized agencies, not only because the Commission was an organ of the United Nations, but also for a practical reason: it was on those organizations that the Secretariat could most quickly provide the necessary information.

57. Lastly, in accepting the post of special rapporteur, he was aware that, in the performance of his task, national and personal standpoints must often give way to those of the Commission. In that respect, he would try to follow the high example set by former special rapporteurs, notably Sir Humphrey Waldock for the Law of Treaties.

58. The CHAIRMAN confirmed that the Commission had indeed approved the recommendations in paragraph 15 of the report.

59. Mr. USHAKOV said that, although those recommendations had been approved in principle, they would have to be more precisely formulated in the Commission's report to the General Assembly.

60. The CHAIRMAN said that the General Rapporteur would bear that comment in mind.

The meeting rose at 5.45 p.m.

1130th MEETING

Tuesday, 6 July 1971, at 10.20 a.m.

Chairman: Mr Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 to 3; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.174 and Add.1 and 2)

[Item 1 of the agenda]

(resumed from the 1127th meeting)

FIRST AND SECOND REPORTS OF THE WORKING GROUP

1. The CHAIRMAN said the Commission would remember that on 25 May its officers had recommended that a working group be set up to prepare, on the basis of the texts already approved by the Commission, a set of consolidated draft articles on relations between States and international organizations. The officers of the Commission had also recommended that the group should consist of Mr. Kearney, as Chairman, Mr. Ago, Mr. Ushakov and Sir Humphrey Waldock. Those recommendations had been approved by the members of the Commission then present at Geneva.¹ The Working Group had now submitted its first and second reports to the Commission (A/CN.4/L.174 and Add.1 and 2) and he invited Mr. Kearney to introduce them.

2. Mr. KEARNEY (Chairman of the Working Group) said he would like to make a few comments on the Working Group's method of approach, partly as a supplement to the written introduction (A/CN.4/L.174 and

¹ See 1106th meeting, para. 85.