

Document:-
A/CN.4/SR.1242

Summary record of the 1242nd meeting

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

Extract from the Yearbook of the International Law Commission:-
1973, vol. I

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sued them better than a system of specific and rigid rules, and it was significant that the Special Rapporteur had encountered some difficulty in obtaining information.

37. With regard to the form of the agreements to be studied, he considered that, as in the Vienna Convention, unwritten agreements should be excluded. That was even more justified in the case of international organizations than in the case of States. The written form ensured a clarity which was absolutely necessary. It was even more important in the practice of international organizations than in State practice to rule out ambiguity regarding consent to be bound by a treaty. In the case of a State, the whole treaty-making process included certain steps—such as parliamentary approval—which removed all doubt about consent to be bound; no similar safeguards existed in the case of international organizations.

38. He was inclined to agree with Mr. Kearney that it was desirable to include in the draft a provision to the effect that international organizations had the capacity to conclude treaties. It could be said that, following the 1949 advisory opinion of the International Court of Justice on *Reparation for injuries suffered in the service of the United Nations*, there could be no doubt regarding the objective personality of international organizations. In his own view it was nevertheless necessary to state clearly in the draft that international organizations possessed treaty-making capacity. As to the language to be used, the Special Rapporteur, although he was not himself inclined to introduce a provision on capacity, had made a very good suggestion in his second report: "In the case of international organizations, the capacity to conclude treaties depends on any relevant rule of the organization" (A/CN.4/271, para. 49 *in fine*).

39. With regard to problems of representation he found the Special Rapporteur's conclusions absolutely correct. Where international organizations were concerned, those problems were still in a very fluid state, and he did not favour the inclusion in the present draft of an article on the lines of article 7 of the Vienna Convention. In a State, certain organs were traditionally in charge of international relations and had powers of representation in virtue of their functions; but that was not the case in international organizations. In view of the pyramidal structure of the secretariats of international organizations, however, it should be possible to settle doubts on that point. The chief executive officer of an organization—Director-General or Secretary-General as the case might be—was the unquestioned head of its secretariat.

40. With regard to agreements concluded by subsidiary organs, he fully agreed with the Special Rapporteur's conclusion that the organization itself should be considered as entering into the agreement in each case.

41. The question of representation of a territory by an international organization had been given very thorough study by the Special Rapporteur. That question had been of great importance in the past, but was likely to arise very rarely in the future.

42. On the subject of agreements concluded with a view to applying other agreements, the Special Rapporteur's conclusions were absolutely correct. In his own view,

however, it was doubtful whether the Commission need go into that matter at the present stage.

43. Lastly, he had noted Mr. Kearney's remark concerning the need to draw a dividing-line between contracts and treaties. But it was difficult to see how an international organization could conclude a contract with a State, except with the host State for certain specific purposes.

The meeting rose at 6 p.m.

1242nd MEETING

Thursday, 5 July 1973, at 10.5 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

later: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

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

(A/CN.4/258; A/CN.4/271)

[Item 4 of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of item 4 of the agenda.
2. Mr. TAMMES said that, in his enlightening reports, the Special Rapporteur had opened up new horizons of international law, and the manner in which he had been able to maintain the confidence of the organizations and at the same time collect valuable information on their practice, provided a promising starting-point for the Commission's work.
3. The hierarchical relationship between international law and national law had been a subject of discussion among international lawyers for a long time. In considering the present topic, however, the problem was that of the interaction between different legal systems each belonging to international law. The Commission was examining what appeared to be a largely technical question, namely, how agreements concluded by international organizations would fit into the system of the Vienna Convention on the Law of Treaties.¹ What was really at stake, however, was the relationship between the all-embracing system of general international law, on the one hand, and various international systems of different degrees of organization, on the other.

¹ 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.

4. The Special Rapporteur wished to have the Commission's views on the desirability of including in the draft an introductory article, corresponding to article 6 of the Vienna Convention, which would state the capacity of every international organization to conclude treaties. He considered that the function of article 6 of the Vienna Convention was a special one, in the light of history, because the full capacity of States to conclude treaties had not always been taken for granted. A similar article would not be necessary for organizations. There did not seem to be real problem in that regard because the validity of the innumerable agreements concluded by international organizations—a validity which depended on their capacity to conclude agreements—was unlikely to be denied by anyone. Or course, if an article were to be included on the lines of article 6 of the Vienna Convention, a reservation would have to be made to cover the case in which the constitutional law of the organization contained a contrary rule.

5. As to the degree of applicability of part III of the Vienna Convention, dealing with the observance, application and interpretation of treaties, he generally agreed with the Special Rapporteur's conclusions concerning the effects of agreements on third parties (A/CN.4/271, paragraphs 89 to 107). For the purposes of international organizations, it was necessary to adapt the more rigorous provisions of the Vienna Convention on that subject. The Special Rapporteur had rightly pointed out that the consent of an organization would always be required for obligations arising from a *res inter alios acta*, but that consent need not necessarily be express or in writing, as article 35 of the Vienna Convention prescribed in order to protect State sovereignty. With regard to rights arising for an organization as a third party in relation to a treaty, the Special Rapporteur's position was quite reasonable. An organization, as a body serving the international community, could not invoke any "subjective right" to retain a function when all the States which had instituted that function had decided to abolish it. Article 37 of the Vienna Convention, on revocation, would thus apply to only a limited extent.

6. The question whether or not a State was a third party in relation to an agreement concluded by an organization of which it was a member was a most interesting one. It had its parallel in internal law in the question of the direct effect, if any, within the legal order of a State, of treaties concluded by that State. If that parallel was valid, the problem of the applicability of the Vienna rules did not arise. The acceptance by a member State of obligations arising from a treaty concluded by the organization was implicit in its very membership, which presupposed acceptance of the fundamental distribution of powers in the organization. The case would be one of implicit acceptance, in advance, of any future obligations of the organization, rather than of tacit consent under the Vienna rules. The general rule in the matter was stated with considerable caution by the Special Rapporteur: "In no case does it seem possible for a member State to ignore agreements regularly concluded by an organization" (A/CN.4/271, paragraph 105). He himself would submit that it was preferable to have a clear rule on the subject, that would be followed by

practice, rather than unsteady practice followed by a hesitant rule.

7. Lastly, there was a fundamental rule in the Vienna Convention whose relevance to international organizations would have to be considered. It was the rule stated in article 27, that a party might not invoke the provisions of its internal law as justification for its failure to perform a treaty. That issue was the key to the problem of the relationship between different international legal systems, since the so-called "internal law" of an organization (A/CN.4/271, paragraphs 83 to 88) was at the same time a portion of international law. The question was therefore essentially that of determining which of two systems, both belonging to international law, but situated at different levels, would prevail. The Special Rapporteur had expressed himself on one aspect of the broad question covered by article 27 of the Vienna Convention: that was in connexion with article 46 of that Convention, on provisions of internal law regarding competence to conclude treaties.

8. He had been able to mention only a very few of the issues raised by the Special Rapporteur in his two reports. He looked forward with keen interest to seeing the draft articles that would follow.

9. Mr. MARTÍNEZ MORENO associated himself with the tributes paid to the scholarly reports of the Special Rapporteur on the important and difficult topic of the treaties of international organizations, which was the logical complement of the law on treaties between States. The development of the doctrine of subjects of international law, the growing importance of international organizations in the life of the world community, the need to strengthen institutions working for peace and security and, in general, the facts of life in the contemporary world society, made it necessary to codify—and to codify with some boldness—the law governing the treaties of international organizations, both regional and world-wide.

10. Before considering some of the points raised by the Special Rapporteur in his second report (A/CN.4/271), he wished to express regret at the fact that a number of organizations had not answered his questionnaire. Perhaps those organizations feared that their powers might be restricted by a treaty on the present topic, but the real intention was the very opposite. An international organization should not fail in its duty to co-operate in the progressive development of the law.

11. It was true that the great diversity exhibited by international organizations in structure, functions and objectives militated against codification. The formulation of general and uniform rules for the various organizations would be extremely difficult. Nevertheless, the problems could be solved by proceeding step by step and adopting common rules wherever possible.

12. The question of the capacity of international organizations to conclude treaties was vital to the present topic. He firmly believed that international organizations had that capacity, even if it was more limited than that of States; without it, no international organization could attain its objectives in international relations. He respected the views of the school of thought which held

that the capacity to conclude treaties existed only subject to the provisions of the constituent instrument of the organization concerned; and he agreed that, in such a constituent instrument, the States which established an organization could even go so far as to deny it the capacity to conclude treaties, though he knew of no practical example of such a restriction. However, the rules that the Commission would frame were intended to deal with the bulk of the practical cases.

13. It was natural that nearly all the treaties concluded by international organizations should be of an administrative or operational nature, but some of those treaties, such as technical assistance agreements, were of great importance. Apart from that he saw no reason why an international organization should not become a party to such treaties as the Geneva Conventions on humanitarian law. If the capacity of organizations to conclude treaties were denied, the United Nations would be prevented from subscribing to those treaties and invoking them in regard to its peace-keeping operations.

14. That would be an undesirable result; but the omission from the draft of an article on capacity to conclude treaties would have much more serious consequences in that it could lead, on the basis of reasoning *a contrario* from the clear provision of article 6 of the Vienna Convention on the Law of Treaties, to the assertion that international organizations had no such capacity. Since the capacity of all States to conclude treaties was expressly affirmed in article 6 of the Vienna Convention, it was essential to make an express provision to the same effect for international organizations, thereby recognizing a fact of international life. So far as the formulation of the rule was concerned, the wording put forward by Professor Dupuy in his report to the Institute of International Law (A/CN.4/271, paragraph 39) was acceptable to him.

15. On the question of representation, he believed it was essential to include in the future draft an article dealing specifically with treaties concluded by an organization on behalf of a territory it represented.

16. Agreements concluded by subsidiary organs had to be regarded, as a general rule, as treaties of the organization itself. There could, of course, be exceptions to that general rule, as in the case of a fund established for a specific purpose; an agreement signed on behalf of such a fund would not commit the mother organization financially. Discussions were at present under way with a view to the establishment of an international body to be entrusted with the conservation and utilization of the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. If such an organization was established, it could not be denied the power to conclude treaties in matters within its competence.

17. Mr. TSURUOKA associated himself with the commendation addressed to the Special Rapporteur on his second report, which bore witness to the erudition of its author. Under its apparent simplicity, it was based on a very thorough analysis of the topic under discussion.

18. In that report the Special Rapporteur had stated his own opinions and the arguments in support of them, and had asked for the views of members of the Commission on several points. On the matters on which he had

expressed an opinion, it seemed desirable that the Special Rapporteur should go ahead. On the matters on which the Special Rapporteur had put questions to the Commission, he (Mr. Tsuruoka) did not feel able to reply immediately and intended to submit comments in writing. Indeed there was not time at the present session for all the members of the Commission to state their views orally on the various questions which the Special Rapporteur had raised.

19. Mr. USTOR associated himself with the expressions of appreciation for the clarity and logic of the reports prepared by the Special Rapporteur on an extremely difficult topic. That topic provided a good example of the close connexion between codification and progressive development. It was one on which there had already been "extensive State practice, precedent and doctrine", to use the language of article 15 of the Commission's Statute, referring to codification. Yet it was true to say that the law on it had "not yet been sufficiently developed in the practice of States", so that it belonged to the realm of progressive development as defined in the same article.

20. It was worth remembering, however, that the relevant practice included not only State practice, but also the practice of the organizations themselves. Unfortunately it was difficult to get at the sources of that practice. There were hardly any relevant decisions of either international or national courts, and the practice of States and international organizations was usually buried in official files that were difficult of access. The better to identify trends in customary law, the Special Rapporteur had wisely followed the method of establishing contacts with the organizations themselves; that was undoubtedly the most practical method of exploring their practice. Another possible course would be to make a systematic study of all the treaties signed by international organizations. That would be a formidable task, however, because there were already several thousand such treaties. Without the use of a computer, it was difficult to see how meaningful results could be achieved.

21. It was, of course, possible that most of the agreements concluded by international organizations would turn out to be contracts rather than treaties. In theory, the line of demarcation between the two was clear: a treaty was an agreement governed by international law, whereas a contract was an agreement governed by the law of a particular State. In practice, however, there were agreements which were governed in some respects by international law and in other respects by the law of a particular State. That problem was of great importance for the delimitation of the present topic, as other members had already pointed out.

22. On most of the other issues raised by the Special Rapporteur there appeared to be unanimous support for his approach. On the question of the capacity of international organizations to conclude treaties, the Special Rapporteur had reached the conclusion that it was preferable not to include a provision on that matter in his draft (A/CN.4/271, paragraph 40). A valid argument in favour of that solution had been given by Mr. Ushakov, who had pointed out that the law of treaties as a whole operated only when the capacity to

conclude treaties existed. He could not accept the formula suggested by Professor Dupuy and quoted by the Special Rapporteur in paragraph 39 of his second report. It assumed that every international organization had the capacity to conclude agreements in the exercise of its functions and for the achievement of its objectives, and would deny that capacity only where the constituent instrument of the organization provided otherwise. That was going much too far. The formula tentatively put forward by the Special Rapporteur himself was much more appropriate and reflected existing international practice fairly closely. It read: "In the case of international organizations, the capacity to conclude treaties depends on any relevant rule of the organization" (A/CN.4/271, paragraph 49 *in fine*).

23. On the subject of representation, he fully shared the view that it was impossible to adopt, for the purposes of the present topic, a rule such as that laid down in article 7, paragraph 2, of the Vienna Convention on the Law of Treaties. In the case of an international organization it was not possible to say that certain persons had full powers of representation "in virtue of their functions".

24. On the interesting question of agreements concluded by subsidiary organs he agreed that the solution would depend on the constituent instrument and the internal rules of the organization concerned.

25. The problem of the application to international organizations of the *pacta tertiis* rule was extremely complicated. In the case of a treaty signed by the member States of an organization and relating to that organization, it was clear that the organization was not a third party within the meaning of part III, section 4, of the Vienna Convention on the Law of Treaties. Clearly, the organization would be affected by the agreement. It was therefore essential to adapt the Vienna rules for the purposes of the present topic. The need to do so was evident in the case of an agreement between two organizations. To take an extreme example, if two economic associations of States concluded an agreement to establish a large free trade area, it would be impossible to assert that the member States of the two associations were "third States" in relation to that agreement.

26. Mr. EL-ERIAN paid a tribute to the quality and scholarship of the two reports submitted by the Special Rapporteur, who was an authority on international institutions.

27. In the interests of brevity he would speak only on four of the many interesting issues which had been raised. The first was co-operation with the secretariats of the United Nations and the specialized agencies, a subject on which he fully supported the Special Rapporteur's views. There was an understandable apprehension on the part of organizations that codification might introduce an element of rigidity which would inhibit their present flexible practices. At the beginning of any work of codification reticence of that kind was often encountered, not only on the part of international organizations, but also on the part of governments. It was perhaps true that in certain matters the formulation of rigid rules might do a disservice; but in regard to the present topic there was a clear need to establish certain general rules.

28. With regard to regional organizations, it had been suggested that if the future draft was to be limited to universal organizations its usefulness might be undesirably restricted. In his view, however, it would be better to follow the practice adopted in 1971 for the Commission's draft articles on the representation of States in their relations with international organizations, and confine the work to international organizations of a universal character. The first reason for doing so was that regional organizations had not been consulted, so it would be advisable to confine the study to the organizations of the United Nations family, with which consultations had been held. The second reason was that regional organizations invariably benefited from the codification work done by the United Nations. In the matter of privileges and immunities they had taken the United Nations conventions as a model. Clearly, however, the Commission itself could not undertake to codify the law for regional organizations.

29. On the question of capacity, his own experience as Special Rapporteur for the topic of relations between States and international organizations had convinced him of the wisdom of not entering into such theoretical issues as those of international personality and treaty-making capacity. He fully supported the Special Rapporteur's view on the need to adopt a purely pragmatic approach.

30. On the question of treaties concluded by subsidiary organs, he thought the Special Rapporteur's analysis (A/CN.4/271, paragraphs 65 to 68) contained all the necessary guidance for arriving at satisfactory decisions. The problem was not purely theoretical; it had important practical implications, particularly in financial matters. Although situations varied, it was desirable to frame a general rule, because there was in practice some uncertainty about the identity of the party to a treaty when it was concluded by a subsidiary organ of an organization. He himself accepted the Special Rapporteur's conclusion that, as a general rule, the organization itself was the party to the treaty unless there was evidence to the contrary. The problem was really one of agency.

31. Mr. TABIBI said that the Special Rapporteur's valuable reports well illustrated the complexity of the topic, which justified his cautious approach. The Commission must also exercise caution, for international organizations were performing a great service to mankind and their development should not be hampered. It was also necessary to take their sensibilities into account. The problems involved were well illustrated by the difficulties encountered in the Administrative Committee on Co-ordination (ACC), on which the executive heads of the specialized agencies met under the chairmanship of the Secretary-General of the United Nations. In view of the complexity of the problems and in order to take account of the views of the organizations themselves, he suggested that the legal advisers of the international organizations of a universal character should be invited to participate in the Commission's discussion of the topic. That would enable them to reply direct to any questions that members of the Commission might wish to put to them.

32. With regard to the various issues raised by the Special Rapporteur, it was difficult to take a definite

stand. On the question how closely to follow the pattern of the Vienna Convention on the Law of Treaties, it should be remembered that there were great differences between States and international organizations and that the rules governing inter-State treaties were based on the sovereign equality of States.

33. In matters of capacity and representation, in particular, there was a marked difference between States and international organizations. There were also differences among the organizations themselves. The Secretary-General of the United Nations, for example, had broader authority than the executive heads of other international organizations. In some organizations, treaties were concluded, not by the executive head, but by an organ of the organization. He agreed with the Special Rapporteur that it would be appropriate to define a minimum capacity possessed by all international organizations, though some of them would have a more extensive capacity (A/CN.4/SR.271, paragraph 45). He also agreed with the Special Rapporteur that the criteria for capacity to conclude treaties on behalf of an international organization should be sought not only in the constituent instrument, but also in the relevant rules of the organization.

34. With regard to agreements concluded by subsidiary organs, it should be remembered that the role of some of those organs could be very important in practice. The regional economic commissions of the United Nations, for example, took decisions and concluded agreements on matters of great moment. Nevertheless, he could accept the idea that the Commission should concentrate, at the present stage, on treaties concluded by the organizations themselves.

35. In conclusion, he expressed the hope that arrangements would be made for the legal advisers of international organizations to participate in the discussion of the present topic at the twenty-sixth session; that would facilitate acceptance of the draft by the international organizations which had a major interest in it.

36. Mr. QUENTIN-BAXTER said he had been persuaded by the Special Rapporteur's magnificent reports that the Commission had before it a topic which was both worthy and capable of codification and which would in due course take its place in the Vienna family of treaties.

37. The Special Rapporteur had very properly stressed the relationship between the future draft articles and the Vienna Convention on the Law of Treaties, though he had been scrupulous in drawing attention to the differences between them. After all, States were characterized by sovereign equality, whereas international organizations varied widely in nature and functions. The word "State" itself, however, covered a variety of situations. For example, in some multilateral administrative agreements, territories had their own place as signatories; that also applied to associate States, which had their own sovereign law-making bodies, but might choose to merge their national personality with a larger State. States might also choose to bestow an important section of their sovereign competence on an international organization. An organization such as the European Economic Community could be said to possess some of the characteristics

of a State, so he would not wish the draft articles on international organizations to differ too greatly from the Vienna Convention on the Law of Treaties.

38. In connexion with what the Special Rapporteur had said on the subject of representation, it should be noted that it was possible for an international organization itself to be a territorial sovereign. The United Nations, for example, might have been established in an enclave where the Organization would have been territorially sovereign, as in the case of the Holy See. It was also necessary to distinguish cases in which an international organization might be responsible for territory which was not capable of acquisition by States, such as the sea-bed or Antarctica.

39. Article 6 of the Vienna Convention provided that every State possessed capacity to conclude treaties. The question that arose was one of definition, and the present draft articles might conceivably include some such provision as "For the purposes of the present instrument an international organization is considered to possess rights under customary law, including the power to conclude treaties". It was necessary to reassure the representatives of international organizations that they would not be subjected to some Procrustean plan which would deprive them of their distinguishing characteristics and their autonomy. A provision might be included, therefore, to the effect that "For the purposes of the present articles an international organization is one which has the capacity to enter into treaties".

40. It should also be borne in mind that the internal law of an international organization was already, in a certain sense, on the international level, in a way which the constitutional law of a State was not. What was obviously needed was a detailed study of the progress made by international organizations. It was impossible to propound a rule under which the executive head of an international organization would have the same powers as a minister for foreign affairs, although international organizations, especially those of a financial character, might have to enter into arrangements with States which called for legal assurances at the highest level. Some rule was therefore needed to give a State which dealt with an international organization confidence in the capacity of those who represented the organization. From that point of view the Vienna rules were clearly not appropriate.

41. It was not his aim to elevate intergovernmental organizations to a position equivalent to that of States, for in many cases States considered that international organizations were primarily mechanisms designed to carry out their collective purposes. However, he would like to regard the future draft articles as applying to intergovernmental organizations which possessed treaty-making power. After all, no one had applied the Vienna rules more assiduously than the legal advisers of international organizations. The Commission should make it clear that it wished to adopt a position of absolute neutrality with regard to the status of those organizations. Accordingly, a certain looseness in the Commission's approach seemed to be indicated, since it was often difficult for intergovernmental organizations to undertake obligations which could be undertaken by States.

In that connexion, he referred to the difficulties in making the United Nations peace-keeping force responsive to the various Red Cross Conventions.

42. He had no doubt that the rich practice of the international organizations themselves would supply the Special Rapporteur with the proper solutions and enable the Commission to promote the progressive development of international law in that field.

43. Sir Francis VALLAT said he had read the Special Rapporteur's reports with admiration. If the first report had seemed somewhat pessimistic, the second had given grounds for hope. Whatever problems might be inherent in the Special Rapporteur's task, there was no reason to be discouraged by the fundamental problem: how to give effect to the draft articles.

44. Like other members of the Commission he welcomed the Special Rapporteur's investigation of the practice of international organizations, although not every external practice of those organizations was necessarily satisfactory. That practice would have to be examined critically, and it was to be hoped that in due course the Commission would be provided with the necessary information for a better assessment of the Special Rapporteur's work.

45. He agreed that the Vienna Convention should be taken as the basis for the draft articles, but hoped that it would not be regarded as a straitjacket. In other words, it must not be assumed that everything which had proved satisfactory for the Vienna Convention would hold good for international organizations.

46. The problem of capacity was one of the most important and difficult with which the Commission would have to deal. In the Vienna Convention it was possible to say that "every State possesses capacity to conclude treaties", but he doubted whether the Commission could make such a statement with regard to international organizations. Nevertheless, since an article on capacity had been included in the Vienna Convention, it would seem strange if no such article were included in the present draft. He hoped that the Special Rapporteur would attempt to produce one or more articles on that subject.

47. He had no *a priori* theory about the personality of international organizations; in his opinion the Commission should not approach the problem with a presumption of personality from which a capacity to conclude treaties could be inferred. It should rather work from the other direction, that was to say, on the basis of the need to establish such capacity and its extent in the case of each organization.

48. Lastly, on the subject of third parties, article 2, paragraph 1 (h) of the Vienna Convention was inappropriate in the case of international organizations, since there was a special relationship between the organization and its members; hence treaties concluded by the organization might have some effect on its members without their necessarily being parties thereto.

49. Mr. RAMANGASOAVINA said that, as the Special Rapporteur had rightly emphasized in his two excellent reports, the topic under discussion was closely related

to the Vienna Convention on the Law of Treaties. The question whether international organizations should or should not fall within the field of application of that Convention had been discussed on several occasions during the preparatory work on it, and it was therefore significant that in their answers to the Special Rapporteur's questionnaire, the international organizations had been reticent about stating their positions with regard to multilateral treaties in general and the Vienna Convention in particular. Some of them had made a distinction between the status of a "party" to, and "participation" in, a convention. Hence he could only be glad that the Special Rapporteur was going to prepare articles dealing specifically with treaties concluded by international organizations, and he approved of the method chosen.

50. He urged the Special Rapporteur to continue his work on those lines in the light of the Commission's discussions and of any additional information he could obtain. Perhaps at a later stage the Commission would do well to bring representatives of the United Nations family into its discussions, as Mr. Tabibi had proposed.

51. In view of the growing importance of international organizations, it would be very useful to produce a set of draft articles on the topic. For as things stood, international organizations were subjects of international law, but marginal subjects so far as the Vienna Convention was concerned.

52. Mr. YASSEEN said he would confine his comments to four questions which the Special Rapporteur had raised when introducing his excellent reports.

53. With regard to general method, it was desirable to follow the Vienna Convention wherever possible, but also to take into account the special character of international organizations. An international organization was not a State. The reason why international organizations and treaties concluded by them had not been mentioned in the Vienna Convention was that the Commission itself had considered that that question did not exactly coincide with what the subject of the Convention should be, and that it should not trust in analogies which were sometimes deceptive.

54. With regard to the capacity of international organizations to conclude treaties, a convention on treaties concluded between international organizations should include a rule on that matter. The Commission must respect the independence of the organizations, however, and it could not, by a convention it prepared, change the status of an organization or enlarge or reduce its competence. Any article on capacity to conclude treaties should therefore reflect reality and seek the organization's competence where it was to be found: in the organization's own law—that was to say in its relevant rules.

55. The same applied to representation. A convention prepared by the Commission could not endow the head of a secretariat with competence not conferred on him by the law of the organization. There again, the solution must be sought in the relevant rules of the organization.

56. The question of agreements concluded by subsidiary organs was also governed by the internal law of the organization, on which any rule on the subject should be based.

The meeting rose at 1 p.m.

1243rd MEETING

Friday, 6 July 1973, at 9.40 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

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

(A/CN.4/258; A/CN.4/271)

[Item 4 of the agenda]

(continued)

1. The CHAIRMAN invited the Special Rapporteur to sum up the discussion and present his conclusions.

2. Mr. REUTER (Special Rapporteur) said he inferred from the discussion that the Commission wished him to continue his work and submit to it, at its next session, a third report containing the beginning of a set of draft articles. He was glad to be able to speak henceforth as a rapporteur, that was to say, as one responsible for expressing no longer his own ideas, but those of the Commission. The following seemed to be the gist of the exchange of views that had taken place.

3. So far as method was concerned, the Commission had generally approved the method followed so far and had agreed that it should continue to be applied in the immediate future. The Secretariat would therefore be asked to transmit his second report and the summary records of the discussion on it to the organizations which had furnished information and to those which had not yet done so, requesting them to comment on the second report in the same way as on the first. The Secretariat would also point out to the organizations that it was desirable that they should authorize the Special Rapporteur to publish the information which they furnished or had furnished, after amending or amplifying it, if necessary, according to their instructions. The organizations should also be asked for information on new points, in particular the point raised by Mr. Kearney and Mr. Ustor concerning the distinction between agreements which were international agreements proper and those which were really contracts.

4. The theoretical answer to that question was simple: agreements which were subject to public international law were international agreements; those which were subject to any other rule of law, whether internal or transnational, were not. As to the distinction made in fact, however, it would be useful to have some information on the practice of the organizations in a matter which affected their finances, their premises and their supplies; if any conclusions could be drawn from that information, he would put them before the Commission, which would decide whether they could form the subject-matter of a draft article. In addition he would ask the Secretariat to see whether any of the constituent instruments of the international organizations, especially the United Nations, contained provisions which expressly limited the organization's capacity. That seemed to be the case with certain international commodity agreements; but generally speaking the capacity of organizations was governed by practice.

5. With further reference to method, he wished to reply to some suggestions which had been made. Mr. Ustor had asked whether the Special Rapporteur might not be able to extend the scope of this study by recourse to data processing. Computerized studies of treaties in general had been made in the United States and in some European universities and were of great interest of purposes of political science, but it was questionable whether the results they could provide would be of immediate interest for the Commission's study and whether the United Nations would be prepared to meet the cost, which would be very high. However, he would consult the Secretariat on that point.

6. Mr. Tsuruoka had said that he would send him comments in writing on his second report. Generally speaking, he was greatly in favour of the practice of submitting written observations and he invited members of the Commission who had been unable to participate in the discussion, or who had had to confine their remarks to essentials, to adopt it if they thought it important to draw his attention to any particular point. Despite the extra work it entailed, that method was one to be recommended for the Commission's future work.

7. He agreed with Mr. Hambro that it was highly desirable that all the members of the Commission should be familiar with the comments which the international organizations had sent him, and he would ask them to authorize publication, if necessary in an amended form.

8. Several members of the Commission, including Mr. Tabibi, had suggested that the legal advisers of the international organizations should take part in the Commission's discussions as observers. That would be a most judicious way of giving effect to General Assembly resolution 2501 (XXIV), which recommended the Commission to study the question in consultation with the principal international organizations. The time would even come when their participation would be essential. However, those concerned would obviously have to be consulted informally beforehand, and he and the Commission would have to be absolutely sure of their conclusions and their respective positions before engaging in a "confrontation" of that kind. For the moment, it was no more than a possibility to be considered for the