

Document:-  
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**Summary record of the 1274th meeting**

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

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graph 3(c) of article 17 had been adequately dealt with by Mr. Elias. The contradiction between paragraphs 1 and 2 of article 18 was indeed more apparent than real. The notion that a State might become a party to a treaty which could have retroactive effect was inherent in article 28 of the Vienna Convention on the Law of Treaties: the provision that a treaty should not have retroactive effect "unless a different intention appears from the treaty" implied that a treaty might have retroactive effect if it so provided. Article 18 dealt with just the kind of case that, by implication, was contemplated in article 28 of the Vienna Convention.

58. The CHAIRMAN suggested that article 18 should be referred to the Drafting Committee for further consideration.

*It was so agreed.*<sup>3</sup>

The meeting rose at 12.25 p.m.

<sup>3</sup> For resumption of the discussion see 1293rd meeting, para. 34.

### 1274th MEETING

*Monday, 10 June 1974, at 3.10 p.m.*

*Chairman:* Mr. Endre USTOR

*Later:* Mr. José SETTE CÂMARA

*Present:* Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Yasseen.

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

(A/CN.4/277; A/CN.4/279)

[Item 7 of the agenda]

#### INTRODUCTION BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his third report on treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/279), and article 1 of his draft.

2. Mr. REUTER (Special Rapporteur) first drew attention to the bibliography prepared by the Secretariat on the topic under study (A/CN.4/277), which contained an interesting selection of works.

3. He explained that the draft articles appearing in his third report attempted to extend and adapt the Vienna Convention on the Law of Treaties<sup>1</sup> to the particular

sphere of treaties concluded between States and international organizations or between two or more international organizations. The similar attempts made with other topics also linked with the Vienna Convention—succession of States in respect of treaties and the most-favoured-nation clause—were already well advanced, and it was time for the topic under discussion also to assume the form of a draft of articles.

4. In drafting the articles, he had followed the Vienna Convention on the Law of Treaties very closely and had retained the order and numbering of the articles of that Convention. Of course, certain provisions of the Vienna Convention, such as article 5, could have no equivalent in the present draft, and in those cases the number had been omitted. In other cases, such as that of article 2, it had not been possible to reproduce all the paragraphs and subparagraphs systematically. On the other hand, it might perhaps be necessary to introduce articles into the draft which did not appear in the Vienna Convention; they would be numbered *his*, *ter* or *quater* so as not to break the numerical correspondence between the two sets of articles so long as the Commission was working on them.

5. In his third report he had reduced the commentaries to a minimum, in response to the suggestions to that effect made in the Sixth Committee at the twenty-eighth session of the General Assembly.

6. The draft articles were very different from those which the Commission usually had to examine. In the present case he, as Special Rapporteur, must not depart from the Vienna Convention unless it was necessary to do so. In view of that rigid framework, he even had to disregard any new thinking that might have emerged since the adoption of the Vienna Convention in 1969. The preparation of the articles was therefore mainly a matter of drafting and most of the ten provisions proposed should not give rise to long discussions on matters of principle. Six of them raised drafting problems; three raised relatively simple matters of principle; and only one, article 6, raised an important point of principle.

7. The fact that members of the Commission had not sent him any written notes on his draft, as he had asked them to do, certainly did not mean that they fully approved of it.

#### ARTICLE 1

8. Introducing article 1, he said that he proposed the following wording:

##### *Article 1*

##### *Scope of the present articles*

The present articles apply to treaties concluded between States and international organizations or between two or more international organizations. Article 3(c) of the Vienna Convention on the Law of Treaties does not apply to such treaties.

9. The first sentence corresponded to article 1 of the Vienna Convention; it was only with some hesitation that he had added the second.

10. The term "treaty" had been preferred to the term "agreement", in order to conform to the spirit of the

<sup>1</sup> 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.

Vienna Convention. In that instrument, the term "agreement" had a very wide meaning, for it covered any conventional act governed by international law, regardless of the form it took and the parties to it, the term "treaty" being confined to agreements in written form between States. The term "agreement" meant any international conventional act that was not subject to a special régime. So since the draft before the Commission made certain specific conventional acts subject to a special régime, it was undesirable to use the word "agreement", which should continue to be used in its widest sense. Furthermore, since the fate of the draft was linked with that of the Vienna Convention, it was necessary to use the term "treaty", and, following the wording of the resolution adopted by the Vienna Conference, to describe the treaties in question as "treaties concluded between States and international organizations or between two or more international organizations".<sup>2</sup> The disadvantage of that formula was its length and the impossibility of replacing it by an abbreviated expression.

11. At the Commission's twenty-fifth session Mr. Ushakov had suggested that, from the start, treaties concluded between States and international organizations should be kept separate from treaties between two or more international organizations,<sup>3</sup> and his suggestion had subsequently been taken up in the Sixth Committee. He (the Special Rapporteur) considered it inadvisable to stress that distinction from the outset. Both the Commission and the United Nations Conference on the Law of Treaties had decided against making a systematic distinction between the different categories of treaty. They had taken the view that such a distinction should be made only within individual articles and to meet certain needs. It was obvious that not all the rules applicable to treaties concluded between international organizations would apply to treaties concluded between States and international organizations. For instance, in the case of treaties between States and international organizations, and more particularly with regard to the formation and expression of consent, the Vienna Convention would apply to States, whereas the future convention based on the draft articles would apply to international organizations. It would then be necessary to apply the two conventions simultaneously. On the other hand, the Vienna Convention would not apply to treaties concluded between international organizations. In his opinion, it would be better to make such distinctions in individual articles than to make them the basis of the draft.

12. The second sentence of draft article 1 made the wording less simple than that of its model, article 1 of the Vienna Convention. It raised the delicate question of the relationship between a conventional text and a text which might one day become conventional, but to which other subjects of international law might become parties. In adding the second sentence his intention had not been to provide an answer to that question, but to

take account of what had happened at the Vienna Conference. When it had been decided at that Conference to exclude treaties concluded between States and international organizations or between two or more international organizations, some speakers had expressed concern because the future convention on the law of treaties would not cover "trilateral" treaties, which joined two States and an international organization, and which were very numerous, especially where assistance or supplies of fissionable materials were concerned. It was to allay their fears that a subparagraph (c) had been added to article 3 of the Vienna Convention, the effect of which was to reserve the application of that Convention to treaty relations between States, to the exclusion of relations between States and other subjects of international law. But the second sentence of draft article 1 would no longer be justified once the draft had become a convention; for any treaty concluded between two States and an international organization, all three of which were parties to the future convention, would be entirely governed by that new instrument, even where relations between the two States were concerned. If the Commission thought it desirable, the second sentence of article 1 could be placed in square brackets, or replaced by explanations in the commentary, or inserted in one of the final provisions of the draft.

13. Mr. HAMBRO, after congratulating the Special Rapporteur on his excellent report, said that the preparation of the future convention was by no means a simple matter of drafting. It touched on the development of international co-operation and the increasing part played in it by international organizations. It would lead to the discussion of essential questions such as the capacity of international organizations to conclude treaties and the advisability of their acceding to multilateral conventions. Like the Special Rapporteur, he thought the time had come when it was essential to formulate draft articles, in particular, to enable international organizations to provide fresh information on the topic.

14. With regard to article 1, the term "treaty" was certainly preferable to the term "agreement", but it did not seem necessary to specify each time that what was meant was "treaties concluded between States and international organizations or between two or more international organizations". It would be sufficient to indicate that for the purposes of the future convention the term "treaty" was to be understood in that sense. It might, moreover, be thought that in the future jurists would understand the word "treaty" as meaning both treaties concluded between States and treaties concluded between States and international organizations or between international organizations. Besides, in the resolution by which it had recommended the General Assembly to refer the topic under consideration to the Commission, the United Nations Conference on the Law of Treaties had used the word "treaty", even though in article 2 of the Vienna Convention a treaty was defined as "an international agreement concluded between States". The reason why only that one term had been used was that there was no other adequate expression.

<sup>2</sup> *Ibid.*, p. 285, resolution relating to article 1.

<sup>3</sup> See *Yearbook . . . 1973*, vol. I, p. 189, para. 76.

15. Mr. SETTE CÂMARA said that the Special Rapporteur's report was remarkable for the clearness and simplicity of the draft articles and commentaries it contained, which would greatly facilitate the Commission's task of examining the complex and intricate problems of treaty relations between States and international organizations and between international organizations. In accordance with the recommendations of the Sixth Committee, discussions and theoretical references had been reduced to a minimum; the report contained all that need be said on each particular aspect of the problem and no more. The conciseness of the oral presentation of the draft articles also met the wishes of many representatives in the Sixth Committee, and in any case concrete draft articles would do more than long theoretical dissertations to persuade States and international organizations to submit comments and information.

16. As to methodology, the Special Rapporteur's main guideline was that the Commission "should remain as faithful as possible to the Vienna Convention on the Law of Treaties" (A/CN.4/279, preface, para. 3). That was the only possible method, since the essential purpose of the Commission's work was to extend the provisions of the Vienna Convention to treaties concluded between States and international organizations or between two or more international organizations. The fact that the draft articles had been given the same numbers as the corresponding provisions of the Vienna Convention would enable the Commission to keep constantly in mind the parallelism between the two texts.

17. With regard to article 1, he approved of the Special Rapporteur's terminology. Parallelism between the use of the words "treaty" and "agreement" in the Vienna Convention and their use in the present draft was necessary and had been fully justified by the Special Rapporteur in his commentaries.

18. He had found quite convincing the arguments advanced by the Special Rapporteur against separation of the treaties at that early stage into two categories, namely, those concluded between States and international organizations and those concluded between international organizations. The Commission should endeavour to preserve the unity of the juridical régime applicable to international treaties which had emerged from the Vienna Convention.

19. Lastly, he could accept the second sentence of draft article 1, since the saving clause in article 3(c) of the Vienna Convention would no longer be necessary once the rules of that Convention were extended to treaties to which international organizations were parties.

20. Mr. TABIBI said that he, too, welcomed the simplicity and clarity of the Special Rapporteur's report and draft articles.

21. The topic was a very important one, which touched on many sensitive issues. The Commission should lose no time in dealing with it in order to complete the codification of the law of treaties. It was worth noting that the first three Special Rapporteurs on the law of treaties, and Sir Humphrey Waldock himself in

the early stages of his work, had favoured studying the whole of the law of treaties at once. It was only owing to lack of time that it had been decided to concentrate on treaties concluded between States and to defer the study of the present topic. In those circumstances, the General Assembly and the world community as a whole would welcome the early conclusion of the Commission's work on that topic, which would constitute an essential complement to the Vienna Convention on the Law of Treaties.

22. An instrument to govern the present topic was a matter of vital importance to the small nations, which had concluded many assistance agreements with the United Nations and its specialized agencies. Thousands of experts were working all over the world under those agreements to carry out numerous projects. And the number of agreements of that kind was growing very fast—even faster than the number of treaties between States. Over six thousand assistance agreements had already been concluded by the United Nations, mostly through such bodies as the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and the World Food Programme. At the United Nations Conference on the Law of Treaties, the observer for the International Bank had mentioned that the Bank was then a party to some seven hundred agreements with States. At present, five years later, the International Bank, the International Development Association (IDA) and the International Monetary Fund (IMF) were parties to some two thousand agreements. Those figures bore witness to the importance of the subject and the care needed in dealing with it.

23. On the question of capacity, he thought it was now abundantly clear—from custom, law and judicial precedent—that not only States, but also international organizations had the capacity to conclude treaties. For instance, no one could doubt the treaty-making capacity of the United Nations, which had been conferred on it by the collective sovereign authority of the community of States. Hence it was possible—and essential—to complete the codification of the law relating to the present topic. An international instrument on it would protect small nations in the same way as the provisions of the Vienna Convention protected them in regard to treaties concluded between States. He was thinking, in particular, of the provisions of that Convention relating to the validity of treaties.

24. The need to protect States benefiting under assistance agreements was all the greater because of the large sums allocated for programmes covered by those agreements. Moreover, the greater proportion of the funds did not come from the regular budget of the United Nations, but from voluntary contributions promised by States at pledging conferences. Huge sums were thus allocated and spent, without being subject to the control machinery provided for the United Nations budget. The Office of Technical Co-operation allocated funds to the various projects and divided the amounts available among various executing agencies. There had been cases in which a specialized agency, acting as the executing agency, had not spent all the funds allocated to a

project, ostensibly because of some delay on the part of the recipient country, but really in order to divert some of the money into the agency's regular budget. It had to be remembered that, in the case of most specialized agencies, all operational activities were financed with United Nations funds, mainly through UNDP; an agency's regular budget covered only its administrative expenses. The adoption by the Commission of draft articles on the present topic, and their ultimate incorporation in an international instrument, would have the beneficial effect of introducing regularity and discipline into the execution of assistance agreements.

25. That being said, he wished to stress a number of other points. The first was that care should be taken to formulate rules that would not hamper the activities of the international organizations concerned. The activities covered by assistance agreements were beneficial to the recipient countries, and it was in the general interest that they should operate smoothly. Small nations had more faith in agreements with international organizations than in bilateral arrangements. They were, of course, grateful to donors under bilateral arrangements, but they believed that multilateral arrangements were always preferable.

26. Another point to be considered was the question of succession which arose when one international organization or body absorbed another. Examples of such absorption were to be found in the history of the Office of Technical Co-operation, the Governing Council of the Special Fund and the Governing Council of UNDP. When one international body or organization absorbed another, all the technical assistance agreements concluded with recipient States had to be transferred.

27. His third point related to the importance of subsidiary organs. An interesting example was provided by the activities of the regional economic commissions. Resident representatives of UNDP attached to those Commissions often concluded important agreements with States on behalf of the United Nations. Clearly, projects such as those relating to the Mekong River and the Asian Highway could be directed and supervised much better from the offices of the Economic Commission for Asia and the Far East (ECAFE) than from United Nations Headquarters.

28. Lastly, he wished to urge, as he had constantly done, that agreements entered into by international organizations should be registered either at a regional office or at United Nations Headquarters. Those agreements, unlike treaties between States, were not at present registered with the United Nations Secretariat and it would be financially very useful if some form of registration were introduced, if only to minimize the risk of duplication. For instance, it had happened that UNESCO had concluded an agreement with the Ministry of Education of a certain country and another organization had later concluded an agreement with another Ministry covering some of the same ground.

29. Generally speaking, he approved of the content of article 1. On the question of terminology, however, he thought the term "agreement" was preferable to the term "treaty", although the use of the latter term

involved no danger, since its meaning was defined in the Vienna Convention on the Law of Treaties. The term "agreement" was the one generally used by United Nations bodies; it was difficult, for example, to designate as a "treaty" an understanding embodied merely in a letter addressed to a recipient State by an organ of the United Nations.

30. Mr. USHAKOV said he supported the idea that the order and numbering of the articles of the Vienna Convention should be followed in the draft; that would greatly facilitate the Commission's work. In his otherwise excellent report, the Special Rapporteur had adopted a comprehensive method, lumping together treaties between States and international organizations and treaties between international organizations. That method was bound to raise difficulties, of which draft article 1 provided some examples.

31. According to the second sentence of draft article 1, article 3(c) of the Vienna Convention on the Law of Treaties did not apply to "such treaties". According to the first sentence of draft article 1, the expression "such treaties" meant "treaties concluded between States and international organizations or between two or more international organizations". But article 3(c) of the Vienna Convention related only to treaties between States and international organizations, not to treaties between international organizations. Legally, it would be impossible to change the scope of article 3(c) of the Vienna Convention by a provision in another convention, even if the States parties to both conventions were the same. Hence he doubted whether the second sentence of the article under consideration was necessary. Moreover, it followed from article 3(c) of the Vienna Convention that that Convention could, but need not necessarily, apply to the relations referred to in that sub-paragraph. If a new convention dealing with that particular subject-matter was drawn up, it might take precedence.

32. With regard to the drafting of article 1, he suggested that the words "between two or more international organizations" should be replaced by the words "between international organizations", for the sake of symmetry with the Vienna Convention, which used the words "between States". Besides, in the text proposed by the Special Rapporteur, the expression "two or more" was not used with reference to treaties concluded between States and international organizations. That difference might create difficulties of interpretation, as could the use of the plural in the phrase "between States and international organizations". That phrase gave the incorrect impression that the article referred only to multilateral treaties and excluded bilateral agreements between one State and one international organization. Article 3 (c) of the Vienna Convention, on the other hand, did refer to multilateral agreements to which at least two States were parties, as well as another subject of international law.

33. Mr. YASSEEN, referring to the method of work adopted by the Special Rapporteur, said he recognized that there was a close resemblance between the rules governing treaties between States and those governing agreements between international organizations or be-

tween States and international organizations. Nevertheless, the fact that the Commission had decided that the latter question should be considered separately showed that there were certain differences between the two sets of rules. The Vienna Convention should, of course, be followed closely, and the Special Rapporteur had facilitated the Commission's work by following the numbering of the articles of that Convention. The method adopted was therefore acceptable for the first reading, provided that the Commission kept open the possibility of reviewing the whole structure of the draft articles on second reading, or even at the end of the first reading. It should not be blinded by the analogy between the two kinds of treaty, but should recognize the separate nature of the subject-matter it was now trying to codify. The explanations given by the Special Rapporteur did not appear to conflict with that approach.

34. He agreed with the Special Rapporteur that it was necessary to prepare a draft convention to complete the work already done on the general law of treaties. He supported the idea expressed in the first sentence of article 1, but doubted whether it was advisable to assert, in the second sentence, that article 3(c) of the Vienna Convention on the Law of Treaties did not apply to the treaties in question. In fact article 3(c) provided that the Vienna Convention could apply to relations between States under international agreements to which other subjects of international law were also parties, so that the second sentence of draft article 1 might conflict with the Vienna Convention. Moreover, article 3 of the Vienna Convention did not reserve the application of that instrument to agreements between international organizations or between international organizations and States, but its application to relations between States under such agreements. Hence, the second sentence of draft article 1 was unnecessary and there would be no harm in deleting it.

35. With regard to the definition of the subject-matter, he agreed with Mr. Hambro that it was unnecessary to repeat the title of the draft articles every time, and that it would be sufficient to define the word "treaty" for the purposes of the present articles. The Vienna Convention in fact applied only to treaties between States and had not defined the word "treaty" in absolute terms; so in dealing with agreements concluded between States and international organizations or between two or more international organizations, the Commission might well decide to call such agreements "treaties". In doing so, it would not be formulating an absolute definition, any more than the Vienna Convention had done, since the definition would be given only for the purposes of the articles under consideration.

*Mr. Sette Câmara, First Vice-Chairman, took the Chair.*

36. Mr. TSURUOKA said he associated himself with the other members of the Commission in congratulating the Special Rapporteur on his very clear and logical report. Broadly speaking, he agreed with the position taken by the Special Rapporteur, both in his general introduction and in his comments on draft article 1.

37. As to the method of work, he agreed with the Special Rapporteur that it was time to prepare a draft

convention on the important topic of treaties concluded between States and international organizations or between two or more international organizations, and that in doing so the Commission should be faithful not only to the form, but also—and above all—to the spirit of the Vienna Convention.

38. With regard to terminology, he was not sure whether it would be right to refer simply to "treaties", or whether that term needed qualification. He was sure that the Drafting Committee would be able to solve that problem. He himself would be inclined to favour the solution suggested by Mr. Hambro, the Chairman of the Drafting Committee, but he also understood the Special Rapporteur's point of view. For so long as the Commission remained faithful to the Vienna Convention, the term "treaty" would have a precise meaning, and that must be borne in mind when formulating article 1. In any case, article 2 would clarify that point.

39. He agreed with Mr. Yasseen about the second sentence of article 1. At first sight, it was hard to understand the import of that provision, and he thought that it would be wiser not to refer to article 3 (c) of the Vienna Convention at the outset, but to wait and see later whether it was really necessary to include such a provision in the draft. Apart from that point, he was in general agreement with the Special Rapporteur on the draft articles as a whole and on the wording of article 1.

40. Mr. ŠAHOVIĆ said that the draft articles were of great interest and importance to all specialists in international law, from the point of view of the codification and progressive development of the rules relating to treaties concluded between States and international organizations or between two or more international organizations.

41. The discussions which had taken place in the International Law Commission at its twenty-fifth session and in the Sixth Committee at the twenty-eight session of the General Assembly, had made it possible to delimit the scope of the draft and to establish the principles which should govern its formulation. The Special Rapporteur had analysed those basic principles very well, and he agreed with him in recognizing that there must be an underlying unity between the different parts of the law of treaties—that was to say, between the Vienna Convention and the draft in course of preparation. The Special Rapporteur believed that that underlying unity lay in the basic value of consensualism; he had made laudable efforts to preserve it, but in regard to the method to be followed, the question arose whether the Vienna Convention should be taken as the sole basis for the work. In paragraph (7) of his commentary to article 1 (A/CN.4/279), the Special Rapporteur said that the Commission had avoided classification of treaties in order to maintain for all treaties the unity of the régime applicable. In his own opinion, however, the difference between treaties concluded between States and international organizations and treaties concluded between international organizations should be taken into account, for it was a difference resulting from the different legal character of States and international organizations as subjects of international law. The practice relating to

each of those two classes of treaty should therefore be examined more fully.

42. He agreed with the Special Rapporteur's views on the first sentence of article 1 and hoped it would subsequently be possible to find answers to the questions raised during the discussion. With regard to the second sentence, on the other hand, he agreed with Mr. Yasseen and Mr. Ushakov; even though it might later be possible to take a more precise position, he thought the problem should be mentioned in the commentary from the outset. Article 1 should, indeed, be perfectly clear and precise, since it defined the scope of the draft. Personally, he did not think it would be possible to follow the presentation of the Vienna Convention in all respects.

43. Mr. EL-ERIAN said he was pleased to note that, in his third report, the Special Rapporteur had complied with the wish of the Sixth Committee that a set of draft articles should be prepared as quickly as possible. With his usual clarity of vision, the Special Rapporteur had brought out the essential points of the subject, and he fully agreed with his conclusions.

44. He also approved of the pragmatic approach adopted by the Special Rapporteur when he said, in the preface to his report, that it was "preferable to draw the attention of international organizations to a set of draft articles which, perhaps because of their very imperfections, will re-attract their attention in a specific way" and thus "elicit observations more valuable than those which might be obtained in reply to additional questionnaires". Speaking from his own experience as a Special Rapporteur, he could say that international organizations were generally reluctant to reply to questionnaires and much preferred to examine a set of draft articles.

45. He fully endorsed the Special Rapporteur's decision to adhere to the general spirit of the provisions of the Vienna Convention on the Law of Treaties, while introducing adaptations of a substantive or drafting nature wherever appropriate.

46. With regard to the method of work, however, he could not share the hope expressed in the Sixth Committee in 1973, and mentioned in paragraph 6 of the preface to the report, that the Commission's documents would be shorter and omit certain doctrinal or theoretical considerations. On the contrary, he strongly believed that the Commission's doctrinal and theoretical observations, including those contained in the Special Rapporteur's third report, represented a valuable contribution to international law and could be of great use, especially to small countries which did not possess large international law libraries.

47. As to article 1, he agreed with the Special Rapporteur that the idea underlying the draft articles should be the unity of juridical régimes, in accordance with the basic concept of consensualism. Like Mr. Ushakov, Mr. Tsuruoka and Mr. Šahović, however, he doubted that the second sentence of article 1 was necessary, and he accordingly endorsed the last sentence of paragraph (10) of the commentary.

48. Mr. AGO said he was glad to see that the draft articles were beginning to take shape, for although the

Vienna codification of the law of treaties between States had been a very great achievement, it was really only the starting-point for a whole set of instruments which the Commission must draft if it was to complete its work on the law of treaties. The topic of treaties concluded between States and international organizations or between two or more international organizations was perhaps the most important of those still outstanding. It involved some very awkward problems and one of the Special Rapporteur's great merits was to have pointed them out; for the Commission was now aware that at every step it would come up against the problem of co-ordination with the basic convention, which was the Vienna Convention on the Law of Treaties. Like the Special Rapporteur, he believed that even before coming into force that Convention had already gained wide authority as a definition of existing customary law on the subject, and that the same would probably be true of the draft codification on which the Commission was now engaged.

49. During the discussion, reference had been made to the principle of the unity of treaty régimes, and it was precisely in order to solve the problem which arose in that connexion that the second sentence of article 1 made article 3(c) of the Vienna Convention inapplicable. While he appreciated that that sentence was open to discussion, he did not think the problem could be solved by merely deleting it.

50. Was it really possible to speak of a unity of treaty régimes? Article 3(c) of the Vienna Convention dealt with relations between States under international agreements to which other subjects of international law, such as international organizations, were also parties. And there was no reason why the Vienna Convention rules should not apply *in toto* to relations between States under a treaty, even if an international organization was a party to the treaty on the same footing as States. But that did not necessarily mean that there was unity of régime—for instance, in regard to part II of the Vienna Convention, concerning the conclusion and entry into force of treaties. It was, indeed, quite evident that an international organization did not participate in the conclusion and entry into force of a multilateral treaty in the same way as a State. The fact that a treaty was a unity did not mean that the participation of States and the participation of international organizations in the treaty were governed by the same rules. Indeed, it was practically impossible for certain rules to apply both to States and to international organizations. For instance, it was obvious that the rule on the capacity of organs of the State to conclude treaties applied only to States and could not apply to international organizations. Thus, in the case of a treaty concluded between States and international organizations, the rules that would apply to States would necessarily be those laid down in part II of the Vienna Convention, whereas the rules applicable to international organizations would be those that would be laid down in part II of the new convention.

51. That was a complex problem, and he did not think the Commission could solve it by pretending to ignore it or by relying on the principle of the unity of treaty régimes. The Commission should reflect on that prob-

lem, to which the Special Rapporteur had so rightly drawn attention, and seek the formula that would provide the best solution.

52. Mr. KEARNEY, after congratulating the Special Rapporteur on his report, said he had no objections to the method and approach adopted in it, though he was inclined to agree with Mr. Hambro and other speakers that it was unnecessary to repeat, whenever the word "treaty" was used, that it meant a treaty concluded between States and international organizations or between two or more international organizations. He suggested, however, that that matter might best be discussed in connexion with article 2, paragraph 1 (a).

53. He did not consider it necessary to distinguish, from the outset, between treaties concluded between States and international organizations and treaties concluded between two or more international organizations. That was a question which could be better settled in the context of each article as it came up for examination.

54. Lastly, he pointed out that the purpose of the second sentence of article 1 was merely to make it clear that the present set of draft articles would apply to the situation dealt with in article 3 (c) in the Vienna Convention. But whether the present set of articles would provide a complete substitute for that provision of the Vienna Convention could only be known when the articles lay before the Commission in their entirety. He suggested, therefore, that the logical approach would be to leave the second sentence aside until the contents of the draft were better known.

55. Mr. RAMANGASOAVINA said he had read with great interest the Special Rapporteur's third report, which defined the approach and precise scope of the draft articles on treaties concluded between States and international organizations or between two or more international organizations. The draft was, in his view, the logical sequel to the Vienna Convention on the Law of Treaties. He endorsed the recognition of the principle of consensualism on which the draft had been prepared, and the Special Rapporteur's method of following the Vienna Convention step by step. That method was a very sensible one, not only because the Commission must remain faithful to the Vienna Convention, but also because the draft was the necessary complement to that Convention.

56. With regard to article 1, which defined the scope of the draft articles, he noted that the Vienna Convention already encroached to some extent on the topic of treaties concluded between States and international organizations. The first sentence of the article raised no problem, but he thought the second, excluding the application of article 3 (c) of the Vienna Convention, called for clarification. The precise effect of the second sentence did not seem very clear: did it mean that article 3 (c) of the Vienna Convention lost its effect, or that it did not apply to the cases dealt with in the draft articles, but continued to apply to other cases of treaties between States and other subjects of international law? Was article 3 (c) out of place in the Vienna Convention and would it be more appropriate in the present draft,

or did the present draft article 1 cover subject-matter already partly covered by the Vienna Convention? The Commission would have to settle those questions later, in the light of the other draft articles.

57. He thought it desirable that the international organizations should be consulted, since they did have a say in the matter.

The meeting rose at 6.10 p.m.

## 1275th MEETING

Tuesday, 11 June 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

*Present:* Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Yasseen.

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

(A/CN.4/277; A/CN.4/279)

[Item 7 of the agenda]

(continued)

#### ARTICLE 1 (Scope of the present articles) (continued)

1. Mr. MARTÍNEZ MORENO said that the Special Rapporteur's report was solid in content and distinguished throughout by its elegance and clarity of style.

2. In article 1, there could be no question about the logical correctness of the first sentence. As to the second sentence, he himself would prefer to retain it, subject to some redrafting, to show that the present set of draft articles did not apply to subjects of international law other than those envisaged in the Vienna Convention on the Law of Treaties.<sup>1</sup>

3. Mr. QUENTIN-BAXTER said that at the last session the Special Rapporteur had made the Commission fully aware of the fact that the topic under discussion was one which would have to be considered on two levels: first, in terms of the need to remain faithful to the central structure of the Vienna Convention, an instrument already completed and adopted; and secondly, in terms of a voyage of discovery in an area with which international lawyers were not yet very familiar. He welcomed the fact that the Special Rapporteur was uniquely qualified as a guide on that voyage of discovery and as a master of the meticulous legal craftsmanship it would necessarily entail.

<sup>1</sup> 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.