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A/CN.4/SR.1291

Summary record of the 1291st 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:-

1974, vol. I

that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if the object and purpose of the treaty are incompatible with the participation of the newly independent State in that treaty.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

72. Article 14 applied to treaties in respect of which the predecessor State had not expressed its consent to be bound, but which it had signed subject to ratification, acceptance or approval. The Drafting Committee had changed the title of the article in order to align it with the titles of articles 12 and 13 as just approved. All three titles now began with the words "Participation in treaties".

73. During the Commission's discussion of article 14 in 1972[12] and at the present session, several members had taken the position that a newly independent State should not have the right to inherit the signature of a predecessor State to a treaty, and had suggested that the article should be deleted. The majority of the Commission, however , appeared to be opposed to that suggestion, and the Drafting Committee had decided to recommend that article 14 should be retained.

74. The Committee had, however, found several imperfections in the 1972 text of the article. Paragraph 1, which dealt exclusively with the ratification of a treaty by the successor State, contained cross-references to five other provisions of the draft articles and could be understood only after a careful reading of those provisions. Paragraph 2 contained a somewhat obscure reference to paragraph 1 in the phrase "under conditions similar to those which apply to ratification". In order to remedy those imperfections, the Drafting Committee had recast the whole article and now submitted a new text which it believed to be clearer than the 1972 version. The changes which had been made did not affect either the sense of the article or the principle underlying it.

75. Mr. KEARNEY said that although he had no basic objection to paragraph 2 of the article, he noted that that paragraph made use of a legal fiction. As a matter of practice, there was always considerable doubt as to whether the signature of the predecessor State really expressed the intention to extend the treaty to the entire territory for the international relations of which it was responsible.

76. The CHAIRMAN said that the purpose of paragraph 2 appeared to be to establish a presumption. Unless the predecessor State had signified that its signature applied to a certain part of its territory, it could be presumed to wish to bind the whole of the territory under its jurisdiction.

77. If there were no further comments, he would take it that the Commission approved article 14 as proposed by the Drafting Committee.

It was so agreed.

The meeting rose at 12.30 p.m.

1291st MEETING

Tuesday, 9 July 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, 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; A/CN.4/L.210)

[Item 7 of the agenda]

(resumed from the 1279th meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to consider the title of the draft articles and of part I, the titles and texts of articles 1, 2, 3 and 4, the titles of part II and section 1, and the titles and text of article 6 adopted by the Drafting Committee (A/CN.4/L.210).

TITLE OF THE DRAFT ARTICLES AND OF PART I

2. Mr. HAMBRO (Chairman of the Drafting Committee) said that, in the title of the draft articles, the Drafting Committee proposed that the words "Question of" should be replaced by the words "Draft articles on". It also proposed that the words "or between two or more international organizations" should be replaced by the shorter and possibly clearer wording "or between international organizations". The new title would thus read: "Draft articles on treaties concluded between States and international organizations or between international organizations".

3. For part I, the Drafting Committee proposed that the Commission should retain the title "Introduction", used by the Special Rapporteur in his third report (A/CN.4/279), and in the Vienna Convention on the Law of Treaties,[1] on which the present draft articles were modelled.

ARTICLE 1[2]

4. For article 1, the Drafting Committee proposed the following title and text:

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[12] Then article 8 *bis*; see *Yearbook ... 1972*, vol. I, p. 212 *et seq.*

[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.

[2] For previous discussion see 1274th meeting, para. 8.

Article 1

Scope of the present articles

The present articles apply to:

(*a*) treaties concluded between one or more States and one or more international organizations;

(*b*) treaties concluded between international organizations.

5. Article 1 dealt with the scope of the draft articles and covered two categories of treaties. The first consisted of treaties concluded between one or more States on the one hand, and one or more international organizations on the other; the second consisted of treaties concluded by international organizations *inter se*. In the interests of clarity, the Drafting Committee had divided the article into two sub-paragraphs, each referring to one of those two categories—an arrangement which would facilitate cross-references.

6. During the discussion in the Commission, it had been suggested that the commentary to article 1 should emphasize that the application of the draft articles was subjected to the rules of *jus cogens*. The Drafting Committee had, however, taken the view that that matter should be dealt with as a specific provision of the draft and not merely in the commentary; the Special Rapporteur would submit an article on the subject later.

7. Mr. ELIAS, supported by Mr. KEARNEY, proposed the addition of the word "and" at the end of sub-paragraph (*a*).

8. The CHAIRMAN said that if there were no further comments he would take it that the Commission approved the title of the draft articles, the title of part I, and the title and text of article 1, with the change proposed by Mr. Elias.

It was so agreed.

ARTICLE 2,[3] PARAGRAPH 1 (*a*)

9. Mr. HAMBRO (Chairman of the Drafting Committee) said that article 2 contained the usual provisions on the use of terms. The Drafting Committee proposed the following text for article 2, paragraph 1(*a*):

Article 2

Use of terms

1. For the purposes of the present articles:

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

(i) between one or more States and one or more international organizations, or

(ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

10. It would be recalled that the Commission had discussed at some length the question whether paragraph 1(*a*) of the present draft, which corresponded to article 2, paragraph 1(*a*) of the Vienna Convention on the Law of Treaties, should likewise define the term "treaty" or should, instead, define the expression "treaty concluded between States and international organizations or between international organizations". The majority of the Commission, and also the Special Rapporteur in his concluding statement at the 1279th meeting, had favoured the simpler of those two solutions. The text now proposed by the Drafting Committee therefore defined the term "treaty" in the context of the present draft articles. That text was divided into two sub-paragraphs in order to reflect the distinction now made in article 1 between the two categories of treaty to which the draft applied.

11. In the text of paragraph 1(*a*) submitted by the Special Rapporteur in his third report (A/CN.4/279), the expression "governed by international law" had been qualified by the adverb "principally" and the adjective "general", neither of which appeared in the corresponding provision of the Vienna Convention. The Special Rapporteur himself had suggested in his concluding statement that those two words should be deleted, since they were not indispensable and might even be considered not quite correct. They had accordingly been omitted from the text now proposed by the Drafting Committee.

12. The CHAIRMAN, speaking as a member of the Commission, asked whether, in the present draft articles, the term "treaty" would never have the same meaning as in the Vienna Convention on the Law of Treaties. It seemed to him possible that it might prove necessary somewhere in the draft to use the term "treaty" to denote a treaty between States, which was the meaning given to that term in the Vienna Convention.

13. Mr. REUTER (Special Rapporteur) confirmed that view and said that the definition of the word "treaty" given in sub-paragraph (*a*) could raise a drafting problem later; the Commission might indeed have to refer in other articles to treaties as defined in the Vienna Convention. It would then have to explain the term "treaty" by saying "treaty between States" or "treaty within the meaning of the Vienna Convention".

14. The CHAIRMAN said that if there were no further comments he would take it that the Commission approved paragraph 1(*a*) of article 2, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 2, PARAGRAPH 1(*d*)

15. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 2, paragraph 1(*d*):

(*d*) "reservation" means a unilateral statement, however phrased or named, made by a State or by an international organization when signing or consenting [by any agreed means] to be bound by a treaty whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization;

16. That text was modelled on the corresponding provision of the Vienna Convention on the Law of Treaties, except in one respect. Article 2, paragraph 1(*d*) of the Vienna Convention used the words "when signing, ratifying, accepting, approving or acceding to a treaty".

[3] For previous discussion see 1275th meeting, para. 25.

Since it was not yet known what means would be specified in the present draft articles for the expression of consent to be bound by a treaty, the Commission had replaced those words by the more neutral phrase: "when signing or consenting [by any agreed means] to be bound by a treaty". The words "by any agreed means" were intended to emphasize that it was not within the discretion of a participant in a treaty to choose the means of expressing consent to be bound by the treaty. Those words had, however, been placed in square brackets in order to indicate that the Commission would have to review the whole matter at a later stage, when it completed its study of the means of expressing consent to be bound by a treaty.

17. Mr. YASSEEN said he was afraid that the expression "agreed means" might suggest that the means had to be the subject of an agreement. For if a custom or a consistent practice of international organizations was involved, one could hardly speak of "agreed means" without straining the meaning of practice or custom. He would therefore prefer the expression "by any other recognized means".

18. Mr. REUTER (Special Rapporteur) reminded the Commission that as the result of an amendment submitted by Poland and the United States, article 11 of the Vienna Convention had been substantially amended by the addition of the expression "or by any other means if so agreed" to the enumeration of the different traditional means of expressing consent to be bound by a treaty.[4] On reading that article, it might be wondered whether the expression in question was not intended to include and summarize the various means previously mentioned, namely, signature, exchange of instruments constituting a treaty, ratification, acceptance, approval and accession. If that was so, the wording of the article could have been simplified by deleting the reference to those various means of expressing consent to be bound by a treaty, since they were agreed means. He recognized that in French the word "*convenu*" might suggest an agreement, whereas the English term "agreed" was more flexible and denoted any process whereby consent was given. Nevertheless, he recommended that paragraph 1(*d*) be approved as it stood, since the Commission would have to revert to the matter later. If it then took the view that international organizations had formal procedures analogous to those generally recognized—ratification, approval, accession, and so on—it would have to define those procedures and mention them in the text of the article. The replies from international organizations did, indeed, show that, just like States, they each had their own practice. He therefore thought it preferable provisionally to approve paragraph 1(*d*) as proposed by the Drafting Committee.

19. Mr. YASSEEN said he saw no objection to retaining the present wording of paragraph 1(*d*) until the draft was reviewed as a whole.

20. The CHAIRMAN said that if there were no further comments he would take it that the Commission approved paragraph 1(*d*) of article 2, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 2, PARAGRAPHS 1(*e*) AND 1(*f*)

21. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following texts for article 2, paragraphs 1(*e*) and 1(*f*):

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

(i) a State,

(ii) an international organization

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

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

(i) a State,

(ii) an international organization

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

22. With very minor drafting changes, the text of those paragraphs was modelled on that of the corresponding provisions of the Vienna Convention on the Law of Treaties.

23. Mr. USHAKOV said that the translation of paragraphs 1(*e*) and 1(*f*) into Russian presented a grammatical problem, owing to the joint treatment of the separate subjects "a State" and "an international organization"; he hoped that type of construction could be avoided in future.

24. The CHAIRMAN said that the point made by Mr. Ushakov had been noted. If there were no further comments, he would take it that the Commission approved paragraphs 1(*e*) and 1(*f*), as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 2, PARAGRAPH 1(*i*)

25. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for paragraph 1(*i*):

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

26. That paragraph was identical with the corresponding provision of the Vienna Convention on the Law of Treaties.

27. The CHAIRMAN said that if there were no comments he would take it that the Commission approved paragraph 1(*i*), as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 2, PARAGRAPH 2

28. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 2, paragraph 2:

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

[4] See *Official Records of the United Nations Conference on the Law of Treaties, First Session, Summary Records* (United Nations publication, Sales No. E.68.V.7), p. 83, para. 42 *et seq.*

29. That paragraph reproduced the wording of article 2, paragraph 2, of the Vienna Convention on the Law of Treaties with the addition of the words: "or by the rules of any international organization". That addition, which corresponded to the reference to the internal law of any State, was necessary, because the draft dealt not only with treaties concluded by States, but also with treaties concluded by international organizations. The words "rules of the organization" had been taken from the passage reading "without prejudice to any relevant rules of the organization", in article 5 of the Vienna Convention. The use of the word "relevant" before "rules" was appropriate in that article because it dealt with specific matters, namely, treaties constituting international organizations and treaties adopted within an international organization. It was equally appropriate in article 6 of the present draft, which also dealt with a specific matter—the capacity of international organizations to conclude treaties. The word "relevant" would, however, have been out of place in paragraph 2 of draft article 2, which related to the whole body of rules of an international organization.

30. The CHAIRMAN said that if there were no comments he would take it that the Commission approved paragraph 2, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 3[5]

31. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following title and text for article 3:

Article 3

International agreements not within the scope of the present articles

The fact that the present articles do not apply

(i) to international agreements to which one or more international organizations and one or more entities other than States or international organizations are [parties];

(ii) or to international agreements to which one or more States, one or more international organizations and one or more entities other than States or international organizations are [parties];

(iii) or to international agreements not in written form concluded between one or more States and one or more international organizations, or between international organizations

shall not affect:

(*a*) the legal force of such agreements;

(*b*) the application to such agreements of any of the rules set forth in the present articles to which they would be subject under international law independently of the articles;

(*c*) the application of the present articles to the relations between States and international organizations or to the relations of international organizations as between themselves, when those relations are governed by international agreements to which other entities are also [parties].

32. Article 3 of the Vienna Convention on the Law of Treaties was a saving clause applying to all the international agreements not covered by that Convention. It was, of course, theoretically possible to include in the present draft a corresponding clause safeguarding all the international agreements not covered by the draft, but such a clause would apply, in particular, to international agreements in written form concluded between States. In the Drafting Committee's view, that would be undesirable, since such agreements needed no safeguarding in draft articles which were the offspring of the Vienna Convention. The Committee had therefore come to the conclusion that article 3 of the present draft should apply to only some of the agreements not covered by the draft. That conclusion required that the categories of the agreements safeguarded by the article should be clearly specified. The text now proposed therefore contained a list of those categories, divided into three sub-paragraphs. It did not include either international agreements between States or international agreements between entities other than States or international organizations, which were both rare and varied, so that no rules on them could yet be formulated.

33. The word "entities" had been used in sub-paragraphs (i) and (ii) instead of the term "subjects of international law" used in article 3 of the Vienna Convention, in order not to prejudge the question whether all international organizations, whatever their nature, were subjects of international law. The Commission would no doubt wish to avoid prejudging that question in a draft which did not deal with the status of international organizations.

34. The term "parties", appearing in sub-paragraphs (i), (ii) and (*c*), had been placed in square brackets in order to indicate that, for the time being, the draft contained no definition of that term. The use of the term would be reviewed by the Drafting Committee and by the Commission itself when a definition had been agreed upon.

35. Mr. CALLE Y CALLE suggested that, in the Spanish text of sub-paragraph (iii), the words "*no escritos*" should be replaced by the language used in the corresponding provision of the 1969 Vienna Convention: "*no celebrados por escrito*".

36. Mr. REUTER (Special Rapporteur) said that agreements in written form should be distinguished from agreements of which there was merely evidence in writing; for there might be agreements concluded by oral exchanges whose existence was recorded in writing in the records of a conference or of an international organization. Such agreements were evidence in writing, but were not in written form.

37. It would not suffice, in sub-paragraph (iii), to refer to "oral" agreements, since that would exclude another category of agreements—those which might be concluded by conduct. For in addition to agreements in written form, agreements evidenced in writing and oral agreements, there was, perhaps, a fourth category: agreements resulting from conduct, which was neither written nor oral. It would therefore be preferable to keep to the negative and non-committal expression "not in written form".

38. Mr. ELIAS proposed the deletion of the word "or" at the beginning of sub-paragraphs (ii) and (iii) and its insertion at the end of sub-paragraph (ii).

[5] For previous discussion see 1275th meeting, para. 25.

39. The CHAIRMAN said that the commentary should perhaps explain that the agreements mentioned in sub-paragraphs (i) and (ii) could be in written form or not.

40. If there were no further comments, he would take it that the Commission approved article 3 as proposed by the Drafting Committee, subject to final decisions on the change in the Spanish text proposed by Mr. Calle y Calle and the changes in the English text proposed by Mr. Elias.

It was so agreed.

ARTICLE 4[6]

41. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following title and text for article 4:

Article 4

Non-retroactivity of the present articles

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

42. The article was modelled, with the necessary changes, on the corresponding provision of the Vienna Convention on the Law of Treaties.

43. Mr. USHAKOV observed that the words "their entry into force" presupposed the participation of all international organizations in the future convention—a matter which the Commission had not yet considered. He doubted whether that assumption was justified at the present stage.

44. Mr. REUTER (Special Rapporteur) said that the present text did, indeed, presuppose the machinery of a convention and, as Mr. Ushakov had pointed out, the Commission had not yet taken up that problem. It would therefore be necessary to adopt a different formulation and say, for example, "after they have become invocable against those States and those international organizations". For States could conceivably conclude a treaty whose final provisions stipulated that the present articles could be invoked only against organizations which so agreed; that would not make those organizations parties to the convention, but it would enable them to recognize, by an independent juridical act, the rules laid down in the present articles. As to the future of the draft articles there were, in fact, three possibilities: a general convention to which States and organizations would be parties and which would remain within the general régime of treaties—the situation which seemed to follow from the present text; a resolution of the General Assembly recommending the application of the rules laid down in the draft articles; and a convention between States, with machinery enabling international organizations to recognize those rules without being parties to the convention.

45. Mr. HAMBRO (Chairman of the Drafting Committee) said he appreciated the problem raised by Mr. Ushakov, but thought that to make any change in the text might prejudice later decisions by the Commission. He would prefer to retain the text as it stood, while making it clear in the commentary that the Commission did not intend to deal with the question how international organizations would become bound by the instrument that would emerge from the present draft articles.

46. Mr. REUTER (Special Rapporteur) proposed that the words "their entry into force" should be placed in square brackets and that it should be explained in the commentary that the Commission was not taking any position on how the rules laid down in the draft articles could enter into force for international organizations.

47. Mr. AGO observed that, coming after the word "treaties", the word "their" was ambiguous. It might be preferable to say: "after the entry into force of the present articles".

48. Mr. KEARNEY said that the question of participation by international organizations in the instrument which would result from the present draft was a fundamental one. The matter should be dealt with fully in the commentary, so as to elicit government comments.

49. The CHAIRMAN said that if there were no further comments he would take it that the Commission approved article 4, as proposed by the Drafting Committee, subject to the words "their entry into force" being placed in square brackets as proposed by the Special Rapporteur, and on the understanding that the commentary would explain very fully the reasons for that decision.

It was so agreed.

TITLES OF PART II AND SECTION 1

50. Mr. HAMBRO (Chairman of the Drafting Committee) said that the titles proposed by the Drafting Committee for part II and section 1 had been taken from the Vienna Convention on the Law of Treaties. They read:

PART II

CONCLUSION AND ENTRY INTO FORCE OF TREATIES

SECTION 1. CONCLUSION OF TREATIES

51. The CHAIRMAN said that if there were no comments he would take it that the Commission approved the titles of part II and section 1, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 6[7]

52. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following title and text for article 6:

Article 6

Capacity of international organizations to conclude treaties

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

[6] For previous discussion see 1275th meeting, para. 25.

[7] For previous discussion see 1275th meeting, para. 25.

53. That text was the result of a compromise which, like the use of the word "entity" in article 3, was based on the obvious fact that the draft was not concerned with the status of international organizations. The Drafting Committee believed that, for the limited purposes of the draft, article 6 said all that needed to be said on the matter and did so briefly and clearly.

54. He had already explained the origin of the expression "the relevant rules of that organization", when introducing paragraph 2 of article 2. The commentary would, of course, explain what the Commission meant by that expression. The matter had been fully discussed in the Commission and he need not add anything to what had already been said, particularly by the Special Rapporteur and by Mr. El-Erian.

55. Mr. TAMMES said that, in spite of its commendable efforts, the Drafting Committee had not been able to produce a really satisfactory text on the question of the capacity of international organizations to conclude treaties. As the Special Rapporteur had pointed out in paragraph 50 of his second report,[8] to say that the capacity of each organization was determined individually by the terms of its own statutes was tantamount to admitting that there was no general rule; a provision of that kind would be of little use.

56. Although article 6 might be said to state an obvious fact, it could still be dangerous in view of the prominent place it occupied in the draft: it could have a confusing effect on subsequent articles. That point could be illustrated by considering the consequences that would have ensued if article 6 of the Vienna Convention on the Law of Treaties had been worded to state that the capacity of a State to conclude treaties was governed by the internal law of that State—a formula which would correspond to the "relevant rules" principle embodied in the draft articles under consideration. An article of that kind would clearly have conflicted with the provisions of article 27 (Internal law and observance of treaties) and article 47 (Specific restrictions on authority to express the consent of a State) of the Vienna Convention. It would have made it possible, for example, to invoke internal law to argue that a treaty had been concluded *ultra vires*, which was precisely the possibility excluded by the rule in article 27 of the Vienna Convention.

57. Mr. YASSEEN said that, in his view, the Drafting Committee had succeeded in finding the appropriate wording, since the formulation of the article was neutral and did not prejudge the different doctrines concerning the basis of the capacity of international organizations to conclude treaties. Article 6 presupposed that, under international law, those who established an international organization had the power to confer a certain treaty-making capacity on it; but existing international law could not be held to contain rules on the capacity of the host of international organizations which might be created in the future. It was not for an international convention on treaties concluded between States and international organizations to grant an international organization treaty-making capacity. The possibility of conferring that capacity on an international organization lay in international law itself, and the international organizations availed themselves of it to draw up rules on the subject. It was therefore correct to say that the capacity of an international organization to conclude treaties was "governed by the relevant rules of that organization".

58. Mr. KEARNEY said article 6 was a reasonably successful attempt to reconcile the conflicting approaches to the nature of international organizations. Undoubtedly, as Mr. Tammes had pointed out, the Commission would in due course have to deal with the problem of the effect of the constitutional law of an international organization on the conclusion of treaties by it. Problems of that kind would certainly have to be faced, because many of the treaties signed by international organizations involved large sums of money—a fact which would inevitably lead to arguments on questions like capacity. It would therefore be wise to mention in the commentary that the Commission would deal with the matter later in the draft.

59. Mr. ELIAS said that there was no real analogy with article 6 of the Vienna Convention to justify the argument put forward by Mr. Tammes. The treaty-making capacity of States was determined by the principle of the sovereignty and equality of all members of the international community; draft article 6 simply stated that the capacity of an international organization to conclude treaties would be determined by the internal rules of that organization.

60. In its advisory opinion on *Reparation for injuries suffered in the service of the United Nations*,[9] the International Court of Justice had based its finding that the United Nations had capacity to bring suit on a close examination of all the provisions of the United Nations Charter. What the Court had done had been, precisely, to refer to the "internal law" of the United Nations. The Commission could therefore do no more than adopt a similar formula for the purposes of draft article 6.

61. He therefore suggested that the Commission should approve article 6 as it stood, and revert to it if necessary in the light of the decisions taken with regard to later articles of the draft.

62. The CHAIRMAN, speaking as a member of the Commission, said that he found the terms of article 6 fully in conformity with the present stage of development of international law.

63. Mr. TAMMES said he would not oppose the approval of article 6, provided it was made clear in the commentary that the Commission might have to revert to it in the light of its later decisions on articles such as those corresponding to articles 27 and 47 of the Vienna Convention.

64. Mr. REUTER (Special Rapporteur) said it would be mentioned in the commentary that, in the opinion of some members of the Commission, the wording of

[8] Document A/CN.4/271, reproduced in *Yearbook ... 1973*, vol. II.

[9] I.C.J. Reports 1949, p. 174.

article 6 might have to be reconsidered in the light of subsequent articles.

65. The CHAIRMAN said that if there were no further comments he would take it that the Commission approved article 6, as proposed by the Drafting Committee, on the understanding that the commentary would contain a passage on the lines indicated by the Special Rapporteur.

It was so agreed.

The meeting rose at 12 noon.

1292nd MEETING

Wednesday, 10 July 1974, at 12.10 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Co-operation with other bodies
(A/CN.4/L.214)

[Item 10 of the agenda]
(resumed from the 1278th meeting)

STATEMENT BY THE OBSERVER FOR THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

1. The CHAIRMAN welcomed the observer for the European Committee on Legal Co-operation and invited him to address the Commission.

2. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that it had been under the chairmanship of Mr. Bartoš that the Commission had decided, in 1966, to establish links of co-operation with the then recently established European Committee on Legal Co-operation. The passing of that great jurist, who had been wholeheartedly devoted to the cause of justice and peace in the world, was a loss not only to the Commission, but to the international community as a whole. He expressed his sympathy to the Commission and congratulated it on having elected Mr. Šahović to succeed Mr. Bartoš as a member.

3. He had been unable to attend the special meeting which the Commission had held on 27 May 1974 to celebrate its twenty-fifth anniversary, but he had already conveyed his Committee's sentiments of admiration in a message he had addressed to the General Assembly of the United Nations on the occasion of its celebration of that anniversary. In addition, the European Committee on Legal Co-operation had associated itself with that event by stressing, at its own tenth anniversary, the objectives which linked it with the Commission, namely, the codification and progressive development of international law. The European Committee would seek to ensure the widest possible application of the drafts on which the Commission was engaged; Mr. Tabibi, who had attended its recent meeting as observer for the Commission, had encouraged the Committee to follow that course.

4. The activities of the European Committee on Legal Co-operation related to a number of subjects, three of which deserved special mention: the protection of human rights, water pollution control and practice relating to the law of treaties. The international protection of human rights was, of course, one of the Committee's main activities. It took the form, first, of action based on the European Convention on Human Rights,[1] and, secondly, of connected measures which might even lead to the formulation of more highly specialized treaties to supplement that Convention. France had recently ratified both the Convention and its additional protocols, with the exception of the protocol which conferred a consultative jurisdiction, though of a very limited character, on the European Court of Human Rights. That ratification had been accompanied by reservations which were of considerable interest with regard to international treaty practice in the matter of reservations. In addition, the application of the Convention had been developed by the European Court of Human Rights in a judgment that had awarded monetary compensation to an injured person on the basis of provisions which were to be found, in an almost identical form, in human rights treaties of a universal character.

5. During the twenty-five years since its signature, the European Convention on Human Rights had naturally given rise to procedural problems with regard to its application, and studies had recently been undertaken with a view to simplifying and speeding up procedure. It should be noted that the Court of Justice of the European Communities had recently invoked the Convention as a reference text, that was to say, in an area not formally within its scope.

6. With regard to the protection of water resources and, particularly, of international watercourses against pollution, a draft convention had been prepared[2] which was now before the Committee of Ministers of the Council of Europe; only political difficulties could now prevent its finalization. That draft contained legal innovations of some importance. It took the form of a basic instrument which laid down the obligation of the future contracting parties to enter into negotiations with each other, with a view to concluding co-operation agreements between the riparian States of the same international watercourse. In its present form, that *pactum de contrahendo*, which was set forth in articles 12 and 13 of the draft, was without precedent.

7. The draft convention also imposed specific material obligations on contracting States to maintain the quality of the waters in accordance with minimum quality standards, and to enact regulations to prohibit or re-

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[1] United Nations, *Treaty Series*, vol. 213, p. 222.

[2] See *Legal problems relating to the non-navigational uses of international watercourses* (A/CN.4/274), part III, para. 377.