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A/CN.4/SR.1346

Summary record of the 1346th 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:-

1975, vol. I

bound by that Convention in calculating the number of instruments of ratification necessary for its entry into force.

75. Referring to a difficulty regarding article 9 pointed out to him by Mr. Ushakov, he said that the equivalent of the words "all the States", used in article 9, paragraph 1, of the Vienna Convention which gave that provision its legal force, should be included in article 9, paragraph 1, of the present draft. It was only because he had not been able to find a satisfactory wording that he had left the text he was proposing somewhat imprecise.

The meeting rose at 6.10 p.m.

1346th MEETING

Tuesday, 8 July 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Rossides, Mr. Šahović, Mr. Sette Câmara, 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.4/285)

[Item 4 of the agenda]

(*continued*)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 9 (Adoption of the text),

ARTICLE 2 (Use of terms), PARAGRAPH 1 (*g*), AND

ARTICLE 10 (Authentication of the text) (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of articles 9 and 10 and the related provision in paragraph 1 (*g*) of article 2 (Use of terms).

2. Mr. ŠAHOVIĆ said that although he recognized the need to keep the law of treaties as consistent as possible, the study of treaties concluded between States and international organizations or between several international organizations required a thorough analysis of the practice because there were wide differences in that respect between States and international organizations. The Commission had so far adopted a realistic method. Article 6, on the capacity of international organizations to conclude treaties, was a compromise which was perfectly acceptable in the present circumstances. In considering the draft articles, the Commission should try both to promote the progressive development of international law and to reaffirm the principles already codified in the Vienna Convention on the Law of Treaties.

3. He agreed with the way in which the Special Rapporteur had framed article 9. In particular, two separate paragraphs were needed, one dealing with treaties concluded between States and international organizations, and the other with treaties concluded between several international organizations. The phrase "as potential parties", which was intended to eliminate any difficulties which might arise as a result of the particular situation of certain organizations taking part in the drawing up of the text of a treaty, did not seem to him indispensable. It would be sufficient to use the word "parties" and to provide the necessary clarification in the commentary.

4. Although international organizations could not be fully assimilated to States as subjects of international law, it was important, particularly in article 9, paragraph 3, not to make too great a distinction between the status of States and that of international organizations. The definitions already adopted by the Commission were applicable to the draft as a whole and would not allow it to treat States and international organizations very differently.

5. Mr. ELIAS said he found both articles 9 and 10 acceptable for the reasons given in paragraphs 3 and 4 of the commentary to article 9, especially in paragraph 3, to which there was a reference in the commentary to article 10. A satisfactory explanation was given of the way in which the corresponding provisions of the Vienna Convention on the Law of Treaties had been adapted.

6. Article 10 did not involve any difficulty, but article 9 raised the problem of the position of an international organization as a party to a treaty. For obvious reasons, there were instances where a conference was held under the auspices of an international organization and the participants did not all have the same status. It was thus possible for an organization to participate in the drawing up of a convention without necessarily becoming a full party to it subsequently. The Special Rapporteur had therefore been well advised to frame article 9 so as to confine the requirement of consent to those organizations which had participated in the drawing up of the text as "potential parties". In paragraph 3 of the commentary to article 9, the Special Rapporteur mentioned the possibility of using instead the form of words "which participated in that drawing up during the negotiation". He himself did not favour that alternative and much preferred the wording used in the text submitted by the Special Rapporteur.

7. In paragraph 3 of article 9, the Special Rapporteur had taken the position that, in computing the required two-thirds majority, only international organizations possessing the same rights as States at the conference should be counted. Clearly, the matter would depend entirely on whether, in that situation, an organization was regarded as broadly comparable to a State.

8. He suggested that articles 9 and 10, together with the definition of "party" contained in paragraph 1 (*g*) of article 2, be accepted and referred to the Drafting Committee, with instructions to examine the possibility of improving the wording, particularly that of article 9, paragraph 3.

9. Mr. PINTO said that the provisions under discussion involved for him problems both of substance and of drafting.

10. From the point of view of substance, he had a fundamental difficulty with the terms of paragraph 3 of article 9. The idea that an international organization could become a party to a treaty was established by practice and there could be no question of reversing that practice. Nevertheless, as he had pointed out at the 1344th meeting, [1] an international organization was not a State and could not possibly be treated on the same footing as a State. In the first place, an organization was not sovereign. It did not possess the full range of powers or the same political potentialities as a State. An international organization was bound by its constituent instrument and had no powers beyond those conferred upon it either explicitly or by implication in that instrument.

11. Another consideration was that the political forces which operated within an organization were not the same as those which operated within a State. The position in an organization depended on the resolution of forces exercised by individual sovereign States, each pursuing its national policy. Every State had the possibility of initiating action in an international organization, but a single State had very little control over an organization. It would not be possible for any particular State to determine the position that would be taken by an organization at a conference to draw up the text of a treaty. The only way in which States could exercise their influence in an organization was through their right of association. That right, however, was very complex to operate. Even in a very cohesive group of States, each individual State had to sacrifice its own immediate requirements to the interests of the group. The immediate political gains resulting for a particular State from following the action agreed by the group were usually small and sometimes even non-existent. Certain States having considerable power, on the other hand, were faced with a different problem by what some regarded as the tyranny of the majority. The difficulties resulting from the contrast between the position of those States and that of certain groups had led to the practice at international meetings of taking decisions by consensus. That was the situation in the international community and it had to be taken into account as a reality. In that situation, most States were extremely reluctant to allow international organizations to have a status comparable to that of States. By adopting that attitude, the Governments of States believed that they were upholding their sovereign rights and thereby protecting the legitimate interests of their people.

12. Another important consideration was that international organizations varied considerably in character. Some were of a universal character, others were more limited. Some had a wide range of activities and interests, others were restricted to a specific topic. It was therefore extremely hazardous to try to lay down rules applicable to all organizations at all conferences in which they might participate.

13. For those reasons, and bearing in mind particularly the wariness of States when dealing with international organizations, he could not accept the idea embodied in paragraph 3 of article 9 that an international organization could have the right to vote at a conference. The Commission should recognize the present position, namely, that an international organization was allowed to speak at a conference and wield whatever influence its chief executive officer could exercise, but without participating in votes.

14. He had a few comments to make on the drafting of article 9. In paragraph 2, the Drafting Committee should consider the possibility of replacing the word "between" by the word "among", before the words "several international organizations". In paragraph 3, the phrase "two thirds of the States and organizations present and voting" stood in need of explanation, possibly in the commentary. Under no circumstances should those words be taken to mean that it was necessary for the majority to include both two-thirds of the States present and voting and two-thirds of the organizations present and voting. That drafting comment was of course subject to his objection of substance to the idea of an international organization voting at all.

15. Mr. KEARNEY said that, although he understood Mr. Pinto's position, he was not at all opposed to the provision contained in paragraph 3 of article 9. It should be remebered that the provision in question had the character of enabling legislation. It simply supplied a framework in which it was possible for States and international organizations to agree among themselves on the role which those States and organizations would have in relation to a particular treaty. The Commission should not attempt to draw any conclusions or impose any requirements as to the necessary role of an international organization. It should draft rules which would permit international organizations to participate in the formulation of a treaty to the fullest extent, if such was the wish of the participating States and international organizations concerned. Concern regarding the present situation in the international community should not block future developments. The Commission should take the long view and consider that the draft articles which it was preparing were intended to serve as rules of international law valid for the next half-century.

16. It seemed undesirable, however, to include in paragraph 3 of article 9 the requirement that organizations should have the same rights as States at a conference to adopt the text of a treaty. There was no need for an international organization to have all the rights of a State for it to be allowed to vote at a conference. For example, the rules of procedure of a conference might require that the officers of the conference should all be representatives of States. The fact, however, that the representatives of participating international organizations were not eligible for such office was no reason to deprive those organizations of the right to vote if the participants in the conference wished them to have that right.

17. The real test should be whether the rules of procedure of the conference conferred upon an international organization the right to vote. For that reason, he proposed that, in paragraph 3 of article 9, the words "possessing the same rights as States at that conference" be replaced by the words "participating with the right to vote". In that manner, any international organization having the

[1] Para. 34.

right to vote under the conference's rules of procedure would be covered by the provisions of paragraph 3.

18. There were similar reasons for amending paragraph 1 (*g*) of article 2, which stated that, for the purposes of the draft articles, "party", apart from a State party, meant an international organization, when its position with regard to the treaty was "identical to that of a State party". The requirement of identity made the provision excessively restrictive and very difficult to apply when it was considered that States and international organizations were fundamentally two very different types of entity. It was significant that, in the commentary to that paragraph, a much weaker expression was used, since it referred to international organizations whose relations with the treaty were in every respect "comparable to those of the States parties". It was also worth noting that even States parties might not all be in an identical position in relation to a treaty. For example, in the case of the Antarctic Treaty of 1959, [2] there were two types of party, depending upon their activities in the region.

19. For those reasons, he proposed the deletion of the second sentence of paragraph 1 (*g*) of article 2, beginning with the words "in the same conditions", and the insertion, after the word "State", of the words "or international organization". The provision would then read: "'party' means a State or international organization which has consented to be bound by the treaty and for which the treaty is in force".

20. He had no problem with the provisions of article 10.

21. Mr. HAMBRO, referring to Mr. Pinto's comments, said that while it was true that international organizations were not sovereign, it was equally true that the sovereignty of States was not unlimited; like that of international organizations, it was limited by international law.

22. International organizations were extremely diverse and their interests and competence could vary considerably. The same diversity was to be found among States; they could be either large or small and their interests could be very wide or very narrow. The principle of the sovereign equality of States could not hide the fact that States were really no more equal than international organizations were. Some organizations had many members, but others had only three or four. In the latter case, the vote of each member State had much more weight. The majority of two-thirds of the States and organizations present and voting, referred to in article 9, paragraph 3, should be understood as the majority of two-thirds of all the States and organizations present and voting, provided the organizations were entitled to vote. If that was indeed the meaning of that provision, it would be necessary to provide the required clarification in the commentary.

23. According to Mr. Pinto, international organizations were so different from one another that it was very difficult to state a general rule, but although that might be true in fact, it was not true in law, because it was precisely the task of the Commission to try to formulate general legal rules. Moreover, article 9, paragraph 3, reserved to States and organizations the right to decide to apply a rule which was different from the general rule.

24. He could accept articles 9 and 10 and article 2, paragraph 1 (*g*), in the form proposed by the Special Rapporteur.

25. Mr. USHAKOV said that he would deal only with the substance, not with the terminology or the drafting. First, it was essential to formulate different provisions for the different categories of treaties. Article 9, paragraph 3, and article 10 clearly showed that it was impossible to formulate rules applicable to treaties without specifying whether such treaties were treaties between States and international organizations, or treaties between several international organizations. Thus, in the case of treaties concluded between international organizations, there was no need to mention the participation of States.

26. With regard to article 9, paragraph 3, the principle it stated should merely refer back to the rules established by the international conference at which the text of the treaty was adopted. If a conference was attended by ten States and one international organization, the organization's vote would have as much weight as that of the States; it would even be decisive because, without the organization, the treaty could not be concluded. If two international organizations took part in a conference with ten States, their votes also might be decisive. The proportion of States and organizations taking part in the adoption of the text of a treaty could vary enormously and it was impossible to formulate rules applicable to every case without making very complicated mathematical calculations. Consequently, he suggested that article 9, paragraph 3, be divided into two provisions, one relating to treaties concluded between States and organizations, and the other to treaties concluded between organizations, and that it be stipulated that only the procedure established by the conference was decisive for the adoption of the text of a treaty. Moreover, both sub-paragraph (*a*) and sub-paragraph (*b*) of article 10 implied the need to formulate separate rules for those two categories of treaties.

27. He agreed that the text of a treaty could be established as authentic and definitive by the signature *ad referendum* or initialling of the representative of an international organization, as provided in article 10, sub-paragraph (*b*), but he wondered whether those two means of authentication were really appropriate for international organizations.

28. Mr. RAMANGASOAVINA said that article 9, paragraph 1, dealt with the very special case in which States and international organizations were called upon, as subjects of international law, to co-operate in adopting a treaty which would be mutually binding upon them. According to that provision, the States and organizations concerned must have taken part in the drawing up of the text of the treaty in order to be able to give their consent to its adoption. In accordance with draft article 11, however, consent could also be expressed by approval, accession or any other means, if so agreed. Consent could therefore be expressed either by participation in the drawing up of the text of the treaty or,

[2] United Nations, *Treaty Series*, vol. 402, p. 72.

subsequently, by approval, accession or any other means, if so agreed. Article 9, paragraph 1, should therefore be amended so as not to give the impression that the adoption of the text of a treaty was limited to the parties which had taken part in its drawing up, to the exclusion of those which had not done so but subsequently expressed their consent to be bound by it.

29. The difficulties to which article 9, paragraph 3, might give rise seemed to be due to the fact that international organizations were not subjects of international law fully on a par with States. In principle, States were all equally sovereign and enjoyed the same right to express their consent to be bound by a treaty. But the capacity of international organizations to be bound by a treaty was derived from the relevant rules of each organization, as stated in draft article 6. There was a kind of hierarchy of international organizations and it was obvious that the General Assembly of the United Nations was at the top of it, while other principal and subsidiary organs came much lower down. Furthermore, although closely related, each organ or organization was also characterized by its particular field of activity. When several persons representing different organizations with similar fields of activity took part at the same time in the adoption of the text of a treaty, it was important to determine which were to be considered as representing the organizations present and voting. The two-thirds majority rule laid down by the Special Rapporteur could then give rise to serious difficulties. There could, for example, be a conflict between the competence conferred upon an organization by its constitution and the competence of certain States.

30. He had no major objection to article 9, but thought the Special Rapporteur should try to improve the wording and make the position clearer because it was difficult to place on the same level subjects of international law as different as States and international organizations.

31. Mr. TSURUOKA said he would leave aside drafting questions, and consider only the substance of the articles. In connexion with paragraph 3 of article 9, the Special Rapporteur had stated in paragraph (4) of his commentary that "it would probably be for the States concerned to define in the case of each treaty, should they so desire, the particular conditions to be extended to organizations which were to become 'parties' to the treaty under a special régime". In the same paragraph he had expressed the view that the time had not yet come to propose a general framework for that topic, but that in the case of a rule as important as that of the two-thirds majority at international conferences, the vote of international organizations should not be placed on the same footing as the vote of States unless the organizations had the same rights as States. He (Mr. Tsuruoka) shared that view, which seemed to reflect the current state of international law. Most international organizations, however, did not have the right to vote at international conferences, simply because, in accordance with the Special Rapporteur's argument, organizations did not have the same rights as States at those conferences. That being so, he wondered what was the Special Rapporteur's real intention on that point.

32. With regard to the two-thirds majority rule, the Commission could either codify existing law, or contribute to the progressive development of international law with a view to promoting international co-operation. Since the purpose of an international conference was to promote international co-operation in a particular field, the two-thirds majority rule or even the simple majority rule, as opposed to unanimity, could only facilitate such co-operation. Since the decisions taken at such conferences usually had far-reaching consequences, the two-thirds majority rule seemed preferable to the simple majority rule.

33. Sir Francis VALLAT said that he had great sympathy with the comments by Mr. Pinto and still greater sympathy with the suggestions made by Mr. Kearney. The fact that the legal situation in the field covered by the articles was still developing and that the factual situations which could arise were extremely complex should not deter the Commission from attempting to draft rules which would provide the best possible solutions for the foreseeable future. The difficulties were, after all, the same as those with which the Commission and the Vienna Conference had been faced in drafting the Convention on the Law of Treaties. Similarly, while he sympathized with much of what had been said by Mr. Ushakov, he did not feel that the use of the word "treaty" in articles 9 and 10 of the present draft would give rise to any greater problems of adoption or interpretation than had been occasioned by the use of the same word in, for example, articles 9, 10, 31 and 32 of the Vienna Convention. Like that Convention, the draft dealt with the whole range of treaties and he did not see, therefore, why difficulties should arise if a particular term was employed throughout.

34. The Commission must bear in mind two basic principles in drafting its rules. The first was that it must respect the view of the many Governments which were unwilling to accept that international organizations had the same status in international law as States, and the second that the articles must be made flexible enough to cover all the various cases which might arise.

35. While he entirely agreed that the Vienna Convention on the Law of Treaties was an appropriate model, he wondered, in the light of the second of those principles, whether articles 9 and 10 had not become a little too rigid in the process of their adaptation from the corresponding articles of that Convention. For example, reference was made in both article 9, paragraph 1, and article 10, sub-paragraph (*a*), to "potential parties". Difficulties could arise because the word "potential" was always ambiguous in English, but they were even more likely to arise if, as he assumed was the case, the definition of the term "parties" was intended to be that found in article 2, paragraph 1 (*g*). He was unaware of any multilateral treaty with regard to which the position of an international organization had been identical with that of a State party, as that definition required, and his view was that the positions of States and international organizations would continue to be different in the vast majority of foreseeable cases. Since the mere fact that there would be differences in the nature and details of the obligations of international organizations and States was

no reason for excluding the application of articles 9 and 10, he hoped that the Special Rapporteur would consider making the definition more flexible.

36. As to the comments of earlier speakers concerning the phrase "same rights as States at that Conference" in article 9, paragraph 3, he thought that what was of importance in that context was undoubtedly that the organization had the right to vote on the adoption of the text. It was that which had to be taken into account so far as the voting rule was concerned. He entirely accepted the idea underlying article 9, paragraph 3, and supported the assumption of a presumptive rule on voting on the adoption of the text. It would be remembered that the compromise formula "unless by the same majority they [the States] shall decide . . ." had been included in article 9, paragraph 2, of the Vienna Convention on the Law of Treaties only after considerable debate and reflection. The Commission should adhere to its general policy of following the Vienna Convention and leave it to States to make such changes as they desired.

37. He supported the proposal to refer to articles 9 and 10 and article 2, paragraph 1 (*g*), to the Drafting Committee.

38. Mr. TSURUOKA said he should point out that, since the phrase "by the same majority", in paragraph 3 of article 9, applied not only to States but also to international organizations it perhaps belonged rather to progressive development than to true codification of international law.

39. Mr. SETTE CÂMARA said that, in his opinion, the definition of the term "party" in article 2, paragraph 1 (*g*), implied an *ex post facto* criterion: a State or international organization which had participated in the negotiation of a treaty could not be considered a party to that treaty until it had consented to be bound by it. The term "potential parties" used in article 9 was too vague, since a State could become a party to the treaty by accession, irrespective of whether or not it had participated in the negotiation of the treaty. The replacement of the term "potential parties" by a phrase akin to the alternative suggested by the Special Rapporteur in paragraph (3) of his commentary to the article in his fourth report would obviate the addition of yet another definition.

40. He shared the doubts of Mr. Pinto and Mr. Kearney concerning the phrases "possessing the same rights as States" and "position ... identical to that of a State party", in article 9, paragraph 3, and article 2, paragraph 1 (*g*), respectively. Even when international organizations had full voting rights, their position with regard to a treaty was rather different from that of States. That could be seen, for example, from article 11, which showed that a State could express its consent to be bound by a treaty through ratification, a concept which could not be extended to international organizations.

41. The two-thirds majority rule in article 9, paragraph 3, was taken from article 9, paragraph 2, of the Vienna Convention on the Law of Treaties, but he did not feel that it was appropriate in the present case. Although the great majority of international conferences took their decisions by a two-thirds majority, that practice could not yet form the basis for a binding rule of international law. Many United Nations organs operated on the basis of consensus, and even decisions taken by the Security Council in accordance with Article 43 of the Charter of the United Nations, which authorized the Council to conclude agreements with a State or a group of States, were subject to the overriding vote of its five permanent members. International conferences were at present free to establish their own rules of procedure, including the conditions governing voting, and that should continue to be the case.

42. He fully supported the substance of articles 9 and 10 and of article 2, paragraph 1 (*g*), as proposed by the Special Rapporteur, and was willing for the articles to be referred to the Drafting Committee.

43. Mr. AGO said it should not be forgotten that article 9 of the present draft was based on article 9 of the Vienna Convention on the Law of Treaties, which had two very specific purposes, namely, to codify the principle of the unanimity required for the conclusion of treaties, and to introduce an exception to that rule for treaties adopted during an international conference. Thus, in the case of an international conference such as the ones convened by the United Nations, a treaty was adopted by a two-thirds majority and not unanimously, according to the traditional rule. That was one of the differences between Sir Gerald Fitzmaurice's draft and the draft which the Commission had ultimately adopted and which had led to the Vienna Convention.

44. At first sight, it seemed that the rule stated in article 9, paragraph 2, of the Vienna Convention was a residuary rule, since a conference could decide to apply a different rule from that of the two-thirds majority for the adoption of the text of a treaty. But that rule was absolute when it was a question of deciding by what majority the treaty should be adopted.

45. With regard to article 9, paragraphs 1 and 2, he shared the view that it would be necessary to restore the word "all"—"the consent of all the States" which appeared in the Vienna Convention article—because unanimity was the essence of the rule set forth in those two provisions. He also wondered whether it might not be possible to simplify paragraphs 1 and 2 and combine them in a single paragraph, affirming the principle of unanimity and introducing the exception made in paragraph 3. The paragraph might then read more or less as follows:

> "The adoption of the text of a treaty concluded either between one or more States and one or more international organizations, or between several international organizations, takes place by the consent of all the parties which participated in its drawing up".

46. In proposing the rule set forth in paragraph 3, the Special Rapporteur had been very objective because those who had taken part in the Vienna Conference on the Law of Treaties knew that he had then said that he was opposed to the two-thirds majority rule. Paragraph 3 dealt with the case in which one or more international organizations would be invited to take part, on an equal footing with States, in an international conference for the adoption of a multilateral treaty. The case was somewhat theoretical because it was hardly likely that international

organizations would be invited to take part on the same footing as States in the drawing up of a multilateral treaty at an international conference. If international organizations were invited on another footing than States, there would be no problem because it would then be the rule enunciated in paragraph 1 which applied. In the case covered in paragraph 3, however, the rule which would apply was that which the Special Rapporteur had set forth in that paragraph. If the participants in the Conference decided not to apply the two-thirds majority rule for the adoption of the text of the treaty, they would have to take that decision by the same majority. Even if the case dealt with in paragraph 3 was not very likely to occur, it could not be left out of account. Paragraph 3 was therefore necessary because, without it, the unanimity rule stated in paragraph 1 would apply in such a case.

47. Mr. ROSSIDES said he wished to express his appreciation of the Special Rapporteur's draft articles and comments and to thank the Secretariat for the documentation it had provided.

48. He thought that article 9, paragraph 1, should state, in line with article 9, paragraph 1, of the Vienna Convention on the Law of Treaties, that the adoption of the text of a treaty took place by the consent of "all the States" participating in its drawing up. Similarly, the word "all" should be inserted before the words "the organizations participating . . ." in article 9, paragraph 2. The difficulties occasioned by the vagueness of the term "potential parties" used in that paragraph could be resolved by substituting for it the term "prospective parties".

49. With regard to article 9, paragraph 3, there was no doubt that international organizations did not at present have the same powers or rights as States. He believed, however, that it was essential for the survival of the world that States should delegate to the United Nations some part of the powers they derived from their sovereignty. As it stood, paragraph 3 was regrettably far removed from reality, but it looked to the future in a spirit of idealism, as the Commission itself must seek to do in the rules it formulated. An international organization "possessing the same rights as States" at a conference was an organization which was competent under the terms of article 6 of the draft in respect of the subject-matter of the conference. He approved the idea that, at international conferences as referred to in paragraph 3, decisions should be taken by a two-thirds majority.

50. Mr. BILGE, comparing article 9 of the draft with article 9 of the Vienna Convention on the Law of Treaties, said he noted that the Special Rapporteur had added the words "as potential parties" in paragraphs 1 and 2, and the words "possessing the same rights as States" in paragraph 3. The Special Rapporteur had clearly explained in his commentary the reasons for those additions, that international organizations played different parts and might have no intention of becoming parties to the treaty even if they had taken part in its drawing up. The additions seemed perfectly acceptable.

51. The Special Rapporteur had, however, deleted the word "all", which appeared in article 9, paragraph 1, of the Vienna Convention. In his opinion it should be restored because it was necessary to have the consent of all the participants in the drawing up of the treaty.

52. He had no difficulty with article 2, paragraph 1 (*g*). In using the phrase "when its position with regard to the treaty is identical to that of a State party", the Special Rapporteur had wished to maintain the principle of the equality of the parties, but perhaps that wording might be softened a little by replacing the word "identical" by the word "similar".

53. Mr. USHAKOV said that the two-thirds majority rule laid down in paragraph 3 of article 9 was totally unrealistic. If an organization such as the Common Market or CMEA concluded at an international conference a multilateral treaty with countries of Asia, Africa or Latin America, the organization in question would not necessarily be included in the two-thirds majority required for the adoption of the treaty and such a situation would be absurd. Similarly, if international organizations with headquarters in Switzerland convened an international conference for the conclusion of a treaty with Switzerland, Switzerland would not necessarily be included in the two-thirds majority required in paragraph 3 and that would make the conclusion of the treaty futile. In such circumstances, no rule, whether of procedure or of substance, could be adopted by a two-thirds majority. Moreover, it was impossible, generally speaking, to conceive of States concluding a treaty with an organization which was not on the same footing as they were.

54. Mr. REUTER (Special Rapporteur) said that he would willingly agree to combine paragraphs 1 and 2 of article 9 into a single paragraph, as proposed by Mr. Ago. The question of the authentication of the text of a treaty by the representative of an international organization duly accredited for that purpose by the organization did not, in his opinion, present any serious difficulty. Apart from questions of a purely drafting nature, however, the discussion had raised two main problems.

55. The first, brought up by Mr. Ago, arose out of article 9, paragraph 3, and there he agreed with everything Mr. Ago had said. The distinction made in article 9 of the Vienna Convention between the case dealt with in paragraph 1 and the case dealt with in paragraph 2 was far from clear. According to the Vienna Convention, it was the two-thirds majority rule which applied in the case of an international conference; in other cases, it was the unanimity rule. The Commission must therefore decide whether to retain the principle laid down in paragraph 3, as Mr. Ago desired, or to delete it. He (the Special Rapporteur), proposed to prepare two versions of article 9 between which the Commission might choose: in the first version paragraph 3 would be retained and improved, and in the second it would be deleted. But even if paragraph 3 were deleted, it would always be for the conference to decide in its rules of procedure by what majority the text of the treaty should be adopted.

56. The second problem was that of the concept of a party to a treaty. It was quite obvious that, when the text of the treaty or the rules of procedure of the conference clearly indicated who the parties were, there was no problem, but there were cases in which the problem could arise. He had therefore adopted the very strict position

of not according the status of a "party" to an international organization which, according to the law of treaties, was not in the same situation as a State party. That position appeared a little less strict, however, if it was remembered that, in principle, it was the rules of procedure of the conference or the text of the treaty which decided the status of a "party". The status of a "party" would thus be accorded to all organizations which had the same rights as the States parties. He was aware that the case in which an international organization had the same status as the States parties to a multilateral treaty must be very hypothetical because there was as yet no multilateral treaty to which an international organization was a party. But it was quite possible to imagine, for example, a treaty on literary or artistic property rights in which an international organization might participate on the same footing as a State, for the purpose of the rights of its own productions. It should not be forgotten that most Governments feared that if an international organization were accorded the same rights as States, it would mean allowing the same States to vote twice, because an international organization obviously voted according to the wishes of the member States which controlled it. He had therefore considered it necessary to propose rather strict wording, but was prepared to find ways of making it more flexible by proposing alternatives.

57. The CHAIRMAN suggested that articles 9 and 10 and article 2, paragraph 1 (*g*) be referred to the Drafting Committee.

It was so agreed. [3]

The meeting rose at 1.10 p.m.

[3] For resumption of the discussion see 1353rd meeting, paras. 19, 33 and 50.

1347th MEETING

Wednesday, 9 July 1975, at 11.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Castañeda, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Rossides, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

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

(A/CN.4/285)

[Item 4 of the agenda]

(*continued*)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLES 11, 2 (PARAGRAPH 1 (*b*)), 12, 13, 14, 15 AND 16

1. The CHAIRMAN invited the Special Rapporteur to introduce articles 11 to 16 and article 2, paragraph 1 (*b*), which read:

Article 11

Means of expressing consent to be bound by a treaty

1. The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

2. The consent of an international organization to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, acceptance, approval or accession, or by any other means if so agreed.

Article 2, paragraph 1 (b)

Use of terms

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

Article 12

Consent to be bound by a treaty expressed by signature

1. The consent of a State or international organization to be bound by a treaty is expressed by the signature of the representative of that State or organization when:

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

(*b*) it is otherwise established that the negotiating States or organizations were agreed that signature should have that effect; or

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

2. For the purposes of paragraph 1:

(*a*) the initialling of a text constitutes a signature of the treaty when it is established that the negotiating States and organizations so agreed;

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

Article 13

Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty

1. The consent of a State or international organization to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect; or

(*b*) it is otherwise established that that State and that organization were agreed that the exchange of instruments should have that effect.

2. The consent of two international organizations to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

(*a*) the instruments provide that their exchange shall have that effect; or

(*b*) it is otherwise established that those organizations were agreed that the exchange of instruments should have that effect.

Article 14

Consent to be bound by a treaty expressed by acceptance, approval or ratification

1. The consent of a State or international organization to be bound by a treaty is expressed by acceptance or approval when:

(*a*) the treaty provides for such consent to be expressed by means of acceptance or approval;