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Summary record of the 1347th meeting

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

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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;

(b) it is otherwise established that the negotiating States and organizations were agreed that acceptance or approval should be required;

(c) the representative of the State or organization has signed the treaty subject to acceptance or approval; or

(d) the intention of the State or organization to sign the treaty subject to acceptance or approval appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of a State to be bound by a treaty is expressed by ratification under conditions similar to those which apply to acceptance or approval.

Article 15

Consent to be bound by a treaty expressed by accession

The consent of a State or international organization to be bound by a treaty is expressed by accession when:

(a) the treaty provides that such consent may be expressed by that State or organization by means of accession;

(b) it is otherwise established that the negotiating States and international organizations were agreed that such consent may be expressed by that State or organization by means of accession; or

(c) all the parties have subsequently agreed that such consent may be expressed by that State or organization by means of accession.

Article 16

Exchange, deposit or notification of instruments of ratification, acceptance, approval or accession

Unless the treaty otherwise provides or it is otherwise agreed, instruments of ratification, acceptance, approval or accession establish the consent of a State or international organization, as the case may be, to be bound by a treaty upon:

(a) their exchange between a contracting State and a contracting international organization, or between two contracting international organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting States and international organizations or to the depositary, if so agreed.

2. Mr. REUTER (Special Rapporteur) said he thought that the Commission would have no difficulty in considering articles 11 to 16 and article 2, paragraph 1 (b), at the same time. At earlier meetings, he had amending some of the terms used in preceding articles in order to take account of certain observations, in particular those of Mr. Ushakov.

3. Thus, the expression "full powers" would be used only to designate powers emanating from governments and the word "credentials" to designate those emanating from organizations. The use of the phrase "expressing consent to be bound" in connexion with representatives of international organizations would also be avoided, for the term "expressing" might suggest that, if the constituent instrument of the organization contained no provision relating to the capacity of the organization to conclude treaties, subordinate agents might be able not only to communicate the consent of the organization to be bound, but also to define it. In order to avoid any ambiguities, he therefore proposed that the term "expressing" be replaced by the term "communicating" or "establishing". Other corrections of that kind might be proposed to the Drafting Committee, which would shortly be issuing a revised text of the draft articles already considered by the Commission. If the Drafting Committee decided to adopt those corrections, they would also

apply to the group of articles now about to be considered by the Commission.

4. That group of articles raised two main questions. First, it could be asked whether it was necessary to retain in the draft an article similar to article 11 of the Vienna Convention, which served as an introduction to articles 12 to 16 in that it listed a number of procedures relating to the conclusion of treaties. At the Vienna Conference on the Law of Treaties, an amendment by Poland and the United States had given the text submitted by the Commission a much broader effect.¹ That amendment, which now formed part of article 11 of the Vienna Convention, had radically changed the scope of the provisions by adding to the list of procedures contained in the original text—signature, exchange of instruments, ratification, acceptance, approval, accession—the general formula, "or by any other means if so agreed". The addition of that formula was tantamount to saying that, in public international law, there was a very great deal of flexibility in the means of concluding treaties because treaties could be concluded by any means on which the parties agreed, irrespective of the nature or description of such means. He had considered it essential to formulate an identical rule for treaties concluded between States and international organizations or between two or more international organizations, because such treaties required even more flexibility than treaties between States. The scope of article 11 of the draft was therefore the same as that of article 11 of the Vienna Convention. He was so convinced of the need for such an article that he did not think that the Commission would have any misgivings about accepting the principle it embodied.

5. The draft articles now before the Commission also raised a problem of terminology. The terms used in article 11 of the Vienna Convention and of the present draft did not need to be defined, for two reasons; first, because a number of terms, such as "signature", "exchange of instruments" and "accession" were perfectly clear and, secondly, because even the remaining terms, such as "acceptance", "approval" and "ratification", whose meaning was less obvious and could vary according to the constitutional law of each State and the internal law of each organization, designated, in general public international law, a means of expressing consent to be bound by a treaty. For that reason, the terms "acceptance", "approval" and "ratification" could also be used for treaties concluded by international organizations. The terms "acceptance" and "approval" had, in fact, already been used for that purpose. He had, however, had some misgivings about using the term "ratification", because he had thought that it might not be appropriate to use that term to express the definitive consent of an organization when the organization had already given its provisional consent. In practice, the term "ratification" was not used in connexion with international organizations. In his fourth report (A/CN.4/285), he had stated that he had found only one case in which that term had been used in speaking of international organizations.

¹ See *Official Records of the United Nations Conference on the Law of Treaties, Summary Records, First Session*, p. 83, paras. 42 *et seq.* and p. 344, paras. 67 *et seq.*; *Second Session*, pp. 24 and 25, paras. 60 *et seq.*

He therefore feared that, more for historical than for legal reasons, some Governments might be taken aback by the use of the term "ratification" to indicate the definitive consent given by an international organization. The concept of ratification was linked to the concept of the Head of State, for the history of treaties showed that States had always possessed some organ endowed with a right of general representation in international negotiations. It was the role of the Head of State which was the source of the procedure of ratification, and even though that procedure had changed with time, it was still linked to the existence of a structure which was found in all States, for in all States there was a supreme organ, something which did not exist in international organizations in the same way as it did in States. He had therefore considered it preferable to avoid using the word "ratification", although doing so had caused him some drafting problems. However, if the Commission considered that the word "ratification" could be used to express the definitive consent of an international organization, he would gladly accept its decision, particularly since it would make the drafting much easier.

6. In his view, the group of articles now before the Commission did not require any particular comments. Article 2, paragraph 1 (b), which defined the words "acceptance", "approval", "accession" and "ratification", was taken from the Vienna Convention and took account of what he had just said in connexion with the term "ratification". It did not involve the difficulty to which the term "expressing"—in the words "expressing consent to be bound by a treaty"—could give rise because the corresponding text of the Vienna Convention used the term "establishes".

7. In article 12, he had started from the assumption that the term "full powers" meant both the credentials of representatives of organizations and the powers of representatives of States. If the Commission decided to use those words to mean only the powers of representatives of States, it would then be necessary to make a correction in article 12. Similarly, if the Commission decided no longer to use the word "expressing" in the phrase "expressing consent to be bound by a treaty", it would be necessary to amend all the titles of articles which referred to the expression of consent to be bound by a treaty.

8. In article 16, he had made some minor changes to the Vienna Convention text. In the title, he had added the word "notification", which had been omitted from the Vienna Convention text. In the first sentence of article 16, he had added the phrase "or it is otherwise agreed", which might and perhaps should have been included in the Vienna Convention text, because treaties concluded between States and international organizations or between two or more international organizations required an even more flexible procedure than treaties between States.

9. Mr. TAMMES said that he found little to add after the very instructive and clear statement by the Special Rapporteur and his admirably condensed commentary.

10. The Special Rapporteur had made it clear that articles 12 to 16 had been included after the fundamental

article 11, mainly in order to reassure governments by using terminology with which they were familiar. That being so, and in view of the fact that the list of means of consent contained in article 11 was far from exhaustive, he found it difficult to see why ratification should be omitted. The omission seemed to constitute a deviation from the language of the Vienna Convention on the Law of Treaties which the international treaty relations of international organizations did not really necessitate. Moreover, the contemporary ratification procedures of States were so diverse that in some countries little or nothing remained of the monarchical origins of ratification. Even article 2, paragraph 1 (b), which suggested that international organizations could "accept", "approve" or "accede to" a treaty, and that only a State could "ratify" it, did not really prove that such a distinction was necessary for the purposes of international relations. The question whether such a distinction in fact existed was a matter for the commentary. In his view, the present wording of the article should be replaced by the excellent alternative version proposed by the Special Rapporteur in paragraph (4) of the commentary to article 11 in his fourth report.

11. Mr. KEARNEY said he supported the view expressed by Mr. Tammes with regard to article 11. It was illogical to exclude ratification from the list of means by which an international organization could express its consent to be bound by a treaty when the article went on to say that such consent could be expressed "by any other means if so agreed", a phrase which admitted the possibility of ratification.

12. He supposed that the reason behind the proposed omission was either that international organizations did not in practice ratify treaties, or that ratification had historically been an act of the person who was, in title and in fact, the supreme organ of the State. It was, however, quite possible that international organizations might wish to ratify treaties in the future and the Commission must avoid any implication that they should not do so. In addition, it could happen that the titular Head of State who signed the instruments of ratification was not in fact the supreme organ of the State. In other cases, instruments of ratification were signed by government officials below the rank of Head of State, and it was a fact that article 2 of the Vienna Convention on the Law of Treaties contained no stipulation as to who must authorize the issuance of instruments of ratification on behalf of State. Accordingly, he saw no reason to imply that it was either impossible or undesirable for an international organization to ratify a treaty. Like Mr. Tammes, he thought that the article should be simplified by reinserting "ratification" in the list of possible means of consent. That would have the added advantage of avoiding drafting problems in articles 13, 14 and 16.

13. Mr. HAMBRO said that he agreed with the comments made by Mr. Tammes and Mr. KEARNEY. He saw no reason for not using the word "ratification" in connexion with international organizations because he saw no difference between ratification by a State and ratification by an international organization. If an international organization such as the United Nations gave full powers to an organ or a representative, such as the

Secretary-General, to negotiate and sign a treaty, and if it reserved the right to have the treaty approved by another organ such as the Security Council, the ratification procedure was identical to that followed by a State. As Mr. Kearney had rightly pointed out, ratification was no longer the privilege of the Head of State and was performed with increasing frequency by a popularly elected body. The term "ratification" could therefore very well be used both for States and for international organizations. He was in favour of using that term for philosophical, psychological, linguistic and ideological reasons and saw no reason to reject it out of concern for the traditions and superstitions regarding the State which might subsist in the minds of some jurists, statesmen and diplomats.

14. Mr. CALLE Y CALLE said that the Special Rapporteur, with his profound knowledge of the Vienna Convention on the Law of Treaties, had explained clearly the reasons behind the drafting of article 11, drawing particular attention to the list of means of expressing consent in paragraph 2. That list could be of assistance in the conclusion of agreements with international organizations, since the ways of expressing consent to be bound by a treaty varied from one organization to another. Generally speaking, the Secretary-General or other person authorized to sign the agreement on behalf of the organization did so *ad referendum* and the signature had to be approved or confirmed by the supreme organ of the organization.

15. The possibility of ratifying a treaty should not be limited exclusively to States, since ratification was, in reality, nothing more than a process of approval or confirmation by the competent organ: it took the form of the issuance of an instrument similar to that granting full powers, in other words, a document emanating from the competent authority. If ratifications were limited to States, it would be necessary to provide in a treaty that it was subject to ratification by a State and to confirmation by an international organization, and that would give rise to the problem of determining how many ratifications or confirmations were necessary for the instrument to enter into force.

16. Mr. SETTE CÂMARA said he agreed with the substance of articles 11 to 16 as proposed by the Special Rapporteur, whose introductory statement had been most instructive.

17. With regard to the use of the words "may be expressed" in article 11, paragraphs 1 and 2, he thought it would be better to retain the language of the corresponding article of the Vienna Convention. He approved the definitions proposed by the Special Rapporteur in article 2, paragraph 1 (b) and considered them to be a necessary part of the Commission's draft.

18. He disagreed with other speakers and shared the concern of the Special Rapporteur with regard to the use of the term "ratification" in connexion with international organizations. It was not just a matter of the historical antecedents of the concept; he was concerned about the fact that ratification represented, in all senses of the word, the most solemn means by which a State expressed its consent to be bound by a treaty. Moreover, ratification still involved a two-stage procedure. In the case of a

State, the treaty, once signed, had to be approved by parliament before the instruments of ratification could be issued. If ratification was extended to international organizations, problems would arise from the fact that texts could not be approved without recourse to their complex consultative machinery. He agreed with the Special Rapporteur that there was not a single example in history of the ratification of a treaty by an international organization. Any suggestion that international organizations should be able to ratify treaties would expose the Commission to severe criticism in the Sixth Committee of the General Assembly.

19. Mr. ROSSIDES said that he understood the qualms of the Special Rapporteur regarding the use of the term "ratification" in articles 11 to 16, bearing in mind the differences which existed in that respect between States and international organizations. Ratification as a means of expressing a State's consent to be bound by a treaty had a long history behind it and the Special Rapporteur had made a profound analysis of that historical evolution; ratification by international organizations, on the other hand, had so far not yet appeared in practice.

20. It should be remembered, however, that the draft under consideration by the Commission was intended for the future. The fact that international organizations had not done something until now did not mean that they would never do it. The time might well come when an international organization would wish to express by ratification its consent to be bound by a treaty. Bearing that eventuality in mind, a draft dealing with the treaties of international organizations should not exclude altogether the possibility of ratification of a treaty by an international organization.

21. He therefore urged the inclusion of the term "ratification" in the enumeration in paragraph 2 of article 11 of the various means by which an international organization could express its consent to be bound by a treaty. There would be no disadvantage in retaining for international organizations the complete list of such means given in the corresponding article 11 of the Vienna Convention on the Law of Treaties. International organizations which could not avail themselves of the ratification procedure could resort to acceptance, accession or approval; they would always be free to choose one from among the several means of expression available to them.

22. There were similar reasons for using the term "to express" in connexion with the consent to be bound of an international organization. It was to be hoped that the day would soon come when there would be no hesitation about speaking of an international organization "expressing" its consent. He therefore urged that, there too, the term used in the Vienna Convention should be retained, as had in fact been done by the Special Rapporteur in his proposed text of article 11.

23. Mr. USHAKOV said that members of the Commission obviously did not all have the same category of treaties in mind. Some were considering treaties in whose negotiation international organizations took part, while others were considering treaties which were concluded with international organizations. Treaties in the first category usually embodied rules of international law

applicable to States as well as, sometimes, rules relating to international organizations. When international organizations were allowed to take part in the negotiation of all or part of a treaty, they were not on an equal footing with States. For the purposes of the present articles, it was only treaties in the other category which should be taken into consideration, namely, treaties to which international organizations were parties. It could even happen that an international organization was the principal party to a treaty of that kind, as was the case when the Common Market or CMEA concluded a treaty with States. In such cases, international organizations were parties on the same basis as States. Many misunderstandings could have been avoided during the discussion if members had made a distinction between those two categories of treaties.

24. Article 4, which was entitled "Non-retroactivity of the present articles" and had already been provisionally adopted by the Commission, left open the question whether international organizations could become parties to the future convention. That was why the words "entry into force" had been placed in square brackets. It was likely that that situation, too, had led to the difficulties encountered by some members of the Commission.

25. With regard to the term "ratification", in accordance with Articles 83 and 85 of the United Nations Charter, it was the Security Council which exercised the function of approving trusteeship agreements relating to strategic areas, and the General Assembly which exercised the function of approving trusteeship agreements for all areas not designated as strategic. In both cases, those functions were almost equivalent to ratification. However, in order to avoid applying that term to international organizations, it would be desirable to find a suitable expression, such as "decision of approval", although the word "decision" was not entirely satisfactory.

26. A number of points were not clear to him. For example, could a treaty in fact provide that the signature of the representative of an organization would have the effect of expressing the consent of the organization to be bound by such a treaty, as stated in article 12, paragraph 1 (a)? With regard to paragraph 1 (b) of the same article, he wondered whether a representative who was authorized to negotiate could claim that his signature had the effect of expressing the consent of the organization he was representing to be bound by the treaty. He would prefer to see paragraph 1 (c) deleted because the intention referred to in that provision could not be expressed by the representative during the negotiation; it must be the subject of an authorization by the organization in question. With regard to paragraph 2 (a), he very much doubted whether the initialling of the text of a treaty could constitute a signature for an international organization.

27. The words "instruments exchanged between them", at the beginning of article 13, paragraph 1, would cause many difficulties if they applied not to a treaty between a State and an organization, but to a treaty between several States and several organizations. In article 13, paragraph 1 (b), the words "it is otherwise established" were not satisfactory and the reference to the organization

was not accurate since only an organ of the organization could take the decision referred to in that provision. He was surprised that article 13, paragraph 2, referred to two international organizations and not to two or more international organizations. He also wondered what was the significance of the expression "it is otherwise established" in paragraph 2 (b). The same expression in article 14, paragraph 1 (b) also puzzled him. The concluding phrase of article 14, paragraph 1 (d) caused him the same hesitation as article 12, paragraph 1 (c). Like the preceding articles, article 15 contained the words "it is otherwise established", about which he had already expressed his concern. Lastly, he noted that article 16, sub-paragraph (a), did not cover the case of an exchange of instruments between two or more States and two or more international organizations.

28. It was not enough to make a few drafting changes in the corresponding articles of the Vienna Convention; every conceivable case had to be provided for.

29. Mr. RAMANGASOAVINA said that, in general, he approved articles 11 to 16. In article 12, paragraph 1 (c), he preferred the verb "established" to the verb "expressed". The Special Rapporteur had been right not to use the term "ratification" in article 11, paragraph 2, in connexion with international organizations. In his (Mr. Ramangasoavina's) view, ratification was the expression of a commitment which could emanate only from the organ invested with national sovereignty; only the person invested with national sovereignty could commit his country and express its consent to be bound by a treaty. That role had originally been that of the monarch, then of the Head of State or any other person at the head of the State. According to some constitutions, the people were sovereign and expressed their consent to be bound by a treaty either directly, by referendum, or through the intermediary of a parliament. The exercise of sovereignty was sometimes the function of a collegiate body. In all cases, however, ratification was the expression of national sovereignty and frequently took the form of a law.

30. According to article 2, paragraph 1 (b), of the Vienna Convention on the Law of Treaties, the words "ratification", "acceptance", "approval" and "accession" meant the "international" act by which a State established on the international plane its consent to be bound by a treaty, but that was not really an international act, it was rather a national act of international scope. That act confirmed the entry into force of the treaty in the national legal order, where it would occupy a prominent place in the hierarchy of laws. It was, however, a combination of the national acts of acceptance by all the States concerned which brought about the entry into force of the treaty at the international level. He therefore hoped that, in the definition of the terms "acceptance", "approval" and "accession" in article 2, paragraph 1 (b) of the draft, the words "the international act" would be replaced by the words "the act".

31. Mr. ELIAS said that he had not been convinced by the arguments of those speakers who had suggested that the concept of "ratification" was inapplicable to an international organization. It was generally agreed that the

historical origin of the concept of ratification was not the most important consideration, but much emphasis had been laid on the element of sovereignty—a line of reasoning which he failed to understand. In his country, and also in most common law countries, the act of ratification was not necessarily performed by parliament and could therefore not be described as an act of sovereignty. Ratification was an executive act performed by the government of the day. A treaty which had been ratified could be laid on the table of parliament for information and thereby lead to criticism of the government by members of parliament, but ratification nonetheless remained an act of the executive branch. That being so, there was nothing far-fetched in applying the term “ratification” to an act which emanated from, say, the Director-General of an international organization.

32. He would therefore suggest that articles 11 to 16 and paragraph 1 (b) of article 2 be referred to the Drafting Committee and that the Special Rapporteur be instructed to submit to that Committee the alternative text of article 11 contained in paragraph (4) of the commentary to that article. At the same time, the Special Rapporteur should submit revised texts of the articles which followed article 11 and bring them into line with the corresponding provisions of the Vienna Convention.

33. Apart from that, he saw considerable merit in some of the drafting points which Mr. Ushakov had mentioned, relating to the proper adaptation of the provisions of the Vienna Convention in order to make them suitable for the purposes of international organizations. Those points, however, could conveniently be dealt with by the Drafting Committee.

34. Sir Francis VALLAT said that the distinction between the international act of ratification and the domestic act of ratification, to which Mr. Ramangasoavina had drawn attention, was extremely relevant. In drawing up the Convention on the Law of Treaties great care had been taken to ensure that its provisions dealt exclusively with matters on the international plane. The drafters of that Convention had studiously avoided making any attempt to dictate to States the domestic procedure to be followed in the treaty-making process.

35. If that distinction between acts on the international plane and acts on the domestic plane were kept clearly in mind, many of the difficulties to which Mr. Ushakov had drawn attention would be avoided. Mr. Ushakov had expressed a very proper concern for the manner in which an international organization gave authority when becoming a party to a treaty. The question was governed by the terms of the constituent instrument of the organization and the rules and practice of the organization. That question, however, did not affect very much the precise subject now under discussion, which was the manner in which the consent of an organization to be bound by a treaty, as an international act, was to be given. It would be appropriate to indicate in the commentary that article 11 was not intended to deal with the manner in which authority was given by an international organization, which was a complex and difficult problem relating to the constitution of the organization concerned.

36. It was highly desirable that, throughout articles 11-16, the language of the Vienna Convention regarding consent to be bound by a treaty should be followed in so far as it was compatible with the fact that one or more international organizations might be parties to the treaty. In the light of that general approach, and for the reasons given by Mr. Elias and other speakers, the term “ratification” should be included in the list contained in paragraph 2 of article 11 and also in paragraph 1 (b) of article 2.

37. There were also practical arguments in favour of that solution. He would take the example of a multilateral treaty to which one international organization was going to become a party, and which was signed with the usual clause stating that the treaty was subject to ratification. The parties to the treaty would be faced with a dilemma: either they would have to put in a special provision to deal with the international organization, or they would face the possibility that doubts might arise regarding the applicability of the ratification clause to the international organization. It seemed a more reasonable solution to recognize the possibility that, for the sake of convenience, the parties to the treaty could agree to speak of “ratification”. In dealing with that point, the Commission had to look a little into the future. For those reasons, he preferred the text of article 11 given in paragraph (4) of the commentary to the one put forward by the Special Rapporteur.

38. In article 13, he did not favour the Special Rapporteur’s departures from the text of the Vienna Convention. It was explained in the commentary that the proposed wording was based on the fact that treaties concluded by an exchange of instruments operated in practice “only as bilateral conventions”. In fact, the point was a controversial one. A considerable body of opinion considered that it was perfectly possible to constitute a multilateral treaty by means of a series of exchanges of instruments. The Commission should be reluctant to exclude that possibility merely because one of the prospective parties to the treaty was an international organization. He saw no reason to depart from the formula used in article 13 of the Vienna Convention.

39. In article 16, the change of title in order to include a reference to notification did not call for any comment. But the introduction of the phrase “or it is otherwise agreed”, after the opening words “Unless the treaty otherwise provides” raised a much more difficult problem. In substance, the Special Rapporteur was right in making that addition, for the reasons explained in the commentary. The Drafting Committee, however, should examine very carefully whether the inclusion of those additional words might not have unfortunate implications for the interpretation of the corresponding provision of the Vienna Convention.

40. Mr. AGO said that the Commission was concerned only with treaties to which one or more international organizations were to become parties, not with treaties concluded between States, in the drawing up of which one or more organizations might take part. The Special Rapporteur had noted that, so far, international organizations had never been allowed to take part on an equal footing with States in large international codification

conferences, or subsequently to become parties to the conventions resulting from such conferences. Such a possibility should not, however, be ruled out for the future. The draft the Commission was considering contained rules which were intended to apply both to States and to international organizations, and it was possible that international organizations might be invited to take part in the conference of plenipotentiaries which would embody those articles in a convention and to become parties to that convention. Such a decision would be logical and it was therefore important not to adopt too absolute a position on that point.

41. It was not easy to study seven articles at once, and if the Commission decided to refer those articles to the Drafting Committee without thorough examination, the Committee's work would be much more difficult. He did not propose to make any observations of a drafting nature.

42. With regard to the concept of ratification, he fully shared the point of view expressed by Mr. Ramangasoavina and by Sir Francis Vallat. Ratification was an act governed by internal law and the combination of a number of ratifications enabled the treaty to enter into force. When international organizations were involved, the situation became more complicated because the rules governing the conduct of the negotiation and the acceptance of the treaty by an international organization were rules of international law, although rules of a special kind since they were peculiar to each organization. Consequently, it was important to find a term to characterize the decision by which the highest organ of an international organization approved the conduct of a lower organ which had taken part in the negotiation of a treaty.

43. Personally, he feared that the term "ratification" was not suitable for such a decision of approval, since that term was usually applied to a specific act of certain organs of the State. It might cause difficulties if it were used, for example, in connexion with the decision by which the Security Council approved a trusteeship agreement. Moreover, even States did not always use the term "ratification", and it was precisely for that reason that the Vienna Convention defined the terms "ratification", "acceptance", "approval" and "accession" all at the same time. The Special Rapporteur had therefore been right not to use the term "ratification" in connexion with international organizations. Moreover, the meaning of that term in State practice had changed. Originally, it had applied to the approval of the conduct of an inferior organ by a Head of State but, gradually, the process of negotiating a treaty had come to involve a legislative organ which, normally, did not ratify the treaty, but authorized the Head of State to ratify it. It was sometimes wrongly stated that parliament ratified a treaty, whereas, in fact, it merely authorized the ratification. In those circumstances, it would be better to reserve the term "ratification" for States and not to extend it to international organizations.

44. Some solution of that kind seemed to have prompted the Special Rapporteur to refer, in article 14, to acceptance, approval and ratification in that order, while, in the Vienna Convention, the means of expressing consent

to be bound by a treaty were listed in the following order: ratification, acceptance and approval. It would seem more logical to do the same in article 16.

The meeting rose at 1.5 p.m.

1348th MEETING

Thursday, 10 July 1975, at 10.15 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

ARTICLE 11 (Means of expressing consent to be bound by a treaty)

ARTICLE 2 (Use of terms), PARAGRAPH 1 (b)

ARTICLE 12 (Consent to be bound by a treaty expressed by signature)

ARTICLE 13 (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty)

ARTICLE 14 (Consent to be bound by a treaty expressed by acceptance, approval or ratification)

ARTICLE 15 (Consent to be bound by a treaty expressed by accession) and

ARTICLE 16 (Exchange, deposit or notification of instruments of ratification, acceptance, approval or accession)
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of articles 11 to 16 and the related provision in paragraph 1 (b) of article 2 (Use of terms).

2. Mr. CASTAÑEDA said he fully supported the Special Rapporteur's formulation of the articles under consideration. Those articles, as pointed out by Mr. Ushakov, related exclusively to treaties to which international organizations became actual parties and not to treaties between States concluded merely under the auspices of an international organization.

3. Most of the treaties in question would be bilateral in character and would be concluded between a State and an International organization. Others would take the form of a treaty concluded by an organization with a group of States and would resemble what Basdevant had