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**Summary record of the 1349th meeting**

Topic:

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

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## 1349th MEETING

*Friday, 11 July 1975, at 10.15 a.m.*

*Chairman:* Mr. Abdul Hakim TABIBI

*Members present:* Mr. Bilge, Mr. Calle y Calle, Mr. Castañeda, Mr. El-Erian, 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.

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**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 19 (Formulation of reservations)

ARTICLE 20 (Acceptance of and objection to reservations)

ARTICLE 21 (Legal effects of reservations and of objections to reservations)

ARTICLE 22 (Withdrawal of reservations and of objections to reservations) AND

ARTICLE 23 (Procedure regarding reservations) (*continued*)

1. Mr. REUTER (Special Rapporteur) said that, on the whole, he agreed with the views expressed by Mr. Ushakov at the previous meeting, but he had some reservations on minor points.

2. To justify the inclusion of the provision contained in paragraph 3 of article 20 in the draft, it was necessary to accept that an international organization could become a party to the constituent instrument of another international organization and a member of it. The treaty in question would then be a treaty between the States which had established the organization and an international organization, and thus came within the scope of the articles under consideration. Did such a case actually exist in practice? He had touched on that question in his previous reports and thought that it required a cautious answer. It could, for example, be asked whether the United Nations was a party to the constituent treaties of ITU and UPU, of which it was a member. He was not absolutely sure what the answer to that question was because, although the United Nations had certain rights by virtue of those treaties, it did not have all the rights which flowed from them. It could therefore be said that the United Nations participated in those two organizations, but not necessarily that it was a party to the treaties which had established them. It was possible, however, to imagine an international organization becoming a party to a treaty establishing another international organization. For example, it might be considered that the European Economic Community, which was a member of GATT, was a party to the Agreement by which GATT had been established. If one international organization were a member of another international organization, there would be the difficulty resulting from the definition of the term "international organization"; according to article 2, paragraph 1 (*i*), of the Vienna Convention on the Law of Treaties, the wording of which was used in the present draft, "international organization" meant "an intergovernmental organization". Mr. Ushakov considered, therefore, that an intergovernmental organization was an organization whose only members were States, so that an organization whose members included another organization could not claim to possess the status of intergovernmental organization. If, therefore, article 20, paragraph 3, were retained as it now stood, it would be necessary to amend the definition of international organization given in article 2.

3. That position was open to question because it was doubtful whether the definition of an international organization as "an intergovernmental organization" should be interpreted so strictly. In fact, there were a number of international organizations—specialized agencies—whose members included some entities which were not yet States. It could therefore be argued that the term "intergovernmental organization" could have a broader meaning. But he saw no need to discuss that point because article 3 of the Convention on the Law of Treaties had been adopted at the Vienna Conference as a kind of compensation for the drawbacks resulting from the fact that that Convention did not apply to international organizations.

4. If an international organization consisted only of States, its constituent instrument was governed by the Vienna Convention. If the treaty were revised to include a provision opening membership of the organization to one or more international organizations, and an international organization ratified the treaty, all the relations of States as between themselves would continue to be governed by the Vienna Convention. The problem which would arise would be that of the relations of the new member of the organization with the other members with regard to the law of treaties. Paragraph 3 of article 20, therefore, could simply be deleted and the small gap it left could be covered in the commentary. It would be better to stop there instead of embarking on a formal definition of international organization. If the Commission decided to retain paragraph 3, however, it might indicate in the commentary that the expression "intergovernmental organization" applied not only to organizations composed of States, but also to those whose members included a few international organizations. He personally had some serious doubts about the legal efficacy of article 3 (*c*) of the Vienna Convention because he did not see how that Convention, when it had been ratified by States, could have an effect for third parties which were international organizations, since international organizations were excluded from it.

5. With regard to article 20, it was necessary to consider how the machinery of reservations and objections established by the Vienna Convention could be transposed to the present context. In the case of a treaty in which an

unspecified number of States and two international organizations participated on an equal footing with the States parties, what happened if each of the two organizations formulated a different reservation, if all the States objected to both those reservations and if the two organizations objected to each other's reservation? According to the present text of article 20, as long as the treaty was in the draft stage, it came within the scope of article 20 of the draft articles, but, as soon as the two reservations had been formulated and rejected, the treaty then governed only relations between States and consequently came within the scope of the Vienna Convention. On the other hand, if the organizations had formulated the same reservations, or had not objected to each other's reservations, the situation became more complicated because the treaty governed both relations between the States and relations between the two organizations: it came both within the scope of the Vienna Convention as a treaty between States, and within the scope of the draft articles as a treaty between two organizations. It could thus happen that a treaty lay partly outside the scope of application of the articles under consideration.

6. Some might think that an explicit provision should be included in the draft to cover that case. In his opinion, article 3 (*c*) of the Vienna Convention made such a provision unnecessary by ensuring that, if a treaty applied only to relations between States as a result of the formulation of reservations and objections, such relations would at least be governed by the Vienna Convention. To take the case of a treaty which was governed by the draft articles until objections were made to the reservations formulated by international organizations: if the objections were general, it would then no longer fall within the scope of the draft, but if an objection were later withdrawn, the treaty would once again be governed by the draft. It might be necessary to take account of that case during the consideration of article 22, on withdrawal of reservations and of objections to reservations, because if a State withdrew its objection to a reservation formulated by an international organization, the entire treaty would thereby come once again within the scope of the draft articles. He did not think it necessary, however, to prepare special provisions on that point. It would be enough to draw attention in the commentary to the difficulties which could arise.

7. The position taken by Mr. Ushakov with regard to the formulation of reservations was perfectly logical, since it was entirely in keeping with the position taken by the Commission with regard to the adoption of treaties. It was, in fact, an essential point which not only affected reservations, but was also closely related to article 9. In that connexion, Mr. Ushakov had been right to draw a distinction between treaties between States and international organizations and treaties between two or more international organizations.

8. At present, treaties between two or more international organizations were never general multilateral treaties but always treaties of a very special character, for which the only reasonable rule was to state that reservations would be authorized only if they were expressly allowed for by the terms of the treaty or by all the other parties of the treaty.

9. With regard to treaties between States and international organizations, a distinction should be made between the general case and a special case already envisaged in article 9. In the general case, it was necessary to apply the same rules as for treaties between international organizations and to state clearly that, when a treaty was characterized by the simple fact that it was concluded between one or more States and one or more international organizations, reservations were permitted only if they were provided for in the treaty or if all the parties —States and organizations—consented to them. In the special case already dealt with in connexion with article 9, the rule relating to the adoption of the text of the treaty and the rule relating to reservations must be parallel in all respects. The special case was the case of a general conference between States which allowed for the additional participation, on the same footing as States, of one or more international organizations. It was in that case—and in that case only—that the principle came into operation of the functioning of the machinery of reservations, which was the most interesting innovation in the Vienna Convention. That principle was retained in the present draft, but again in that particular case only. He had already reached a parallel conclusion in article 9, which stated that the adoption of the text of a treaty took place by the consent of all the parties in the case of a treaty between international organizations or a treaty between States and international organizations, but that it took place by a two-thirds majority in the specific case of a general conference between States which allowed for the participation of one or more international organizations on the same footing as States. That parallelism was perfectly logical because the reason why the Vienna Conference had opened the system of reservations so wide was that it had made the rule concerning the adoption of the treaty far more flexible by adopting the provision relating to the two-thirds majority. That idea formed the basis of the opinion of the International Court of Justice concerning the effects of reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. [1]

10. If that position were accepted by the other members of the Commission, it would mean a considerable change in the whole scheme of the articles relating to reservations. It would mean that, at a general conference between States, one or more international organizations could be placed on the same footing as States and that, in that case, but in that case only, the very liberal rules of the Vienna Convention would apply to the adoption of the text of the treaty and to reservations. In the case of treaties between States and international organizations, however, the only prudent rule, which was the traditional rule that reservations must be accepted by all the parties, would apply.

11. Mr. USHAKOV said he wished to thank the Special Rapporteur very much not only for having fully understood his ideas, but also for the brilliant way in which he had expounded them.

12. Mr. TAMMES said that he had no problem in accepting draft articles 19 to 23 as they stood. He agreed

[1] *I.C.J. Reports 1951*, p. 15.

with the Special Rapporteur that it was not necessary at the present stage to include the "special provision" to which the Special Rapporteur had referred in connexion with article 20. In general, the extremely interesting questions raised by the Special Rapporteur at the present meeting required further thought.

13. It seemed to him that acceptance of the provisions of article 11 relating to international organizations implied that such organizations could also consent to be bound by a part only of a treaty, as provided in article 17, the articles on reservations and, perhaps, the final clauses of the treaty itself. By the same reasoning, acceptance of the possibility that international organizations could become parties to treaties on the same footing as States parties as defined in article 2, paragraph 1 (*g*), implied recognition of the right of international organizations to protect their own position by objecting to reservations entered by other parties.

14. In that case, the problems of potential conflict between the competence of an international organization and that of its member States, to which the Special Rapporteur had alluded in the general commentary to articles 19 to 23 in his fourth report and in the statement he had just made, were not specifically problems relating to reservations but were more general. They were an inevitable consequence of the fact that in most international organizations there was no clear-cut division between the competence of the corporate body, which was the organization itself, and that of its constituent parts. It could be seen from the Convention cited in the Secretariat study [2] that international organizations were already to participate materially on behalf of territories under their administration or for whose international relations they were responsible in multilateral agreements of an extremely complex nature, the application of which might easily bring the organization concerned into conflict with its member States. So long as international organizations remained at their present stage of constitutional development, there seemed to be no solution to potential conflicts other than the adoption of an attitude of good faith, according to which the member States of the organization would try to strike a balance between loyalty to the corporate body and a reasonable concern for their own interests. The same provisional solution would seem to be indicated in the event of conflicts between reservations and objections to treaties entered by international organizations and their constituent States.

15. Mr. PINTO said he had expressed the view on several occasions that the States and international organizations were fundamentally different in nature, and pointed out that States entering into agreements with international organizations normally did so with organizations of which they were members. Seen in that light, the draft articles on reservations, which were otherwise excellent, gave rise to a host of problems. While he did not by any means take the view that States and international organizations should not be considered as parties to the same kind of treaties, there must be no undue haste to adopt the attractive solution of placing them on the same plane in all respects. In practical terms, such action was impossible at the present stage and would remain so for the foreseeable future.

16. With regard to the formulation of reservations, the fact that States were more often than not members of an international organization with which they concluded an agreement gave rise to problems for both the organization and the State. On the one hand, the organization had constantly to safeguard its own reasonable interests and bear in mind at the same time the interests of its members, and on the other, States had to protect the interests of their nationals while fulfilling their duties as members of the organization. Those problems could be said to result from the "membership connexion" between the State and the international organization. The best solution, in a case in which an international organization had doubts concerning a provision of a treaty to which it was considered desirable in the general interest that it should be admitted as a party, would seem to be to accord to that organization the privilege generally given to the States to enter reservations in accordance with article 19 of the Vienna Convention on the Law of Treaties, much of which was reproduced in article 19 of the draft. He was uncertain, however, in the light of the "membership connexion", whether the range of permissible reservations should be the same in the case of international organizations as in that of States.

17. It would seem advisable to state that the formulation of reservations to a treaty by an international organization would be restricted not only by the provisions of article 19, sections (*a*) to (*c*), but also by the constituent instrument and the stated policies of the organization. States would then have an assurance that an international organization would act not simply in the way its officials thought was most expedient for the organization, but in accordance with its charter or with policies which they themselves had drafted or approved. The Special Rapporteur might also wish to draw attention to the fact that States should bear in mind their duties as members of one, or perhaps several, international organizations. Those points could be covered in either the draft articles or the commentary,

18. Mr. KEARNEY said that at the 1346th meeting, [3] during the discussion of article 2, paragraph 1 (*g*), to the provisions of which Mr. Tammes had referred at the present meeting, he had suggested that it would be better not to state that the position of an international organization with regard to a treaty would be identical with that of a State, but to leave that question open. That view was confirmed by the problems which had been raised with regard to the question of reservations.

19. It was important to bear in mind the nature of the multilateral treaties to which an international organization was likely to become a party. As Mr. Pinto had said, they would usually involve an organization and States which were members of that organization. Moreover, they would be treaties in which, as in the case of those cited in the Secretariat study (A/CN.4/281), the international organization undertook certain duties or responsibilities vis-à-vis the States parties in connexion with the implementation of the treaty. That being so,

[2] Document A/CN.4/281, part one, section B (*b*).

[3] Paras. 18 and 19.

it seemed impossible to say that the positions of States and international organizations with regard to a treaty were anywhere near to being identical.

20. That point could be illustrated by reference to the provisions of article 20, paragraph 4, under which the effect of a reservation formulated by an international organization in connexion with its interpretation of its functions under a treaty would be very different from that of a reservation entered by a State party. If a reservation made by a State party was the subject of an objection by another State party, that would remain a matter between the States concerned, but objections by one or more States parties to a reservation made by an international organization could affect the operation, and possibly even the entry into force, of the treaty. If, for example, a treaty declared an international organization to be the operating agent of the States parties in respect of a development project, such as the development of a river basin, the objections of those States to a reservation formulated by the organization could prevent it from taking necessary action for the furtherance of the project.

21. For that reason, he found it extremely difficult to apply to international organizations the rules of the Vienna Convention on the Law of Treaties without first considering the role of such organizations in the execution of treaties and the possibility that special rules would be required. The problems to which he had referred were more mechanical in nature than those mentioned by Mr. Pinto and could not, therefore, be solved in the way that speaker had suggested.

22. Mr. HAMBRO said he hoped that the draft would not contain any provision which might in the future prevent international organizations from participating in multilateral treaties and making reservations to them. No one knew what multilateral treaties might be adopted in the future and what kind of reservations international organizations might wish to make, but it was quite certain that international organizations would be called upon to play an increasingly important role in the international community. Nothing should therefore be done which might prevent them from concluding treaties, acceding to treaties and even, where necessary, formulating reservations to treaties.

23. Sir Francis VALLAT said he noted that none of articles 11, 14 and 19 made provision for the ratification of a treaty by an international organization. While he had no strong feelings about that omission in the case of article 11, its effect in the cases of articles 14 and 19 was to restrict the range of choices open to international organizations; that was contrary to the intention of the Commission's draft, which was to assimilate as far as possible the procedures which could be followed by international organizations and States.

24. He was concerned that the provisions of article 3 (*c*) were not identical with those of article 3 (*c*) of the Vienna Convention on the Law of Treaties. Was the Commission trying to build up a series of conventions each dealing with a different category of entity or a series of conventions whose provisions would overlap? What worried him was how the draft articles on reservations would relate to the application of the provision of the Vienna Convention as between the States parties to a treaty, for it was a little difficult to apply identical provisions in respect of reservations to international organizations and to States. That being so, he wondered whether it was theoretically and practically possible to limit the applicability of the Commission's provisions on reservations to the relations between international organizations and States and between international organizations themselves, leaving the relations between States to be governed by the Vienna Convention. He feared that, unless that were done, the slight differences in wording between the Commission's draft articles and the provisions of the Convention might lead to serious, and as yet unforeseen, practical difficulties.

25. It was clear from both the text and what the Special Rapporteur had said that the intention of article 20, paragraph 3, was that the Commission's draft should not apply to organizations consisting entirely of international organizations. He had no objection to that, but the Commission should give the matter some thought since it was theoretically studying treaties between international organizations and should, therefore, theoretically consider treaties between bodies created by such organizations.

26. Mr. ELIAS said that the interesting discussion which had taken place on articles 19 to 23 had shown that the Commission must take a fundamental decision. During the discussion on articles 11 to 16, it had been almost evenly divided on whether provision should be made for the possibility of international organizations using the ratification procedure. That question had not then been settled but it had to be decided now before any real progress could be made with the articles on reservations.

27. It was undeniable that international organizations could not be placed on a par with States for all purposes. The Commission had to take care not to include in its draft any provisions that would be unworkable in practice. The present draft was being considered because both the Commission and the Conference on the Law of Treaties had appreciated the need for a set of articles specially adapted to deal with treaties concluded between States and international organizations or between international organizations. During the present discussion, however, members had stressed the need to keep treaties between States separate from treaties entered into by international organizations.

28. If that was accepted, there was much to be said for Sir Francis Vallat's suggestion that two separate sets of articles should be drafted, one dealing with treaties between States and international organizations and the other dealing with treaties concluded between two or more international organizations; questions relating to treaties between States would be left out altogether. But that approach would have the disadvantage of obliging the Commission to draft a large number of articles, and then to consider whether some of them could be combined for purposes of the final draft. The Commission had already been faced with that problem when preparing its draft on the representation of States in their relations with international organizations.

29. With regard to the texts of the articles on reservations, the Special Rapporteur had expressed his will-

ingness to drop paragraph 3 of article 20. If that course was adopted, a suitable explanation should be given in the commentary.

30. In the light of the difficulties to which Mr. Kearney and Mr. Pinto had drawn attention, the text of article 19 did not appear to be fully satisfactory, not only because it omitted any reference to ratification in connexion with international organizations but also because insufficient provision was made for the case where an organization and one of its members were both parties to a multilateral treaty. Yet some limitation was clearly needed, and the matter was not covered by the present sub-paragraphs (*a*), (*b*) and (*c*). Was it therefore necessary to introduce an additional sub-paragraph? Or should the Commission simply state in the commentary that neither the international organization nor the member States should have the power to make reservations incompatible with the constituent instrument of the organization? On the whole, he thought that the best course would be to adopt articles 19 to 23 broadly in the form in which they had been submitted, with a note showing that adoption was only provisional. The Commission could then reconsider them at the next session.

31. He was concerned that suitable emphasis should be placed on the fact that international organizations were not, and could not be, in exactly the same position as States in relation to the treaty-making process. But he was not convinced that the way to deal with the problem lay in restrictive provisions, such as denying to international organizations all access to the ratification procedure, on what appeared to be historical grounds. The true path of progress lay in the direction of recognition of the law of international organizations. The Commission was not only codifying existing international law but also contributing to its progressive development and should therefore look to the future rather than to the past.

32. Mr. EL-ERIAN said that he wished to make some comments on the question of ratification in its application to international organizations. The Special Rapporteur, in paragraph (4) of his commentary to article 11 (A/CN.4/285), had stated that the term "ratification" was not used in the practice of international organizations and that the single example which could be given was subject to interpretation: as explained in a foot-note, the 1950 agreement between Italy and FAO had referred to the "ratification" of that agreement by the FAO Council, but the obvious intention had been to refer to the adoption of that agreement by the Council.

33. Nevertheless, it was important to bear in mind the anxiety of international organizations that the codification of international law should in no case result in thwarting the evolution of a branch of the law which was in a state of constant development. For that reason, though he was prepared to accept the Special Rapporteur's conclusion not to mention ratification in paragraph 2 of article 11, he would urge that the commentary should explain that there was no intention to rule out altogether the possibility that ratification might be used in the future by an international organization, and that there was no intention either to check the evolution of international law in that respect.

34. There could well be cases in the future of an agreement being concluded between a State and an international organization under circumstances closely resembling signature subject to ratification. For example, in an emergency situation a State might conclude an agreement with the chief executive officer of the organisation, subject to confirmation by what might be called the "sovereign organ" of the organization. In the case of the United Nations the organ in question would be the General Assembly for some purposes and the Security Council for others. Without necessarily establishing a complet analogy between an international organization and a State, it was nevertheless necessary to make it clear that cases of that kind were left to the evolution of the law of international organizations and that the provisions of article 11 were simply intended to codify the existing practice.

35. Mr. ROSSIDES said that there could be no doubt that international organizations in their present condition would not be placed on a par with States. That reality had to be reflected in the draft articles. Nevertheless, it had also to be recognized that the present times were a period of transition and that, under the impact of technological and other changes, the law was rapidly evolving.

36. In the circumstances, the Commission had to strike a balance between codifying the existing law and helping to promote the changes needed to establish legal order in the world. As he saw it, the primary duty of the Commission was to promote the progressive development of international law. The door should therefore be left open for the possibility that an international organization might behave in relation to treaties in a manner not very different from a State.

37. In that process, the Commission also had to strike a balance between reasonable speed and undue haste. It was necessary to move forward without unnecessary delay but not at a pace that States would not be prepared to follow.

38. He fully realized, of course, that the Commission must exercise caution and promote the development of the law in a realistic direction, since any departure from realism would make its proposals ineffective. Though it had to take reality into account, it must not treat present reality as if it were everlasting.

39. The CHAIRMAN invited the Special Rapporteur to comment on the discussion.

40. Mr. REUTER (Special Rapporteur), referring to the observations by Mr. Kearney, said it was obvious that the Commission would have to reconsider the definition of the expression "party" in article 2, paragraph 1 (*g*). In particular, it would have to replace the word "identical" by an expression such as "on a par with". Some of Mr. Kearney's difficulties were undoubtedly due to the fact that, in the explanations he (the Special Rapporteur) had given to Mr. Ushakov, he had moved quite a long way from the position he had adopted when drafting articles 19 and 20 in their original form. He had now taken Mr. Ushakov's views into account and his new drafts of articles 19 and 20 were based on principles which reflected the real situation but were expressed much more clearly than previously.

41. Those principles could be summarized in the following way: reservations must be accepted by all the parties to a treaty, whether States or international organizations; there could be no exception to that rule for treaties between international organizations: for treaties between one or more States and one or more international organizations, the only exception allowed was in the case of a treaty of a universal character between States, to which one or more international organizations could become parties.

42. The rule that reservations must be accepted by all States, which was stated in article 20, paragraph 2, of the Vienna Convention, was thus the general rule. He was satisfied that that was realistic and was the only possible solution. As soon as an international organization became a party to a treaty, all sorts of problems arose since it was not possible to assimilate an international organization to a State. At present, the idea of a conference of a universal character consisting only of international organizations was inconceivable because a group of international organizations could not represent the international community, which consisted of States, and the concept of universality could be understood only in terms of States. Mr. Kearney's objections would all disappear once the general rule which he (the Special Rapporteur) was now proposing was accepted.

43. Mr. Kearney had envisaged the case of a treaty concluded between a number of States and one international organization assigning to the organization functions which gave it a predominant position in relation to the States. In Mr. Kearney's view, any reservation which the organization or a State might make concerning such functions would upset the balance of the treaty. But that case fell clearly within the scope of a provision to which there could be no exceptions, namely, article 19 (*c*) of the Vienna Convention. According to that provision, a State could not formulate a reservation if it was incompatible with the object and purpose of the treaty. It was obvious that any reservation to a treaty establishing an international organization or entrusting new functions to an existing organization would be considered invalid if it had the effect of impairing the structure of the organization, because it would be contrary to the object and purpose of the treaty. Another example cited by Mr. Kearney related to the development of a river basin by a small number of States and the establishment of an organization entrusted with specific functions. A treaty of that kind, however, would not be of a universal character and any reservations to it must be accepted by all the parties.

44. The approach which he (the Special Rapporteur) was now proposing was a sensible one because it provided that the consent of all the parties was necessary when reservations were formulated to a treaty to which at least one international organization was a party. It also implied a certain measure of open-mindedness. When the Commission had prepared its draft on the law of treaties, it had at first accepted the concept of a general multilateral treaty. If that concept was not to be found in the Vienna Convention, it was not for reasons of principle, but only because of political circumstances, which had now changed. The 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character was a recent example of a general multilateral treaty of a universal character.

45. It was now therefore necessary for the Commission to be realistic. In article 9, the two-thirds majority rule was stated for a certain category of treaties, and, with the new version of articles 19 and 20, the Commission might be able to take a small step forward. In the future, international organizations should not be prevented from participating in conferences of a universal character to draw up general multilateral conventions. Of course, there were no examples of that so far, but it would be quite normal, for instance, for customs unions to be able to participate one day in conventions relating to customs nomenclature. The Commission did not have to take a position on that matter; all it had to do was simply to give governments an opportunity to take such a decision. It was quite impossible to exclude such a case from the present topic.

46. A case of that kind was bound to cause difficulties and he had not overlooked them in his report. He had mentioned the contradiction which might appear if both an international organization and the member States of the organization were allowed to participate in a conference. But the Commission did not intend to give international organizations the right to participate in conferences of a universal character; it would merely provide a régime to cover the case in which governments might, in certain circumstances and in clearly defined conditions, decide to grant them that right, taking into account the object and purpose of the treaty.

47. Referring to Sir Francis Vallat's comments, he said that the Commission had decided that the draft now being prepared should form a self-contained set of articles which could enter into force independently of the Vienna Convention on the Law of Treaties. The draft related to treaty relations between the States parties to a treaty to which entities other than States were also parties. Such a situation gave rise to problems which were very different from those dealt with in the 1969 Vienna Convention. He understood the misgivings expressed by Mr. Elias, but thought that they should be less strong now that a new solution was being proposed. With regard to Mr. El-Erian's comments on the subject of ratification, he agreed that it would be necessary to establish an equitable balance between the content of the articles and the content of the commentary. Perhaps the simplest solution would be to allow ratification for international organizations and to explain in the commentary that, although ratification by international organizations was not prohibited, it was also not recommended and was in any case not customary.

48. To assist the Drafting Committee, he had redrafted not only articles 19 and 20, but also a number of the other provisions considered by the Commission at the present session.

The meeting rose at 1.10 p.m.