Document:-

A/CN.4/SR.1432

Summary record of the 1432nd 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:-

1977, vol. I

to reservations, which it could refer to the Drafting Committee.

48. With regard to the possibility of consulting international organizations, which had been mentioned by Mr. Calle y Calle and other members of the Commission, he thought that, for the time being, there could be no question of holding formal consultations with international organizations on the subject of reservations. The Commission had already held general consultations on the draft articles as a whole and, as Mr. Šahović had very rightly pointed out, it was not possible formally to consult international organizations in connexion with each point. The Commission had made it very clear that only a small number of international organizations in the United Nations system would be consulted, even though such a decision would deprive it of some potentially very interesting observations by other international organizations. Finally, the consultations which had been held had been with officials of the secretariats of the organizations, who had been hard put to reply to some of the questions asked, whereas it was the principal organs of the organizations which would have been competent to express an opinion on questions with a significant political background. The replies to the questions asked by the Commission during the general consultations had shown that those questions had not always been fully understood by the international organizations and that some of them had had repercussions in their internal administrations. That seemed to prove that the organizations expected the Commission to give them more detailed information than they could give to it.

49. If two opposing trends emerged within the Commission concerning the system of reservations, it would be necessary to draft two different versions for each article and then submit them to the international organizations for their consideration.

The meeting rose at 1 p.m.

1432nd MEETING

Thursday, 2 June 1977, at 11.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/285,[1] A/CN.4/290 and Add.1,[2] A/CN.4/298)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 19 (Formulation of reservations in the case of treaties concluded between several international organizations), [3]

ARTICLE 19*bis* (Formulation of reservations in the case of treaties concluded between States and international organizations), [4]

ARTICLE 20 (Acceptance of and objection to reservations in the case of treaties concluded between several international organizations) [5] *and*

ARTICLE 20*bis* (Acceptance of and objection to reservations in the case of treaties concluded between States and international organizations) [6] (*continued*)

1. Mr. VEROSTA said that, in his sixth report, the Special Rapporteur had himself emphasized that "certain secondary details in the articles of the Vienna Convention derive from the fact that the effects in question are to operate with respect to *sovereign* subjects of law, namely, States, whose sovereignty must be carefully respected, whereas in the draft articles consideration must also be given to the effects which are to operate with respect not to sovereign States but to subjects of law which are wholly subject to the service of a *function*, as internationally defined in relation to States". (A/CN.4/298, para. 25.) That passage was extremely important and should appear at the beginning of the commentary to the articles under consideration, because it showed the limits within which international organizations could be assimilated to States. States were sovereign subjects of international law, whereas international organizations were the creations of States, in other words, subjects of international law by derivation, which were, as the Special Rapporteur had stated, wholly subject "to the service of a function, as internationally defined in relation to States", a definition to which the words "and by States" might even be added.

2. During the 1920s, after the founding of the League of Nations, some international organizations had begun to be accorded a position of exaggerated importance. That tendency had been reinforced by Kelsen's theory and had developed, after the Second World War, with the proliferation of international organizations. But in his *Théorie et réalités en droit international public*,[7] Charles de Visscher had demonstrated the fundamental role of States and the limited role of international organizations in international society.

3. International organizations could conclude treaties only within the narrow limits of their functions, as defined in the treaty concluded by the founder States, which was the constituent instrument of every international orga-

[1] *Yearbook...1975*, vol. II, p. 25.

[2] *Yearbook...1976*, vol. II (Part One), p. 137.

[3] For text, see 1429th meeting, para. 1.

[4] For text, see 1431st meeting, para. 1.

[5] For text, see 1429th meeting, para. 1.

[6] For text, see 1431st meeting, para. 1.

[7] 4th ed. (Paris, Pédone, 1970).

nization. Thus, as Mr. Ago and Mr. Ushakov had noted, the World Bank could not conclude a treaty of friendship or a trade treaty either with a State or with another international organization. The treaty-making capacity of an international organization was limited by the function attributed to it by States in the treaty by which they had established it. That should be expressly stated in the draft, because it constituted a general principle of public international law which warranted codification.

4. The question to be answered was whether the limits imposed on the treaty-making capacity of international organizations by reason of the functions to which they were subject impaired in any way their capacity to formulate reservations to a multilateral treaty or to object to reservations by other parties to the treaty. In his fifth report (A/CN.4/290 and Add.1), the Special Rapporteur appeared to be of the opinion that they did not.

5. He (Mr. Verosta) would be prepared to accept, in principle, the rules laid down in articles 19, 19*bis*, 20 and 20*bis*, provided that it was made clear in the draft that the capacity of an international organization to conclude treaties was governed not only by the relevant rules of the organization, as already stated in article 6,[8] but also, as the Special Rapporteur had quite rightly pointed out in his sixth report, by the function to which it was wholly subject.

6. Mr. RIPHAGEN said that the clear and original views expressed by the Special Rapporteur, both in his reports and in his oral statements, were a real contribution to legal thinking on the difficult subject under consideration.

7. He wished to address himself to two questions: the system of reservations itself, and the actual meaning and effect of the participation of an international organization in a treaty to which States were also parties. Under article 2, paragraph 1 (*d*), of the draft, which was based on the corresponding provision of the Vienna Convention,[9] a reservation was defined as a unilateral statement purporting to exclude or to modify the legal effect of certain provisions of the treaty in their application to the entity making that statement. He would submit that, in considering the question to what extent an international organization should be permitted to make a reservation and to accept or object to a reservation made by another party, it was relevant to know the exact legal effect of the provisions of the treaty in their application to the organization concerned.

8. Turning first, however, to the reservations régime itself, as laid down in the Vienna Convention, it would seem an exaggeration to say that that system had been received with general enthusiasm by international lawyers. That régime was far from ideal, either with regard to substance because it operated on the rather vague basis of compatibility with the object and purpose of the treaty, or with regard to procedure because, through the individual acceptance or rejection of reservations by the other parties, it split up the multilateral regulation into a series of bilateral relationships. Ideally, an international conference convened to draft and adopt a series of treaty provisions should itself determine, on a collective basis, which deviations from those provisions were acceptable within the framework of the treaty as a whole. In very many cases, however, international conferences were unable to devote the necessary time and attention to such matters. So-called residual rules on the substance and procedure of reservations were therefore necessary, but in fact tended to become general rules.

9. The Commission was now faced with the need for such rules with regard to the power of international organizations to make reservations, and to accept or reject reservations made by other international organizations or by States. Every international organization was different from every other international organization, and international organizations as a whole were quite different from States, a fact which, at the first blush, would seem to militate in favour of adopting an extremely flexible approach in the matter of reservations made by international organizations. Indeed, if a multilateral treaty contained general rules which did not distinguish between States and international organizations in the formulation of rights and duties, it would seem almost imperative for any international organization wishing to become a party to that treaty to specify "the legal effect of certain provisions of the treaty in their application... to that international organization", in other words, to make what was technically known as a reservation.

10. The case for admitting reservations by international organizations which became parties to a multilateral treaty was, however, based on two rather formidable assumptions. The first assumption related to the legal effect of the accession of an international organization to a multilateral treaty to which States were or became parties. Was that legal effect automatically limited to such rights and obligations under the treaty as the organization itself could have or could assume under its own "relevant rules", as referred to in article 6? If so, there would be no need for the organization concerned to make any unilateral declaration. On the other hand, if the Commission were eventually to adopt a provision along the lines of article 36*bis* (A/CN.4/298), according to which the fact that an international organization of the kind mentioned in that provision became a party to a multilateral treaty entailed direct rights and obligations for its member States, such an organization should clearly have the same right to formulate reservations as other parties to the treaty. The point he wished to emphasize was that it was extremely difficult to arrive at a final conclusion regarding the admissibility of reservations by international organizations until one had clearly established what the effect was of an international organization becoming a party to a multilateral treaty.

11. The second assumption was that there were or might be multilateral treaties which, on the one hand, did not distinguish in their provisions between States and international organizations as parties thereto and, on the other, admitted the possibility that a specific international organization, international organizations of a particular type, or any international organization might become a party thereto. Obviously, in a great many cases, a treaty would only provide for one or more

[8] See 1429th meeting, foot-note 3.

[9] *Ibid.*, foot-note 4.

international organizations becoming a party if it made specific provision for the rights and obligations of such organizations as distinguished from States parties to the treaty. Thus, in such a case, the legal effect of an international organization becoming a party to such a treaty was *a priori* limited to such provisions as specifically mentioned its rights and duties. While it could obviously be argued that the international organization concerned should be required to subscribe fully to the provisions of the treaty without having the option of making reservations to it, the Commission could not rule out a situation in which an international organization, which might not have had a real say in the drafting and adoption of a treaty, might be willing to accept only part of the obligations envisaged for it by the treaty, without thereby affecting the object and purpose of the treaty as a whole. Furthermore, the Commission could not altogether rule out a situation in which a treaty instrument adopted at an international conference accepted the possibility that a certain type of international organization might become a party to that treaty, without describing in detail what the legal consequences of such an action really were. The only way in which such detailed legal effects could be formally determined was through the formulation of a reservation by the international organization concerned and the acceptance of that reservation by the other parties to the treaty.

12. His tentative conclusion was that the Commission should not take any rigid decision concerning the admissibility of reservations to a multilateral treaty by an international organization. While any reservation which was incompatible with the object and purpose of the treaty would be excluded, the question arose who was to decide whether a particular reservation had that character of incompatibility. Unless the drafters of the treaty dealt with that matter collectively at the international conference itself, one was practically forced to admit the rather inadequate procedure of individual reactions, as envisaged in the Vienna Convention.

13. The further problem arose whether international organizations should have the power to accept or reject reservations made by other entities entitled to become parties to a particular treaty. There again, he found it extremely difficult to arrive at abstract conclusions which would be valid for every kind of treaty, international organization and reservation. In the case of a treaty which envisaged an obligation for an international organization to provide for the financing of projects in States parties to the treaty, and which further imposed certain obligations on such States, the fact that, by a reservation, one such State refused to accept the obligation in question must entitle the international organization concerned not to accept any financial obligation towards that State. It seemed equally clear that, in the case of a treaty dealing both with matters of concern to an international organization, and therefore envisaging the accession of that organization to the treaty, and with matters which fell outside the scope of the organization's activities, it did not make sense to allow the organization in question to reject a reservation by a State relating to a matter which fell outside the scope of the organization's competence and interests.

14. For the time being, he could find no formulation which would take account of the two cases he had mentioned. He did, however, consider that an international organization entitled to become a party to a treaty should not object to a State becoming, vis-à-vis itself, a party to that treaty for reasons unconnected with the role of that organization under the provisions of the treaty. On balance, it seemed to him that an objective rule in that matter was not easy to elaborate. An international organization should therefore be permitted not to accept its obligations under a treaty towards a State which itself was unwilling to accept certain obligations under that treaty, the acceptance of which the organization concerned considered relevant to its own contribution to the implementation of the treaty.

15. Sir Francis VALLAT, speaking as a member of the Commission, said that there was no doubt that draft articles 19, 19*bis*, 20 and 20*bis* contained elements of progressive development in the field of policy and legislation. The Commission would quite clearly be creating rules to govern future circumstances. There was, however, a second aspect to its task, namely, the codification of existing rules in the matter of reservations.

16. In that connexion, it was appropriate to recall article 15 of the Statute of the Commission, in which the expression "progressive development of international law" was defined as meaning the preparation of draft conventions on subjects which had not yet been regulated by international law, or in regard to which the law had not yet been sufficiently developed in the practice of States. In some respects, clearly, the Commission had virtually no practice of States or international organizations in regard to reservations on which to base itself. On the other hand, there were international legal standards which had been written down and codified in the Vienna Convention. Whatever one's personal views might be concerning the virtues or shortcomings of those rules, they could be regarded more or less as a statement of current international law in the field of reservations.

17. In the present context, therefore, the Commission's task was a limited one, namely, not so much to develop new law as to adapt to its present purposes the known rules as laid down in the Vienna Convention. Reference should also be made to the Commission's report on the work of its twenty-seventh session, which recorded the Commission's decision generally to follow as far as possible the articles of the Vienna Convention referring to treaties concluded between States, for treaties concluded between one or more States and one or more international organizations, and even for treaties concluded between two or more international organizations.[10]

18. That consideration constituted the essential point of departure. It was good legislative practice to build on precedent, although that should also be accompanied by a vision of the future and by caution and flexibility. The question arose what was meant by "caution" in the present context. To his mind, caution meant making adequate provision for the possibility of future development, and not creating artificial barriers and complexities.

[10] *Yearbook...1975*, vol. II, p. 169, document A/10010/Rev.1 para. 124.

As the Commission had been reminded, there were already some 220 international organizations within the meaning of the definition provisionally adopted under article 2, together with some thousands of treaties to which international organizations were parties. Doubtless, most of those treaties were mainly or exclusively bilateral in character. However, the developments of the past 50 years would indicate that the number of multilateral treaties in which international organizations participated was bound to expand considerably in the relatively near future. It was not difficult to imagine areas in which States and international organizations might wish to participate in the same treaty: treaties relating to cultural matters, the exchange of information, industrial property and the outcome of research in particular fields were examples which immediately sprang to mind. The Commission should foresee that possibility and prepare the ground for the likely future developments in that area.

19. At the same time, however, the Commission should bear in mind the very limited nature of the particular subject under discussion, namely, reservations. Under article 2, paragraph 1 (*d*), a reservation was defined as "a unilateral statement... by an international organization... whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application... to that international organization". Consequently, the Commission was not concerned with the case of an international organization which might attempt, by means of a reservation, to alter the obligations of States parties to a treaty but rather with the right of an international organization to modify the legal effect of provisions in their application to itself. Thus, the real issue before the Commission was that of the competence of international organizations. The question whether the parties to the multilateral treaty other than the reserving party were States or international organizations was not strictly relevant, nor, as Mr. Ushakov had pointed out, was the question of overlapping.[11] If a State party to a treaty made a reservation different from a reservation made by an international organization of which that State was a member and, as a result, a question arose concerning the duties of that State within the organization, that was a matter for the internal regulation of the organization concerned.

20. To some extent, the fears which had been expressed concerning the formulation of reservations by international organizations appeared to be based on two factors. It was feared, first, that an international organization might attempt to make reservations which went beyond its competence. In that regard, Mr. Ushakov [12] had given the example of a case in which the United Nations might formulate a reservation concerning a treaty provision on the breadth of the territorial sea. But he doubted very much whether such a reservation could be made since a provision on that point could hardly be held to apply to the United Nations. If it were considered to be applicable, however, he saw no real reason why the United Nations should not be allowed to make a reservation in the same manner as any other party to the treaty concerned.

21. Misgivings had also been voiced in regard to objections to reservations, some members of the Commission being of the opinion that it would be unseemly to permit international organizations to object to reservations made by States. However, the provisions of article 20 of the Vienna Convention, and of articles 20 and 20*bis* of the draft under consideration brought out the bilateral character of acceptance of and objection to reservations. Under paragraph 4 (*a*) of article 20 of the Vienna Convention, acceptance by another contracting State of a reservation constituted the reserving State a party to the treaty in relation to that other State. Under paragraph 4 (*b*) of the same article, an objection by another contracting State to a reservation did not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention was definitely expressed by the objecting State. In both those cases, the effect achieved was essentially bilateral. In the case of international organizations, he did not find it unreasonable that an international organization should be allowed to express the intention not to regard a treaty as being in force between itself and a reserving State if it objected to the reservation formulated by that State. He could conceive of circumstances in which international organizations would need to exercise such a right. The bilateral effect of a reservation was further emphasized by article 21, paragraph 2, of the Vienna Convention, which stated that the reservation did not modify the provisions of the treaty for the other parties to the treaty *inter se*.

22. As he saw it, the capacity to formulate reservations formed an integral part of the treaty-making capacity. The capacity of international organizations to conclude treaties was generally recognized and had been acknowledged in draft article 6. However, that provision further stated that such capacity was governed by the relevant rules of the organization concerned. It was in the regulations, written and unwritten, of a particular organization that the key to the problem lay, and it was those rules that determined how far an international organization was entitled to formulate reservations. The Commission's report on the work of its twenty-seventh session stated:

> Similarly, with regard to the exercise by international organizations of their competence in the process of concluding treaties, the Commission considered that it was necessary to bear in mind that such competence, unlike that of States, is never unlimited and that the terms used in the Vienna Convention concerning the competence of organizations should be adapted accordingly.[13]

23. Thus, the problem before the Commission was how far to adapt the provisions of the Vienna Convention concerning reservations so as to take account of the limited competence of international organizations, and he would submit that good legislation should be designed to meet the problem. The Commission should not deprive international organizations of their right to formulate reservations merely because their competence might be limited.

24. The raison d'être of article 19*bis*, paragraph 2, appeared to be a concession to that line of thinking; if an international organization could participate in an international conference on a par with States, then it should

[11] 1431st meeting, para. 26.

[12] *Ibid.*, para. 27.

[13] *Yearbook...1975*, vol. II, p. 170, document A/10010/Rev.1, para. 127.

enjoy the same rights with regard to the formulation of reservations. He was not sure whether the inclusion in that article of a reference to article 9, paragraph 2, was the best way of achieving that end, but he approved of the general approach.

25. As the subject was still in an early stage of development, he felt it would be a great mistake to make too much of special cases. The United Nations Council for Namibia, for instance, was a novel entity, which did not fully fall within the ordinary framework of international organizations. The Commission should take a broad view looking to the future and, if anything, should open the door instead of shutting it. If States wished to exclude the possibility of reservations being made by international organizations in particular cases, that was easy to do. It was, however, far more difficult to make positive provision for reservations in particular cases.

26. With regard to the basis for the four draft articles under discussion, he agreed with the Special Rapporteur that there were only three categories of multilateral treaty to be taken into consideration: treaties to which only States were parties, which came within the ambit of the Vienna Convention; treaties to which only international organizations were parties, which were covered by article 19; and treaties to which both States and international organizations were parties. He had originally been strongly in favour of the distinction drawn in respect of such treaties in articles 19*bis* and 20*bis*, but he had been unable to find any solid reasons for the discrimination against international organizations which it implied. The more he had heard of the Commission's debate, the more he had become convinced that the distinction made in those two articles was based on the wrong criteria. He did not see why the Commission should wish to deprive States *inter se* of the right to formulate reservations to a treaty simply because international organizations were parties to it, or to deprive international organizations *inter se* of the same right merely because States were parties to the treaty. If the Commission did wish to make what would inevitably be an artificial distinction in the case of the third category of treaties he had mentioned, it must look to the real problem, namely, the question whether there should be a special régime for States and international organizations which were parties to the same treaty. He had very serious doubts as to whether there was any legal or political justification for a limitation of that nature.

27. Articles 20 and 20*bis* followed logically from articles 19 and 19*bis* as they now stood. He hoped, however, that the need for article 19*bis*, paragraph 2, would disappear. The phrase "in some other manner" which appeared in article 19*bis*, paragraph 1, and article 20*bis*, paragraph 1, was open to improvement by the Drafting Committee.

28. Mr. EL-ERIAN, recalling that the United Nations Conference on the Law of Treaties had recommended in a resolution that the General Assembly refer to the Commission the study of the present topic, "in consultation with the principal international organizations",[14] asked whether other consultations would be held with such organizations than those the Special Rapporteur had mentioned at the previous meeting.[15] He considered that, once the Commission had prepared a full set of draft articles, it should circulate them not only to Governments but also to international organizations in order to be able to take account of the comments of both groups in preparing its final proposals.

29. Mr. AGO, referring to the statement made by Sir Francis Vallat, said that he wished to dispel a number of misunderstandings. Sir Francis had been right to say that the Commission need not concern itself with questions such as the risk that international organizations might exceed their competence if they had full freedom to formulate reservations. However, he (Mr. Ago) had never linked that question with the subject under consideration. Sir Francis had further referred to the equal rights enjoyed by participants in an international conference and had stressed the need to avoid any discrimination. On that point, it should be noted that discrimination could exist only between comparable entities, such as States *inter se*, but not between States and international organizations.

30. He agreed with Sir Francis Vallat that it would be wrong to make too much of special cases, such as that of the United Nations Council for Namibia. That body, which had been established at the international level to represent a possible future State, might just conceivably be assimilated to a State. The case of EEC, which was characterized by a limited division of sovereignty between the Community and its member States, was also very different from that of organizations of a universal character. The latter, on the other hand, were really quite different from States, and their participation in an international conference was at another, and possibly higher, level. An international organization might be expected to promote the adoption of a convention or exercise a measure of supervision with regard to its application. In other words, the difference to which he had referred was evidenced by the fact that the rights and duties deriving from a convention were generally not the same for States as they were for international organizations.

31. Sir Francis' appeal to the Commission to look to the future and progressively develop international law was certainly praiseworthy. However, he wondered whether the Commission might not rather hamper the development of international law by giving international organizations too free a hand in the formulation of reservations. The system of reservations was necessary but at the same time regrettable, since it deprived treaties of their general character. He therefore doubted whether the confusion caused by State reservations should be aggravated by according international organizations excessive power to make reservations. Further complications might arise through allowing an international organization to object to the reservations of a State. It

[14] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 285, document A/CONF.39/26, annex, resolution relating to article 1 of the Vienna Convention on the Law of Treaties.

[15] 1431st meeting, paras. 48 and 49.

would be extremely odd for an international organization to make an objection concerning rights or duties which the treaty did not confer upon it.

32. Mr. USHAKOV said he shared most of the misgivings expressed by Sir Francis Vallat, particularly with regard to the extent of the competence of an international organization to conclude a particular treaty and the need not to place international organizations and States on the same footing. Many difficulties would be resolved if the proposal he had made at a previous meeting was adopted.[16] That proposal had been to grant international organizations the right to formulate only such reservations as were authorized by the treaty. Needless to say, it would be possible in practice to make an exception to that rule so as to give one or more organizations the right to make other reservations.

33. To revert to the suggestion which he had made in connexion with articles 19 and 19*bis*,[17] he now suggested that article 20 (Acceptance of and objection to reservations in the case of treaties concluded between several international organizations) be supplemented by two articles: an article 20*bis* applicable to treaties concluded between States with limited participation by international organizations, and an article 20*ter* applicable to treaties concluded between international organizations with limited participation by States. In his view, the Commission should refrain from dealing with any intermediate cases.

34. Mr. REUTER (Special Rapporteur) said that, interesting as they were, he could not systematically review all the comments, questions, misgivings and criticisms to which the consideration of articles 19, 19*bis*, 20 and 20*bis* had given rise. With regard to the drafting, for instance, he would confine himself to acknowledging that, as a number of members of the Commission had suggested, the words "two or more" should be used in articles 19 and 20 instead of the word "several".

35. In general, it would appear that the members of the Commission were not far from reaching agreement so that the four articles could be referred to the Drafting Committee. Personally, he favoured a fairly open approach towards international organizations and a solution which, while meeting the concerns expressed during the debate, would be more generous than the solution proposed by Mr. Ushakov. The problem was to determine when and how to adopt that approach, and he would be submitting new proposals on that subject.

36. Before turning to the four articles, he wished to make two preliminary remarks. First, he noted that some members of the Commission had addressed themselves to general concepts, such as the concept of reservations. He himself wished to refer to a concept which was even more elementary but extremely important for the draft, namely, the status of party to a treaty. The question had already been settled by the Commission in draft article 2, paragraph 1 (*g*), which read:

> "party" means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force.

37. That definition, which the Commission had adopted provisionally, was based on a definition which he had previously proposed but which the Commission had discarded, and which read:

> "party" means a State which has consented to be bound by the treaty and for which the treaty is in force; in the same conditions it means an international organization when its position with regard to the treaty is identical to that of a State party,[18]

While the Commission had doubtless been right to discard the last part of that definition, it was precisely to that point that many of the comments made during the debate on the articles under consideration had been directed. The question was whether an international organization was to be regarded as never being on the same footing as a State, as always being on such a footing, or only sometimes so being. In the first case, Mr. Ushakov's proposal would be entirely acceptable; in the second, it would be a recipe for disaster. In his view, an international organization was sometimes on the same footing as a State; the question was when.

38. Still on the subject of the status of party to a treaty, he said that, in putting forward his own definition of the term "party", he had had in mind the many situations where a treaty accorded a special role to an international organization without making it a genuine party to the treaty or regarding it as a stranger to the treaty. That was the status of the United Nations in respect of the constituent instrument of ITU. The concepts of party to a treaty and of member did not necessarily coincide. For that reason, it should be made clear that the rules laid down in the draft were not applicable when an international organization was in a special situation vis-à-vis a treaty. The Commission could not go into details and should acknowledge that, when States subjected an international organization to a special régime in a treaty, they could equally well settle the question of reservations.

39. His second preliminary remark related to the legal foundation and extent of the right to deposit an instrument in the matter of reservations, in other words, to formulate, accept or object to a reservation. In the view of Sir Francis Vallat, that right was quite simply founded on the capacity to conclude treaties. To formulate a reservation was to limit one's commitment and one could not limit a commitment unless one was capable of entering into the commitment. To accept a reservation was also to limit one's commitment. On the other hand, objection to a reservation raised more difficult problems, which had been referred to by Mr. Riphagen and Mr. Ago, and to which he intended to revert at a later stage.

40. The real problem was not that of an international organization which exceeded its competence by objecting to a reservation, since in such a case the organization concerned would have no right to raise an objection. The question was rather whether States could confer a "quasi-judicial" power on the organization making an objection. That power was not judicial in the true sense of the word, since the organization was not a court, but it was judicial to the extent that it performed a function which distin-

[16] 1430th meeting, para. 35.

[17] *Ibid.*, para. 36.

[18] *Yearbook...1975*, vol. II, p. 31, document A/CN.4/285, art. 2, para. 1 (*g*).

guished it from States. That would be the case if States concluded between themselves and an international organization a treaty relating to nuclear inspection. If a State made a reservation and the organization raised an objection, on the ground that the State concerned would no longer be bound by the obligations of the treaty, the organization would be taking a quasi-judicial decision. It might be that States wished to confer such a power on the organization concerned. Admittedly, that question was linked with the question of competence, but with competence in the broad sense, since not only the assumption of a commitment but also the supervision of the application of a treaty would be involved. Thus, the problem of objection to reservations had manifold implications which should form the subject of further consideration.

The meeting rose at 1 p.m.

1433rd MEETING

Friday, 3 June 1977, at 10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

Thirteenth session of the Seminar on International Law

1. The CHAIRMAN invited Mr. Raton, the Senior Legal Officer in charge of the Seminar on International Law, to address the Commission.

2. Mr. RATON (Secretariat) said that the thirteenth session of the Seminar would be held from 6 to 24 June 1977 and would be called the "Edvard Hambro session" as a tribute to that eminent man who had always placed all his competence and energy at the disposal of the Seminar.

3. Desiring to secure the widest possible geographical distribution, the Selection Committee had chosen 22 candidates, some of whom were from distant countries, such as Papua New Guinea. Mr. Verosta, Mr. Reuter, Mr. El-Erian, Mr. Šahović, Mr. Dadzie, Mr. Ushakov and Sir Francis Vallat, as well as the Director of the Human Rights Division and Mr. Pilloud of the International Committee of the Red Cross, would give lectures at the Seminar. The programme of work would enable yet another member of the Commission to give a lecture during the third week of the Seminar.

4. With regard to the Seminar's finances, he wished to thank Mr. El-Erian, the Commission's previous Chairman for the efforts by which he had obtained a contribution of $2,000 from Kuwait. He also observed that the Netherlands and Norway had considerably increased their contributions, that of Norway being nearly doubled. The 1977 budget, which amounted to $22,000 and to which Denmark, the Federal Republic of Germany, Finland, Kuwait, the Netherlands, Norway and Sweden had contributed, had made it possible to grant 13 fellowships. That was an encouraging result, but the interest of Governments should not be allowed to wane for the cost of living and travel expenses were continually increasing. It was only through the generosity of Governments that candidates from developing countries could be invited to participate in the Seminar.

5. The CHAIRMAN said he was glad to note that the contributions of several Governments had increased, and expressed the hope that every member of the Commission would draw the attention of his country's Government to the importance and value of the Seminar so that the level of contributions would not only be maintained but, if possible, increased.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/285,[1] A/CN.4/290 and Add.1,[2] A/CN.4/298)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 19 (Formulation of reservations in the case of treaties concluded between several international organizations),[3]

ARTICLE 19*bis* (Formulation of reservations in the case of treaties concluded between States and international organizations),[4]

ARTICLE 20 (Acceptance of and objection to reservations in the case of treaties concluded between several international organizations) [5] *and*

ARTICLE 20*bis* (Acceptance of and objection to reservations in the case of treaties concluded between States and international organizations) [6] (*concluded*)

6. Mr. REUTER (Special Rapporteur) said he would begin by answering Mr. El-Erian, who has asked at the previous meeting when and how international organizations should be consulted on the draft articles being prepared.[7] Although it was not for him to settle the matter, he wished to intimate that he did not see how international organizations could be officially consulted if States were not consulted at the same time. It was

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[1] *Yearbook...1975*, vol. II, p. 25.

[2] *Yearbook...1976*, vol. II (Part One), p. 137.

[3] For text, see 1429th meeting, para. 1.

[4] For text, see 1431st meeting, para. 1.

[5] For text, see 1429th meeting, para. 1.

[6] For text, see 1431st meeting, para. 1.

[7] 1432nd meeting, para. 28.