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Summary record of the 1434th meeting

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and its bearing on other provisions of the draft should be carefully weighed. Having adopted article 6, which recognized the capacity of an international organization to conclude treaties, the Commission had no choice but to acknowledge the right of international organizations to formulate, accept and object to reservations. The problem was to determine what limitations should be imposed on the exercise of that right. Initially, the Special Rapporteur had favoured the adoption of a liberal régime modelled closely on that of the Vienna Convention; subsequently, he had come round to the view that some restrictions should be placed on the freedom of international organizations in the matter of reservations, in order to avoid a chaotic situation in the future. The new article the Special Rapporteur had proposed could solve many of the problems confronting the Commission in that area. He (Mr. Sette Câmara) had no objection to Mr. Ushakov's suggestion that that article, together with articles 19, 19*bis*, 20 and 20*bis*, should be referred to the Drafting Committee.

38. The Commission should not shy away from practical cases, whatever their special characteristics might be. The question of the capacity of the United Nations Council for Namibia, for instance, had recently been discussed in some considerable detail at the United Nations Water Conference, held at Mar del Plata, and at the United Nations Conference on Succession of States in respect of Treaties, held at Vienna, and it would doubtless come up again in the future. The situation of the Council for Namibia was, of course, a *sui generis* case, but the matter could not simply be left aside until such time as Namibia attained independence and became a full member of the international community. The status of EEC was another practical case which the Commission could not ignore.

39. Mr. EL-ERIAN said he had no objection to the articles on formulation and acceptance of, and objection to, reservations being referred to the Drafting Committee, provided that members were given an opportunity to make additional comments on articles 20 and 20*bis*, when those articles came back to the Commission. In any event, many of the points he had wished to raise had been covered in the statement made by the Chairman, particularly in his analysis of the basic differences between States and international organizations in regard to the formulation of reservations.[21]

40. He was grateful to the Special Rapporteur for his further comments on the question of consulting international organizations. He now realized that there was no exact analogy between the present topic and the question of the representation of States in their relations with international organizations, a field in which there existed a wealth of material and abundant practice. In the case of treaties concluded between States and international organizations or between international organizations, the practice was extremely limited and the problems far more delicate.

41. Mr. FRANCIS said he would comment on articles 20 and 20*bis* after they had been examined by the Drafting Committee.

[21] 1432nd meeting, paras. 19 *et seq.*

42. The CHAIRMAN said it was clear that there would have to be some further discussion on articles 20 and 20*bis* after they had been considered by the Drafting Committee. On that understanding, if there was no objection, he would take it that the Commission agreed to refer to the Drafting Committee articles 19, 19*bis*, 20 and 20*bis*, as well as the new article proposed by the Special Rapporteur.[22]

It was so agreed.[23]

The meeting rose at 12.55 p.m.

[22] See para. 11 above.

[23] For the consideration of the text(s) proposed by the Drafting Committee, see 1446th and 1448th meetings, 1450th meeting, paras. 48 *et seq.*, and 1451st meeting, paras. 1-11.

1434th MEETING

Monday, 6 June 1977, at 3 p.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. Sucharitkul, 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 21 (Legal effects of reservations and of objections to reservations)

1. The CHAIRMAN extended a warm welcome on behalf of the Commission to Professor H. Valladão, observer for the Inter-American Juridical Committee.

2. He invited the Special Rapporteur to introduce article 21, which read:

Article 21. Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 19*bis*, 20, 20*bis* and 23:

(*a*) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

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

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

(*b*) modifies those provisions to the same extent for that other party in its relations with the reserving party.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When, as provided in article 20, paragraph 3 (*b*), and in article 20*bis*, paragraph 2 (*b*), a contracting State or international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving contracting party, the provisions to which the reservation relates do not apply as between the two contracting parties to the extent of the reservation.

3. Mr. REUTER (Special Rapporteur) said that the preceding articles on reservations, of which he had just submitted a new version to the Drafting Committee, raised a basic question, on which the Commission had not yet taken a decision: could international organizations be allowed to make reservations or objections which were not expressly authorized by the text of the treaty to which they were parties? The reply to that question might affect the texts of articles 21, 22 and 23 if the Commission adopted a very restrictive position in regard to reservations and objections by international organizations. However, since it would probably lead to a simplification of those texts, the Commission could begin its consideration of articles 21, 22 and 23 without having taken a definite position on the other articles relating to reservations.

4. Articles 21, 22 and 23, which were contained in his fifth report (A/CN.4/290 and Add.1) and which the Commission was considering for the first time, followed the text of the Vienna Convention [3] very closely because he had thought it wise not to depart from that Convention where the concept of reservations was concerned. It was possible, however, that some of the questions raised during the discussion of the preceding articles might throw new light on the question of reservations.

5. In connexion with articles 19*bis* and 20*bis*, Mr. Ushakov had raised the question whether a land-locked State which was a party to the future convention on the law of the sea could conceivably formulate reservations to the provisions of that convention relating to the territorial sea, and had given a negative answer. In supporting that view, he (the Special Rapporteur) had cited the definition of a "reservation" given in article 2, paragraph 1 (*d*), of the Vienna Convention and had stressed that a State could not make a reservation on a question concerning which it could not itself assume any commitment. The arbitral award which was to be rendered shortly in the dispute between the United Kingdom and France concerning the continental shelf in the Channel and part of the Atlantic might clarify some notions relating to reservations.

6. The wording of article 21 differed only slightly from that of article 21 of the Vienna Convention: the words "or international organization" had been added after the word "State" in paragraph 1 (*a*) and in paragraph 3, and the word "State" had been deleted in paragraph 1 (*b*). He was not sure whether he had been right to add the word "contracting" in paragraph 3 and whether it might not be better to delete that word at the beginning of the paragraph and, at the end of the paragraph, to replace the words "the two contracting parties" by the words "the reserving party and the objecting party".

7. Mr. TABIBI said that article 21, which had been so brilliantly introduced by the Special Rapporteur, followed logically from articles 19, 19*bis*, 20 and 20*bis*. He had no difficulty in subscribing to the rule clearly formulated in paragraph 1, according to which a reservation established with regard to another party to a treaty modified, for the reserving State or international organization in its relations with that other party, the provisions of the treaty to which the reservation related to the extent of the reservation, and modified those provisions to the same extent for that other party in its relations with the reserving party. He could also accept the rule laid down in paragraph 3, under which an objection to a reservation did not in itself prevent the entry into force of the treaty between the objecting and the reserving contracting parties. Article 21 could be referred to the Drafting Committee forthwith.

8. Mr. CALLE Y CALLE thanked the Special Rapporteur for his lucid introduction of article 21, the purpose of which was to identify the legal effects of reservations and of objections to reservations made by States or international organizations before consenting to be bound by a treaty. During the Commission's discussions on articles 19, 19*bis*, 20 and 20*bis*, some members had advocated a liberal approach to reservations while others had argued in favour of a more restrictive attitude. The practice of reservations had been described as an evil, although perhaps a necessary one, which should ideally be eliminated from treaty relations between States and, more particularly, from treaty relations between States and the international organizations which were their creation and of which they were members. But if reservations were admitted, their legal effect was obviously to modify the relations between the reserving party and the party with regard to which the reservation was established. That truth was stated in paragraph 1. Paragraph 2 made it clear that such a reservation did not affect relations between the other parties to the treaty. Paragraph 3 was also sufficiently clear, though it would be better not to use the term "contracting", which implied that the State or international organization concerned had already expressed its consent to be bound by the treaty.

9. Mr. USHAKOV, referring to article 23, asked whether the representative of an international organization who was authorized to sign a treaty was also authorized to formulate reservations at the time of signature, as was the representative of a State, or whether he would need special powers issued by a competent organ of the international organization he represented. The same question arose in regard to authorization to accept reservations or, what was even more important, to object to reservations formulated by the other parties to the treaty.

10. He regretted the fact that the Special Rapporteur had not divided article 21 into two separate articles, one dealing with treaties concluded between international organizations only, and the other with treaties concluded between States and international organizations; for, like article 20*bis*, article 21 raised the question whether an international organization could object to a reservation formulated by a State party with respect to a provision

[3] See 1429th meeting, foot-note 4.

which concerned only the States parties to the treaty. As it stood, the article proposed by the Special Rapporteur provided for that possibility in so far as it made no distinction between treaties concluded between international organizations and treaties concluded between States and international organizations. As the Special Rapporteur himself had said, it was obvious that the final form of that article would depend on the decision taken by the Drafting Committee on articles 19, 19*bis*, 20 and 20*bis*.

11. He nevertheless believed that the draft should contain a separate provision dealing with agreements concluded mainly between States, but to which one or two international organizations were parties, for that was the category of agreements referred to by the words "international agreements to which other subjects of international law are also parties" in article 3 (*c*) of the Vienna Convention. Article 3 of the Vienna Convention did not provide that the Convention applied to that category of agreements obligatorily, but that it could apply to them. Thus, it was for the Commission to indicate what rule was applicable to them.

12. Mr. SETTE CÂMARA said he thought article 21 should be referred to the Drafting Committee. That article brought out a number of interesting aspects of the fabric of bilateral relationships established in the context of a multilateral relationship by the operation of the mechanism of reservations. The practice of making reservations was a common expedient of international law whose merits or demerits the Commission should, in his view, refrain from assessing. While it might be considered preferable to preserve the provisions of a treaty in their entirety, it could also be argued that the mechanism of reservations made for wider participation in treaties. The practice of reservations was a fact of international life which the Commission should accept.

13. Mr. VEROSTA said that Mr. Ushakov had raised a very important question when he had asked, in connexion with article 23, whether the representative of an international organization was authorized to formulate reservations or objections to reservations when signing a treaty. He himself had already drawn the Commission's attention [4] to the need to amend article 6 [5] in accordance with the decisions to be taken by the Drafting Committee on articles 19, 19*bis*, 20 and 20*bis*. He now considered that it would also be necessary to expand article 7 to take account of the problems raised, in article 21, by reservations and objections to reservations. Article 7, paragraphs 3 and 4, specified the conditions in which a person was "considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty" and "for the purpose of communicating the consent of that organization to be bound by a treaty", but they did not specify the conditions in which a person was considered as representing an international organization for the purpose of formulating reservations or objecting to reservations, for it was difficult to accept that the words "consent to be bound" implied the faculty to formulate reservations or to object to reservations.

14. He nevertheless had no difficulty in associating himself with the members who had proposed that article 21 should be referred to the Drafting Committee.

15. Mr. EL-ERIAN noted with satisfaction that, as the Special Rapporteur had pointed out in his commentary, article 21, as compared with the corresponding text of the Vienna Convention, contained only the drafting changes necessitated by its specific subject. He believed that the Commission should not engage in a discussion of the provisions of the Vienna Convention relating to the very difficult problem of reservations, but should consider how to adapt those rules to the topic under consideration. Mr. Ushakov's idea of formulating two sets of provisions, one covering treaties between States and international organizations and the other treaties between two or more international organizations, held some attraction for him and was worthy of consideration.

16. Mr. FRANCIS said that he thought article 21 could be referred to the Drafting Committee for refinement.

17. With regard to the possibility, first referred to by Mr. Ushakov, that a land-locked State party to the future convention on the law of the sea might seek to formulate a reservation concerning the territorial sea, he wished it to be placed on record that, in his view, such a reservation was in principle admissible. Although, for reasons of convenience, the negotiations concerning the future convention had been divided into separate subjects, the various aspects of the law of the sea formed an organic whole and were inextricably linked. He believed that it would be quite correct to allow Zambia, Bolivia or other land-locked countries to make a reservation concerning the territorial sea, not just because their shipping might be affected by the provisions of the future convention but also because the delimitation of the territorial sea, as currently envisaged, would certainly affect their interests on the high seas. A further consideration to bear in mind was that the land-locked States were participating fully in the elaboration of the convention and it had never been suggested that they should be denied the right to vote. They should, therefore, enjoy the same rights as the other parties to the future convention in regard to the formulation of reservations. If a land-locked State made a reservation which was not relevant, the other parties to the convention could exercise their right to object to it.

18. Mr. DADZIE said that article 21 was the logical consequence of the preceding articles. The Special Rapporteur had rightly decided to base his draft on the Vienna Convention, an instrument which enjoyed a particular status. Any departure from its provisions might create problems for the international community. He found the rules laid down in article 21 perfectly acceptable and thought they could be referred to the Drafting Committee without delay.

19. With regard to drafting, it seemed to him that paragraph 1 (*a*) and paragraph 3 could be more concise. In the first of those provisions, he saw no need to make a distinction between a State and an international organization since the rule laid down could equally well apply

[4] 1432nd meeting, para. 5.

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

to either. It would surely be sufficient to refer to the "reserving party". Similarly, in paragraph 3, the expression "contracting State or international organization" might be replaced by a simpler term such as "contracting party" or simply "party".

20. Mr. REUTER (Special Rapporteur) noted that the members of the Commission seemed to be in general agreement that article 21 should be referred to the Drafting Committee though several of them had emphasized that final adoption of the article would depend on the position taken by the Drafting Committee in regard to the questions of principle raised by articles 19, 19*bis*, 20 and 20*bis*.

21. The question regarding article 23, raised by Mr. Ushakov and taken up by Mr. Verosta, had two aspects: an international aspect concerned with powers, and a constitutional aspect concerned with the internal law of international organizations. The points to be decided were, first, what powers the representative of an international organization must produce in order to be authorized to formulate, accept or object to reservations provisionally and, second, what organ of an international organization was competent to formulate, accept or object to reservations definitively. Mr. Ushakov had raised the question only in regard to international organizations, but it also arose in regard to States.

22. With regard to powers at the international level, it was obvious that, in view of the sovereign power of States, a representative of a State who was authorized to sign a treaty had no need to prove that he was also authorized to formulate or object to reservations.

23. At the constitutional level, on the other hand, the question was not nearly so clear for the constitutional law of many States did not specify who was authorized to formulate or object to reservations. In some States, the executive power sought authorization from parliament to ratify a convention but not to make reservations to it, since the right to formulate and object to reservations was considered to be part of the function of government.

24. Thus, as Mr. Verosta had said, the question was whether a special provision should be drafted to indicate that the person signing the treaty, even provisionally, must be provided with powers authorizing him to formulate or object to reservations. He saw no reason why a provision of that kind should not be introduced.

25. However, the question who, in an international organization, was authorized to formulate or object to reservations came under its constitutional law, which could vary from one organization to another. Later on, when reconsidering article 7, the Commission could specify that the powers of the representative of an international organization must state whether he was authorized to enter or object to reservations. The Drafting Committee could consider that question in connexion with article 23.

26. Mr. Ushakov and later Mr. El-Erian had raised the question whether a distinction should not be made, in article 21, between treaties concluded between international organizations and treaties concluded between States and international organizations. He (the Special Rapporteur) had thought it better not to make that distinction in article 21 so as not to make the wording unduly complicated, but he was willing to do so if the members of the Commission thought it necessary.

27. As to the question asked by Mr. Francis, he had fully recognized that, in the case of the future convention on the law of the sea, a land-locked State party could object to a reservation formulated by another State party concerning the provisions relating to the territorial sea, since reservations concerning the territorial sea necessarily impaired the right of navigation on the high seas in so far as they imposed limits on the high seas. In that instance, there was no doubt about the right to object to reservations, but there was some doubt about the right to make them.

28. Could a State which had no territorial sea, on acceding to the future convention on the law of the sea, make reservations concerning the territorial sea? Some members had answered that question affirmatively, others negatively. The Drafting Committee would have to solve the problem in connexion with articles 19*bis* and 20*bis*. He himself believed that there was a link between the power to enter into commitments, the power to make reservations and the power to object to reservations; he had submitted to the Drafting Committee a new article which stated that principle.

29. The CHAIRMAN said, that if there was no objection, he would take it that the Commission agreed to refer article 21 to the Drafting Committee.

It was so agreed.[6]

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

30. The CHAIRMAN invited the Special Rapporteur to introduce article 22, which read:

Article 22. Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(*a*) the withdrawal of a reservation becomes operative in relation to another contracting State or international organization only when notice of it has been received by that State or international organization;

(*b*) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the reserving party.

31. Mr. REUTER (Special Rapporteur) said he had no comments to make on the text of article 22, which merely reproduced, with appropriate drafting changes, the text of the corresponding article of the Vienna Convention.

32. Mr. CALLE Y CALLE asked the Special Rapporteur to explain why he thought, as he had stated in the second sentence of his commentary to the article in his fifth report (A/CN.4/290 and Add.1), that it might be necessary

[6] For the consideration of the text proposed by the Drafting Committee, see 1451st meeting, paras. 16-20.

"to complete article 22 and in particular to provide for wider notification".

33. Mr. REUTER (Special Rapporteur) said he would answer that question at the next meeting.

34. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to refer article 22 to the Drafting Committee.

It was so agreed.[7]

ARTICLE 23 (Procedure regarding reservations)

35. The CHAIRMAN invited the Special Rapporteur to introduce article 23, which read:

Article 23. Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and international organizations and other States and international organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty

by a State subject to ratification, acceptance or approval of the treaty

by an international organization subject to formal confirmation, acceptance or approval of the treaty

a reservation must be formally confirmed, as the case may be, by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

36. Mr. REUTER (Special Rapporteur) said that article 23 called for little comment. If the Drafting Committee thought it advisable to include in the draft a special provision on the power of representatives of international organizations to execute an act relating to reservations, it might be inserted in article 23 or perhaps in article 7.

37. In paragraph 2, the words "a reservation must be formally confirmed" had been taken from the corresponding article of the Vienna Convention. The Commission had decided, however, after long discussions, that the act whereby an international organization, after signing a treaty, finally expressed its consent to be bound by that treaty, should be called "formal confirmation" and not "ratification". Accordingly, in order to avoid any possible confusion, the words "formally confirmed" in paragraph 2 should be replaced by the words "expressed for a second time", on the understanding that the two expressions had exactly the same meaning.

38. Mr. CALLE Y CALLE said he thought the risk of confusion with the terminology of draft article 11, which the Special Rapporteur had just mentioned and to which he referred in his commentary to article 23 (A/CN.4/290 and Add.1) could be avoided by deleting the word "formally" from the last subparagraph of paragraph 2. That change would not reduce the effectiveness of the provision in any way, since the confirmation of a reservation, whether it was qualified as "formal" or not, merely consisted in formulating the reservation again.

39. Mr. SETTE CÂMARA reminded the Commission that it had decided to make of the expression "formal confirmation" a term of art, meaning the act by an international organization corresponding to ratification of a treaty by a State. That being so, he agreed with the Special Rapporteur that the expression should not be used for other purposes, as in the last subparagraph of article 23, paragraph 2.

40. Referring to the comments by Mr. Ushakov, he said that if, as the Special Rapporteur had suggested and he himself hoped, the Drafting Committee introduced an article establishing a link between reservations and the provisions of article 6, the question of the power to enter, accept or object to reservations on behalf of an international organization would have to be settled in accordance with the relevant rules of the organization concerned.

41. Mr. USHAKOV said that, although seemingly straightforward, article 23 raised questions of substance, in particular, that of the powers concerning reservations to be conferred on the person or persons representing an international organization. He doubted whether it was really necessary or useful to give an international organization the faculty to formulate reservations when signing a treaty. An authorization to do so would be required from the competent organ, which might not even have decided to sign the treaty. Consequently, he was not in favour of a system by which the competent organ would be obliged to decide, at the time of signature, both on signing and on reservations. It was rather at the time of formal confirmation that reservations should be formulated.

42. According to paragraph 1 of the article, "A reservation, an express acceptance of a reservation and an objection to a reservation must be ... communicated to the contracting States and international organizations and other States and international organizations entitled to become parties to the treaty". In the case of treaties of a universal character concluded between States and international organizations, such communications would thus have to be made to all existing States. For the same category of treaties and also treaties concluded between international organizations only, it would, however, be more difficult to determine what international organizations were "entitled to be comeparties". If 10 international organizations were parties to a treaty, to what other international organizations would the communications have to be sent? That fundamental question should be settled either in the text of article 23 or at least in the commentary.

43. Again, paragraph 1 of article 23 was linked to article 78 of the Vienna Convention, which governed the procedures for notifications and communications. It was important therefore to bear that provision in mind when considering article 23.

44. As all of the points he had raised could be discussed in the Drafting Committee, he thought article 23 could be referred to that Committee.

[7] *Idem.*

45. Mr. VEROSTA, referring to the expression "entitled to become parties to the treaty" said that, in order to determine whether States were so entitled, it was enough to ascertain whether or not they had been invited to become parties, in other words, whether the treaty was open or restricted. The same did not apply to international organizations for, as the Special Rapporteur had rightly pointed out in his sixth report (A/CN.4/298, para. 6), there were major differences between them and States. States were sovereign entities whereas the powers of international organizations were subordinate to their functions. Thus, the question whether an international organization was entitled to become party to a treaty also depended on its function. It would be asserted that, in the end, it was the organization itself which decided whether accession to a treaty fell within its functions. That decision, however, did not depend upon the constituent instrument of the organization but upon the competent organ, in other words, on a certain number of States. Consequently, a limitation based on the functions of international organizations should be introduced into the article. As it stood, it might give the impression that, where reservations were concerned, States and international organizations were on an equal footing. Perhaps the Drafting Committee could consider that question.

46. Mr. CALLE Y CALLE said he interpreted article 23, paragraph 1, as meaning that reservations and acceptances of or objections to them must be communicated not only to the States and international organizations which had negotiated a treaty or expressed their consent to be bound by it, but also to those which were "entitled to become parties to the treaty" by virtue of the provisions of the instrument itself. He did not think that entitlement depended, in the case of international organizations, on the existence of a link between the functions of the organization and the object and purpose of the treaty. Consequently, he saw no objection to reproducing the wording of the corresponding paragraph of article 23 of the Vienna Convention, as the Special Rapporteur proposed.

47. Mr. SCHWEBEL said that he was unclear why Mr. Ushakov considered that an international organization which was able to formulate reservations to a treaty should not be able to do so at the stage of signature as well as at the stage of formal confirmation. Mr. Ushakov might be right in saying that it was easier to communicate reservations to States than to international organizations, but it could also be difficult to communicate them to States which had not participated in the formulation or negotiation of the treaty. There was not always agreement as to whether entities on, or allegedly on, the international scene were in fact States.

48. In his view, an international organization was entitled to become a party to a treaty if there was a link between the basic function for which it had been created and the object and purpose of the treaty. The decision on whether such a link existed would presumably lie with the depositary of the treaty, if there was one.

49. Mr. REUTER (Special Rapporteur) said that he thought the majority of the members of the Commission would agree with him that article 23 should be referred to the Drafting Committee, on the understanding that the Committee would also consider the question of the special powers to be required of the representatives of international organizations.

50. Mr. Ushakov had said that it was not perhaps necessary or useful to give international organizations the faculty to formulate reservations when signing a treaty. He (the Special Rapporteur) thought it was always better to make a reservation then than at the time of formal confirmation. In his opinion, no great importance need be attached to the question whether it was premature to formulate a reservation on signing the treaty because the intergovernmental organ actually empowered to commit the organization did not normally intervene in the proceedings until later. In practice, the intergovernmental organs concerned generally had cognizance of the text of a treaty long before if was signed. Such was the case at least among international organizations whose member States assumed major commitments. Moreover, both the Vienna Convention and the present draft encouraged the withdrawal of reservations so that, if an international organization wished to reconsider a reservation formulated at the time of signature, it could always refrain from confirming it and enter a definitive reservation later. He thought it would be a serious matter to deprive international organizations of the capacity to make a reservation at the time of signing, since that was precisely the time the other parties considered most appropriate for doing so.

51. With regard to the phrase "entitled to become parties to the treaty", it would be remembered that the Vienna Convention did not contain any general rule indicating which States were entitled to become parties to a convention of any kind. In 1962, the Commission had drawn up a bold and generous draft article which gave States a subjective right to participate in treaties.[8] The absence of any provision on that point in the Vienna Convention meant that entitlement to become party to a treaty concluded between States was necessarily determined by the treaty itself. Nevertheless, the fact remained that treaties which concerned all States should be open to all States. The same would apply to international organizations: it would be determined in each case whether international organizations could become parties to a treaty and, if so, which organizations. It was conceivable that a treaty might one day be open to all existing intergovernmental organizations, though that day seemed far off. Legally, the expression "entitled to become parties to the treaty" applied to States and international organizations so designated by the treaty in question. Those who thought that States and international organizations should not be placed on the same footing were thus advancing considerations dictated by sentiment rather than logic. Nevertheless, as those considerations should be taken into account, reference could be made, on the one hand, to States entitled to become parties to the treaty and, on the other, to international organizations invited by the treaty and having the capacity to become parties to it in conformity with article 6. Personally, he did not feel the need to make that distinction, but it would be for the Drafting Committee to decide.

[8] *Yearbook ... 1962*, vol. II, p. 167, document A/5209, chap. II, sect. II, art. 8.

52. The Drafting Committee would also have to consider the question of notifications and communications, raised by Mr. Ushakov. That should not present any difficulties, however, since the international organizations designated in a treaty would probably always have the necessary means of communication.

53. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to refer article 23 to the Drafting Committee.

It was so agreed.[9]

Gilberto Amado Memorial Lecture

54. The CHAIRMAN announced that Judge Elias had informed the Committee for the Gilberto Amado Memorial Lecture that his duties at the International Court of Justice would unfortunately prevent him from accepting its invitation to give the lecture that year. In view of the difficulty a substitute speaker would have in preparing himself adequately if the lecture was to be delivered as usual before the end of the International Law Seminar, the Committee proposed that the lecture should be postponed until the following year, when Judge Elias had said he hoped to be available.

55. If there was no objection, he would take it that the Commission agreed to that proposal.

It was so agreed.

The meeting rose at 6 p.m.

[9] For the consideration of the text proposed by the Drafting Committee, see 1451st meeting, paras. 16-20.

1435th MEETING

Tuesday, 7 June 1977, at 10.05 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. Sucharitkul, 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*)

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

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

ARTICLE 22 (Withdrawal of reservations and of objections to reservations) [3] (*concluded*) [4]

1. Mr. REUTER (Special Rapporteur), replying to a question asked by Mr. Calle y Calle at the previous meeting,[5] explained what he had had in mind when he had suggested, in the commentary to article 22 (A/CN.4/290 and Add.1), that it might be necessary "to complete article 22 and in particular to provide for wider notification when the withdrawal of an objection to a reservation results in a modification of the conventional régime to which a treaty is subject".

2. As he had already said, it was possible that a treaty concluded between States, but which had been open to one or two international organizations might at some time become a treaty between States only. In his opinion, such an "intermittent" treaty should continue to be governed by the draft articles. With regard to reservations and objections to reservations to a treaty of that kind, an international organization might formulate a reservation and two States might raise an objection to it, thus depriving the international organization of its status as a party in relation to them. For both those States, the treaty would then be a treaty between States only, whereas for the other States parties and the two organizations, it would still be a treaty between States and international organizations. If the two States in question subsequently withdrew their objection, the situation would return to normal; for them, the treaty would again be a treaty between States and international organizations and the rules of the draft articles would apply. In such a case, however, it would be advisable for all the parties, and not only the reserving party, to be notified of the withdrawal of the objection, as provided in draft article 22. In any event, his own opinion was that a treaty governed by the rules of the draft articles should be considered as remaining subject to them, even if it temporarily became a treaty between States only.

ARTICLE 24 (Entry into force) *and*

ARTICLE 25 (Provisional application)

3. The CHAIRMAN invited the Special Rapporteur to introduce draft articles 24 and 25 in his fourth report (A/CN.4/285), which read:

Article 24. Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States and international organizations may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States and international organizations.

3. When the consent of a State or international organization to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State or organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent of States and international

[3] For text, see 1434th meeting, para. 30.

[4] See 1434th meeting, foot-note 7.

[5] *Ibid.*, para. 32.