Document:-
A/CN.4/SR.1437

Summary record of the 1437th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1977, vol. I

46. Mr. SETTE CÂMARA said he had asked his question of the Special Rapporteur largely as a matter of curiosity. It did, however, seem strange that, although both article 27 and article 28 of the present draft laid down general rules, mention of the relevant rules of international organizations had been made only in the former.

47. The CHAIRMAN emphasized that it was not his intention to prevent the consideration of points which, like that just raised by Mr. Sette Câmara, related exclusively to international organizations, but merely to avoid renewed discussion of article 28 of the Vienna Convention as such.

The meeting rose at 1 p.m.

1437th MEETING

Thursday, 9 June 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT
later: Mr. José SETTE CÂMARA

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

Co-operation with other bodies

[Item 10 of the agenda]

STATEMENT BY THE OBSERVER FOR THE INTER-AMERICAN JURIDICAL COMMITTEE

1. The CHAIRMAN invited Mr. Valladão (Observer for the Inter-American Juridical Committee) to address the Commission.

2. Mr. VALLADÃO (Observer for the Inter-American Juridical Committee) said that the Inter-American Juridical Committee, which had been established by the Third International Conference of American States (Rio de Janeiro, 1906), had originally been known as the International Commission of American Jurists and that its mandate had been to formulate a code of public international law and a code of private international law governing relations between the countries of America. On the basis of a draft code of public international law prepared by Mr. Epitàcio Pessôa and a draft code of private international law prepared by Mr. Lafayette Pareira, that Commission had elaborated two important drafts in 1912 and in 1927, which had become multilateral treaties, signed at Havana in 1928. Those treaties, which had been ratified and were still in force, had been the world's first multilateral treaties of public international law. They dealt with such subjects as the status of foreigners, treaties, diplomatic staff, consular staff, maritime neutrality, asylum and the rights and duties of States in civil wars. A Convention on Extradition, which was still in force, had been signed at the Seventh International Conference of American States (Montevideo, 1933). The International Commission of American Jurists had pursued its activities and, when the Inter-American Juridical Committee was established, the two bodies had continued to work side by side for some time. In 1948, the Charter of the Organization of American States had established the Inter-American Council of Jurists, which it had entrusted with the task of assessing the Committee's work, but, when the Charter was revised in 1967, the Council was dissolved and the Committee became the sole codification body.

3. The Committee had continued to provide legal assistance to OAS, particularly by preparing draft treaties and conventions of public and private international law, several of which were in force. As examples, he referred to the Convention on Territorial Asylum and the Convention on Diplomatic Asylum (Tenth Inter-American Conference, Caracas, 1954) and to the conventions adopted by the Inter-American Specialized Conference on Private International Law (Panama City, 1975), particularly in the areas of international trade law and international procedural law.

4. When the United Nations established the International Law Commission in 1947, several international multilateral instruments prepared by the International Commission of American Jurists, which had preceded the Inter-American Juridical Committee, were already in force. Eight of those instruments related to questions of public international law and one was a code of private international law. That was one of the reasons why article 26, paragraph 4, of the Statute of the International Law Commission recognized "the advisability of consultation by the Commission with intergovernmental organizations whose task is the codification of international law, such as those of the Pan-American Union". Similarly, the Statute of the Inter-American Juridical Committee, formulated in 1948, provided in article 22 for the invitation of representatives of international institutions of a world-wide character. The meeting of the two bodies had thus been inevitable.

5. The Committee's mandate was broader than the Commission's. Although both had been entrusted with the task of promoting the progressive development of international law and its codification, the Committee was, in addition, the advisory body of OAS. Accordingly, it studied problems relating to the integration of the developing countries of the American continent and the possibilities of harmonizing their legislation. In the field of international law, it studied questions of public international law and private international law. Referring to the codification and progressive development of international law, he pointed out that, as early as 1906, at the time of the establishment of the International Commission of American Jurists, Mr. Amaro Cavalcanti, the distinguished representative of Brazil, had considered that the partial and gradual condification of international law was preferable to the elaboration of a comprehensive and definitive code; that view had been endorsed nearly 30 years later by the Seventh International Conference

of American States (Montevideo, 1933). The broad outline of the Committee's work had been determined at that time: it was to pursue the partial and gradual codification of international law by drafting specialized conventions or treaties. Similarly, the Charter of the United Nations had entrusted the General Assembly with the task of initiating studies and making recommendations for the purpose of "encouraging the progressive development of international law and its codification".

6. Codification had been one of the lofty ideals of the nineteenth century, which had produced quite a crop of civil codes in Europe and in Latin America. They had been codes in the Roman sense of the term, in that they had embodied existing law, but with many major and inevitable changes. Influenced by the trend towards the codification of internal law, the leading international law scholars of the time, and, in particular, Bluntschli in Switzerland, Fiore in Italy, and Field in the United States, had embarked upon the codification of international law.

7. The codification of internal law was now on the decline. Attempts were being made either to replace the famous civil, commercial, penal or procedural codes by laws or codes of more limited scope or to modernize them. The Inter-American Juridical Committee had also become involved in revising the treaties based on its drafts. Indeed, many anachronistic and unfair international texts, such as Article 38 of the Statute of the International Court of Justice, which referred to the general principles of law recognized by "civilized nations", needed to be revised and adapted to contemporary law. The Committee had therefore oriented its work towards specialization and revision. It had prepared several draft reforms relating to certain aspects of the Bustamante Code of 1928, which was still in force in 15 American States.

8. Several specialized conferences on private international law had been held under the auspices of OAS. At the first conference, held in 1975, six inter-American conventions had been signed and had already entered into force. They related to such matters as conflict of laws concerning bills of exchange, promissory notes, invoices and cheques; international commercial arbitration; letters rogatory; the taking of evidence abroad; and the legal régime of powers of attorney to be used abroad. At its last two sessions held in 1976 and 1977, the Committee itself had approved several draft conventions, which would be submitted to the Second Inter-American Specialized Conference on Private International Law; to be held at Montevideo in late 1977. Those drafts related to the following matters: commercial companies; extradition; evidence of foreign law; enforcement of interim measures; maritime and land transport; extra-territorial enforcement of foreign arbitral awards and decisions; and conflict of laws relating to cheques. The text of those drafts would be distributed to the members of the Commission for information.

9. He said that he would also provide the Commission with copies of the volume containing the third international law course organized by the Committee in 1976 and the text of a lecture which he had given at the second course, held in 1974, on the importance of updating the rules of private international law applied in inter-American relations. He noted that the fourth course, which would be given in July and August 1977, would cover the law of treaties, the inter-American system and certain topics of public international law, the law of the sea and private international law. Those courses took place at the same time as the Committee's sessions. The Committee's next session would focus on two priority topics: the principle of self-determination and its field of application, and conflict of laws and the need for a uniform law relating to cheques in international circulation.

10. In conclusion, he reaffirmed the Committee's standing invitation to the Commission to attend its sessions.

11. The CHAIRMAN thanked Mr. Valladão for his statement, which had not only provided historical background but had also touched on some fundamental problems in the Commission's work. The Commission was indeed faced with problems of progressive development; the Special Rapporteur was very conscious of those which related to the topic under discussion. The reminder that the Commission should consider not only public but also private international law was particularly pertinent to the study of succession of States in respect of matters other than treaties. The reference to the potential obsolescence of codified international law was also very apposite for the problem was one of which the Commission was particularly aware in connexion with the topic currently under study. It was true that there existed no convenient international machinery for the adjustment of texts.

12. Mr. EL-ERIAN expressed the hope that copies of Mr. Valladão's outstanding speech, with its wealth of historical information, could be distributed not only to the members of the Commission but also to the participants in the International Law Seminar.

13. Mr. CALLE Y CALLE agreed entirely with Mr. Valladão that there was a need to modernize international law and make it more democratic. There must be a single system of law, free from aristocratic origin, which would apply equally to all peoples throughout the world. That need was felt most acutely in the third world countries, which had for so long been deprived of justice and equality.

14. Mr. REUTER congratulated the Observer for the Committee on his masterly statement, in which he had clearly demonstrated his unshakeable faith in the merits of codification. All the members of the Commission shared that belief but they sometimes needed to hear it defended by someone with greater seniority and with as much enthusiasm as Mr. Valladão. The message he had conveyed was one of hope in a better future for the "new world", a term which no longer applied to America alone but also to Asia and Africa.

15. Mr. USHAKOV said that it was an honour for the Commission to welcome Mr. Valladão, a great master of international law, whom he congratulated warmly on his brilliant statement.

16. Mr. TABIBI said that, although the activities of the Inter-American Juridical Committee were funded by OAS, its members, like those of the Commission, served in their personal capacity, a fact which, he was sure, contributed to the success of their work in the fields

of private and public international law. He hoped that the close co-operation between the jurists of Latin America and the third world, which was evidenced by the meetings of the Asian-African Legal Consultative Committee, would continue and would grow.

17. Mr. DÍAZ GONZÁLEZ said that Mr. Valladão had spoken on behalf of the entire Latin American continent, which had traditionally upheld the concept of a system of international law applicable to all and dominated by none and had demonstrated its attachment to international legal norms, which transfusions from Asia, Africa and Latin America would bring up to date.

18. Mr. SCHWEBEL said that, as a new member of the Commission and one from a country which was a member of the Inter-American Juridical Committee, he was very grateful to Mr. Valladão for his most instructive statement.

19. Mr. SETTE CÂMARA said that, as his compatriot, he could not but feel a certain pride in the presence of Mr. Valladão, in the fact that he had not merely given a formal report of the activities of the Inter-American Juridical Committee but had delved into problems of interest to all members of the Commission, and in the response his statement had evoked.

20. Mr. DADZIE said that he had found Mr. Valladão's statement deeply inspiring. He had himself pleaded before the Sixth Committee of the General Assembly that the the time had come to rewrite international law to take account of the customs of the third world countries, and he agreed with Mr. Valladão that the reference in the Statute of the International Court of Justice to the general principles of law recognized by "civilized nations" had no meaning in the modern world, where no nation could be considered uncivilized. Mr. Valladão's statement had shown the contribution the third world had to make to the development of the law of nations.

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 28 (Non-retroactivity of treaties) [3] (*concluded*)

21. The CHAIRMAN said that, if there was no objection, he would take it that the Commission decided to refer article 28 to the Drafting Committee.

It was so agreed.[4]

Article 29 (Territorial scope of treaties)

22. The CHAIRMAN invited the Special Rapporteur to introduce draft article 29 (A/CN.4/285), which read:

Article 29. Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each State Party in respect of its entire territory.

23. Mr. REUTER (Special Rapporteur) said that every set of draft articles contained articles with which he was satisfied and others with which he was less satisfied. Article 29 came within that second category.

24. Although he was an ardent defender of the Vienna Convention,[5] he was not convinced that article 29 of that Convention, on which draft article 29 was based, was entirely satisfactory. Since that provision was entitled "Territorial scope of treaties", it might be expected to concern the scope of application of treaties—in other words, the spatial extent of the the territory in which a legal matter was governed by the rules of a treaty. It was not an unnecessary provision since the rules of a treaty, like the rules established in an internal law, could apply to acts or situations extending beyond the territory of a State and it would be presumptuous to try to define, in an article, the legal acts and situations which might fall within the territorial scope of a treaty. The authors of article 29 of the Vienna Convention had, however, had something else in mind, as shown in the wording of that provision. Article 29 did not concern the scope of application of treaties; it was designed to create a link between each party and the whole of its territory. That meant that, in the absence of a provision to the contrary, the commitments made by a State applied to its territory as a whole and not to a part of its territory. It was possible that the authors of that provision had simply wanted to enunciate a rule for the interpretation of treaties, namely, the rule that every provision of a treaty was applicable to the entire territory of the States which were parties to it. In that case, however, the problem of the scope of application of treaties still had to be solved.

25. In the case of treaties to which international organizations were parties, it would be very dangerous to refer to the territory of an international organization. Some treaties or constituent instruments of international organizations probably contained references to the notion of the territory of an organization, but a closer look at that expression showed that, when it was used in that context, it meant something entirely different from what it meant when applied to States. For example, the single postal territory of UPU corresponded in fact to a single postal régime, which covered the entire territory of the States members of that organization, and the "territory of GATT" meant the single régime that applied to the territory of the States parties to GATT. He had therefore adopted a solution which he did not consider very brilliant, but which remained faithful to the Vienna Convention. He had used the corresponding provision of that Convention, which was applicable to the States parties to treaties concluded with international organizations, and had not referred to international organizations at all. Perhaps the Commission would wish to delete the article under consideration, but it might like to retain it or even tackle the problem of the scope of application of treaties. He would bow to its decision but he had wished to draw its

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

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

[3] For text, see 1436th meeting, para. 41.

[4] For the consideration of the text proposed by the Drafting Committee, see 1458th meeting, para. 4.

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

attention to the difficulties to which a solution other than the one he was proposing might give rise.

26. Mr. USHAKOV said that article 29 would be perfectly acceptable to him if the words "between one or more States and one or more international organizations" were added after the words "appears from the treaty".

Mr. Sette Câmara, first Vice-Chairman, took the Chair.

27. Mr. FRANCIS said that his initial misgivings concerning article 29 had not been entirely dispelled by the Special Rapporteur's candid introduction of that article. Those misgivings derived from the fact that the wording of article 29 was extremely similar to that of the corresponding article of the Vienna Convention. In the present case, however, the Commission was dealing not with treaties concluded between States but with treaties concluded between one or more States and one or more international organizations, a fact which was not immediately evident from the existing wording of article 29. The additional phrase suggested by Mr. Ushakov would help to clarify the point.

28. Mr. ŠAHOVIĆ said that it might be preferable to delete article 29, as the Special Rapporteur himself had suggested. If, however, the Commission decided to retain that article, he thought that it should adopt Mr. Ushakov's suggestion. In his opinion, the Special Rapporteur's views on the specific situation of international organizations warranted a more thorough analysis.

29. Mr. DADZIE said that, in its present form, article 29 failed to meet the needs of the exercise on which the Commission was engaged. In article 1,[6] it was stated that the present articles applied to treaties concluded between one or more States and one or more international organizations, and treaties concluded between international organizations. However, article 29 made no provision for such cases and was therefore inappropriate to the object of the Commission's deliberations. An effort should be made to devise a formula which would cover treaties concluded between international organizations or between international organizations and States. If such a formula could not be worked out, it would be better to delete article 29 altogether.

30. Mr. TABIBI said that the text of article 29, which had been so ably introduced by the Special Rapporteur, would be perfectly acceptable were it not for the fact that the Commission was dealing with cases involving not only States but also international organizations. Of course, international organizations did not have territory in the sense that States did. They did, however, exercise activities which extended over large areas of territory. For instance, FAO, which had its headquarters in Rome, might conclude a treaty which would involve the mobilization of food resources in the Americas for use in relieving the consequences of a drought in Africa. Similarly, operations conducted under a treaty signed by WHO, which was based at Geneva, might involve the WHO Regional Offices in New Delhi, Istanbul or Latin America. In some cases, the problem might be further complicated by the fact that activities under a treaty were carried out, not by the international organization as such, but by a connected organ having autonomous status. One example was the United Nations Special Fund, which had its own Board of Governors and membership and whose operations were funded directly by its member States. The same was true of UNICEF, which concluded many treaties and exercised its activities through regional offices situated in Asia, Latin America, Europe and elsewhere.

31. If the Commission was to bring international organizations within the scope of article 29, as he believed it should, it would have to include an additional provision concerning the area of activity of such organizations. Alternatively, it might cover all eventualities in a very comprehensive commentary or decide to eliminate article 29 altogether.

32. Mr. CALLE Y CALLE said that, in paragraph 3 of the preface to his fourth report (A/CN.4/285), the Special Rapporteur had recognized that the task of adapting the wording of article 29 of the Vienna Convention to the purposes of the present draft raised difficult problems. The Special Rapporteur's solution to those problems had been to insert the word "State", thus emphasizing the fact that the question of the territorial scope of treaties concerned only States. Of course, international organizations did not have any territory in the physical or indeed the legal sense, and it might therefore be argued that there was no need for a provision concerning territorial scope in the case of treaties concluded between States and international organizations. If the Commission decided to delete article 29, it should indicate its reasons for so doing in the commentary.

33. Consideration might, however, be given to the possibility of including a provision defining the scope of application of treaties within international organizations. Such organizations were entities of a composite structure, comprising principal, subsidiary and associated organs. In the case of the United Nations, for instance, it was conceivable that there might be a conflict of competence between the General Assembly, the Security Council and the Trusteeship Council. It would be recalled that, at the United Nations Conference on the Representation of States in their Relations with International Organizations, there had been considerable discussion concerning the question of offices established by international organizations away from their headquarters. A case might arise in which an international organization considered that obligations assumed by it under a treaty were of a limited nature, applying only to one particular field of its activity or only to some of its organs and not others. The Commission might provide for that eventuality and at the same time differentiate between treaties concluded by States *inter se* and treaties concluded between States and international organizations, by indicating that the provisions of a treaty involving the participation of an international organization were binding on that organization as a whole and must be respected in all areas of its activity, unless a different intention appeared from the treaty or was otherwise established.

34. Mr. VEROSTA said he thought that the retention of article 29 was absolutely essential and that the Commission must not merely refer to the question of the territorial scope of treaties in the commentary. The clarification of the word "treaty" proposed by Mr. Ushakov was

[6] *Ibid.*, foot-note 3.

also essential for, according to article 2, paragraph 1 (*a*), the term "treaty" meant an agreement concluded between one or more States and one or more international organizations or between international organizations. The present wording of article 29 did not, however, contain any reference at all to treaties between international organizations; it covered only treaties between States and international organizations.

35. The second paragraph which the Special Rapporteur had proposed in paragraph (6) of his commentary (A/CN.4/285) introduced a new element, namely, that of the scope of application of treaties, which posed some very difficult problems. He considered that, for the time being, it might be preferable not to add a second paragraph to article 29 and that, before dealing with the question of the scope of application of treaties in the case of international organizations, it might be better to examine draft articles 34 to 38 (section 4 of the draft articles), which involved the problem of the application of the two categories of treaties to third parties. The Commission could then decide whether or not it was necessary for article 29 to contain a second paragraph relating to the scope of application of treaties in the case of international organizations.

36. Mr. REUTER (Special Rapporteur) said that he would be willing to accept Mr. Ushakov's suggestion that the category of treaties covered by article 29 should be specified in the text of that article.

37. He noted that many of the members of the Commission had said that they were in favour of a second paragraph relating to treaties between international organizations. Some members had suggested that reference should be made to the area of activity of the international organization but reference might also be made to the territories in which the competence of the organization could be exercised.

38. The majority of the members of the Commission seemed to think that article 29 should be retained, provided that acceptable wording could be found for a reference to international organizations. If that proved impossible, some members had said that the present text should be retained in any event, whereas others had said that they would be inclined to delete the article altogether.

39. He therefore proposed that article 29 should be referred to the Drafting Committee, which might consider the possibility of adding a second paragraph. The article would then come back to the Commission, which would decide, on the basis of the Drafting Committee's proposals, whether or not it should be retained. If the Commission decided to delete article 29 altogether or not to add a second paragraph, it would have to indicate the reasons for its decision in the commentary.

40. Mr. USHAKOV pointed out that the area of activity of an international organization was sometimes very difficult to define. For example, the area of activity of WMO or of ITU could be the atmosphere or even outer space.

41. Mr. REUTER (Special Rapporteur) said that the competence of some international organizations was, in fact, exercised outside the territory of the member States. Therefore, in speaking of the area of activity of an international organization, reference should not be made to the territory of the member States.

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

It was so agreed [7]

ARTICLE 30 (Application of successive treaties relating to the same subject-matter)

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

Article 30. Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States and organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(*a*) as between States or international organizations parties to both treaties the same rule applies as in paragraph 3;

(*b*) as between a State or international organization party to both treaties and a State or international organization party to only one of the treaties, the treaty which binds the two parties in question governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State or another international organization under another treaty.

44. Mr. REUTER (Special Rapporteur) said that, although the adaptation of article 30 of the Vienna Convention to the draft on treaties between international organizations and treaties between States and international organizations should not give rise to any substantive difficulties, it did pose particularly difficult drafting problems owing to the complexity of the subject-matter. He did not think that the present text of article 30 was very satisfactory. Moreover, an involuntary omission had been made in paragraph 5, in which the words "or an international organization" should be added after the words "which may arise for a State".

45. He drew the Commission's attention to the fact that article 30 related to five different possible cases. There could be two successive treaties to which two or more international organizations were parties, two successive treaties to which two or more international organizations and an undetermined number of States were parties, or two successive treaties to which two or more States and an undetermined number of international organizations were parties. In those first three cases,

[7] For the consideration of the text proposed by the Drafting Committee, see 1458th meeting, para. 4.

the two successive treaties were either treaties between international organizations only or treaties between States and international organizations.

46. There were, however, two other possible cases, namely, that of an initial treaty between two or more international organizations and a second treaty between two or more international organizations and an undetermined number of States; and that of an initial treaty between two or more States and a second treaty between two or more States and an undetermined number of international organizations. In the latter case, the initial treaty would be covered by the Vienna Convention whereas the second treaty would be covered by the draft articles. That fifth case thus raised the problem of the relationship between the Vienna Convention and the draft articles.

47. If the Commission considered that, in those five cases, there was no reason not to follow the rules of the Vienna Convention, the only problem to be solved would be of a drafting nature; if however, it considered that the rules of the Vienna Convention should not apply in some of those cases, it would be necessary to isolate them and apply special rules to them.

48. He was of the opinion that the rules of the Vienna Convention could be said to apply to all those cases and that, consequently, article 30 could be retained and simplified. Instead of referring to the "States or international organizations parties" to the treaty, it would be enough merely to refer to the "parties" to the treaty.

49. If the Commission decided that article 30 should make a distinction between some of those cases, they would all have to be listed in the title, which would then be inordinately long. For the sake of brevity and in order to simplify the text, he proposed to use the term "treaties between States and international organizations", without referring to any particular category of treaties between States and international organizations, and to indicate in a definition the different categories of treaties covered by that term.

50. He therefore proposed that the following definition should be added to article 2, paragraph 1 (*a*):

In the present articles, the term "treaty between States and international organizations" designates, depending on the case and according to the object of the article and the context, one or more of the following categories of treaties, to which the contracting parties or parties are:

a State and an international organization, or
a State and two or more international organizations, or
an international organization and two or more States, or
two States and two international organizations, or
more than two States and more than two international organizations.

The meeting rose at 1 p.m.

1438th MEETING

Friday, 10 June 1977, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: 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. 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 ARTICLE SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 30 (Application of successive treaties relating to the same subject-matter) [3] (*concluded*)

1. Mr. USHAKOV said that, before considering the various categories of treaties between States and international organizations envisaged by the Special Rapporteur, the Commission could divide article 30 into two parts, one dealing with treaties between international organizations only, and the other with treaties between States and international organizations.

2. It was plain that Article 103 of the United Nations Charter covered treaties between States and international organizations since it provided that, in the event of a conflict between the provisions of the Charter and those of an international agreement, the provisions of the Charter prevailed. But it was not certain that Article 103 could be invoked in regard to treaties between international organizations for the Charter did not apply expressly to that category of treaties. The rule set out in paragraph 1 should therefore be different, according to whether treaties between States and international organizations or treaties exclusively between international organizations were concerned. Apart from paragraph 1, however, the rules should be the same for both categories of treaties.

3. With regard to treaties between States and international organizations, paragraph 4 raised the most difficulties. The Commission could either delete the whole of that paragraph, and paragraph 5 along with it, or examine the categories of treaties which could raise problems. He was convinced that the Drafting Committee would be able to overcome those difficulties if it made a distinction in article 30 between treaties between States and international organizations and treaties between international organizations only.

4. Mr. ŠAHOVIĆ said he considered, like Mr. Ushakov that a distinction should be made in article 30 between treaties between international organizations and treaties between States and international organizations, but he thought the rule should be the same for both categories. The problem posed by Article 103 of the Charter seemed to him extremely complex and he saw no alternative but the one proposed in paragraph (6) of the Special

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

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

[3] For text, see 1437th meeting, para. 43.