Document:-

A/CN.4/SR.1438

Summary record of the 1438th 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

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.

Rapporteur's commentary (A/CN.4/285). Obviously, Article 103 of the Charter only applied to States Members of the United Nations and the Commission might perhaps be going too far by extending it to international organizations at the present time.

5. Like Mr. Ushakov, he thought that paragraphs 2 and 3 raised no difficulties. The rule in paragraph 4 seemed logical and he was inclined to accept it. As paragraph 5 referred to articles which the Commission had not yet taken up, he proposed that it be placed provisionally in square brackets, pending examination of articles 41 and 60.

6. Mr. CALLE Y CALLE said he believed that there was a consensus among the members of the Commission on the principles underlying article 30 and the substance of the rules laid down in it. It would therefore be appropriate to refer the article to the Drafting Committee, which would be better able to consider how those rules should be expressed so as to cover the five cases referred to by the Special Rapporteur in his introductory statement.[4]

7. Mr. VEROSTA said that, in view of the definition the Special Rapporteur was proposing to insert in article 2, paragraph 1 (*a*),[5] he thought the Drafting Committee could be left to examine more closely those cases which, for the moment, seemed to him to be very abstract.

8. Mr. REUTER (Special Rapporteur) said the Commission seemed to think that article 30 should be referred to the Drafting Committee, and he agreed. It also appeared to think that a distinction should be made between treaties concluded between international organizations and treaties concluded between States and international organizations. Some of the members believed that, while treaties between international organizations did not raise any problem, difficulties did arise in the case of treaties between States and international organizations. He welcomed Mr. Šahović's suggestion that paragraph 5 should be placed in square brackets, if the Commission adopted it.

9. The reference in paragraph 1 to Article 103 of the Charter raised a serious problem, which went beyond the framework of article 30. The question was to what extent the draft articles applied, in general, to treaties concluded by the United Nations. That was something the Commission would have to reflect on and discuss in its commentary.

10. Again, he wondered whether a reservation should not also be made in article 27 concerning Article 103 and the other relevant provisions of the Charter so as to dispel the doubts of some members of the Commission. He therefore hoped that any decision the Drafting Committee might take regarding a reference to Article 103 would be provisional only.

11. Mr. SCHWEBEL said he agreed with previous speakers that article 30 could be referred to the Drafting Committee. If he had to choose between the text of paragraph 1 as it stood and the alternative text for that paragraph set out in paragraph (6) of the commentary, he would be inclined to favour the former, since it could be concluded by various means that Article 103 of the United Nations Charter was effectively binding on the Organization itself as well as on its Members. It might, however, be asked whether it was necessary to make any reference to Article 103 at all, since, notwithstanding the provisions of draft article 27, Article 103 was couched in such imperative terms that it would be extremely odd if a treaty, particularly one concluded under United Nations auspices in pursuance of the progressive development and codification of international law, could reasonably be interpreted as weakening the force of Article 103. It might perhaps be preferable to clarify that point in the commentary and to refrain from mentioning Article 103 in the text of draft article 30.

12. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to refer article 30 to the Drafting Committee.

It was so agreed.[6]

PROPOSED AMENDMENT TO ARTICLE 2, PARAGRAPH 1 (*a*)

13. Mr. REUTER (Special Rapporteur) proposed that article 2, paragraph 1 (*a*), should be replaced by the following text:

(*a*) "treaty" means an international agreement governed by international law, whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation, and concluded in written form:

(i) between international organizations; or

(ii) between one or more States and one or more international organizations; in the present articles, the expression "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:

treaties to which the contracting parties or parties are:

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

14. He would like to hear the Commission's views on the definition of the expression "treaty between States and international organizations", which he was proposing to insert in paragraph 1 (*a*) (ii) of article 2, so that he could use a fairly concise expression if it did not present any ambiguity in the context of a given article.

15. Mr. USHAKOV said he was convinced that it was very useful to distinguish between the various categories of treaties covered by different articles, but he was not entirely sure that it was necessary to mention those categories in a definition in article 2. An enumeration in article 2 of the various categories of treaties between States and international organizations would be justified only if the Commission thought it necessary to draft separate articles for each category. Otherwise, it need

[4] 1437th meeting, paras. 45-46.

[5] *Ibid.*, para. 50. For the reference to the text of article 2, see 1429th meeting, foot-note 3.

[6] For the consideration of the text proposed by the Drafting Committee, see 1458th meeting, paras. 20-32, and 1459th meeting, paras. 1-5.

only mention those categories in the commentaries to certain articles. It would therefore be preferable, for the time being, to reserve the decision to be taken on the definition proposed by the Special Rapporteur.

16. Mr. FRANCIS said that his first tentative reaction to the new text for article 2, paragraph 1 (*a*), submitted by the Special Rapporteur was that he preferred the original formulation, partly because of its greater simplicity. As to the new text itself, it would be more logical for the words "concluded in written form" to qualify the words "international agreement" in the beginning of subparagraph (*a*).

17. Mr. ŠAHOVIĆ said that, like Mr. Ushakov, he doubted whether it was necessary to define the expression "treaty between States and international organizations" and whether such a definition ought to appear in article 2, paragraph 1 (*a*), which reproduced article 2, paragraph 1 (*a*), of the Vienna Convention.[7] In his opinion, there were only two categories of treaties: treaties between international organizations and treaties between States and international organizations. All the other types of treaty that fell within the second category were simply different forms of relationship between States and international organizations, which depended on the number of parties to the treaty.

18. Mr. VEROSTA said that the different types of treaties between States and international organizations mentioned by the Special Rapporteur should be illustrated by examples. Headquarters agreements fell within the first category because they were agreements concluded between a State and an international organization, but the other States members of the international organization, which had representatives at the organization's headquarters, were also directly affected by those agreements.

19. The agreements provided for in Article 43 of the United Nations Charter, which stated:

> All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

fell within the first or the third category, since they were agreements "concluded between the Security Council and Members or between the Security Council and groups of Members" of the United Nations; but the other States involved in the conflict were also affected by those agreements.

20. Mr. SCHWEBEL said he had the impression that the Special Rapporteur had prepared his new text in response to a persistent line of questioning in the Drafting Committee. It now appeared, however, that many members of the Commission doubted the need for such a detailed definition, at any rate in the body of the draft articles rather than in the commentary. He, too, doubted that such a high degree of specification was required, though he would be prepared to accept the new text if it was considered necessary.

21. Mr. RIPHAGEN said he had no difficulty in accepting the original formulation of article 2, paragraph 1 (*a*). On the other hand, he would have no objection to the more detailed version under consideration if it was preferred by the Commission.

22. As to the wording of the proposed new text, he wondered whether the expression "contracting parties or parties" in subparagraph (*a*) (ii) was altogether appropriate, since a number of articles of the draft dealt with treaties which were still at the negotiating stage and to which there were not yet any contracting parties or parties.

23. Mr. DADZIE said that, for the time being, he considered the original definition of the term "treaty" perfectly satisfactory for the purposes of the draft articles. The exhaustive classification proposed in the new text seemed unnecessary. He endorsed the comment by Mr. Francis concerning the expression "concluded in written form".

24. The CHAIRMAN, speaking as a member of the Commission, said that, although he had no strong objections to the new text proposed by the Special Rapporteur, he, like other speakers, considered that the original formulation was quite adequate for the Commission's purposes. Moreover, at least some of the distinctions made in the new text seemed superfluous. It seemed to him that the new definition would complicate the draft needlessly.

25. Mr. REUTER (Special Rapporteur) noted that the members of the Commission did not think it necessary, for the time being, to introduce a new definition in article 2 and that, if a definition of that type did become necessary later on, they would prefer to keep as close as possible to the text of article 2, paragraph 1 (*a*), of the Vienna Convention.

26. Mr. VEROSTA said that the Special Rapporteur's efforts to define the notion of a treaty between States and international organizations would prove extremely useful for the consideration of later articles, particularly articles 30 to 38.

27. The CHAIRMAN thanked the Special Rapporteur for working out a text which clearly specified the various situations that could arise. Like Mr. Verosta, he believed that that text would be extremely useful for the subsequent work of the Commission. The Commission might perhaps reconsider the need for a more detailed definition of the term "treaty" at some future stage if that seemed desirable in the light of its discussions on other articles.

ARTICLE 31 (General rule of interpretation),

ARTICLE 32 (Supplementary means of interpretation) *and*

ARTICLE 33 (Interpretation of treaties authenticated in two or more languages)

28. The CHAIRMAN invited the Special Rapporteur to introduce articles 31, 32 and 33, which read:

Article 31. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

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

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(*b*) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) leaves the meaning ambiguous or obscure; or

(*b*) leads to a result which is manifestly absurd or unreasonable.

Article 33. Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic text discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

29. Mr. REUTER (Special Rapporteur) said that articles 31, 32 and 33 were simply an expression of the philosophy of consensus and reproduced the text of the corresponding articles of the Vienna Convention.

30. Mr. USHAKOV said that, among the supplementary means of interpretation, article 32 might mention pertinent decisions of international organizations parties to the treaty and the circumstances in which those decisions had been taken.

31. Mr. CALLE Y CALLE said he agreed with Mr. Ushakov. The Special Rapporteur, in his general commentary to part III, section 3 of the draft articles (A/CN.4/285), had observed that the corresponding articles of the Vienna Convention did not use the word "State" and could therefore also be applied to treaties involving international organizations. The Special Rapporteur had further stated that the interpretation of such treaties presented no special features, except in the case of the constituent instrument of an international organization, where it might be appropriate to take account of teleological factors. He agreed with the Special Rapporteur on the importance that should be attached to such factors, since the capacity of an international organization to conclude treaties was subject to its functions and purposes.

32. Article 31, paragraph 2 (*b*), provided that the context for the purpose of the interpretation of a treaty should comprise "any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty". In the case of international organizations, besides full powers, such instruments might include resolutions and documents of the organization, and it might perhaps be appropriate to make some reference to such decisions and documents as being of relevance for the purpose of interpreting a treaty to which an international organization was party.

33. Mr. RIPHAGEN said that he had some doubts about the suggestion that reference should be made, in one of the articles under discussion, to the various acts of an international organization which entered into a treaty with another organization or with a State, for that would mean mentioning what was in effect an internal matter for one of the parties to the treaty. The articles contained no such reference in the case of States, and he thought the existing balance in their treatment of States and international organizations should be maintained.

34. Mr. VEROSTA said he agreed with Mr. Riphagen. The text proposed by the Special Rapporteur was adequate and there was no need to stress, for example, decisions taken after the signing of the treaty.

35. The CHAIRMAN, speaking as a member of the Commission, said he fully agreed with the comments made by Mr. Riphagen and Mr. Verosta. It was well known that determination of the authentic interpretation of a treaty could entail consideration of the preparatory work for it. However, to extend that notion to include the resolutions or similar decisions of international organizations would be to enter a field which was specific to one of the parties to the treaty and could not, therefore, be considered a supplementary means of interpretation.

36. Mr. FRANCIS submitted that Mr. Ushakov's suggestion could not be dismissed altogether. The parties to a treaty were at liberty to vary its application and, to the extent that such a variation was accepted by all the parties, a decision of an international organization could be interpretative of their modified intent.

37. Mr. REUTER (Special Rapporteur), before summarizing the discussion on articles 31, 32 and 33, pointed out that two separate matters had arisen: the usefulness, or even the necessity, of mentioning acts of the organization prior to the conclusion or application of the treaty, and the question of acts subsequent to the conclusion or application of the treaty.

38. Personally, he felt bound to say that it was quite impossible to mention the latter category of acts. It was true that the authentic interpretation of a treaty was determined by all the parties to the treaty, whether States or international organizations, but he had the most extensive reservations regarding the value to be attached to a resolution of an international organization, which was a unilateral act and could not be used for the

authentic interpretation of a treaty. Moreover, the rules of interpretation of treaties varied from one organization to another, even for treaties concluded by the organizations themselves. Consequently, he was not in favour of a formulation that was ambiguous on that point.

39. Speaking in his capacity as Special Rapporteur, he noted that, during the discussion, several members had suggested that the value of the resolutions of an international organization for the interpretation of a treaty concluded by that organization should be mentioned, if not in the text of article 32, at least in the commentary. The question did not seem to have arisen in connexion with article 31. If it had, the problem would have been more serious, because article 31 referred to agreement between the parties and not to the position adopted unilaterally by the organization. In short, he would prefer to mention the acts of an international organization only in connexion with the preparatory work, that was to say, in article 32 only.

40. Despite the hesitation of some members, it appeared to be the general wish of the Commission that the articles should be referred to the Drafting Committee, on the understanding that the Committee would see whether some reference could be made in article 32 to the participation of international organizations in the preparatory work.

41. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to refer articles 31, 32 and 33 to the Drafting Committee.

It was so agreed.[8]

ARTICLE 34 (General rule regarding non-party States or international organizations)

42. The CHAIRMAN invited the Special Rapporteur to introduce his sixth report (A/CN.4/298), which contained section 4 (Treaties and non-party States or international organizations) of part III of the draft, beginning with article 34, which read:

Article 34. General rule regarding non-party States or international organizations

A treaty does not create either obligations or rights for a State or organization not party to the treaty without its consent.

43. Mr. REUTER (Special Rapporteur) said that his sixth report contained articles that were few in number but important and difficult. The Vienna Convention had adopted a classical, simple and absolutely clear approach to the question of the effects of treaties with respect to third parties: a treaty created neither obligations nor rights for a third State without its consent. That idea was the foundation for all the other articles relating to third parties. Nevertheless, through a mechanism which was simply an agreement, treaties could, with the consent of all concerned, produce effects with respect to third parties. The mechanism, which was that of the collateral agreement, had been described rather flexibly in the Vienna Convention in order to meet the concern expressed by many members of the Commission, who had held that the possibility of a *stipulation pour autrui* in regard to rights should not be excluded. Moreover, the Vienna Convention did not preclude certain treaties from having effects with respect to third parties, in the absence of any collateral agreement, by virtue of an institution that was foreign to the law of treaties and thus of no concern to the Commission in the present instance.

44. The articles of the Vienna Convention relating to treaties and third States had a dual basis: first, the general principle of consensus, according to which, in internal law as in international law, all contracts, agreements and conventions bound the parties only; and second, the notion of the sovereignty of States, of which both the Commission and the United Nations Conference on the Law of Treaties had been very sensible. It was because of the sovereign equality of all States, without exception, that the extension of the effects of a treaty to a third State had been made subject to the requirement of written acceptance.

45. The chief difficulty in extending the relevant articles of the Vienna Convention to the treaties with which the Commission was now concerned lay precisely in the principle of the absence of effects of treaties with respect to third parties. The notion of consensus did not in itself raise any problem. The Commission was probably not prepared to accept the idea that an international organization was always in the same position as a State in regard to treaties. However, once it was accepted that an international organization was a party to a treaty, it was logical to infer that the rules of consensus applied in principle. After all, international organizations were only a means of collective action by States. On the other hand, the notion of sovereignty could not be extended to international organizations. The rules, which were justified by the need to protect the sovereignty of States, did not apply to international organizations, which could not be assimilated to States in that respect. The competence of international organizations was not governed by the notion of sovereignty but by the fact that they were at the service of States.

46. Those considerations had led him to drop the requirement of written form for the extension of rights or obligations to an international organization. It was clear from abundant practice that international organizations willingly agreed to place themselves at the service of States and to assume the new responsibilities entrusted to them by States. Obviously, they could accept those responsibilities only within the limits of their competence but generally speaking there was an internal procedure for acceptance by communication or notification. That was why he had adopted a flexible formula on that point.

47. Again, he had taken a position on a point of drafting which he was prepared to reconsider if the Commission did not support him. In his opinion, it would not be felicitous, either in French or in the other languages, to speak of a "third organization", as the counterpart to a "third State". He had therefore opted for the expression "non-party international organizations", being convinced that the definition of the word "party" in article 2, paragraph 1 (*g*), permitted of such a change from the standpoint of substance.

48. There remained the important question of the presence among the parties to a treaty of States members of

[8] For the consideration of the texts proposed by the Drafting Committee, see 1458th meeting, para. 5.

an organization beside States that were entirely unconnected with it. He doubted whether that problem could be left out of account in considering the effects of treaties on third parties. It did not arise in so acute a form in the case of treaties concluded exclusively between international organizations, although the discussion had more than once shown the need to bear in mind that an international organization was an intergovernmental organization and, after all, only a means by which States could enter into collective commitments. In the case of treaties between States and international organizations, on the other hand, the need to protect States which concluded treaties with an international organization against the dangers inherent in the fact that the organization was made up of a certain number of States could not be left out of account. Furthermore, the parties to a treaty might include international organizations and States some of which were members of one of those organizations. Because he believed that those situations called for special provisions, he was submitting to the Commission an article which obviously had no equivalent in the Vienna Convention. Nevertheless, in view of the delicate problems it raised, the Commission would no doubt refrain from taking up that article before the appropriate time.

49. Mr. USHAKOV said that the Vienna Convention was completely silent on a fundamental question: could a treaty concluded between States create obligations or rights for non-party international organizations? He wondered whether that question had escaped the attention of the authors of the Vienna Convention, whether they had deliberately left it aside or whether they had refrained from answering it because of the difficulties it raised. If that question was to be answered in the affirmative, the Commission should now consider its opposite and decide whether a treaty concluded between international organizations could create obligations or rights for a non-party State.

50. Mr. REUTER (Special Rapporteur) said that he would reserve for later the detailed reply that Mr. Ushakov's question merited. For the time being, he would merely point out that the Vienna Convention contained special provisions on treaties constituting international organizations. It therefore recognized the power of States to establish international organizations. Some people even took the view that a certain treaty between States conferring privileges and immunities on an international organization had made the organization a party to that treaty. That might lead one to believe that States could, by means of a treaty, make an offer of rights or obligations to an international organization without, of course, imposing anything on it.

The meeting rose at 1 p.m.

1439th MEETING

Monday, 13 June 1977, at 3.05 p.m.

Chairman: Mr. José SETTE CÂMARA

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

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 34 (General rule regarding non-party States or international organizations) [3] (*concluded*)

1. Mr. USHAKOV asked what rules would apply to the consent which an international organization had to give in order that a treaty to which it was not a party might create rights and obligations for it. In article 6,[4] when dealing with the capacity of an international organization to conclude treaties, the Commission had referred to the relevant rules of the organization, namely, its constituent instrument or statutes. It should also determine which were the relevant rules applicable in the present case.

2. Mr. REUTER (Special Rapporteur) said he thought that Mr. Ushakov's question related not to the forms of consent, which were dealt with in later articles, but to the principle of the capacity of an organization to express the consent referred to in article 34. Clearly, the provisions of article 6 again applied. If the Commission agreed, that might be specified in the draft.

3. Consequently, the organization, as such, must first possess capacity to accept the rights or obligations arising for it from a treaty to which it was not a party. Then, the acceptance must be in conformity with the constitutional rules of the organization. Those rules varied from one organization to another but practice in the matter was fairly abundant. If often happened that, when formulating in a treaty a set of rules which would apply to them, States entrusted an international organization with the task of supervising the application of the treaty or of helping to settle disputes. In such cases, the organization had to consent to the new responsibilities entrusted to it, and the question whether it was competent would be determined by its constitutional rules. For example, in regard to the settlement of disputes, the Vienna Convention [5] established obligations and rights for the United Nations, subject to its consent. Similarly, the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil

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

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

[3] For text, see 1438th meeting, para. 42.

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

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