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Summary record of the 1439th 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:-
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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. It 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 Convention⁵ 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.

Thereof,⁶ which was an agreement between States, conferred powers on the Security Council, subject to its consent. It was thus quite clear that treaties could not create rights and obligations for a non-party international organization without its consent.

4. Mr. CALLE Y CALLE said he agreed with the conclusion the Special Rapporteur had drawn in paragraph 25 of his sixth report (A/CN.4/298), which he had reached only after consideration of the articles of the Vienna Convention corresponding to those he now proposed, and of the work already done by the Commission on the problem of treaties which include international organizations. He also agreed with the suggestion made by the Special Rapporteur in paragraphs 27 to 32 of the report, that it would be more convenient to refer to "non-parties" than to "third States or third organizations" to a treaty.

5. The problem dealt with in paragraphs 33 to 40 of the report, namely, the effect of a treaty concluded by an international organization on its member States, merited careful thought. At the centre of that problem lay the question how far the States members of an international organization could consider themselves "third States" in relation to such a treaty within the meaning of article 2, paragraph 1 (*h*), of the Vienna Convention. His own view was that they would be bound within the limits of the capacity to conclude a treaty which they had given to the organization concerned. An international organization represented the institutionalization of the collective will of its members; the obligations it assumed would affect those members, for it was they who gave the organization the power to conclude treaties and they who, acting within the framework of the organization, confirmed the agreements into which it entered. At the moment of expressing that confirmation, the States members of an organization themselves assumed the obligations which the organization had contracted on their collective behalf.

6. The Special Rapporteur had given some examples, in paragraph 36 of his report, of formal techniques which had been devised for associating the States members of an organization with the obligations of that organization, but those techniques would seem to be valid only in the case of organizations with a relatively small number of members. He would be grateful, therefore, if the Special Rapporteur would elaborate on the situation which would obtain when the States members of an international organization were so numerous that not all of them could sign a treaty at the same time as the organization itself. It seemed to him that in such a case the States concerned would be faced with the assumption of two obligations: one as States and the other within the framework of the agreement entered into by the organization.

7. Mr. REUTER (Special Rapporteur) said he thought that it would be better to wait until article 36*bis* was being examined before discussing the questions raised by Mr. Calle y Calle concerning the effects on the member States of an organization of a treaty to which that organization was a party. The solution of making the member States as well as the organization parties to the treaty, which had sometimes been adopted by the European Communities, did not offer only advantages. Mixed agreements of that

kind often left much uncertainty about the respective powers of the organization and its member States, not to mention the fact that the advantage of a collective commitment by the member States was lost with that arrangement. If IAEA concluded a treaty with a regional nuclear organization composed of only five or six States, only the ratification of those five or six States would be required, in addition to the formal confirmation by the Agency and by the regional organization. But the greater the number of member States of an organization, the longer the procedure would take. That technique had therefore its limitations.

8. Nevertheless, it was not so much the problem of mixed agreements that the members of the Commission would have to study, when the time came, as the problem that article 36*bis* was intended to solve: namely, by what set of rules could guarantees be given to States which contracted with an international organization, without sacrificing the necessary independence of member States in relation to the organization's commitment. The Commission might decide to delete article 36*bis*, but it had been his duty to draw its attention to the problem dealt with in that article. Once it was agreed that an international organization could itself assume a commitment, it became necessary to ensure a balance between the independence of the member States vis-à-vis the organization and the security of third States. In the interests of that security, the member States should not be able to claim, unconditionally and in all cases, that they had no part in the agreements concluded by the organization.

9. Mr. USHAKOV pointed out that in practice it was bilateral treaties, rather than multilateral treaties, which provided for obligations or rights for third parties. Moreover, such treaties usually created rights rather than obligations for international organizations.

10. He thought the expression "a State or organization not party to the treaty" was acceptable in principle since, according to article 2, paragraph 1 (*h*), of the Vienna Convention, the term "third State" meant a State not a party to the treaty. A distinction should nevertheless be made between a third State which was not a party to a bilateral treaty—that was to say, a State which had not taken part in the negotiation of that treaty and had not signed it—and a third State which was not a party to a multilateral treaty, but which might have taken part in its negotiation and even have signed it. The term "non-party" might be interpreted as applying to a State or an organization which was not a party to a bilateral treaty, but which had nevertheless taken part in its negotiation and had perhaps signed it. He therefore preferred the term "third State", which would be interpreted according to the Vienna Convention, and the term "third organization", which would designate an organization that was completely foreign to a treaty.

11. He therefore proposed that article 34 should be divided into two paragraphs, which would read:

"1. A treaty between one or more States and one or more international organizations does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization;

⁶ General Assembly resolution 2660 (XXV), annex.

“2. A treaty between two or more international organizations does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.”

12. As he had pointed out at the previous meeting,⁷ the case of a treaty between States which created obligations or rights for a third international organization was not covered by the Vienna Convention. Nevertheless, a treaty concluded between a large number of States and one or two international organizations, which created obligations for the organizations, being essentially a treaty concluded by States, did come under the Vienna Convention. But if it was agreed that a treaty concluded by States with limited participation by international organizations could create obligations or rights for international organizations, it must logically follow that a treaty concluded only by States should also be able to create such obligations or rights. Recognition of that faculty in the case of treaties between States and international organizations would thus indirectly supplement the rules of the Vienna Convention. Thus, not only the scope of article 34 of that Convention but also that of the following articles would be widened. That result would not give rise to any difficulties if it was absolutely certain that such an extension was implicit in the Vienna Convention.

13. The question of the relationship between the draft articles and the Vienna Convention could become singularly complicated. Not only two States but also two international organizations could create obligations for a third international organization. Furthermore, when two States concluded a treaty creating obligations for a third organization, one of those States might be a member of the organization. Personally, he had no solution to propose for those difficult problems and would merely observe that, in the case of a treaty concluded by States with limited participation by international organizations, the rules of the Vienna Convention should apply to the creation of obligations or rights for international organizations.

14. Mr. TABIBI said he fully understood the concern felt by Mr. Ushakov. His own conclusion, however, after studying the Special Rapporteur's written and oral introductions to his sixth report, was that the approach he had adopted in drafting the articles it contained was correct. He was particularly strengthened in that conclusion by the presence of article 36*bis*. All the members of the Commission recognized that international organizations were different from States, essentially because they were not sovereign; but the Commission had recognized, in earlier draft articles, that organizations had the capacity to conclude treaties and it could therefore agree that they also had the capacity to accept or reject obligations or rights arising from treaties. It could also accept the principles underlying the articles proposed in the Special Rapporteur's sixth report for another reason: international organizations were created by sovereign States and their powers with respect to treaties were limited to those which the States chose to grant them in their constituent instruments.

15. Mr. REUTER (Special Rapporteur), summing up the discussion, noted that, although the principle stated in article 34 did not seem to be contested, its negative character had given rise to certain doubts. Some drafting comments had also been made. He saw no objection to replacing the words “a State or organization not party” by the words “a third State or third organization”; and he could also agree to the division of article 34 into two paragraphs, though he himself did not feel the need for that change. At the present stage in the discussion, it therefore seemed that article 34 could be referred to the Drafting Committee.

16. The comments concerning the whole set of articles relating to third parties had dealt with possible conflicts between the draft articles and the Vienna Convention, and with the difficulties which might result for a State from an agreement concluded between two international organizations. First of all, he wished to remind the Commission that all the articles in section 4 were based on the idea that the treaties which the Commission was now considering did not produce any effects for third parties. When any such effects were produced, they would be the result of a collateral agreement between the third party which accepted the effects and the States or international organizations which had previously decided, by a treaty, to extend them to it. Once it had been agreed that a treaty between two international organizations could not produce effects for a third State, it might be asked whether such a treaty could contain an offer to contract addressed to a State. If so, there could not be any conflict with the Vienna Convention since that instrument did not deal with the problem of such offers. The Vienna Convention did not deal, either, with the faculty which States might have of directly creating rights for private individuals. As the Convention was based on the sovereignty of States, he would be tempted to conclude that States did have that faculty.

17. There were many examples of the situations he had in mind. For instance, two international banks having the status of international organizations might agree to offer financial assistance to a State. They could either conclude a trilateral agreement with that State or they could sign an agreement between themselves establishing the conditions of the offer they would make to the State. In the latter case, the agreement would be supplemented by a second agreement, which generally created not only rights but also obligations for the third State. There were many such agreements. The multilateral agreements by which States sometimes established organizations, such as supervisory bodies, for the purpose of those agreements, were causing a gradual proliferation of international organizations. For example, in the sphere of narcotic drugs, a small organization had first been set up, and then, by successive agreements concluded between different States, new rights and new obligations had been created for it. It seemed that in each case the organization in question had to accept the new obligations and rights. There again, there was a wealth of practice.

18. Mr. DADZIE said that he had studied article 34 in the light of the written and oral comments by the Special Rapporteur and found no difficulty in accepting it as it stood. It did seem to him, however, that the expres-

⁷ 1438th meeting para. 49.

sion *non partie* would be more accurately rendered into English by the phrase "not a party", but that, as the Special Rapporteur had used the expression *non partie* as a term of art in his written introduction, it would be better still if the English text of the article read "... for a State or organization non-party to the treaty...".

19. Mr. FRANCIS observed that, if it had already adopted article 36*bis*—the rationale of which he fully accepted—the Commission would have had to qualify the statement in article 34, for it would have admitted that it was not really true that a treaty could not create rights or obligations for a State which had not been a party to the negotiations. Furthermore, when Mr. Ushakov had asked, at a previous meeting, whether States which concluded a treaty *inter se* could thereby create obligations or rights for an international organization which was not a party to the instrument, the answer had been that they could. That seemed both logical and reasonable, especially where the States concerned were members of the international organization in question. In that situation, the requirement of the consent of the organization, stated in article 34, would be academic.

20. He had listened with great interest to Mr. Ushakov's comments on the term "third party", but thought that, so long as the meaning was clear, either that term or the expression "not party" could be used. For reasons of elegance, he preferred the wording chosen by the Special Rapporteur.

21. With regard to another comment by Mr. Ushakov, he was not certain whether a State which took part in the negotiation of a treaty but did not ratify it became a "third party" in relation to the treaty. His own feeling was that such a State might have no standing with respect to the treaty at all.

22. Mr. SUCHARITKUL said that he could accept article 34 as proposed by the Special Rapporteur. That article was not only negative, as some members of the Commission had said, since it permitted obligations or rights to be created for a State or an organization not party to a treaty, with its consent. That consent would be expressed in a collateral agreement, which could be made subject to other conditions.

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

*It was so agreed.*⁸

ARTICLE 35 (Treaties providing for obligations for non-party States or international organizations)

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

Article 35. Treaties providing for obligations for non-party States or international organizations

1. Without prejudice to article 36*bis*, an obligation arises for a State not party to a treaty from a provision of that treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the non-party State expressly accepts that obligation in writing.

⁸ For the consideration of the text proposed by the Drafting Committee, see 1458th meeting, paras. 6-11.

2. An obligation arises for an organization not party to the treaty from a provision of that treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the non-party organization accepts that obligation in an unambiguous manner and in accordance with the relevant rules of the organization.

25. Mr. REUTER (Special Rapporteur) said that article 35 dealt with the case in which a treaty provided for obligations for non-party States or international organizations. He had distinguished between the case of States and that of international organizations, devoting a separate paragraph to each. The Commission might perhaps decide also to make a distinction between treaties concluded between international organizations and treaties concluded between States and international organizations and to devote separate articles—articles 35 and 35*bis*—to those two categories of treaties, examining, for each category, obligations created for a State and obligations created for an international organization.

26. With regard to third States, he had closely followed the rule of the Vienna Convention, which was stricter than that proposed by the Commission,⁹ since the United Nations Conference on the Law of Treaties had added the obligation of acceptance in writing. The only substantive difference between the text of paragraph 1 of his draft article and that of article 35 of the Vienna Convention consisted in the addition of the words "Without prejudice to article 36*bis*". Those words should be placed in square brackets for the time being, since they would only be retained if the Commission decided to adopt article 36*bis*.

27. The rule he had drafted for third organizations was much more flexible than the rule for third States. He had replaced the requirement of acceptance in writing by the requirement of acceptance in "an unambiguous manner", thus reverting to the equivalent of the original wording which the Commission had proposed for third States at the United Nations Conference on the Law of Treaties. He had considered the fact that international organizations often accepted new functions—in other words, obligations—and that such acceptance should be made easy, because Governments were seeking to avoid the proliferation of international organizations by entrusting new functions to those already in existence. For example, in the sphere of narcotic drugs, the two organizations established by the 1925 and 1931 conventions had been combined into a single body by the Single Convention on Narcotic Drugs, 1961, while the terms of reference of that body had been expanded by the Convention on Psychotropic Substances, 1971.

28. In view of that tendency to rationalize the functions of international organizations, he thought that the rule to be formulated for them should be less strict than the rule for States, provided however that acceptance of the obligation was in accordance with the "relevant rules of the organization". That would not rule out the requirement of acceptance in writing but, if it was imposed, it would be by virtue of the relevant rules of the organization, not of the draft articles.

⁹ *Yearbook ... 1966*, vol. II, p. 181, document A/6309/Rev.1, part II, chap. II, draft articles on the law of treaties, art. 31.

29. Mr. USHAKOV pointed out that the Vienna Convention did not provide that a treaty between States could create an obligation for an international organization not a party to the treaty. In adopting the rule proposed by the Special Rapporteur in article 35, the Commission would be stating a residuary rule. Whether it could do so was an extremely delicate question. He did not believe that a treaty between two States could create an obligation for a natural person, as the Special Rapporteur had said it could, for in his opinion a natural person was not a subject of international law.

30. Moreover, in the case of an agreement concluded between a State and an international organization of which that State was a member, the State, after concluding the agreement, could vote against it in the organization. A situation of that kind would be very delicate, not only from the legal but also from the political point of view.

31. It might also be asked how, in the case of an agreement between two international organizations, those two organizations could provide for an obligation for a third State or a third organization. The Special Rapporteur had given the example of a treaty between two banking organizations which offered a loan to a third State or a third organization, but that would involve the creation of a right, not an obligation.

32. There was, at present, no practice relating to collateral treaties. He therefore proposed that article 35 should state the following rule, which seemed to him to be the only one possible, since it derived from the Vienna Convention:

“An obligation arises for a State from a provision of a treaty between two States and one or more international organizations if the States parties to that treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.”

33. Mr. CALLE Y CALLE said that he was in full agreement with the substance of article 35 and with the treatment of cases involving States and those involving international organizations in two separate paragraphs. With the exception of the introductory phrase, paragraph 1 essentially reproduced the wording of article 35 of the Vienna Convention. Paragraph 2 provided that an obligation could arise for an organization not party to a treaty from a provision of that treaty only if the parties to the treaty intended that provision to establish such an obligation, which must be directly related to the functions of the organization concerned, and if that organization clearly expressed its consent to be bound by the obligation. As the draft article stood, however, a non-party State was required to accept an obligation expressly and in writing, whereas a non-party organization was required only to accept it “in an unambiguous manner”. He would suggest that the latter expression might be replaced by the word “expressly” or the words “expressly and formally” since, if it was to be governed by the future convention, such an acceptance of an obligation must take the form of an international agreement concluded in written form, in accordance with the definition adopted in article 2. It was not enough, for instance, for the executive head of an international organization to accept an obligation

orally; the consent must be embodied in a written instrument.

34. Mr. SCHWEBEL said that he had no difficulty in accepting the sound and straightforward text for article 35 proposed by the Special Rapporteur, though he saw no reason why the two paragraphs of that article could not be merged into one. The phrase “in an unambiguous manner and in accordance with the relevant rules of the organization” seemed to him to be adequate. Although the valuable suggestions made by Mr. Calle y Calle certainly deserved consideration, he thought it obvious that a non-party organization’s acceptance of an obligation would be expressed in writing, whether in a resolution adopted by one of its organs, in minutes recording a consensus reached by such an organ, or in some other way.

35. With regard to Mr. Ushakov’s stimulating statement, his preliminary reaction was that, if the Commission was to draw up a convention of sufficient flexibility and durability, it must inevitably provide for a range of possibilities which had not yet manifested themselves on the international scene or which had done so only in insignificant measure. Mr. Ushakov had wondered whether examples drawn from the sphere of international financing provided persuasive evidence of the need for codification of the kind being attempted. In that connexion, it was possible, for instance, to conceive of the World Bank and the regional development banks preparing a standard model for the reporting by debtor States of the discharge of obligations incident to loans. In so far as a debtor State taking out a loan agreed to adhere to that model, it would be undertaking obligations established by international organizations. To take the opposite case, it was possible to conceive of States meeting together to draft standards to govern the operations of international banks and of such banks accepting those standards. Again, States meeting within the framework of the World Bank might draft such standards, which would in turn be applied by other international finance institutions in their operations. Such examples were relevant, although not necessarily decisive.

36. Mr. Ushakov had further observed that the question of the acceptance of an obligation by an international organization was a delicate one, politically as well as legally, especially as not all States members of the organization concerned might agree to the assumption of such an obligation. On that point, he believed that a State wishing to participate in an international organization must recognize that the organization might take decisions with which it was not in agreement. That was a fact of international life which, in his view, did not detract from the merit of the article proposed.

37. He had also understood Mr. Ushakov to say that, since individuals were not subjects of international law, they could not be vested with obligations or rights. He found that a very surprising statement. For instance, if the Protocol recently signed by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts¹⁰

¹⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.

affirmed the right of individuals not to suffer indiscriminate bombing, it would be remarkable if it did not also give rise to an obligation for individual pilots not to engage in such bombing. Questions of that kind had been dealt with at the Nuremburg trials, to which the Soviet Union had made a distinguished contribution. He reserved the right to comment on the text proposed by Mr. Ushakov when he had had an opportunity of studying it.

38. Mr. RIPHAGEN said that, as far as third parties were concerned, the Vienna Convention and the draft articles under consideration treated rights and obligations differently. It seemed to him, however, that the very particular rights and obligations deriving from a function exercised by an international organization in regard to the implementation of a treaty were inextricably interwoven and could not be distinguished in that manner. Neither the Vienna Convention nor the draft articles were altogether adequate in that respect. The further question arose whether an international organization not a party to a treaty, which accepted a particular function under that treaty, bound itself to exercise that function indefinitely. Of course, if the effects of treaties on third parties were based entirely on the concept of the collateral treaty, it was clear that the rights and obligations which arose could only be, so to speak, erased by a further collateral treaty. He was not sure, however, that that legal construction was always the correct one to apply to the functions of an international organization envisaged in a treaty between States or between States and other international organizations. For those reasons, he had certain doubts about the wording of article 35, paragraph 2, and, by extension, about the following articles, which dealt with the consequences of the acceptance of an obligation by a non-party organization.

39. Mr. CALLE Y CALLE said that the acceptance by a non-party organization of an obligation under a treaty might precede the conclusion of that treaty. For instance, the statute of an organization whose functions included arbitration might provide that the organization concerned would act as an arbitrator if two States agreed that it should do so. The Special Rapporteur might wish to cover such cases of prior acceptance of an obligation when drafting the final commentary to the article.

40. Mr. REUTER (Special Rapporteur) said that the case referred to by Mr. Calle y Calle should indeed be mentioned in the commentary. That question would come up again in connexion with article 36*bis*. If Mr. Ushakov had been referring to arbitration cases, he might be right in saying that there was no practice concerning collateral treaties, but he (the Special Rapporteur) had already given examples of other collateral treaties.

The meeting rose at 6 p.m.

1440th MEETING

Tuesday, 14 June 1977, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, 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 35 (Treaties providing for obligations for non-party States or international organizations)³ (*concluded*)

1. Mr. REUTER (Special Rapporteur) said he noted that some members of the Commission more or less accepted, with certain reservations, the rule he had proposed in article 35, whereas others thought the article should deal only with cases which would not oblige the Commission to take a position, directly or indirectly, on the question whether a treaty between States, which was governed by the Vienna Convention,⁴ could create obligations for international organizations.

2. He thought States ought to be informed of all the problems that arose and of all the options open to them, and therefore intended to submit to the Drafting Committee two versions of article 35, reflecting two points of view, one broad and the other more restrictive. The Drafting Committee would consider those two versions and send them back to the Commission, which would then decide which course to adopt. He hoped that the Commission would decide to transmit both versions to Governments (which would not prevent every member from expressing his opinion on them), for the aim should be not to impose a solution on Governments but to offer them the widest possible choice.

3. That method might also be applied to many other articles for, in dealing with difficult questions, it was well to propose a choice between two solutions. The problem was, in fact, very simple: international organizations were not States, and that would justify treating them differently from States; but the Commission was, *ex hypothesi*, considering cases in which international organizations were parties to treaties on the same footing as States. It was therefore necessary to seek a compromise between the principle of relative assimilation of international organizations to States and the fact that they were different from States.

4. Some members of the Commission had asked whether precedents could be cited in support of the rule in article 35. He had not cited many, but he would like to point out that, even if there were numerous precedents for that

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

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

³ For text, see 1439th meeting, para. 24.

⁴ See 1429th meeting, foot-note 4.