Document:-

A/CN.4/SR.1446

Summary record of the 1446th 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

him realize that he might not have made himself entirely clear in his statement on the consolidated draft article relating to newly independent States.[15] He had said that, in his view, paragraphs 2, 3 and 6 and the three principles embodied therein were central to the article. He had also expressed some doubt as to whether the principle laid down in paragraph 6 should be related only to the conclusion of agreements rather than established as a basic principle in its own right.

37. In amplification of that point, he wished to emphasize the breadth of the notion of capacity to pay. In one sense, it was simply a reflection of the basic United Nations principles which should serve as guide-posts in the Commission's work. One such principle was the concept of sovereignty over natural resources, a notion that, at first sight, seemed almost tautological since it amounted to an assertion that a people owned its own property and that sovereign States had sovereignty in their own territory. What, in his view, that principle really entailed could be illustrated by drawing a parallel from domestic law. On the whole, it was believed that an individual should pay his debts but that belief was never carried to the point of insisting that the individual must starve himself to death in order to satisfy his creditors. The first priority was to keep the debtor alive and in reasonably good health. Similarly, the principle of sovereignty over natural resources meant that a State was not to be deprived in a covert manner of its overt authority to order its own affairs by elevating the question of indebtedness to a higher plane than that of the freedom of will of the State itself. However, the principle of capacity to pay could also be said to derive, in the present context, from virtually all State practice in the matter of succession to debts. Authorities such as Professor O'Connell, Professor Feilchenfeld and many others bore out that point. The principle of capacity to pay thus derived from traditional sources and from United Nations practice alike.

38. The other point which he had wished to make was that, in considering the question whether certain expenditures had benefited a dependent territory, it was not necessary to confine oneself to situations in which the colonial Power might be thought to have incurred expenditures in its own interests rather than in those of the territory concerned. It might simply be that the territory did not have resources of its own to maintain the structure of government that even the metropolitan Power thought necessary and appropriate to modern conditions of life. He had had partly in mind the very small States in the Pacific which had formerly been administered by New Zealand and had continued to be associated with it following their attainment of independence, States which had been able to maintain their system of government solely because of the continuation of subventions from New Zealand. A still more striking case was that of Papua New Guinea, a country with an extensive and very difficult terrain, which, after acceding to independence, had been able to sustain its apparatus of government only with massive assistance from Australia, the former metropolitan Power. If the view had been taken that subventions to Papua New Guinea must stop at the point when it attained independence or, still more, that the structure of government should become a burden on the newly independent State, then even that structure would have been wholly beyond the immediate resources of the new country to support. Consequently, there was a certain degree of overlapping between the two notions of capacity to pay and the benefit to a formerly dependent territory of expenditures incurred by the predecessor State, even though each was a completely valid concept in its own right.

39. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to refer to the Drafting Committee articles F, G and H,[16] as well as the consolidated text proposed by the Special Rapporteur.[17] Those provisions would be considered by the Drafting Committee in the light of the comments made in the Commission and, in particular, of the text of the article proposed by Mr. Ushakov.[18]

It was so agreed.[19]

The meeting rose at 1 p.m.

[15] 1443rd meeting, paras. 32 *et seq.*

[16] A/CN.4/301 and Add.1, chap. V, sect. H.

[17] 1443rd meeting, para. 1.

[18] 1444th meeting, para. 19.

[19] For the consideration of the text proposed by the Drafting Committee, see 1449th meeting, paras. 4-54, and 1450th meeting, paras. 1-6.

1446th MEETING

Friday, 24 June 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

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

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*)* (A/CN.4/285,[1] A/CN.4/290 and Add.1,[2] A/CN.4/298, A/CN.4/L.253, A/CN.4/L.255)

[Item 4 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts adopted by the Drafting Committee for the first five articles (articles

* Resumed from the 1442nd meeting.

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

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

19, 19*bis*, 19*ter*, 20 and 20*bis*) of section 2 (Reservations) of part II of the draft articles on treaties concluded between States and international organizations or between international organizations as well as the title of section 2 (A/CN.4/L.255).

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

ARTICLE 19*bis* (Formulation of reservations by States and international organizations in the case of treaties between States and one or more international organizations or between international organizations and one or more States),

ARTICLE 19*ter* (Objection to reservations),

ARTICLE 20 (Acceptance of reservations in the case of treaties between several international organizations) *and*

ARTICLE 20*bis*[3] (Acceptance of reservations in the case of treaties between States and one or more international organizations or between international organizations and one or more States)

2. Mr. TSURUOKA (Chairman of the Drafting Committee) said that the draft articles on reservations, submitted by the Special Rapporteur in his fifth report (A/CN.4/290 and Add.1), had been referred to the Drafting Committee after a long and detailed discussion in the Commission, during which divergent and even contrary views had been expressed. In accordance with the broad mandate given to it to perform its recognized role in conformity with the Commission's current practice and working methods, the Drafting Committee had examined those different views in detail, taking into account the alternatives proposed by the Special Rapporteur and by members of the Committee. The texts of the articles now before the Commission were the result of the Drafting Committee's efforts to find a middle term, in a spirit of compromise designed to reflect the main trend of its discussions.

3. It should be pointed out, however, that, in the opinion of one member of the Committee, the solutions arrived at could not be regarded as a compromise. That member had reserved his position on the texts of the articles adopted by the Drafting Committee and had submitted his own alternative versions (A/CN.4/L.253).

4. The articles adopted by the Drafting Committee read:

Article 19. Formulation of reservations in the case of treaties between several international organizations

An international organization may, when signing, formally confirming, accepting, approving or acceding to a treaty between several international organizations, formulate a reservation unless:

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(*c*) in cases not falling under subparagraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

[3] For the consideration of the texts originally submitted by the Special Rapporteur, see 1429th to 1433rd meetings.

Article 19bis. Formulation of reservations by States and international organizations in the case of treaties between States and one or more international organizations or between international organizations and one or more States

1. A State, when signing, ratifying, accepting, approving or acceding to a treaty between States and one or more international organizations or between international organizations and one or more States, may formulate a reservation unless:

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(*c*) in cases not falling under subparagraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

2. When the participation of an international organization is essential to the object and purpose of a treaty between States and one or more international organizations or between international organizations and one or more States, that organization, when signing, formally confirming, accepting, approving or acceding to that treaty, may formulate a reservation if the reservation is expressly authorized by the treaty or if it is otherwise agreed that the reservation is authorized.

3. In cases not falling under the preceding paragraph, an international organization, when signing, formally confirming, accepting, approving or acceding to a treaty between States and one or more international organizations or between international organizations and one or more States, may formulate a reservation unless:

(*a*) the reservation is prohibited by the treaty;

(*b*) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(*c*) in cases not falling under subparagraphs (*a*) and (*b*), the reservation is incompatible with the object and purpose of the treaty.

Article 19ter. Objection to reservations

1. In the case of a treaty between several international organizations, an international organization may object to a reservation.

2. A State may object to a reservation envisaged in article 19*bis*, paragraphs 1 and 3.

3. In the case of a treaty between States and one or more international organizations or between international organizations and one or more States, an international organization may object to a reservation formulated by a State or by another organization if:

(*a*) the possibility of objecting is expressly granted to it by the treaty or is a necessary consequence of the tasks assigned to the international organization by the treaty; or

(*b*) its participation in the treaty is not essential to the object and purpose of the treaty.

Article 20. Acceptance of reservations in the case of treaties between several international organizations

1. A reservation expressly authorized by a treaty between several international organizations does not require any subsequent acceptance by the other contracting organizations unless the treaty so provides.

2. When it appears from the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(*a*) acceptance by another contracting organization of a reservation constitutes the reserving organization a party to the treaty in relation to that other organization if or when the treaty is in force for those organizations:

(*b*) an objection by another contracting organization to a reservation does not preclude the entry into force of the treaty as between the

objecting and reserving organizations unless a contrary intention is definitely expressed by the objecting organization;

(c) an act expressing the consent of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting organization has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty otherwise provides, a reservation is considered to have been accepted by an international organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 20bis. Acceptance of reservations in the case of treaties between States and one or more international organizations or between international organizations and one or more States

1. A reservation expressly authorized by a treaty between States and one or more international organizations or between international organizations and one or more States, or otherwise authorized, does not, unless the treaty so provides, require subsequent acceptance by, as the case may be, the other contracting State or States or the other contracting organization or organizations.

2. When it appears from the object and purpose of the treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation formulated by a State or by an international organization requires acceptance by all the parties.

3. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance by a contracting State or organization of a reservation constitutes the reserving State or organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force for the reserving and for the accepting State or organization;

(b) an objection by a contracting State or organization to a reservation does not preclude the entry into force of the treaty as between the objecting and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act expressing the consent of a State or an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State or organization has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a contracting State or organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

5. In preparing those five draft articles, the Drafting Committee had preserved the basic distinction made by the Special Rapporteur between two categories of treaties, namely, treaties between international organizations and treaties between States and international organizations. For greater clarity and precision, however, the Drafting Committee had designated the latter category as "treaties between States and one or more international organizations or between international organizations and one or more States". That new and more descriptive formula had been used to avoid giving the impression—which the other, more ambiguous formula might have given—that the articles under consideration covered reservations to bilateral treaties concluded between a State and an internationa organization. The Drafting Committee had sought to achieve the same result, in regard to treaties concluded between international organizations, by retaining the word "several" in the English version, which, strictly speaking, meant "three or more".

6. Taking that distinction into account, the Drafting Committee had retained the régime of the Vienna Convention,[4] in so far as it related to the position of States, for treaties between States and one or more international organizations or between international organizations and one or more States, which might be called "mixed treaties". That régime also applied to international organizations in the case of treaties concluded between international organizations. The position of international organizations in mixed treaties was, however, more restricted than that of States in regard to the formulation of reservations and objection to reservations, when the participation of those organizations was essential to the object and purpose of the treaty. With respect to the formulation of reservations, the position of international organizations was clearly stated in paragraphs 2 and 3 of article 19*bis*; and to make the restricted position of international organizations regarding objection to reservations equally clear, the Drafting Committee had decided to draft a separate article—article 19*ter*—expressly providing for the various cases of objection to reservations formulated by States or international organizations, as the case might be, in regard to the two basic types of treaty considered.

7. The structure of the five draft articles prepared by the Drafting Committee was in conformity with the basic distinction between the two categories of treaties. As the Special Rapporteur had done in his fifth report, the Committee had devoted separate, but parallel, articles to the formulation and acceptance of reservations, one relating to treaties concluded between international organizations and the other to mixed treaties. Since the new article 19*ter* dealt specifically with objection to reservations, the words "and objection to reservations" had been omitted from the titles of draft articles 20 and 20*bis*, which now related only to acceptance of reservations. In accordance with the practice followed for the texts adopted so far, the articles were arranged and numbered for easy reference to the corresponding provisions of the Vienna Convention.

8. The main changes made by the Committee in the title and text of article 19 originally proposed by the Special Rapporteur were the deletion of the word "concluded" in the title, to bring it into line with the body of the article, and the reversal of the order of the clauses in the introductory phrase. The text of article 19*bis* was simply a statement of the decision of principle to place States and international organizations in different positions in regard to the formulation of reservations to mixed treaties. Three possible situations were dealt with in three separate paragraphs. Paragraph 1, worded in terms similar to those of article 19, applied the liberal régime of the Vienna Convention to the formulation of reservations by States. The stricter régime for the formulation of reservations by international organizations corresponded to the general rule laid down in article 19*bis*, paragraph 2, according to which an international

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

organization could formulate a reservation when its participation was essential to the object and purpose of the treaty, provided that the reservation was expressly authorized by the treaty or if it was otherwise agreed that the reservation was authorized. As an exception to the general restrictive rule stated in paragraph 2, paragraph 3 applied the régime provided for in paragraph 1 to the formulation of reservations by international organizations in the case of mixed treaties, when the participation of those organizations was not essential to the object and purpose of the treaty.

9. Article 19*ter*, which was a new article, regrouped the provisions concerning objection by a State or an international organization to a reservation in the case of the two types of treaty dealt with in the draft. For both types, paragraph 2 of the article applied the liberal régime of the Vienna Convention applicable to States. The same rule was laid down in paragraph 1 for objections formulated by international organizations in the case of treaties between organizations. Paragraph 3 stated the more restrictive rule adopted for international organizations, corresponding to the provisions of paragraphs 2 and 3 of article 19*bis*, namely, that an international organization could object to a reservation in the case of a mixed treaty only if its participation in the treaty was not essential to the object and purpose of that treaty (subparagraph (*b*)), or if the possibility of objecting was expressly granted to it by the treaty or was a necessary consequence of the tasks assigned to it by the treaty (subparagraph (*a*)). The latter provision took account of the importance of the functional aspect of international organizations when it was necessary to differentiate, for the purposes of reservations, between the status of those organizations as parties to a treaty and the status of sovereign States also parties to the same treaty. The word "tasks" had been used in that context in place of "functions" to make it quite clear that the reference was to the particular treaty in question and not to the constituent instrument of an international organization, which defined its "functions".

10. Lastly, articles 20 and 20*bis*, which dealt with acceptance of reservations to the two types of treaty considered, were symmetrical and their wording was similar to that of the corresponding articles proposed by the Special Rapporteur, excepting the slight drafting changes already mentioned.

11. Mr. USHAKOV said he had proposed to the Drafting Committee that it should prepare two different versions of articles 19 to 23 so that States could choose between two possible solutions. As the Committee had preferred to draft only one version, he had decided to submit a second version to the Commission, which appeared in document A/CN.4/L.253. It had been his view that, so far as the formulation of reservations by international organizations was concerned, the Commission was not engaged in the codification but in the progressive development of international law, and that it would necessarily have to adopt an arbitrary approach, which might, consequently, differ from that proposed by the Drafting Committee.

12. In draft articles 19 and 19*bis*, the Drafting Committee had adopted the principle that an international organization party to a treaty could make any reservation whatsoever to that treaty, whereas in his draft article 19 he had adopted the principle that an international organization could formulate a reservation to a treaty only "if the reservation is expressly authorized by the treaty or if it is otherwise agreed that the reservation is authorized".

13. He believed that his point of view was justified for several reasons. In the first place, he did not see what reasons international organizations could have for making reservations to treaties between States. In the case of States, vital interests could come into play and a State was sometimes obliged to make reservations to certain clauses in a treaty when those clauses, to which it was opposed, had been adopted by a two-thirds majority at a codification conference at which it had been in the minority. But in the case of international organizations, the interests at stake were not so important as to oblige an organization to make reservations to a treaty between States.

14. Furthermore, he had noted that, although there were rules for treaties between States to which one or more international organizations were parties, those rules mainly concerned States, since the treaties in question came under the Vienna Convention. Consequently, he did not see why an organization party to a treaty of that kind should be able to make reservations to rules concerning States, as provided in the Drafting Committee's text. Nor did he see why, in the case of a treaty between international organizations to which one or more States were also parties, a State party should be able to make reservations to rules concerning relations between international organizations. In his view, contrary to what the Chairman of the Drafting Committee had said, the Committee's text did not maintain the rule of the Vienna Convention and did not safeguard the necessary relationship between that Convention and the draft articles, since it did not provide for relations *inter se* between the States parties to an agreement between States to which one or more international organizations were also parties. His own draft, on the other hand, did preserve the relationship that should exist between the draft articles and the Vienna Convention, since it allowed States to make reservations as between themselves, in accordance with article 3 (*c*) of that Convention.

15. He also considered that the solution he proposed was justified in so far as the position on reservations which would be adopted in regard to international organizations was bound to be arbitrary because there could be no question of codifying rules generally recognized by State practice in that matter. Moreover, he considered it impossible to place States and international organizations on the same footing, especially where the possibility of making reservations or objections to reservations was concerned.

16. Lastly, with regard to the procedure relating to reservations, he believed that it was for the competent organ of the international organization to decide whether the organization should make reservations or object to reservations, especially in the case of objections to reservations concerning relations between States.

17. He hoped the Commission would accept his proposed version of articles 19 to 23 and submit it to States together with the Drafting Committee's version. If the Commission decided to adopt only the Drafting Committee's text, he would like his own version to be included in the commentary so that States could choose between the two.

18. He had devoted only one article—article 19—to the formulation of reservations, whereas the Drafting Committee had proposed two separate articles on that subject. However, in article 19 he had covered the different categories of treaties which the Drafting Committee had dealt with separately in articles 19 and 19*bis*. Paragraph 1 of his article 19 dealt with treaties between international organizations; paragraphs 2, 3 and 4 with treaties between States and one or more international organizations; and paragraph 5 with treaties between international organizations and one or more States.

19. In the case of a treaty between international organizations, an international organization party to the treaty might formulate a reservation "if the reservation is expressly authorized by the treaty or if it is otherwise agreed that the reservation is authorized" (paragraph 1).

20. In the case of a treaty between States and one or more international organizations—the case covered by article 3 (*c*) of the Vienna Convention—it was the Vienna Convention rule that applied to States (paragraph 2). For international organizations (paragraph 3), the same rule applied as in the case referred to in paragraph 1. Paragraph 4 dealt with a special case, in which the participation of an international organization in a treaty between States was essential for the object and purpose of the treaty. In that case, States were on the same footing as international organizations and the rule applicable to them was the same as that laid down in paragraphs 1 and 3.

21. In the case of a treaty between international organizations and one or more States, dealt with in paragraph 5, States were also assimilated to international organizations and were subject to the same régime.

22. Mr. REUTER (Special Rapporteur) expressed appreciation of the extremely valuable assistance which Mr. Ushakov had given to the Drafting Committee.

23. The solution proposed by the Drafting Committee in articles 19 and 19*bis* concerning the formulation of reservations was extremely simple. For States, the régime applicable was that of the Vienna Convention: as between themselves, States could formulate all the reservations provided for by that Convention. Thus, he did not agree with Mr. Ushakov on that point.

24. For international organizations, the régime applicable was also that of the Vienna Convention in the case of treaties between international organizations. In the case of treaties between States and one or more international organizations or between international organizations and one or more States, it was the rule of authorization that applied because of the functional character of international organizations. There was one exception to that rule, which applied when the participation of an international organization was not essential to the object and purpose of the treaty. For in that case, the treaty would still hold good, even if the international organization did not become a party to it, which meant that States had conferred on that organization the faculty of participating in the treaty on the same footing as States. Consequently, international organizations should, in that case, be subject to the same régime as States, namely, that of the Vienna Convention.

25. Under the system proposed by Mr. Ushakov, international organizations could make only authorized reservations, irrespective of the type of treaty. As for States, the rule applicable to them was stricter than that provided for by the Drafting Committee, for in their case Mr. Ushakov had introduced a distinction between treaties between States and one or more international organizations and treaties between international organizations and one or more States; and for the latter type of treaty he had assimilated the position of States to that of international organizations, whereas the Committee had retained that distinction in the title to article 19*bis* purely for reasons of drafting. In Mr. Ushakov's draft, States were also placed on the same footing as international organizations and, like them, could only formulate authorized reservations when the participation of an international organization in a treaty concluded between States and one or more international organizations was essential to the object and purpose of that treaty.

26. Mr. Ushakov considered that it could be decided, at the outset, to deny international organizations any freedom in regard to the formulation of reservations. The Drafting Committee believed, on the contrary, that an international organization should be granted such freedom in two cases: that of a treaty between international organizations, and that of a treaty between States and international organizations when the participation of the organization in the treaty was not essential to its object and purpose.

27. To take an example, the Fifth International Tin Agreement (1975) was open to a certain number of international organizations and one international organization had already become a party to it without making any reservations. It was clear that, under paragraph 3 of Mr. Ushakov's draft article 19, the international organization concerned would not have had the right to formulate reservations, since the treaty did not expressly authorize or prohibit any reservation either for States or for international organizations. Under paragraph 3 of the article 19*bis* proposed by the Drafting Committee, on the other hand, the organization in question could have formulated reservations, for clearly its participation in the treaty was not essential to the object and purpose of that treaty and it was therefore in the same position as States. Where the participation of an international organization was no more necessary to the object and purpose of the treaty than the participation of any State, that organization should indeed be able to make reservations to the treaty under the same conditions as a State.

28. It would obviously not be acceptable for an international organization to be able to make reservations concerning relations between States parties to a treaty. But the definition of the word "reservation", adopted in

article 2 (*d*),[5] should alleviate the concern expressed by Mr. Ushakov in that regard.

29. From the technical point of view, he was not sure whether it was possible to establish two separate régimes applicable to reservations for the two subcategories of treaties between which Mr. Ushakov had made a distinction—treaties concluded between States with the participation of one or more international organizations and treaties concluded between international organizations with the participation of one or more States—since that distinction was based on purely quantitative data.

30. A problem clearly arose when the number of States and organizations parties to the treaty was the same, since the treaty then fell into both categories. However, even where the number of States and the number of organizations parties to the treaty were different, it might be questioned whether the treaty should be regarded as belonging to one category rather than to the other. For instance, should a public health agreement concluded between five States and four international organizations be regarded as an agreement between States rather than as an agreement between international organizations? Admittedly, it could be said that some treaties were more in the nature of treaties between States, while others were more in the nature of treaties between international organizations. The Drafting Committee had taken account of that distinction in its draft of article 19*bis*, by providing for the case in which the participation of an international organization was not essential to the object and purpose of the treaty. However, that distinction should not be based on a purely arithmetical criterion. In the sphere of technical assistance, for instance, there were treaties between six or seven international organizations and a single State and treaties between six or seven States and a single international organization, for which there was no fundamental reason to establish different régimes.

31. In that connexion, he stressed that the Drafting Committee's text gave great weight to the object and purpose of the treaty. That criterion, which had been adopted in the Vienna Convention, seemed to be the only reasonable one since the Commission could not possibly make a detailed analysis of the structure of treaties, which would involve it in complicated and arbitrary classifications.

32. Mr. FRANCIS said that, in his view, the use of the word "several" in the title and text of article 19 adopted by the Drafting Committee was misleading and perhaps even dangerous. Treaties concluded between international organizations were a very new phenomenon and could not be treated in every respect like treaties between States. An international organization had no basic interest of its own in the sense that, fundamentally, it represented the interests of the States composing it. It was necessary to bear in mind that an international organization did not negotiate as an abstract institution but through accredited representatives, whose powers were limited. When a treaty was negotiated between two international organizations, unless those representatives were able to formulate reservations at the time when the treaty was signed, the negotiations would have to be adjourned to enable the representatives to obtain instructions and authorization from their organizations. He feared that the use of the word "several" would prevent a negotiating agent from formulating a reservation to a treaty being negotiated between two international organizations.

33. Mr. REUTER (Special Rapporteur) said that the question was whether the Commission really wished to exclude reservations to bilateral treaties. That had certainly not been the wish of the United Nations Conference on the Law of Treaties, and the Drafting Committee had followed a course which seemed to preclude such a possibility. If the Commission wished to establish a parallel between the draft articles and the Vienna Convention and not exclude the possibility of making reservations to bilateral treaties, it should revert to the formula "treaties concluded between States and international organizations" and abandon the distinction made, for drafting purposes, between treaties between States and one or more international organizations and treaties between international organizations and one or more States.

34. The CHAIRMAN said that, owing to a meeting of the Planning Group, the Commission would have to break off its discussion of article 19, but members might give some thought to the possibility of simply deleting the word "several" from the title and text of that article. It seemed to him that such a solution would be consistent with article 19 and article 2, paragraph 1 (*a*), of the Vienna Convention.

The meeting rose at 11.30 a.m.

1447th MEETING

Monday, 27 June 1977, at 3.30 p.m.

Chairman: Sir Francis VALLAT

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

Succession of States in respect of matters other than treaties (*continued*)* (A/CN.4/301 and Add.1, A/CN.4/L.256)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to examine the text of articles 17 to 21 as well as the titles of part II of the draft articles and of sections 1 and 2 of part II,

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

* Resumed from the 1445th meeting.