Document:-

A/CN.4/SR.1448

Summary record of the 1448th 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

other than treaties must comprehensively embrace actual debt relations, including those in which the creditor was not a State or an international organization. As Mr. Quentin-Baxter had rightly pointed out, however, that was by no means the same thing as saying that a third -party creditor other than a State or an international organization was an international person and could be regarded as an entity operating on the plane of international law. Referring to the examples which Mr. Quentin-Baxter had given of the primacy of the State over its nationals who were creditors, he urged that account should also be taken of the case in which a private creditor's Government rejected a debt settlement before the private creditor had been able to accept it. In such a case, the private creditor would not be entitled to accept the settlement even if he wished to do so.

43. The CHAIRMAN, speaking as a member of the Commission, said that, although he had no basic objection to the substance of article 20, he thought that, even with the inclusion of the words in square brackets in paragraph 2 (*a*), its meaning was not clear.

44. In referring to paragraph 1, Mr. Schwebel had stressed the importance of protecting the interests of "third-party creditors" but the fact was that those words had not been defined for the purpose of the draft articles. The commentary should explain what the words "third-party creditor" meant in the context of article 20.

45. In paragraph 2, he was not at all satisfied with the word "purported", a word which the Commission had usually tried to avoid. He noted that the words "an agreement providing" had been used in article 8 of the draft articles on succession of States in respect of treaties.[14] That formulation would be better than "purported" because the word "purport" was rather nebulous; he was not even sure that it was a proper juridical term.

46. He also had some difficulties with the words "or other arrangement" in the second line of paragraph 2. Either an agreement existed or it did not. Moreover, the words "or other arrangement" would give rise to problems in the interpretation of article 21, paragraph 2, which began with the words "In the absence of an agreement".

47. He thought that the words "predecessor and successor States" in paragraph 2 should be in the singular because, when a debt passed from one State to another, the relation in question was essentially bilateral, not multilateral. Similarly, the words "State debts" should be amended to read "any State debt" so that the objection of a particular creditor to an agreement would make the agreement ineffective only in relation to the particular debt for which he was a creditor. He therefore proposed that the introductory phrase of paragraph 2 should be amended to read:

> Where an agreement between a predecessor State and a successor State or between successor States provides for the passing of any State debt, it shall not be effective for that purpose unless:

48. He had no objection to the substance of paragraph 2 (*a*) but he thought that, unlike article 3 of the Vienna Convention, the present wording of that subparagraph would exclude such subjects of international law as the Holy See, which might be a creditor. He therefore suggested that the words "or other subject of international law" should be inserted between the words "international organization" and the words in square brackets. Although he normally found the use of square brackets very unsatisfactory, he thought that in the present case they were justified. If the last words of paragraph 2 (*a*) were retained in square brackets, their meaning should be made clearer and they should be fully explained in the Commission's commentary.

49. Speaking as Chairman, he suggested that, in view of all the comments which had been made about article 20, the Drafting Committee should take another look at that article and try to improve its wording.

50. Mr. TSURUOKA (Chairman of the Drafting Committee) said that, in the light of the discussion and subject to the agreement of the Special Rapporteur, he accepted the Chairman's suggestion that article 20 should be reconsidered by the Drafting Committee.[15]

51. Mr. BEDJAOUI (Special Rapporteur) said he thought the discussion on article 20, paragraph 2, had been based on a misunderstanding. That paragraph was certainly not intended to deny the freedom of the predecessor State and the successor State to conclude an agreement or to make their agreement void in the event of non-acceptance by a third State, but to uphold the existing agreement between the predecessor State and the third State.

The meeting rose at 6.10 p.m.

[14] See 1416th meeting, foot-note 1.

[15] For the consideration of the revised text proposed by the Drafting Committee, see 1450th meeting, paras. 7-47.

1448th MEETING

Tuesday, 28 June 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, 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. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

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

[Item 4 of the agenda]

* Resumed from the 1446th meeting.

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

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

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*continued*)

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) *and*

ARTICLE 19*ter* (Objection to reservations) [3] (*concluded*)

1. The CHAIRMAN invited the Commission to resume its consideration of the texts of articles 19, 19*bis* and 19*ter* proposed by the Drafting Committee and the text of article 19 proposed by Mr. Ushakov (A/CN.4/L.253).

2. Mr. FRANCIS, referring to article 19*bis*, said he had the impression that, when reservations were formulated by international organizations to treaties concluded with States, there were circumstances in which an international organization could be said to be contracting on equal terms with States. If that impression was correct, those circumstances should be taken into account in the article.

3. Where an international organization was contracting with a body of States which was equivalent to its total membership, with a view to doing something that was not provided for in its constituent instrument, the organization could not truly be said to be contracting on terms of equality with those States because they were its masters. But there was an entirely different situation that also had to be taken into account. For instance, the Caribbean Community might be instructed by its executive organ to negotiate a treaty with States which were not members of the Community. In that case, the Community could be said to be contracting on equal terms with those non-member States and it should have the right to formulate reservations to the resultant treaty, even if that right was not expressly provided for in its constituent instrument. That example was particularly important because it related to an organization which was composed of sovereign States and which therefore expressed the sovereign will of those States when it contracted with other States. Under article 19*bis*, paragraph 2, however, such an organization could not formulate reservations unless the treaty so provided. He thought the Commission should give further consideration to that question. The Commission should also consider whether the provisions of article 19*bis*, paragraph 2, were fully consistent with those of article 20*bis*, paragraph 2.

4. In article 19*ter*, paragraph 3 (*a*), he had some difficulty with the words "the possibility of objecting is expressly granted to it by the treaty". If those words meant that an international organization could not object to a reservation unless the treaty so provided, the organization would be relegated to the status of a nonentity. Indeed, if an organization could formulate a reservation to a treaty, it followed logically that it should also be able to object to a reservation to a treaty. Moreover, an international organization should be able to object to reservations formulated either by States or by another organization, if those reservations were incompatible with the basic aim or purposes of the organization itself. The Commission should therefore give further consideration to article 19*ter*, paragraph 3 (*a*), which, as it stood, was too restrictive.

5. The CHAIRMAN said that the draft articles under consideration were designed to take account of the fact that the Commission had not yet been able to decide whether States and international organizations had equal status in the matter of formulating reservations. The comments made by Mr. Francis would be reflected in the Commission's report, and the Commission would be able to revert to that basic problem during the second reading of the draft articles. By that time, it would have received the views and comments of Governments on that matter.

6. Mr. USHAKOV, referring to article 19*bis*, paragraph 2, asked whether the other international organizations parties to a treaty, whose participation was not essential to its object and purpose, were also allowed to formulate reservations.

7. Mr. REUTER (Special Rapporteur) said that article 19*bis*, paragraph 2, dealt with the case in which the various international organizations parties to a treaty were not necessarily in the same position. For instance, in the case of a treaty concluded between IAEA (which would be responsible under the treaty for specific supervisory functions), on the one hand, and a certain number of States, and two operational international organizations, such as Eurochemic and Euratom, on the other hand, there was only one international organization whose participation was essential to the object and purpose of the treaty, namely, IAEA, which, because of the specific functions it was required to perform under the treaty, was not in the same position as States. Thus, it could only make a reservation if that reservation was expressly authorized by the treaty, in accordance with the rule laid down in paragraph 2. As to the other two organizations, it was not paragraph 2 but paragraph 3 which applied to them, since they were in the same position as States. The words "that organization" made it clear that the rule laid down in paragraph 2 did not apply to all the organizations parties to the treaty.

8. Mr. QUENTIN-BAXTER said that, although he had been one of the members of the Commission who had thought that the rules on the formulation of reservations should be stricter for international organizations than for States, he now found it possible to accept draft articles 19 and 19*bis*, as proposed by the Drafting Committee.

9. In the case of article 19, he had shared the concern of some of the other members that the Commission was showing an inclination to assimilate international organizations to States and not taking due account of the limited contractual capacity of international organizations. His doubts had now been dispelled, however, and he was quite satisfied with the balance established by articles 6 [4] and 27. Moreover, article 19, as proposed by the Drafting Committee, contained residual rules which were not compelling and did not set any parameters that

[3] For texts, see 1446th meeting, para. 4.

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

international organizations would feel obliged to follow. In fact, what that article now offered to international organizations was an opportunity to benefit from State practice, whenever they found it convenient to do so.

10. With regard to the much more difficult case of article 19*bis*, he had shared the opinion of some members of the Commission that, in view of the practical problems involved in conferences in which international organizations might participate, the status of organizations could not be equal to that of States. The solution proposed by the Drafting Committee did, however, take ample account of cases in which there would be no point at all in holding a conference unless the organization that was going to be involved was prepared, in principle, to assume the responsibilities placed upon it. He therefore found that article satisfactory.

11. He agreed with the Chairman that the question of the relative status of States and international organizations, to which Mr. Francis had referred, did not have to be settled just then. Indeed, the draft articles under consideration were full of questions that would require further investigation. For the time being, however, the Commission was being very tentative and merely suggesting hypotheses and inviting reactions.

12. With regard to the alternative proposed by Mr. Ushakov (A/CN.4/L.253), which implied that there were two intersecting worlds, namely, the world of States and the world of international organizations, he found that hypothesis harder to accept than the one proposed by the Drafting Committee, in which it was simply admitted that there were cases in which international organizations took part in dealings with States for particular purposes. Those cases were well known and could be provided for. However, it was very possible that there would be other cases in which it would be necessary to bring the status of international organizations more closely into line with that of States. In his view, the Commission's task would be to find a way of taking that possibility into account.

13. Mr. USHAKOV said he assumed, from the Special Rapporteur's explanation regarding article 19*bis*, paragraph 2, that only an international organization whose participation was essential to the object and purpose of the treaty could make reservations and that the other organizations could not.

14. Mr. REUTER (Special Rapporteur) said that that was not the meaning of draft article 19*bis*. Under that article, an international organization party to a treaty fell within the scope of either paragraph 2 or paragraph 3. If the participation of the organization was essential to the object and purpose of the treaty, it could only formulate reservations expressly authorized by the treaty; if the contrary was the case, it could formulate the same reservations as States.

15. The CHAIRMAN, speaking as a member of the Commission, said he agreed with the Special Rapporteur that every case involving an international organization was covered either by paragraph 2 or by paragraph 3 of article 19*bis*.

16. Speaking as Chairman, he invited the Commission to consider the suggestion made by Mr. Francis at the 1430th meeting concerning the deletion of the word "several" in the title and the first part of the English version of article 19.

17. Mr. SCHWEBEL said that he supported the suggestion by Mr. Francis.

18. Mr. SETTE CÂMARA said that he also supported the suggestion by Mr. Francis.

19. Mr. TSURUOKA said that, if it deleted the word "several" in article 19 and expressly authorized an international organization to make a reservation to a treaty between only two international organizations, the Commission would be authorizing an anomaly. If an international organization made a reservation to a treaty between two international organizations and the other party did not accept the reservation, the treaty must normally fall. If the two parties decided none the less to conclude a treaty, it would of necessity be another treaty, since the formulation of reservations to a bilateral treaty amounted to a proposal to negotiate another treaty. The Commission was free to allow such a possibility if it so wished, but it should appreciate the anomaly involved.

20. Mr. SETTE CÂMARA, referring to the point made by Mr. Tsuruoka, said the problem whether reservations could be formulated to bilateral treaties was complicated and controversial. The Vienna Convention [5] did not, however, rule out the possibility. The Commission should therefore bear in mind the fact that, if it decided to rule out the possibility of the formulation of reservations to bilateral treaties concluded between two international organizations, it would be going much further than the Vienna Convention.

21. The CHAIRMAN said that he did not think it would make much difference whether or not the Commission decided to delete the word "several", because its discussion of that problem would be reflected in its commentary to article 19.

22. Mr. FRANCIS said that the word "several" had not been used either in article 2, paragraph 1 (*a*) (ii), or in the heading of document A/CN.4/L.255, which contained the texts of the articles adopted by the Drafting Committee.

23. Mr. USHAKOV suggested that the word "several" be placed between square brackets.

24. The CHAIRMAN said be thought it would be better to avoid the use of square brackets in the present case.

25. Mr. QUENTIN-BAXTER said that the problem whether reservations could be formulated to bilateral treaties arose not only in connexion with article 19, where the words "several international organizations" had been used, but also in connexion with article 19*bis*, which spoke of "one or more international organizations".

26. Mr. TSURUOKA, speaking as Chairman of the Drafting Committee, said that the Committee had decided, after a lengthy discussion, to translate the term *un(e) ou plusieurs* by "one or more", except in article 19, where the word "several" had been retained because it was obviously not possible to use the term "one or more".

27. Mr. DADZIE said that he failed to see the significance of Mr. Francis' suggestion that the word "several"

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

be deleted in article 19 because the alternative translation of "one or more", which had been used in article 19*bis*, would pose even greater problems. Since it was clear that article 19 related to cases in which a number of international organizations—obviously more than two—were involved in the conclusion of a treaty, the thrust of the article would be the same whether the word "several" was deleted or not. He therefore suggested that the word "several" be retained.

28. Mr. CALLE Y CALLE said that he too did not think that the use of the word "several" in article 19 could raise any difficulties. Obviously, reservations could not be formulated to treaties concluded between two international organizations only.

29. Mr. ŠAHOVIĆ said that the sensible course would be to approve the Drafting Committee's proposal and take advantage of the commentary to reflect the doubts of some members regarding the use of the word "several".

30. With regard to bilateral treaties, in its commentary to future articles 16 and 17 of the Vienna Convention, the Commission had stated:

> A reservation to a bilateral treaty presents no problem, because it amounts to a new proposal reopening the negotiations between the two States concerning the terms of the treaty.[6]

31. Mr. FRANCIS suggested that the Commission adopt Mr. Ushakov's suggestion to place the word "several" in square brackets, thus leaving the issue open for further discussion and avoiding the need to vote on a matter on which opinions differed.

32. Mr. REUTER (Special Rapporteur) said that there had been no difficulties with the Vienna Convention regarding bilateral treaties because it offered drafting possibilities which had obviated the need to decide the point. The same drafting possibility was open to the Commission in the case of article 19, since it could refer there to a treaty "between international organizations". The problem lay not with article 19 but with article 19*bis*, since the expression "treaty between one or more States and one or more international organizations" would imply that the Commission allowed reservations to a treaty between a State and an international organization—and that was unacceptable to some members of the Commission. He had been unable to find a formula that would retain the required ambiguity in article 19*bis* and was prepared to support Mr. Šahović's proposal if the Commission could not reach a satisfactory solution.

33. The CHAIRMAN said he thought that, in the present case, the use of square brackets was to be avoided. If there was no objection, he would take it that the Commission approved the title and the text of article 19 as proposed by the Drafting Committee, on the clear understanding that the problems involved in the use of the words "several international organizations" would be fully reflected in the commentary.

It was so agreed.

34. The CHAIRMAN said that, if there was no objection, he would take it that the Commission approved the title and the text of article 19*bis* as proposed by the Drafting Committee.

It was so agreed.

35. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed that the discussion to which the alternative text of article 19 proposed by Mr. Ushakov had given rise would be fully reflected in the commentary to article 19, and that the alternative text of that article would be reproduced in a foot-note to the commentary.

It was so agreed.

36. Mr. USHAKOV proposed that draft article 19*ter* (Objection to reservations) be reworded to read:

> "1. An international organization, when signing, formally confirming, accepting, approving or acceding to a treaty between several international organizations, may object to a reservation formulated by another international organization unless the reservation is authorized by the treaty.
>
> "2. 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 object to a reservation formulated by another State or international organization unless the reservation is authorized by the treaty.
>
> "3. 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 object to a reservation formulated by a State or another international organization, unless the reservation is authorized by the treaty, if:"

and be followed by paragraphs 3 (*a*) and (*b*) of article 19*ter*, as proposed by the Drafting Committee.

37. His proposal, which was designed to promote agreement among members of the Commission, did not affect the substance of the article.

38. The CHAIRMAN said he noted, with regard to the amendment proposed by Mr. Ushakov, that in each paragraph the phrase beginning "when signing, ..." seemed to restrict the making of objections to a particular point in time. That was perhaps not Mr. Ushakov's intention, but the limitation was one which did not appear in article 19*ter* as proposed by the Drafting Committee, and therefore seemed to be a matter of substance rather than of drafting.

39. Mr. REUTER (Special Rapporteur) said that Mr. Ushakov's proposal related only to the form of article 19*ter*. It dealt first with treaties between several international organizations and then with treaties between States and one or more international organizations or between international organizations and one or more States, making a distinction between the position of States and that of international organizations.

40. In his view, the proposal looked very like providing the answer to a question on which the Vienna Convention had remained silent: what happened when a State formulated a reservation which, it claimed, was authorized

[6] *Yearbook ... 1966*, vol. II, p. 203, document A/6309/Rev.1, part II, chap. II, sect. C, draft articles on the law of treaties with commentaries, articles 16 and 17, para. 1 of the commentary.

by the treaty, but which another State considered was not so authorized? The other State certainly had the right to formulate an objection to the reservation and, while the Vienna Convention did not expressly recognize such a right, it did not exclude it. Such cases could, moreover, be expected to occur frequently. For each of the cases covered in Mr. Ushakov's proposal, it was provided that an objection could not be formulated to a reservation authorized by the treaty. If the Commission accepted that proposal, it should at least be made clear in the commentary that the right to object applied not only to reservations which had not been authorized but also to reservations which had been authorized by the treaty; in the latter case, the right to object was confined to the question whether a given reservation fell within the category of authorized reservations. So long as there was any uncertainty as to whether Mr. Ushakov's proposal did or did not exclude the second aspect of that right, his own preference would be for the text proposed by the Drafting Committee since it afforded the possibility of objecting to a reservation which, in the opinion of the objecting party, was not a reservation authorized by the treaty.

41. Mr. USHAKOV said that article 19*ter*, paragraph 1, as proposed by the Drafting Committee, did not specify at which point an objection to a reservation could be formulated. Article 19 of the Vienna Convention provided that a State could formulate a reservation "when signing, ratifying, accepting, approving or acceding to a treaty". While that Convention did not state expressly when an objection to a reservation could be formulated, it must be at the same time. The point at which a State or international organization could formulate an objection to a reservation should therefore be indicated.

42. Unlike the Special Rapporteur, he did not think that the Vienna Convention allowed a State to object to a reservation expressly authorized by the treaty. A reservation authorized by a treaty was one which the parties to the treaty accepted in advance, as was clear from paragraph 1 of article 20 as proposed by the Drafting Committee, under which "a reservation expressly authorized by a treaty ... does not require any subsequent acceptance". Although there was no stipulation in the Vienna Convention precluding objections to reservations that were expressly authorized, the point should be decided in the draft. If, in the Commission's view, objections to reservations authorized by the treaty were not allowable, the article should be amended accordingly.

43. The CHAIRMAN, with regard to the statement by Mr. Ushakov, said that the Commission should also bear in mind article 20, paragraph 5, of the Vienna Convention, from which it was quite clear that objections could be made at points subsequent to those mentioned in the amendment proposed by Mr. Ushakov.

44. Mr. CALLE Y CALLE said that paragraphs 1 and 2 of article 19*ter* referred to the making of objections to reservations formulated pursuant to article 19 and article 19*bis*, paragraph 3. Articles 19 and 19*bis* made it clear when such reservations could be formulated but, as the Chairman had said, objections did not have to be made at the same fixed time. The possibility of making an objection was dependent on the prior formulation of a reservation; to limit it to the occasions proposed by Mr. Ushakov would greatly reduce the freedom of parties to a treaty to make objections at all.

45. Mr. REUTER (Special Rapporteur) said that the question of the point at which an objection to a reservation could be formulated was linked with article 20, paragraph 4, which precluded the clarification proposed by Mr. Ushakov.

46. The wording of reservations authorized by the treaty was not normally indicated in the treaty. If a treaty included models of reservations which a State could simply copy when formulating a reservation, the question whether the reservation was authorized by the treaty would not arise. If, however, a treaty simply stated that reservations could be formulated to specific articles, it might happen that a State submitted a reservation which not only related to one of those articles but also affected another provision; in that case, there was a risk of a difference of opinion between the State formulating the reservation and the State raising the objection to it, the former claiming that it was authorized and the latter that it was not. That problem could not be overlooked. The Drafting Committee had taken account of it in article 19*ter*: Mr. Ushakov's proposed article, however, was based on the premise that objections could not be formulated to reservations authorized by a treaty.

47. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to approve the title and text of article 19*ter*, as proposed by the Drafting Committee.

It was so agreed.

48. Mr. USHAKOV said that, in his opinion, there would be no point in authorizing reservations to certain articles in a treaty if it was then possible to object to those reservations. For instance, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character [7] provided for the possibility of formulating reservations to the article on the settlement of disputes by arbitration; in his view, no State could object to the reservation formulated by the Soviet Union with regard to that article.

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

ARTICLE 20*bis* (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) [8] (*continued*)

49. The CHAIRMAN invited the Commission to consider articles 20 and 20*bis* as proposed by the Drafting Committee and the alternative text for article 20 proposed by Mr. Ushakov (A/CN.4/L.253).

50. Mr. USHAKOV said that the word "treaty", as used in article 20, paragraphs 2 and 3, referred to a treaty between several international organizations. Consequently, it did not answer the general definition of that word given in article 2, paragraph 1 (*a*), which covered not only treaties between international organizations but also

[7] See 1435th meeting, foot-note 10.

[8] For texts, see 1446th meeting, para. 4.

treaties between one or more States and one or more international organizations. It should therefore be made clear to what kind of treaty paragraphs 2 and 3 referred.

51. In his opinion, the wording of the last part of article 20*bis*, paragraph 1, which read "does not ... require subsequent acceptance by, as the case may be, the other contracting State or States or the other contracting organization or organizations", was not very satisfactory. If a treaty concluded between States and one or more international organizations was the subject of a reservation formulated by a State, that reservation could be accepted either by another contracting State or by the organization or organizations, but on no account by "the other contracting organization". If the reservation was formulated by an organization, it could be accepted by a State and not by "the other contracting State". Either each category of treaty should be dealt with separately, as in his own draft article 20, or the passage in question should be replaced by the words "does not ... require subsequent acceptance by the contracting State or States or by the contracting international organization or international organizations".

52. The same comment applied to article 20*bis*, paragraphs 2 and 3, as he had made regarding the drafting of the corresponding paragraphs of article 20.

53. Article 20*bis*, paragraph 3 (*a*), was based on the corresponding provision in article 20, and the words "if ... the treaty is in force" applied to the case where a treaty had entered into force generally and not only for the reserving and accepting parties. In that subparagraph, therefore, the words "for the reserving and for the accepting State or organization" should be replaced by the words "between the reserving State and the accepting organization, between the reserving organization and the accepting State or between the reserving organization and the accepting organization".

54. In the French version of paragraph 3 (*b*), he said it should be made clear that the opening words, *l'objection faite à une réserve*, referred to an objection by a State or international organization, in the same way as article 20, paragraph 4 (*b*), of the Vienna Convention specified that its provisions referred to an objection to a reservation "by another contracting State".

55. His comments related only to form and were designed to make the Commission's task easier. He would not press them and would not be opposed to the adoption of articles 20 and 20*bis* as proposed by the Drafting Committee.

56. Mr. VEROSTA said that Mr. Ushakov's comments merited consideration. He would, however, point out that the titles of articles 20 and 20*bis* indicated clearly the kind of treaty to which they applied: article 20 was concerned with the treaties referred to in article 2, paragraph 1 (*a*)(ii), and article 20*bis* with those referred to in paragraph 1 (*a*) (i) of the same article. In the circumstances, it was perhaps unnecessary to repeat, in articles 20 and 20*bis*, the descriptive formula which appeared in their respective titles. The Commission might also indicate in article 2 that, when it was quite clear from their title, certain articles of the draft related to only one or the other category of treaty.

57. The CHAIRMAN said that the Commission's usual practice was to make the title of a draft article fit the text. It was generally agreed by both the Commission and codification conferences that articles must be sufficiently clear in themselves for there to be no need to rely on their titles for their interpretation.

58. Mr. USHAKOV said he agreed with the Chairman that articles should not be interpreted by reference to their title.

59. Mr. REUTER (Special Rapporteur) said he shared that view and would point out that the Drafting Committee had agreed that the word "treaty", as used in paragraphs 2 and 3 of articles 20 and 20*bis*, should be understood in the sense given to it in paragraph 1 of those articles. It would be inadvisable to get out of the difficulty by using the demonstrative "this" since it would not be appropriate in article 20*bis*. It would be better to explain in the commentary that the indications given in paragraph 1 also applied to paragraphs 2 and 3.

60. He agreed with Mr. Ushakov that the last part of article 20*bis*, paragraph 1, starting with the words "by, as the case may be", was not very satisfactory. He would suggest instead the following wording: "by the other contracting parties, State or States, organization or organizations".

61. The CHAIRMAN suggested that the problem of the identity of the treaty referred to in article 20, paragraph 2, first line, could be resolved if the phrase "of the treaty" were replaced by the phrase "of such a treaty". The present wording of the first line of paragraph 3, however, once again made the identity of the treaty in question uncertain, for the phrase "In cases not falling under the preceding paragraphs" seemed to exclude the type of treaty referred to in paragraphs 1 and 2.

62. Mr. TSURUOKA, speaking as Chairman of the Drafting Committee, said that a very meticulous legal mind might indeed feel some doubt but a little ordinary common sense, he thought, should dispel it. He was, however, prepared to try to improve the wording, in agreement with the Special Rapporteur and the members of the Drafting Committee.

63. Mr. CALLE Y CALLE said that the first paragraph of both article 20 and article 20*bis* made it perfectly clear to what type of treaty the article referred.

64. Since the phrase "When it appears from the object and purpose of the treaty" was long established and had an accepted meaning, he would prefer to see the amendment to article 20, paragraph 2, suggested by the Chairman introduced at a later stage in that paragraph, so that the beginning would read "When it appears from the object and purpose of the treaty that the application of such a treaty ...".

65. The CHAIRMAN said he supported the amendment suggested by Mr. Calle y Calle.

66. Mr. REUTER (Special Rapporteur) said that, to meet the Chairman's concern, the last part of the introductory phrase of article 20, paragraph 3, might be redrafted to read "and unless the treaty between international organizations otherwise provides".

The meeting rose at 1.05 p.m.