

Document:-
A/CN.4/SR.1458

Summary record of the 1458th 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

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1458th MEETING

Tuesday, 12 July 1977, at 12.10 p.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, 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.255/Add.2 and Corr.1 and Add.3)

[Item 4 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the titles of sections 2, 3 and 4 of part III of the draft articles and the texts of articles 28, 29 and 31 to 34 as proposed by the Drafting Committee (A/CN.4/L.255/Add.2 and Corr.1).

2. Mr. TSURUOKA (Chairman of the Drafting Committee) said that the titles of sections 2 and 3 and the texts of articles 28, 29, 31, 32 and 33 were identical with those which had been submitted by the Special Rapporteur in his fourth report (A/CN.4/285), except that, in the title and text of article 29, the words "between one or more States and one or more international organizations" had been added after the word "treaties" and the word "treaty" respectively as had been done elsewhere in the draft articles.

3. In the title of section 4 and in the title and text of article 34, the word "non-party", which had been used by the Special Rapporteur in his sixth report (A/CN.4/298) to qualify States or international organizations, had been replaced by the word "third" in order to take account of comments made during the Commission's discussions. In addition, for the sake of clarity and precision, the basic distinction between treaties to which only international organizations were parties and treaties to which both States and international organizations were parties had been reflected in two separate paragraphs in article 34 instead of a single paragraph as proposed by the Special Rapporteur.

ARTICLE 28 (Non-retroactivity of treaties) and

ARTICLE 29³ (Territorial scope of treaties between one or more States and one or more international organizations)

* Resumed from the 1451st meeting.

¹ Yearbook ... 1975, vol. II, p. 25.

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

³ For the consideration of the texts originally submitted by the Special Rapporteur, see 1436th meeting, paras. 41-47, and 1437th meeting, paras. 21-42.

4. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to approve the title of section 2 of the draft and the texts of articles 28 and 29 proposed by the Drafting Committee, which read:

Article 28. Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. Territorial scope of treaties between one or more States and one or more international organizations

Unless a different intention appears from the treaty or is otherwise established, a treaty between one or more States and one or more international organizations is binding upon each State party in respect of its entire territory.

It was so agreed.

ARTICLE 31 (General rule of interpretation),

ARTICLE 32 (Supplementary means of interpretation) and

ARTICLE 33⁴ (Interpretation of treaties authenticated in two or more languages)

5. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to approve the title of section 3 and the texts of articles 31 to 33 proposed by the Drafting Committee, which read:

Article 31. General rule of interpretation

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

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

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

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

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

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

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

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

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

Article 32. Supplementary means of interpretation

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

⁴ For the consideration of the text originally submitted by the Special Rapporteur, see 1438th meeting, paras. 28-41.

- (a) leaves the meaning ambiguous or obscure; or
 (b) leads to a result which is manifestly absurd or unreasonable.

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

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

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

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

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

It was so agreed.

ARTICLE 34⁵ (General rule regarding third States and third international organizations)

6. The CHAIRMAN drew attention to the fact that the English text of article 34, paragraph 2, was contained in document A/CN.4/L.255/Add.2/Corr.1.

7. Mr. USHAKOV said he was not sure that it was necessary to refer to a "third" State in paragraph 1. It might be enough to refer simply to "a State" since, in the case of a treaty between international organizations only, a State could only be a third State.

8. Mr. REUTER (Special Rapporteur) said that, at first sight, Mr. Ushakov's comment seemed justified, but he thought it might be better to retain the words "third State" since article 36*bis* would deal with the case of third States which were also not third States by reason of their membership of an international organization which was a party to the treaty.

9. The CHAIRMAN said he thought it would be advisable for the Commission to follow the Special Rapporteur's suggestion.

10. If there was no objection, he would take it that the Commission agreed to approve the title of section 4 ("Treaties and third States or third international organizations") and the text of article 34 as proposed by the Drafting Committee.

11. The text of the article was as follows:

*Article 34. General rule regarding third States and
 third international organizations*

1. A treaty between 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.

2. 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.

It was so agreed.

⁵ For the consideration of the text originally submitted by the Special Rapporteur, see 1438th meeting, paras. 42-50, and 1439th meeting, paras. 1-23.

12. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the text of article 2, paragraph 1 (j),⁶ and the texts of articles 27 and 30 proposed by the Drafting Committee (A/CN.4/L.255/Add.3).

13. Mr. TSURUOKA (Chairman of the Drafting Committee) said that, since article 27, paragraph 2, contained a reference to the "rules of the organization", the Drafting Committee had found it necessary to include in article 2, paragraph 1, a new subparagraph (j) containing a definition of that expression, which was identical with that contained in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.⁷

14. Article 27, which completed section 1 of part III of the draft articles, corresponded to the article 27 submitted by the Special Rapporteur (A/CN.4/285), the text of which had been rearranged and redrafted to increase its clarity and precision. For example, the first few words of the introductory sentence of the original text had been included in paragraph 3. The former subparagraphs (a) and (b) had been made into two separate paragraphs, namely, paragraphs 1 and 2, each of which incorporated the idea expressed in the second part of the introductory sentence of the original text. Thus, the text of article 27 now corresponded more closely to the text of article 27 of the Vienna Convention.⁸

15. Paragraph 1 restated the rule of the Vienna Convention regarding a State party and, in accordance with the practice followed throughout the draft articles, specified the type of treaty in question, namely, a treaty between one or more States and one or more international organizations.

16. The first part of paragraph 2 stated a similar rule with regard to international organizations by referring to the "rules of the organization". In recognition of the special character of international organizations, the second part of paragraph 2 was intended to provide for an exception to the rule embodied in the first part of that paragraph. The members of the Drafting Committee had not, however, been able to agree either on the need to provide for such an exception or on its scope. Some members had been of the opinion that paragraph 2 should merely state the rule embodied in the first part of the paragraph while others, who had been in favour of including an exception, had nevertheless expressed doubts about the way that exception had been stated. In view of the political importance of the matter, however, the Drafting Committee had decided to adopt the second part of paragraph 2 as it now stood so that the Commission might take a final decision on it.

17. In paragraph 3, the reference to article 46 had been placed in square brackets to show that that article had not yet been considered and in order not to prejudice the question of its adoption.

⁶ See 1429th meeting, foot-note 3.

⁷ *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207.

⁸ See 1429th meeting, foot-note 4.

18. Article 30, which completed section 2 of part III, reproduced the title and text submitted by the Special Rapporteur in his fourth report, with some drafting changes made for the sake of greater clarity. The title and text of article 30 thus followed the wording of the Vienna Convention as closely as possible. The introductory phrase of paragraph 1 of the former text had been redrafted and made into paragraph 6 of the proposed new article 30 in order to avoid any unintended interpretations concerning the applicability or non-applicability to international organizations of Article 103 of the Charter of the United Nations. In paragraph 4, (a) and (b), the various possible combinations of parties to successive treaties relating to the same subject-matter had been set out in full. Lastly, as in the case of article 27, references to articles which had not yet been adopted had been placed in square brackets in article 30, paragraphs 3 and 5.

19. He suggested that, as a matter of convenience, the Commission might first consider article 30, then article 2, paragraph 1 (j), and then article 27.

ARTICLE 30⁹ (Application of successive treaties relating to the same subject-matter)

20. The CHAIRMAN read out the text of article 30 as proposed by the Drafting Committee:

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

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

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

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

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

(a) as between two States or two organizations, or between one State and one organization which are respectively parties to both treaties, the same rule applies as in paragraph 3;

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

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

6. The preceding paragraphs are without prejudice to Article 103 of the Charter of the United Nations.

⁹ For the consideration of the text originally submitted by the Special Rapporteur, see 1437th meeting, paras. 43-50, and 1438th meeting, paras 1-12.

21. Mr. USHAKOV suggested that, in paragraph 4 (a) and (b), the word "international" be added before the word "organization(s)" so as to bring the wording of those subparagraphs into line with that of the preceding articles. He also suggested that, in subparagraph (a), the word "respectively" should be placed before the words "two States" and that, in the French text of subparagraph (b), the words *en cause* should be replaced by the words *en question*, in conformity with the wording used in the rest of the draft. Lastly, he suggested that, at the end of paragraph 5, the words "towards another State or another international organization" should be replaced by the words "towards the State or another State, the international organization or another international organization" in order to take account of the various types of treaty.

22. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to adopt Mr. Ushakov's suggestion that, in order to bring the wording of article 30, paragraph 4, into line with the wording of other draft articles, the word "international" should be added before the word "organizations" and the word "organization" wherever they appeared in subparagraphs (a) and (b).

It was so agreed.

23. Mr. REUTER (Special Rapporteur) said that Mr. Ushakov's comment concerning the place of the word "respectively" in paragraph 4 (a) was justified. He therefore suggested that that subparagraph should read: "as between, respectively, two States, two international organizations or one State and one international organization which are parties to both treaties ...". He also supported Mr. Ushakov's suggestion that, in the French text of subparagraph (b), the words *en cause* should be replaced by the words *en question*.

24. Mr. Ushakov's comment on paragraph 5 also seemed to him to be justified but he feared that the proposed text might not be clear to uninformed readers. He thought it might therefore be better to delete the word "another" and simply say: "towards a State, or an international organization under another treaty".

25. Mr. SCHWEBEL, referring to Mr. Ushakov's suggestion concerning the use of the word "respectively" in paragraph 4 (a), said he thought that the meaning of that subparagraph would be perfectly clear if the word "respectively" was simply deleted.

26. Mr. QUENTIN-BAXTER supported that view.

27. The CHAIRMAN, speaking as a member of the Commission, said that he, too, agreed with Mr. Schwebel. He even believed that the word "respectively" should be avoided in all the draft articles.

28. Speaking as Chairman, he said that, if there was no objection, he would take it that the Commission agreed to delete the word "respectively" from paragraph 4 (a), which would then read: "as between two States, two international organizations, or one State and one international organization which are parties to both treaties, . . .".

It was so agreed.

29. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to adopt Mr. Ushakov's suggestion that, in the French text of article 30, paragraph 4 (b), the words *en cause* should be replaced by the words *en question*.

It was so agreed.

30. The CHAIRMAN then referred to Mr. Reuter's suggestion concerning article 30, paragraph 5, that the words "another State or another international organization under another treaty" be replaced by the words "a State or an international organization under another treaty".

31. Mr. CALLE Y CALLE said he thought the wording of paragraph 5, which corresponded to that of article 30, paragraph 5, of the Vienna Convention, should be retained as it stood in the text proposed by the Drafting Committee.

32. The CHAIRMAN suggested that the Commission should continue its consideration of article 30 and, in particular, of the suggestion made by Mr. Reuter concerning paragraph 5 at the following meeting.

Most-favoured-nation clause

[Item 6 of the agenda]

33. The CHAIRMAN said that the General Assembly, in recommending in its resolution 31/97 of 15 December 1976 that the International Law Commission should complete at its thirtieth session the second reading of the draft articles on the most-favoured-nation clause, had referred to the comments to be received, in particular, from the competent organs of the United Nations and from interested intergovernmental organizations. It seemed to be the General Assembly's intention that the Commission should itself decide to which organs the draft articles adopted by it on first reading at its twenty-eighth session¹⁰ should be circulated for observations.

34. The Commission could either restrict the circulation of the draft to the organizations and agencies listed in the Special Rapporteur's second report¹¹ or extend it to the United Nations bodies, specialized agencies and intergovernmental organizations indicated on the standard list used by UNCTAD.

35. The Enlarged Bureau had recommended that the Commission should use the standard UNCTAD list and that the international organizations and United Nations bodies concerned should be asked to submit their observations on the draft articles by 31 December 1977.

36. If there was no objection, he would take it that the Commission agreed to approve that recommendation.

It was so agreed.

The meeting rose at 1.05 p.m.

1459th MEETING

Wednesday, 13 July 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: 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 (concluded) (A/CN.4/285,¹ A/CN.4/290 and Add.1,² A/CN.4/298, A/CN.4/L.255/ Add.3)

[Item 4 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (concluded)

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

1. Mr. REUTER (Special Rapporteur) suggested that, in the light of the comments made by Mr. Ushakov and Mr. Calle y Calle at the 1458th meeting, the last part of paragraph 5 be worded to read: "towards a State or an international organization not party to that treaty under another treaty".

2. Mr. FRANCIS said that neither the text of the last part of paragraph 5 adopted by the Drafting Committee nor the new version just proposed was satisfactory in English, because they were not sufficiently precise. If the new version was acceptable to the members of the Commission, he would certainly not object to its adoption, but he would prefer a formulation such as "... incompatible with their respective obligations towards another party under another treaty" or simply "... their respective obligations under another treaty".

3. The CHAIRMAN said that a text of the type suggested by Mr. Francis might eliminate the distinction between parties to the treaty in question and parties to another treaty, which was the very essence of the part of the paragraph under consideration.

4. Mr. USHAKOV said he thought the text suggested by the Special Rapporteur clearly conveyed the intended meaning of paragraph 5, namely, that the preceding paragraph would apply without prejudice to any possible incompatibility between the obligations laid on a State or an international organization by the earlier treaty and the later treaty, respectively.

5. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to approve

¹⁰ *Yearbook ... 1976*, vol. II (Part Two), pp. 11 *et seq.*, document A/31/10, chap. II, sect. C.

¹¹ *Yearbook ... 1970*, vol. II, p. 242, document A/CN.4/288 and Add.1, annex III.

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

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

³ For text, see 1458th meeting, para. 20.