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A/CN.4/SR.1511

Summary record of the 1511th 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:-

1978, vol. I

ization must fulfil the obligations arising for them from a treaty to which that organization was party without having expressly accepted those obligations in writing, as provided in article 35, paragraph 1. Consequently that provision was in conflict with the general rule concerning third States laid down in article 34.

29. The general rule, however, must apply to all third states, including those that were members of an international organization party to the treaty. For, in the case of ordinary international organizations like those to which the draft articles referred, the member States were always third States in relation to treaties concluded by the organization. In the case of a supranational organization like EEC, however, the member States were no longer third States in relation to treaties concluded by the organization in the exercise of its supranational functions, for they had delegated to the organization the power to conclude treaties on their behalf. They were therefore automatically bound by the treaties concluded by the organization, without any need to accept expressly in writing the obligations arising from those treaties. The case of the United Nations was quite different, because the Charter did not provide that the States Members of the United Nations surrendered to the Organization their sovereign right to conclude treaties. Hence the States Members of the United Nations were not bound by treaties concluded by the Organization.

30. Article 36 *bis* was unacceptable in that it sought to apply rules on international organizations to an entity that was not an international organization but a supranational organization. Special rules should be formulated for supranational organizations, since ordinary international organizations, such as the United Nations, could not be treated in the same way as supranational organizations such as EEC.

31. According to article 36 *bis*, "Third States which are members of an international organization... may exercise the rights which arise for them from the provisions of a treaty to which that organization is a party if the relevant rules of the organization... provide that the States members of the organization are bound by treaties concluded by it". But the creation of rights for third States members of an organization entailed the creation of obligations for the States parties to the treaty. And while it could be accepted that States members of an organization were bound by the relevant rules of that organization, it could not be accepted that non-member States were bound by the same rules. For example, in the case of a treaty concluded by EEC, it could not be accepted that the other States parties to the treaty, which were not members of EEC, were bound by the Treaty of Rome, to which they were not parties. It was equally difficult to accept that States parties to the treaty agreed to be so bound during the negotiation of the treaty, as envisaged in subparagraph (*b*) of article 36 *bis*. It could also be asked whether the "States members" referred to in subparagraph (*b*) included only the States that had been members of the organization at the time of the conclusion of the treaty, or also included States that became members of the organization later.

32. Mr. TSURUOKA thought article 36 *bis* was unnecessary, since the question of the effects of a treaty to which an international organization was party, with respect to third States members of that organization, was not of direct concern to the parties to the treaty and could very well be settled by the States members of the organization in question.

The meeting rose at 11.30 a.m.

1511th MEETING

Tuesday, 4 July 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/312, A/CN.4/L.269)

[Item 4 of the agenda]

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

ARTICLES 35, 36, 36 *bis*, 37 AND 38, AND ARTICLE 2, PARA. 1 (*h*) (*continued*)

ARTICLE 36 *bis* (Effects of a treaty to which an international organization is party with respect to third States members of that organization)[1] (*continued*)

1. Mr. JAGOTA noted that subparagraphs (*a*) and (*b*) of article 36 *bis* provided that third States that were members of an international organization could acquire rights and obligations under a treaty to which that organization was a party in one of two ways: either if the relevant rules of the organization so provided, or if the States and organizations participating in the negotiation of the treaty, as well as the States members of the organization, acknowledged that the application of the treaty necessarily entailed such effects. He considered that the two conditions prescribed should be combined instead of separated, as in the draft article. Moreover, something more than the relevant rules of the organization was needed to determine the effect of the treaty with respect to the member of an international organization and, bearing in mind emergent practice in the matter, the emphasis should be on the aspect of consent. He would also

[1] For text, see 1510th meeting, para. 25.

remind the Commission that the "rules of the organization" were broadly defined in paragraph 1 (*j*) of article 2[2] to include the constituent instruments, relevant decisions and resolutions, and established practice of the organization. If those rules were to be the only factor determining whether a treaty to which an international organization was a party gave rise to rights and obligations for a third State that was a member of that organization, the parties to the treaty would have to engage in a detailed examination of those rules, and that, in his view, would be undesirable. Lastly, he could not agree to the use of the word "acknowledged", in subparagraph (*b*), since neither the manner of such acknowledgement nor its timing was clear.

2. For those reasons he would suggest that, at the end of subparagraph (*a*), the semicolon should be replaced by a comma, and the word "or" by "and", and that subparagraph (*b*) should be redrafted to read: "the parties to the treaty as well as the States members of the organization give their express consent thereto".

3. One very important point that had not been settled in articles 35, 36 and 36 *bis* concerned the relationship between an international organization and its members when both the organization and its individual members were parties to a treaty. For example, EEC was acquiring increasing competence in many spheres and, at the forthcoming session of the United Nations Conference on the Law of the Sea, the Conference would undoubtedly consider whether EEC competent to become a party to the new convention on the law of the sea, independently of its nine member States. There had been occasions when EEC, as a party to GATT, had expressed on the same subject views different from those of its members, which were also parties to GATT. A similar situation might well arise in connexion with the convention on the law of the sea.

4. Any dispute between a member State and an international organization in regard to their respective rights and obligations under a treaty, where both were parties to the treaty, was of course an internal matter to be decided by the terms of the constituent instrument of the organization. But some provision would have to be made for the guidance of third States so that they would know which party would have rights and obligations in an agreed sphere of activity and whether possible disputes would be determined by the terms of the treaty, by the relevant rules of the organization or by some other mode.

5. The question would arise in an even more acute form with regard to reservations, for the content of a reservation made by EEC, for example, might differ from the content of reservations made by its members. Some guidelines were also required for that question. The whole matter was a reflection of the current trend in regard to the treaty-making capacity of international organizations, and the Commission could not afford to ignore it.

[2] See 1507th meeting, foot-note 2.

6. Mr. USHAKOV, referring to subparagraph (*b*) of the article under consideration, observed that what the States and organizations participating in the negotiation of the treaty as well as the States members of the organization acknowledged—or, to use the wording suggested by Mr. Jagota, what they gave their "express consent" to—was the constituent instrument of the organization, and in particular the rule that the States members of the organization were bound by the treaties concluded by it. The sole purpose of the proposed provision was to safeguard the interests of EEC. For treaties concluded by any other international organization such a provision was unwarranted. For instance, in the case of treaties to which the United Nations was a party, there was no need for express acceptance of the Charter of the United Nations, since that instrument did not provide that Member States were bound by the treaties concluded by the Organization. Member States might, of course, be parties to a treaty jointly with the United Nations, but in that case the United Nations was bound as an organization, and the Member States were bound as sovereign States. Consequently the question dealt with in subparagraph (*b*) arose only in the case of the States members of EEC, owing to the fact that they had relinquished part of their treaty-making capacity.

7. The Commission had encountered similar difficulties during its consideration of the articles relating to reservations and those, too, had derived solely from the fact that EEC was a supranational organization. The reservations that an international organization such as the United Nations might make to a treaty bound only that organization, and not its member States; however, the latter could make their own reservations, which were altogether independent of those of the organization. At the previous session, some members of the Commission had insisted that international organizations should be assimilated to States in the matter of reservations and, in particular, that they should enjoy the same rights in that regard. It was on the basis of that approach that the section of the draft relating to reservations had been prepared. He personally considered that an international organization should not have the possibility of making a reservation relating to rules concerning States. In his view, the provisions relating to reservations, although ostensibly applicable to all international organizations, in fact applied only to EEC. Thus the Commission had been led to draft the somewhat odd rule that an international organization party to a treaty was considered to have accepted a reservation if it had raised no objection thereto either by the end of a period of 12 months after being notified of the reservation or by the date on which it had expressed its consent to be bound by the treaty, whichever was later. That rule defied all logic; an international organization could not implicitly accept a reservation.

8. It was not only in regard to the subject under consideration that the Commission was taking account of the special interests of EEC. In the case of the draft articles on the most-favoured-nation clause, it had been suggested that an exception should be

made for customs unions. In its written comments, EEC had even maintained that it should be assimilated to a State for the purposes of the draft (A/CN.4/308 and Add.1 and Add.1/Corr.1, sect. C, 6, para. 7). For purely political reasons, therefore, some members of the Commission were pressing for the formulation of provisions which, far from being applicable to international organizations in general, were in fact directed exclusively at EEC.

9. Mr. QUENTIN-BAXTER said that most members of the Commission would probably have some reservations about the final wording of a provision of the kind embodied in article 36 *bis* and he would not be surprised if it were somewhat modified in the course of the second reading. Members had a very clear idea of third States as strangers to a treaty, and it was a little difficult to accommodate that view to something which, although described as a third State, was for all intents and purposes as much bound by a treaty as if it were a party. They also had a natural reluctance to intrude into the relations between an organization such as EEC and its members.

10. If there were areas where the respective competences of the international organization and its member States were in some doubt, it was not for third States to attempt to assist in deciding where the dividing line lay, always provided that the member States did not make reservations in differing terms. That would be likely to stir up a debate within the organization and might give States that were not members of the organization good grounds for hesitating to accept all or any of the reservations. It should rather be assumed that the parties to such an arrangement would themselves settle such questions with all due care and would not confront the international community with a situation that required it to become involved in the internal affairs of the organization in question.

11. With regard to the drafting of article 36 *bis*, it seemed to him that to make the obligations and rights arising from a treaty subject to the fulfilment of the conditions governed by the word "if" was, in a sense, putting the cart before the horse. On the other hand, the word "acknowledged" caused him no concern. At the time the Vienna Convention[3] had been prepared, certain cases had arisen where it had been necessary to speak with some generality in matters of that kind, for example in connexion with the doctrine of the legal effect of unilateral acts. To express the idea more precisely would not impose additional obligations on the members of the organization but would instead introduce additional hazards for third States dealing with that organization. That was the point that should guide the Commission.

12. The Special Rapporteur had been entirely right not to take the easy course of ignoring a situation that presented difficulties in exposition. The United Nations General Assembly had the right to consider whether the wealth of State practice now arising from dealings with EEC, and the possibility that the same situation might occur in other contexts, did not demand a provision of the kind embodied in article 36 *bis* for the security of third States. He was not concerned whether the members of that organization felt the need for such a provision. The main question was whether other members of the international community that had to deal with that organization felt such a need. That was the point that it was proper for the Commission to put before States.

13. Mr. ŠAHOVIĆ noted that the new wording for article 36 *bis* proposed by the Drafting Committee differed considerably from the wording proposed by the Special Rapporteur in 1977. In its current form, the article under consideration should be accompanied by a particularly detailed commentary making the origin of that provision clear. The version of article 36 *bis* proposed by the Special Rapporteur had been entitled "Effects of a treaty to which an international organization is party with respect to States members of that organization".[4] Several members of the Commission had considered that, in view of the title and content of that provision, an article on a question as general as that of relations between an international organization and its member States should be dealt with in some other part of the draft. The version of article 36 *bis* now being considered by the Commission was entitled "Effects of a treaty to which an international organization is party with respect to third States members of that organization". The problem was being tackled from a different angle—that of third States members of the organization. The term "third States members" was unsatisfactory. It was not immediately apparent what case article 36 *bis* was designed to cover, and an attempt should be made to find a better expression.

14. The question of the link between article 36 *bis* and articles 35 and 36 had been left in abeyance for the time being. It should be pointed out that articles 35 and 36 were based on the Vienna Convention and laid down basic principles. Article 36 *bis*, on the other hand, related to a particular category of third States, calling for special rules that should derive from the rules laid down in articles 35 and 36.

15. With regard to the wording, he considered the text proposed by the Special Rapporteur to be better than that adopted by the Drafting Committee, in the light of the Commisson's discussions. The two situations referred to in paragraphs 1 and 2 of the article prepared by the Special Rapporteur had been combined and dealt with in a single paragraph. The main substantive question raised by the new text was that of the link between its subparagraphs (*a*) and (*b*).

16. However, since a number of problems of terminology subsisted, it might be appropriate to refer article 36 *bis* to the Drafting Committee once again. Perhaps, too, the Commission should place the article in square brackets, since the main point was to in-

[3] See 1507th meeting, foot-note 1.

[4] See *Yearbook... 1977*, vol. II (Part One), p. 119, doc. A/CN.4/298.

dicate to governments that the situation dealt with in article 36 *bis* had been envisaged. In its new wording, and limited as it was to third States members of an international organization, article 36 *bis* was less general in character.

17. Mr. CALLE Y CALLE would on the whole have preferred the earlier version of article 36 *bis*,[5] which provided that a treaty concluded by an international organization gave rise "directly" for States members of an international organization to rights and obligations in respect of other parties to that treaty if the constituent instrument of that organization expressly gave such effects to the treaty. There would thus be no requirement that each and every State member of the organization should signify its express acceptance of an obligation in writing, since the matter was already covered by the terms of the constituent instrument of the organization. As far as rights were concerned, they would be exercised only within the limits laid down in the treaty, which must itself take account of the relevant rules and constituent instrument of the organization.

18. An important element of both article 35 and article 36 was that the parties, and not the States members of the organization, had to have the intention of creating obligations and rights under the treaty. Paragraph 2 of the earlier version of article 36 *bis* had provided that such an intention was to be inferred from the subject-matter of the treaty and the assignment of the areas of competence involved in that subject-matter between the organization and its member States, whereas, in the current draft, the element of intention had been replaced by the requirement that the States and organizations participating in the negotiation of the treaty and, in addition, the States members of the organization, should have acknowledged that the application of the treaty necessarily entailed such effects. That presupposed that the States members of the organization knew that it was negotiating a treaty having the effect of creating rights and obligations in respect of them.

19. However, he was prepared to accept the new article 36 *bis*, but considered that the two conditions laid down in subparagraphs (*a*) and (*b*) should be combined.

20. He would also suggest that, in subparagraph (*b*), the words "as well as the States members of the organization" should be deleted and that, in subparagraph (*a*), the word "expressly" should be added after "provide".

21. Mr. TSURUOKA observed that article 36 *bis* related to a highly sensitive question on which no settled ideas yet existed. He therefore wondered whether it was really necessary to deal with that question at the current stage of development of international law. He saw some difficulty in referring to third States members of an international organization party to a treaty, for he was not sure whether States members of an international organization should be considered as third States in relation to treaties concluded by the organization to which they belonged. The capacity of an organization to conclude treaties had its origin in the constituent instrument of that organization, in other words, in the will of the sovereign States that composed it. In that sense, the States members of an organization were not really third States in respect of treaties concluded by that organization. Nor were they third States in the same sense as were non-members of the organization, to the extent that they participated in the negotiation of the treaty and decided upon its conclusion.

22. With regard to EEC, the question dealt with in article 36 *bis* was settled in each individual case. He therefore thought it more prudent not to settle that matter in the article and to leave it to be dealt with by the natural development of international law, which followed the development of the political and economic situation.

23. If the Commission nevertheless decided to deal with that matter, it should be careful, first, not to paralyse emergent practice in regard to the questions for which article 36 *bis* attempted to provide solutions and, secondly, to maintain a fair balance between the interests of the States members of the international organization party to the treaty and those of the States parties to the treaty that were not members of the international organization.

24. That balance was not properly safeguarded by the text of subparagraph (*a*) of the article as currently drafted. In the event of a dispute between a State member of the organization party to the treaty and a State party not a member of the organization concerning the interpretation or application of the treaty, the question arose whether, as provided in the constituent instrument of EEC, the non-member State should appear before the Court of Justice of the European Communities. If the expression "relevant rules of the organization" were construed in that manner, it was clear that the interests of non-member States would not be respected in the same way as those of the States members of the organization, since the Court of Justice, as an institution to which one of the parties belonged, was *ipso facto* opposed to the interests of the other party. Care should therefore be taken to safeguard the interests of States parties to the treaty that were not members of the organization.

25. Mr. FRANCIS said that he had spoken on article 36 *bis* at the Commission's twenty-ninth session,[6] and that he still believed that the provision had a place in the draft articles as a statement of a general principle. When making his earlier statement, he had not found it necessary to refer to the particular case of EEC to demonstrate that obligations might arise for the States members of an international organization from a treaty to which that organization was a

[5] *Ibid.*

[6] See *Yearbook... 1977*, vol. I, p. 138, 1441st meeting, paras. 11-14.

party; instead, he had chosen an example concerning the United Nations, and had said that it would be unthinkable for members of the Security Council to claim that they had no responsibility for treaties concluded by the Security Council pursuant to the Charter of the United Nations. The situation of States members of an international organization that concluded a treaty was very different from that of "third States", in the strict sense of the word, in respect of that treaty. An international organization could not act otherwise than through the will of its member States, and those members had a certain responsibility, which was greater than that of the shareholders in a limited liability company, with respect to "contracts" entered into by the organization.

26. While the final decision concerning article 36 *bis* must be left to the General Assembly, the Commission must consider the question in as much detail as possible, for otherwise it would have failed to contemplate the possibility that a number of States might form themselves into an international body and empower it to enter into treaty obligations. Could the Commission suggest, for example, that States should not be liable to the creditor when, as in the case of the Caribbean Development Bank, they dissolved a regional bank that they themselves had formed and had authorized to enter into an agreement to obtain the major part of its capital from a source other than themselves?

27. He agreed that subparagraph (*b*) of the text proposed by the Drafting Committee might require redrafting, but thought that the ideas it contained should be retained. In that connexion, he pointed out that the acknowledgement of the effects of a treaty by an international organization would be governed by the relevant rules of that organization. He did not think there could be any quarrel with the idea that the States members of an international organization might agree in advance that a treaty concluded by that organization would be binding on them, for those States were in a position to ensure that the treaty was in conformity with the powers they had given the organization. Nor should there be any problem with responsibilities devolving upon members of an organization as a result of decisions or resolutions of that organization; if it were accepted that States could enter reservations to a treaty, it would surely also be accepted that they might enter "reservations" to a decision.

28. Mr. REUTER (Special Rapporteur) was prepared to agree that article 36 *bis* had no place in the draft articles if Mr. Ushakov's view were adopted that the article referred solely to EEC and that EEC was no ordinary international organization, for the draft articles concerned international organizations in general, and not special cases. The question was whether article 36 *bis* was relevant only to EEC, or whether it was broader in scope.

29. He recognized that the case covered by subparagraph (*a*) of the article applied only to EEC, since EEC was the sole organization whose constituent instrument contained a provision concerning the effects of agreements concluded by that organization with respect to its member States. He would therefore readily agree to the deletion of subparagraph (*a*).

30. If it was true that an international organization could be regarded as a screen in so far as it entered into commitments as a legal entity, it was also true that, in certain cases, national legal systems gave a degree of transparency to that screen.

31. The question referred to in article 36 *bis* could therefore be dealt with in one of three ways. It was possible to argue that it was not the organization itself but its member States that were parties to the treaty, as in the case of the 1972 Convention on International Liability for Damage Caused by Space Objects.[7] It could also be considered, as Mr. Jagota had suggested, that both the organization and its members were parties to the treaty; however, that case applied only to EEC, and the Commission should not establish rules for exceptional cases. Lastly, it was possible to consider that it was the organization, and not its members, that was a party to the treaty. That third case was the only one covered by article 36 *bis*, where the States members of an international organization that were parties to a treaty were considered as third States in relation to that treaty. That approach had been adopted in the case of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (1947),[8] and it was also the approach that had to be taken in the case of agreements concerning the establishment of a United Nations emergency force.

32. It might of course be decided that the United Nations, like EEC, should be excluded from the scope of the draft articles and that only small "ordinary" organizations that did not have the right to conclude treaties should be dealt with. The draft articles carried two risks between which the Commission must choose: they might arrest the current development of the subject, as Mr. Tsuruoka had said, or they might confirm practices that existed but that were bad or open to criticism. The Commission had therefore to make a policy decision on that matter.

33. From the technical point of view, it should be considered whether article 36 *bis* had something to add or whether it merely duplicated articles 35 and 36. The question that arose was thus that of the relationship between that article and articles 35 and 36.

34. Under the existing text of article 36 *bis*, the consent of third States members of the organization was not excluded, but the reference to it was fairly flexible—or vague, depending on whether one favoured or opposed the formulation adopted. It would of course be possible to opt for a more precise wording. However, if the word "acknowledged", in subparagraph (*b*), were replaced by the words "expressly accepted", article 36 *bis* would lose much of its useful-

[7] General Assembly resolution 2777 (XXVI), annex.

[8] General Assembly resolution 169 (II).

ness, and it would be of no use at all if the phrase "expressly accepted in writing" were adopted, for that wording was already to be found in article 35.

35. He reminded the Commission that, when it had drawn up the draft that was to become the Vienna Convention, it had adopted a very flexible formula with regard to the creation of rights for third States[9] and a fairly flexible formula with regard to the creation of obligations for such States,[10] for in the latter case it had required only express consent. However, the United Nations Conference on the Law of Treaties had adopted a stricter formula, based on an amendment,[11] requiring that, in the case of obligations, consent must be given expressly and in writing.

36. The point at issue was therefore whether a more flexible form of consent should be adopted in the case of international organizations than had been adopted by the Conference on the Law of Treaties in the case of States. The assumption of the Drafting Committee had been that the States members of the organization party to the treaty would have given their consent in advance and that the States parties to the treaty would agree to that form of consent or would require the participation of the member States. The term "acknowledged", in subparagraph (*b*), was fairly vague, but it maintained the idea of consent. It was of course possible to express a preference, as had some members, for the initial version of article 36 *bis*, which had described the precise circumstances in which consent was admitted.

37. As a member of the Commission, he would be willing to agree that the case of EEC should not be taken into account, for it was an organization of a limited character that had no responsibility for peace. On the other hand, he would find it highly regrettable if no account were taken of organizations of a universal character such as the United Nations, in whose case he did not consider it reasonable to lay down a procedure requiring formal, express and written consent in all cases, even in emergencies and even when it was clear that no State had raised objections. The Commission was of course free to decide not to take any account of the practice of the United Nations in that regard, for it was by virtue of practice and not of the Charter that the Organization had capacity to conclude international agreements.

38. Mr. USHAKOV considered that there was no connexion between the United Nations and article 36 *bis*, since an agreement concluded between the United Nations and a State could not bind the States Members of the United Nations without their consent. Under the general rule laid down in article 34, a treaty between a State and an international organization created neither obligations nor rights for a third State without the consent of that State. In the case of a headquarters agreement concluded by the United Nations, rights accorded to States Members of the United Nations could be accepted implicitly, but obligations must be accepted expressly and in writing.

The meeting rose at 1 p.m.

[9] See *Yearbook... 1966*, vol. II, pp. 227 and 228, doc. A/6309/Rev.1, part II, chap. II, draft articles on the law of treaties, art. 32.

[10] *Ibid.*, p. 227, art. 31.

[11] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 268, doc. A/CONF.39/L.25.

1512th MEETING

Wednesday, 5 July 1978, at 10.05 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/312, A/CN.4/L.269)

[Item 4 of the agenda]

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

ARTICLES 35, 36, 36 *bis*, 37 AND 38, AND ARTICLE 2, PARA. 1 (*h*) (*concluded*)

ARTICLE 36 *bis* (Effects of a treaty to which an international organization is party with respect to third States members of that organization)[1] (*concluded*)

1. Mr. USHAKOV said that if it were decided to delete subparagraph (*a*), which, as the Special Rapporteur had himself acknowledged at the previous meeting, applied only to supranational organizations such as EEC, article 36 *bis* would be pointless, since it would duplicate articles 35 and 36.[2] Those two articles applied to all third States, including States members of an international organization party to a treaty, which were also covered by article 36 *bis*. If the words "subject to article 36 *bis*", which had been placed in square brackets, were deleted from articles 35 and 36, States members of an international organization such as the United Nations would be subject to contradictory rules, as the rule in article 36 *bis* did not correspond to the rules stated in articles 35 and 36.

[1] For text, see 1510th meeting, para. 25.

[2] *Ibid.*, paras. 1 and 21.