Document:-

**A/CN.4/SR.1547**

**Summary record of the 1547th 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:-

**1979, vol. I**

relations of territory". That could hardly be held to apply in the case of international organizations at the present stage in the development of international relations, although it was possible to envisage certain cases touching on the problem, such as the disappearance of an international organization. There again, however, the concept was somewhat different, and his reaction, generally speaking, would be that, if an international organization was dissolved, that party to the treaty had disappeared.

39. He doubted whether a change in the rules of the organization would have any direct effect on the situation, since article 6 of the draft, which dealt with the capacity of international organizations to conclude treaties, must surely be governed by the rules in force at the time when the organization concluded the treaty, not by any subsequent change in those rules. On the other hand, there would be a very real problem if there were a change in the essential nature of the organization (for instance, if its functions were restricted in some way), but that problem would have to be resolved not in the context of the draft articles but in the light of the situation as it developed. Conversely, if the powers of the organization were extended, that would not, in his view, give rise to any particular difficulty as far as the treaty was concerned.

40. All those points could be examined when the Commission took up the provision corresponding to article 73 of the Vienna Convention, so they should not delay consideration of draft article 42.

41. Mr. VEROSTA said that paragraphs 1 and 2 of article 42 were acceptable, subject to some clarification, particularly in regard to the denunciation of a treaty by an international organization.

42. Paragraph 3 came somewhat unexpectedly. As its scope was fairly wide, it might perhaps be better to find another place for it in the draft.

**Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (General Assembly resolution 33/139, part I, para. 5; General Assembly resolution 33/140, para. 5)**

[Item 7 of the agenda]

MEMBERSHIP OF THE WORKING GROUP

43. The Chairman said that, having held consultations, he suggested that the Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier should be composed of the following members: Mr. Yankov (Chairman), Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Riphagen, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam and Mr. Ushakov.

44. If there were no objections he would take it that the Commission decided to accept that proposal.

*It was so decided.*

**Review of the multilateral treaty-making process (General Assembly resolution 32/48, para. 2)**

[Item 6 of the agenda]

MEMBERSHIP OF THE WORKING GROUP

45. The CHAIRMAN reminded the Commission that the Working Group on review of the multilateral treaty-making process, set up at the previous session, had been a small one. That Group had been entrusted with the preliminary study of the question. Among the recommendations formulated by the Working Group in its report and approved by the Commission had been a recommendation that the Group should be reconstituted at the beginning of the thirty-first session, taking into account as far as possible the need for continuity of membership, and that it be asked to present a final report to the Commission not later than 30 June 1979.[7]

46. In view of the importance of the topic and the need to draft a report reflecting the views of all the members of the Commission, it had been agreed, during consultations, to enlarge the Group. He suggested the following membership: Mr. Quentin-Baxter (Chairman), Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat and Mr. Yankov.

47. If there were no objections, he would take it that the Commission decided to accept that proposal.

*It was so decided.*

*The meeting rose at 1 p.m.*

[7] See *Yearbook... 1978*, vol. II (Part Two), p. 149, document A/33/10, para. 169.

## 1547th MEETING

*Thursday, 7 June 1979, at 10.20 a.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

*Members present:* Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, 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.4/319)**

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 42 (Validity and continuance in force of treaties)[1] (*concluded*)

1. Mr. PINTO said that paragraph 3 of article 42 could be regarded as dealing with two sets of treaty obligations. One set consisted of international obligations deriving from the Charter of the United Nations, which was viewed as a kind of "higher" treaty and which, in principle, was binding on Members of the United Nations alone. The other set consisted of obligations arising under a treaty between States and an international organization or between international organizations alone. Again, paragraph 3 could be interpreted in two ways. First, it embodied a provision on the application of successive treaties, and the Commission's understanding on that matter was expressed in draft article 30,[2] which in turn reflected a similar understanding expressed in article 30 of the 1969 Vienna Convention.[3] Secondly, the paragraph could be taken as relating to a conflict between international obligations under Article 103 of the Charter and international obligations under a treaty of the kind covered by the present draft—a conflict that did not simply involve a principle of hierarchy but struck at the very foundations of the validity of the treaty, as, for example, in the case, specifically covered by draft article 53, of treaties conflicting with a peremptory norm of general international law. In such a case, the relevant provision of the Charter would be regarded as a peremptory norm of general international law, and the conflict could of course affect the validity of the treaty in question; the treaty would not only be voidable at the instance of an aggrieved party but might also, in certain circumstances, be void *ab initio*. Consequently there were good grounds for considering such a matter in the part of the draft relating to the validity and continuance in force of treaties.

2. For those reasons, he fully appreciated why the Special Rapporteur had tentatively included in paragraph 3 a reference to Article 103 of the Charter. But the difficult question arose where to place such a reference in the draft, since the relevance of Article 103 of the Charter to the validity of treaties was not particularly clear, and in some cases there was an overlap with the provisions of draft article 53. For example, an international financial institution established to make loans to its member States exclusively on the basis of economic criteria might, by an agreement, make a loan to a member State which was violating a peremptory norm of general international law, for example, by pursuing a policy of racial discrimination. The loan agreement might be considered incompatible with Article 103 of the Charter, or the Security Council might have decided that no international institution should make loans to the State in question, in which case the matter would fall under the provisions of draft article 53. Obviously, it was difficult to pinpoint in written terms the way in which Article 103 of the Charter operated in relation to the validity of treaties.

3. Another problem was that, in principle, international organizations were not governed by the provisions of Article 103 of the Charter, which applied exclusively to States Members of the United Nations, although non-member States might be affected by the terms of Article 2, paragraph 6, of the Charter, and international organizations by the terms of Article 48, paragraph 2. He had therefore reached the conclusion that the relevance of Article 103 of the Charter to the validity or invalidity of treaties was too complicated a matter to be dealt with in draft article 42, paragraph 3, or indeed in draft article 30, paragraph 6. It should have a separate place of its own in the set of draft articles.

4. The adaptation of the Vienna Convention to the special case of treaties to which international organizations were parties was a difficult task. For instance, Mr. Ushakov (1546th meeting) had mentioned draft article 52 and had rightly questioned whether it was appropriate to speak of coercion in connexion with international organizations. Coercion did not necessarily imply the use of armed force, however; it was easy to envisage situations involving economic coercion —but that would lead the Commission into an extremely difficult and delicate area. Some international financial organizations could exercise very great influence in their dealings with States and were capable of taking action that might be described as economic coercion or pressure. For instance, such an organization might seek to dictate a State's economic policies.

5. Lastly, he would like to know whether the Special Rapporteur had considered the possibility that special circumstances might affect the validity of a treaty concluded between an international organization and one of its member States. One might think, for example, of an agreement between a State and the future International Sea-Bed Authority, which would be concluded within the framework of the normal activities of that Authority and would be subject to certain rules.

6. Mr. TSURUOKA said that, in the absence of specific examples, and hence of material for codification and development, it would be better to leave aside the case of the disappearance of an international organization. Moreover, the diversity of international organizations would make it difficult to draft a general rule. If the Commission rejected that case, it was unlikely to be blamed for leaving a gap in its work; rather, it would be praised for allowing practice to develop in the matter.

7. As to the advisability of referring to Article 103 of the Charter, it should be borne in mind that, although the Charter was applicable to nearly all States, it was not certain that it was applicable to international organizations. Nevertheless, it was unlikely that international organizations would not consider themselves bound by that instrument, so it seemed unnecessary to refer expressly, in article 42, to "the obligations that may derive from the Charter and particularly from

[1] For text, see 1546th meeting, para. 11.

[2] See 1546th meeting, foot-note 4.

[3] *Ibid.*, foot-note 1.

Article 103". Perhaps it would be possible to make such a reference subsequently in one of the general provisions of the draft, but for the time being the Commission could confine itself to raising the problem in its commentary to the article.

8. Mr. FRANCIS said that his position on draft article 42 was very close to that of Mr. Yankov and Sir Francis Vallat.

9. As to the question of the disappearance of international organizations, it should be remembered that some organizations might leave long-enduring traces of their earlier existence. He would therefore be dismayed if no opportunity were provided subsequently to consider the question of succession of international organizations in a wider context. Fortunately, he had gained the impression from the Special Rapporteur's introduction that he envisaged such a possibility at a later stage in the preparation of the draft articles.

10. Mr. NJENGA said he had some difficulties with draft articles 42, difficulties that necessarily arose in discussing the treaty-making capacity of international organizations, since those organizations could not be equated with States in every respect. Consequently the present draft could not in all instances follow the terms of the Vienna Convention.

11. He entirely agreed with the views expressed by Mr. Pinto on the applicability of paragraph 3 of draft article 42. It was extremely difficult to see how Article 103 of the Charter could apply to international organizations, since that Article dealt with the obligations of Members of the United Nations, which were in all cases States. He therefore urged the Special Rapporteur to delete paragraph 3, especially as that would not prejudice the application of Article 103 of the Charter in cases where States entered into agreements with international organizations, since States would still be required to fulfil their obligations under the Charter.

12. With regard to the effect of the disappearance of an international organization on the validity or continuance in force of a treaty, it should be noted that some international organizations, although they had not disappeared, were none the less moribund. In other words, they had ceased to operate as international organizations competent to perform obligations they had incurred earlier in their existence.

13. For example, the East African Community had not yet disappeared, but it could no longer be regarded as a going concern. The treaties it had entered into could not be said to be effective at the present time, and obviously a treaty was valid only when it could be performed. In its earlier and more active days, the Community had concluded a number of treaties, some of them of major importance, such as treaties on tariffs and a treaty with EEC; but in every instance the Community itself and its members had been parties to those treaties. Subsequently, the members had tended to assume, on their own territory, the obligations assumed by the Community, and had thus avoided the possibility of a lacuna when the Community became less active. That approach had worked quite successfully and no legal problems had arisen because the other States parties to the treaties in question had taken account of the real situation.

14. Accordingly, in the matter of the validity and continuance in force of treaties, he was not convinced of the need to cast article 42 in such strong terms. A treaty might well be in force in theory, but not have any practical application. An attempt could perhaps be made to improve the wording of the article by making provision for situations of that kind.

15. Mr. SCHWEBEL agreed with the substance of paragraphs 1 and 2 of draft article 42, and despite some initial perplexity he none the less appreciated the relevance of paragraph 3. It was true that, if a treaty establishing a regional organization was concluded for the purpose of destroying a Member of the United Nations, the obligations arising under that treaty would conflict with the obligations deriving from Article 103 of the Charter; but they would also conflict with the provisions of draft article 53, inasmuch as they would be incompatible with a peremptory norm of general international law. Hence it could be claimed that the provision contained in paragraph 3 of draft article 42 was not necessary. On the other hand, it was possible to imagine a conflict between treaty obligations and obligations under the Charter which did not involve a peremptory norm of international law. For example, performance of an obligation under a treaty might conflict with a decision of the Security Council that was binding on all Member States but did not involve a peremptory norm of international law. In such instances, the terms of paragraph 3 of the draft article would indeed be relevant.

16. With regard to paragraphs 1 and 2, the question had been raised at the previous meeting whether the validity of a treaty, or the consent of a State or of an international organization to be bound by a treaty, could be impeached only through the application of the present draft articles. He could not subscribe to the thesis that an international organization, by the application of its own rules, might be able to alter its obligations under a treaty, or even affect the validity of the treaty or the consent that it had given to be bound by the treaty. The norm was that international organizations were bound by the treaties they concluded in exactly the same way as other subjects of international law which had treaty-making capacity. Draft article 27, paragraph 2, which dealt not with the validity of a treaty, but with failure to perform a treaty, in no sense detracted from that view. It specified that an international organization party to a treaty might not invoke the rules of the organization as justification for its failure to perform the treaty, unless performance of the treaty, according to the intention of the parties, in other words, of all the parties, was subject to the exercise of the functions and powers of the organization. That meant that the rules of the organization could not be invoked as justification for failure to perform the treaty unless it was the understanding of the parties that the organization might indeed invoke its rules. Plainly, the phrase "functions and powers of the organization" signified the func-

tions and powers of the organization as they were understood by the parties at the time of the conclusion of the treaty, not the functions and powers of the organization as subsequently amended by the rules of the organization.

17. In that connexion, he endorsed Sir Francis Vallat's comment (1546th meeting) concerning draft article 6, namely, that the capacity of an international organization to conclude treaties—which was surely connected with the question of the validity of the organization's consent—was governed by the relevant rules of that organization at the time when the treaty was concluded. He failed to see how one could reasonably maintain otherwise.

18. Mr. REUTER (Special Rapporteur), summarizing the discussion on article 42, noted that the members of the Commission as a whole thought that paragraphs 1 and 2 of the provision were acceptable, subject to some clarification, but that paragraph 3 could be omitted, either provisionally or definitively. The question whether a distinction should be made in article 42 between treaties concluded between States and international organizations and treaties concluded between international organizations only could be decided by the Drafting Committee. As to the difficulty of taking a decision on article 42 without knowing the content of the subsequent articles, it should be made clear that the Commission would never adopt that article without reservations. The purpose of paragraphs 1 and 2 of article 42 was not to endorse the subsequent articles in advance, but to endorse the principle that the Commission would deal with all grounds for invalidating, terminating or suspending the operation of treaties that might supplement those provided for in the Vienna Convention. For it was inconceivable that the Commission should agree that a provision concerning the disappearance of international organizations was necessary, but decide that it would be better not to include one because of the difficulty of the subject.

19. The question raised by Mr. Ushakov at the previous meeting, and developed by Mr. Pinto, whether the prohibition of coercion applied to international organizations, did not arise for the Commission at the moment. Even when it came to deal with the use of force in violation of the Charter, the Commission would not have to decide whether forms of coercion other than the use of armed force, such as economic coercion, need be considered. That was a question of interpretation of the Charter. It would be advisable to adopt the same view as had the United Nations Conference on the Law of Treaties, which had taken the concept of coercion as certainly including armed force, and perhaps other forms of coercion as well.

20. While it was true that an international organization was hardly in a position to apply coercion to another organization, it was quite conceivable that a State might apply coercion to an organization. In the event of riots in France, if the French armed forces had to intervene and suspects took refuge in the UNESCO building, it was not inconceivable that the French authorities, under the threat of armed force, might persuade the Director of UNESCO to amend the headquarters agreement between that organization and France in such a way as to allow the French armed forces to coerce UNESCO in a manner contrary to the United Nations Charter. The existence of peacekeeping forces suggested other examples. If a detachment of such forces became the object of an act of violence contrary to the Charter, it did not seem that military honour would require their commanding officer to allow all his men to be massacred rather than capitulate in open country; he might perhaps decide to sign an agreement with the aggressor consenting to evacuate certain positions. Would such an agreement between an international organization and an aggressor State be valid? It was to cases of that kind that the Commission would have to revert when it came to draft an article on coercion.

21. As to the words "through the application of the present draft articles", Mr. Ushakov had observed that the Commission had not yet settled the question whether international organizations would be able to become parties to the convention that might result from the draft articles. But the Commission would not even have to decide how the articles might be made binding on international organizations. There would seem to be several means of achieving that end, even without the participation of international organizations as parties. For example, the 1971 Convention on International Liability for Damage caused by Space Objects,[4] which was open for signature to States only, could under certain conditions apply to international organizations. The same was true of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.[5]

22. Contrary to what Mr. Ushakov might have thought, there was indeed a link between paragraph 3 and paragraphs 1 and 2 of the article under consideration. While it was true that neither the provisions of the Charter nor the obligations deriving from it had any bearing on the validity or invalidity of treaties, the fact remained that part V of the Vienna Convention also dealt with suspension of the operation of treaties. It was precisely the case of suspension of a treaty that he had had in mind in proposing paragraph 3 of article 42. For it was possible that, even if the Security Council had decided that States Members of the United Nations must abstain from economic relations with a certain State, one of the Member States might conclude a commercial treaty with that State. What, then, would be the effect of the Security Council's decision on that treaty? And what would be its effect on private contracts concluded between buyers and sellers of each State? On the latter point, international tribunals had had occasion to pronounce judgement following the sanctions applied against Italy from 1936 to 1938. In the case of treaties concluded between States, such

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

[5] United Nations, *Treaty Series*, vol. 33, p. 261.

a decision by the Security Council should have a suspensive effect.

23. The writers who had commented on the Vienna Convention had sometimes wondered why the Commission had devoted so much attention to the rather unlikely case of suspension of a treaty. One could easily imagine, however, that the operation of a treaty might be suspended as the result of a Security Council decision. That was why he had referred, in paragraph 3 of article 42, not only to the Charter but also to obligations deriving from the Charter, such as those that the Security Council might impose. It was therefore important to include a reference to article 103 of the Charter in a general provision of the draft. Furthermore, it was not even certain that such a reference would have no effect in respect of third States, as had been suggested. For although the Vienna Convention stressed the absence of effect of treaties with respect to third States, the International Court of Justice, in its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*,[6] had taken the view that, when Member States of the United Nations were concerned, even third States were required to conform to what it regarded as a valid decision. But it was certainly possible to maintain the contrary, as had several members of the Court.

24. With regard to the disappearance of international organizations, Sir Francis Vallat (1546th meeting) had held that, in view of the definition of the expression "succession of States" in the Vienna Convention on Succession of States in Respect of Treaties,[7] it would be difficult now to use the expression "succession of international organizations", and that the question should be re-examined when article 73 was taken up. Like Mr. Ushakov, he had asked what would happen if an international organization, after concluding a valid treaty, were to amend its own rules in such a way that it could no longer perform the treaty. Mr. Schwebel believed that, if it was the rules on capacity to conclude treaties that were amended in that way, the treaty must be regarded as valid if it had been concluded in conformity with the rules applicable at the time of its conclusion.

25. However, it was necessary to consider another case: that of independent States which had set up an international organization with the object of forming a customs union. The association, which was competent to do so, concluded tariff agreements with third States. Later, however, the member States decided that a free-trade area between them would be sufficient, and withdrew from the association its capacity to conclude external agreements. What would then become of the tariff agreements already concluded? It could be maintained that the States members of the association continued to be bound individually by those treaties, each of them being required to negotiate a revision. It was also possible to distinguish between the personality of the organization and that of its member States, and maintain that those treaties had become null and void; it was then a question of State responsibility that arose. In fact it was not possible, by concluding the treaty, to render the constituent treaty of an international organization inexecutable. It might well be considered that the first treaty had become null, but a certain responsibility then arose, which required the initiation of negotiations with a view to concluding a new treaty. In the first case, the standpoint adopted was similar to that of succession of States; in the second, it was that of State responsibility. Moreover, it would be preferable to use the term "change of organization" rather than "succession of organizations". An organization whose functions completely changed or whose membership suddenly increased enormously was no longer the same organization, even if its name remained unchanged.

26. It was obvious that all those questions could not be settled during the consideration of article 42. They could be discussed, but he would have to receive specific instructions enabling him to prepare a draft article. In what had become article 73 of the Vienna Convention, however, the Commission had cautiously left those questions aside, and it might perhaps be preferable to do the same in the present case. It might be answered, however, that in that case no draft articles on changes of international organizations with respect to treaties would ever be prepared, and that the question ought to be settled.

27. Mr. Pinto had pointed out that there might be agreements between an international organization and its member States that were somewhat different from the agreements it concluded with other States. He himself had envisaged precisely such a case in an article that the Commission had not yet considered, article 46, in drafting which he had considered that a plea of ignorance of the law of the organization by a member State was not easily admissible. Consequently, evaluation of the manifest nature of a violation of the Charter could not be defined in the same terms for a member State as for a third State. Hence he had no objection to considering that each international organization made its own law, and that certain agreements between such organizations and their member States were subject to such special international law rather than to general international law. It would be wise to accept that conclusion, in order better to respect the characteristics of each organization. It could be noted, however, that not all international organizations had developed their practice to the point of establishing such a legal rule.

28. Mr. SUCHARITKUL thought the reservation regarding Article 103 of the Charter, which established a hierarchy of the international obligations incumbent upon States, was necessary, but he was not sure that it should appear in paragraph 3 of draft article 42.

29. With regard to the problem raised by the disappearance of an international organization, he pointed

[6] *I.C.J. Reports 1971*, p. 16.

[7] See 1546th meeting, foot-note 6.

out that South-East Asia, which had a large number of international organizations, provided many examples of the appearance, disappearance and change or succession of international or regional organizations.

30. An organization could be formally dissolved, as in the case of the South-East Asia Treaty Organization, which had disappeared as an organization, although the Manila Agreement (Pacific Charter) subsisted. Certain institutions that had come into being by agreement between that organization and its member States had disappeared, such as the Cholera Research Laboratory, established at Dacca, whereas others, such as the Asian Institute of Technology, still existed.

31. An organization could also disappear by tacit agreement. That was how the Asian and Pacific Council had disappeared, as a result of the fundamental change in Asia which had altered the essential nature of that organization. Several centres established under its auspices had been dissolved, but the Asian and Pacific Cultural Association, in Seoul, still existed.

32. Lastly, there could be succession between two international organizations. Thus the Association of South-East Asian Nations, which comprised Thailand, Malaysia, the Philippines, Singapore and Indonesia, had succeeded the Association of South-East Asia, which had comprised only Thailand, Malaysia and the Philippines. An agreement had been concluded between the two organizations for the transfer of projects in progress.

33. With regard to the legal personality of international organizations, he stressed that in South-East Asia there was no international or regional organization with supranational or supra-State power, like EEC.

34. Mr. USHAKOV explained that what he had said in his last statement (1546th meeting) applied not only to article 42 but also to the whole of part V of the draft. In his view, there was a certain relationship between the invalidity, termination and suspension of the operation of treaties and the relevant rules of the organization, particularly its constituent instrument. For example, if the statute of an international organization provided that the organization had its headquarters in a certain State, what would become of the headquarters agreement concluded between that State and the organization if the latter decided to transfer its headquarters to another State? In such a case, amendment of the statute of the organization resulted in the termination of a treaty.

35. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 42 to the Drafting Committee.

*It was so decided.* [8]

ARTICLE 43 (Obligations imposed by international law or independently of a treaty)

36. The CHAIRMAN invited the Special Rapporteur to introduce draft article 43 (A/CN.4/319), which read:

***Article 43. Obligations imposed by international law or independently of a treaty***

**The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present articles or of the provisions of the treaty, shall not in any way impair the duty of any State or of any international organization to fulfil any obligation embodied in the treaty to which that State or that organization would be subject under international law independently of the treaty.**

37. Mr. REUTER (Special Rapporteur) said that, as the commentary indicated, except for minor drafting changes draft article 43 was the same as the corresponding article of the Vienna Convention. He wished to stress, however, that, in recalling "the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty", article 43 of the Vienna Convention implied that States were bound by customary rules. Transposed into the context of relations between international organizations or between States and international organizations, the rule stated in article 43 of the Vienna Convention thus implied that international organizations could also be bound by general customary rules. That problem had already been raised and had caused some concern. He himself thought it was impossible to deny the existence of general customary rules that applied not only to States but also, in certain circumstances, to international organizations.

38. For instance, in the definition of aggression given by the General Assembly in 1974,[9] the term "State" included the concept of a "group of States" where appropriate and, consequently, that of an international organization. Furthermore, the Charter of Economic Rights and Duties of States[10] contained certain customary rules and stated in article 12, paragraph 2, that those rules were also applicable to groupings of States. Lastly, although the capacity of the United Nations to become a party to a humanitarian treaty had been questioned, it was stated in the regulations governing peace-keeping forces that United Nations forces were subject to the general rules of humanitarian law, which meant customary humanitarian law.

39. Thus, in so far as it constituted a group of States, the United Nations was subject to general customary rules. It was moreover difficult to accept that States bound by a general customary rule could, by establishing an international organization, free themselves from that rule through the mechanism of the separate legal personality. He pointed out in that connexion that,

[8] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

[9] General Assembly resolution 3314 (XXIX), annex.

[10] General Assembly resolution 3281 (XXIX).

when the Commission, and subsequently the United Nations Conference on Succession of States in Respect of Treaties, had examined the problems raised by the uniting of States, they had taken the position that States could not free themselves from an international obligation by the expedient of a legal mechanism.

40. Mr. USHAKOV was in favour of article 43, but would prefer it to be divided into two separate paragraphs, one dealing with treaties between States and international organizations, the other with treaties between international organizations. The second paragraph would then state the obligation of an international organization to respect the rules of customary law existing between international organizations. He wondered whether that would be possible.

41. Mr. VEROSTA was also in favour of article 43. He had no doubt that international organizations were subject to customary law, in view of their special status.

42. Mr. REUTER (Special Rapporteur) observed that the division of article 43 into two paragraphs involved either a question of drafting, which it was for the Drafting Committee to settle, or a question of substance. In latter case, he was not in a position to affirm that there were customary rules pertaining to international organizations only, but he thought there were customary rules common to States and international organizations.

43. Mr. USHAKOV pointed out that that remark also applied to the text under consideration, since the treaty referred to in article 43 could be a treaty concluded between international organizations only.

44. Mr. TABIBI supported the draft article and recommended that it be referred to the Drafting Committee. He agreed on the need to take account of the fact that certain customary rules applied in the case of international organizations.

45. Sir Francis VALLAT supported the draft article, despite one or two minor points of drafting that did not call for comment at that stage. In his view, the draft article was to be read as implying a phrase similar to that customarily inserted in English pleadings when pleading to the facts, namely, "if any, which is not admitted".

46. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 43 to the Drafting Committee.

*It was so decided.* [11]

*The meeting rose at 1 p.m.*

[11] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

# 1548th MEETING

*Friday, 8 June 1979, at 10.10 a.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

*Members present:* Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, 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.4/319)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 44 (Separability of treaty provisions)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article 44 (A/CN.4/319), which read:

***Article 44. Separability of treaty provisions***

**1. A right of a party, provided for in a treaty or arising under [article 56], to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.**

**2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present articles may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in [article 60].**

**3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:**

**(*a*) the said clauses are separable from the remainder of the treaty with regard to their application;**

**(*b*) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and**

**(*c*) continued performance of the remainder of the treaty would not be unjust.**

**4. In cases falling under [articles 49 and 50] the State or the international organization entitled to invoke the fraud or corruption may do so with respect either to the whole treaty or, subject to paragraph 3, to the particular clauses alone.**

**5. In cases falling under [articles 51, 52 and 53], no separation of the provisions of the treaty is permitted.**

2. Mr. REUTER (Special Rapporteur) pointed out that article 44 of the Vienna Convention [1] was a technical article, which stated general rules (paragraphs 1

[1] See 1546th meeting, foot-note 1.