Document:-

A/CN.4/SR.1557

Summary record of the 1557th 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

principles of the Vienna Convention.[9] Mr. Jagota (1555th meeting) did not believe that, in the light of such a requirement, a user State not party to the articles would conclude a user agreement and accept the provisions of article 6. Obviously, the matter called for further reflection. The report made the reasonable assumption that there might be situations in which a State not willing to accept all the provisions of the articles would in fact agree to a user agreement that incorporated the provisions of the articles exclusively in a residual manner, and at the same time permitted the parties to vary those provisions to suit their needs.

41. As to the extent to which the articles should deal with the navigational uses of international watercourses, he believed that those uses could not be excluded entirely, because of their impact on non-navigational uses.

42. A number of questions had been raised about the definition of a user State contained in article 2. For example, did the definition include States that only used, but did not contribute to, the watercourse? And in view of the facts of the hydrologic cycle, which States could be regarded as contributing to a watercourse? Plainly, further reflection would be required before those questions could be answered.

43. With regard to some of the questions put by Mr. Tabibi (*ibid.*), it was his impression that the General Assembly had not consciously decided to confine the topic to watercourses, any more than it had decided to adopt the concept of the drainage basin. He thought the Helsinki Rules reflected the most considered statement on the matter by the International Law Association. The articles would deal with land only in so far as it was necessary for them to deal with the uses and abuses of water. Moreover, it was not proposed that neighbouring riparian States should consult on all their economic planning, but simply that they should collect and exchange minimal data on shared watercourses.

44. As to the question how detailed and technical the articles were to be, in his capacity as Special Rapporteur he had been thinking in terms of articles that would go beyond the general principles of the Helsinki Rules. His view, as illustrated by articles 8, 9 and 10, was that the Commission could consider in detail certain uses of international watercourses, endeavouring to establish a core of obligations that States parties to the articles would undertake, and to suggest further matters that States parties to user agreements might wish to take into account. Such an approach might not prove feasible, but it would be extremely helpful to know whether the Commission wished to proceed further in that direction. Obviously, it would be much easier to prepare a draft on the lines of the Helsinki Rules than a draft that took account of highly technical matters and sought to formulate rules on them.

45. With regard to Mr. Njenga's comments, it was obvious that the exercise of permanent sovereignty over natural resources, like the exercise of sovereignty in general, was subject to international law. States did not enjoy complete discretion to deal with shared watercourses as they pleased. As Mr. Reuter had pointed out, if the Commission did not agree on that point it would be futile to prepare draft articles on the topic.

46. Lastly, Mr. Quentin-Baxter had observed that the problem was not an ideological one; it was a problem involving the interests of States that shared international watercourses. That was a cause for optimism, since it meant that, unlike some other issues, the subject under study was not encumbered by factors that made it extremely difficult for States to reach agreement.

The meeting rose at 1 p.m.

1557th MEETING

Thursday, 21 June 1979, at 10.5 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

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 48 (Error)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article 48 (A/CN.4/319), which read:

Article 48. Error

1. A State or an international organization may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State or that organization to exist at the time when the treaty was concluded and formed an essential basis of the consent of that State or that organization to be bound by the treaty.

[9] See 1554th meeting, foot-note 23.

* Resumed from the 1553rd meeting.

2. Paragraph 1 shall not apply if the State or international organization in question contributed by its own conduct to the error or if the circumstances were such as to put that State or organization on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; [article 79] then applies.

2. Mr. REUTER (Special Rapporteur) said that article 48 was the first of five articles on invalidity of consent. Both the Commission and the United Nations Conference on the Law of Treaties had paid very special attention to the preparation of the corresponding articles of the Vienna Convention,[1] which had been adopted by a comfortable majority. As those articles of the Vienna Convention concerned the consensual element of every treaty, he had thought that they could be transposed, with greater or lesser drafting changes, to the draft in preparation.

3. In article 48, he had proposed only minor drafting changes. It should be noted that article 48 of the Vienna Convention was based on generally accepted international jurisprudence that had found expression, in particular, in the 1962 judgement of the International Court of Justice in the *Case concerning the Temple of Preah Vihear.*[2]

4. Mr. USHAKOV deemed the article under consideration acceptable, although it might have been drafted in such a way as to contrast treaties concluded between States and international organizations with treaties concluded between two or more international organizations. Moreover, paragraph 2 raised two questions that should be answered in the commentary. First, how could an international organization contribute by its conduct to an error? Could it contribute to the error if none of its organs had taken a position? Secondly, how could an organization have been put on notice of a possible error if the error had not been brought to the attention of the competent organ?

5. Mr. REUTER (Special Rapporteur) understood Mr. Ushakov to be of the opinion that it would not be possible, in practice, to determine the conduct of an international organization in the same way as that of a State. Furthermore, assessment of the circumstances in which the organization should be put on notice of an error and determination of the organ to be put on notice in a specific case would not take place in the same way as for a State. Mr. Ushakov was thinking mainly of the case in which final power to commit an organization was held by a non-permanent organ; accordingly, he wished it to be explained in the commentary that the conduct of an organization could not be determined in the same way as that of a State and, with reference to the last phrase of paragraph 2 of article 48, that the principles laid down for international organizations could not be as general as those for States and that regard must necessarily be had to the internal structure of the organization.

6. It seemed obvious that in article 48 of the Vienna Convention, and even more so in articles 49 and 50, the question of the validity of consent overlapped that of responsibility. The fact of contributing to an error by its conduct implied at least negligence or imprudence on the part of an international organization. But in preparing the draft articles on State responsibility the Commission had always left aside the question of the responsibility of international organizations. In short, it might be advisable to deal with the problem in the commentary to the article under consideration by pointing out that, to assess the conduct of an international organization, the peculiarities of its internal structure must be taken into account.

7. Sir Francis VALLAT said that the difference between States and international organizations was obviously relevant to the terms of many of the draft articles. In the case of article 48, paragraph 2, however, the Commission was faced not with the problem of the difference between States and international organizations but with the question of evidence, in other words, how to establish that the conduct of the international organization had contributed to the error.

8. Questions of that kind were often encountered in the task of codifying the law. In the past, the Commission had frequently laid down general rules in the knowledge that some of them might prove difficult to apply because of a variety of circumstances. For example, how could one establish the object and purpose of a treaty? There was in fact no general answer, since that problem had to be resolved in the context of each case considered. The Commission had recognized, beyond dispute, that an international organization could in principle have the status and the capacity necessary to conclude international treaties; the organization was therefore capable of the conduct required for that purpose. Hence the circumstances of a particular case could be examined to determine whether or not the conduct attributable to the organization had contributed to the error. In view of the diversity of international organizations and of the ways in which they operated, the difficulties of such an examination might be considerable, but that did not alter the principle underlying article 48. The best course would be to deal with the matter in the commentary and leave the text of the article unchanged.

9. The CHAIRMAN suggested that the Commission should decide to refer draft article 48 to the Drafting Committee for consideration in the light of the discussion.

It was so decided.[3]

ARTICLE 49 (Fraud)

10. The CHAIRMAN invited the Special Rapporteur to introduce draft article 49 (A/CN.4/319), which read:

Article 49. Fraud

If a State or an international organization has been induced to conclude a treaty by the fraudulent conduct of another negotiating State or negotiating international organization, the State or the

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

[2] *I.C.J. Reports 1962*, p. 6.

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

international organization may invoke the fraud as invalidating its consent to be bound by the treaty.

11. Mr. REUTER (Special Rapporteur) pointed out that the corresponding article of the Vienna Convention had not raised any difficulties at the United Nations Conference on the Law of Treaties, and that the article under consideration differed from it only by minor drafting changes.

12. Mr. USHAKOV said he could not accept article 49 as drafted. He was uncertain what constituted fraudulent conduct by an international organization. In the case of a State the situation was clear: the conduct of a representative of a State provided with full powers to conclude a definitive treaty must be recognized as the conduct of that State. If he engaged in fraudulent conduct he placed the State under an obligation, even if he was acting *ultra vires*. For the conduct of an international organization to be fraudulent, on the other hand, the competent organ of that organization must have authorized fraudulent conduct by its representative empowered to participate in the negotiations. Such a case was obviously very difficult to imagine. If the General Assembly of the United Nations authorized a person to represent the Organization in negotiations and that person engaged in fraudulent conduct, the Organization would probably not incur responsibility.

13. In conclusion, draft article 49 should cover fraudulent conduct only in the case of a State, not in that of an international organization.

14. Sir Francis VALLAT said that Mr. Ushakov's comments brought to mind the time in the nineteenth century when States had been gradually developing a national law of corporations. English law had seriously questioned whether a corporation, which did not have the soul of a human being, could really be guilty of a criminal offence or of fraudulent conduct. Fortunately, the law had developed realistically and had recognized that a corporation could be so guilty. Once it was accepted that a corporate body, whether national or international, had legal personality, it had also to be recognized that it was capable of engaging in various kinds of illegal conduct.

15. In modern internal and international law, many international organizations were acknowledged to have corporate capacity and the view that an international organization had objective legal personality had been upheld by the International Court of Justice on a number of occasions. If the Commission sought to deal exhaustively with the elements that might vitiate consent or bring about the invalidity of a treaty, it must consider the possibility of an international organization being responsible for fraud. Admittedly, the concept of fraud in international law was extremely elusive. He could not recall any international case in which a State had been held guilty of fraud. However, the absence of cases of that kind did not constitute grounds for precluding the principle. The article clearly raised a problem, but it was a problem that should be dealt with in the commentary rather than in the article itself.

16. Mr. REUTER (Special Rapporteur) agreed that there were not many examples of fraud committed by States. During the Commission's consideration of the text that was subsequently to become article 49 of the Vienna Convention, reference had been made to a treaty concluded in former times between a colonial Power and a free African State, in the text of which, drafted in two languages, there had been a deliberate contradiction.[4] There were also the Munich agreements, signed by France, which the representatives of Free France in London had subsequently hastened to declare void. Nevertheless, after the Second World War, it had been necessary to justify their invalidity legally. France had maintained that, as a result of the Nürnberg trials, it had been established that at the time of the Munich agreements the Germans had already decided to invade Czechoslovakia. There had thus been fraud, since the Germans had led the French authorities to believe that, to preserve peace, one of France's allies must be partially sacrificed.

17. With regard to international organizations, the case could be posited of the head office of an international bank that had already concluded loan agreements with several developing countries deciding to give a representative of the bank very wide powers to negotiate a new loan with one of those countries, while at the same time secretly deciding to enforce a guarantee given by that country in respect of a prior commitment it was unable to meet. Subsequently, the State in question might very well assert that the bank had committed a fraud, because it would never have accepted the new agreement had it known the bank's intentions. Having found that developing countries feared not only the great Powers but also certain international organizations with large financial means, he did not think such cases should be excluded. When the text that was to become article 50 of the Vienna Convention (Corruption of a representative of a State) had been considered by the Commission,[5] half the members, unlike himself, had taken the view that that case ought not to be covered either.

18. What seemed to worry Mr. Ushakov most was that a fraud might be committed not by the organ that had the power of decision but by a representative acting *ultra vires*, in which case the conduct of a person who did not have the "capacity" to engage in fraudulent acts could not be imputed to the organization. That point of view seemed to confirm the fact that draft articles 48, 49 and 50 pertained both to the law of treaties and to the law of responsibility. Personally, he would be inclined to admit that an international organization, like a State, could be bound by an act of one of its agents acting *ultra vires*. Not to accept that principle might have troublesome consequences. If, paraphrasing the English maxim that "the king can

[4] See *Yearbook... 1963*, vol. I, pp. 27 *et seq.*, 678th and 679th meetings.

[5] See *Yearbook... 1966*, vol. I (Part Two), pp. 140-148, 862nd meeting, paras. 81 *et seq.* and 863rd meeting, and pp. 156 and 157, 865th meeting, paras. 1-27.

do no wrong", it was affirmed that an international organization could do no wrong, that would be transposing for the benefit of international organizations, which ultimately were creations of States, a principle that had not been deemed applicable even to States. In his opinion, if the agent of an international organization acted *ultra vires,* the organization would have to assume partial responsibility, even if such responsibility were assessed in accordance with norms different from those applied to States. The question of the responsibility of international organizations should not, of course, be dealt with in draft article 49, and it was not even certain that the Commission would eventually consider it, but it should perhaps be mentioned in the commentary to the article. The Commission could also develop the question in the commentary to article 73, dealing with the reservations that would be necessitated by certain circumstances, such as the generation of international responsibility.

19. Mr. SCHWEBEL fully agreed with the Special Rapporteur's analysis. As to the question of the responsibility of international organizations under international law, it might be remembered that, on rare occasions, members of United Nations peace-keeping forces had acted *ultra vires* and that the United Nations had accepted responsibility for their acts. That had happened in the Congo, when a number of claims had been paid by the Secretary-General with monies appropriated by the General Assembly for that purpose. Again, the examples cited during the discussion on the capacity of agents of international organizations to enter into international agreements binding on those organizations [6] were relevant to draft article 49. It was easy to imagine cases in which, although the supreme organ of the international organization concerned had not been a party to the act, fraudulent conduct could none the less be imputed to the international organization on the standard principles of responsibility and on the principle of *respondeat superior.*

20. Mr. VEROSTA, referring to the Rapporteur's comments, pointed out that, during the drafting of article 50 of the Vienna Convention, not only had the existence of corruption been denied by some members of the Commission and certain delegations to the Conference on the Law of Treaties, but it had also been maintained that in any case corruption was already covered by the provisions of article 49, on fraud. If cases of corruption were included among cases of fraud, the latter would not be so rare and could be attributed to international organizations as well as to States. What was more, both the representative and the competent organ of an international organization could engage in fraudulent conduct and be guilty of corrupting the representative of a State. Provision must therefore be made in draft articles 49 and 50 for cases of fraud and corruption by an international organization.

21. Mr. USHAKOV considered draft article 49 acceptable as far as fraudulent conduct by the competent organ of the organization was concerned. In any case, that provision did not raise any question of responsibility. As provided in the draft articles on State responsibility, the two constituting elements of an internationally wrongful act were conduct attributable to a State and breach of an international obligation of that State.[7] In the case of article 49, only the conduct of the international organization was at issue. Hence the question of the fraudulent conduct of the organization did not arise in the context of responsibility, but in that of invalidation of consent. It had to be ascertained whether the conduct of the representative of an organization could be attributed to the organization when he had acted *ultra vires.* In the case of States, that question was dealt with in article 10 of the draft articles on State responsibility [8] and it had already raised quite a number of difficulties. Was the Commission now prepared to affirm that the fraudulent conduct of any person whatever who represented an international organization was the conduct of that organization, even if he had acted *ultra vires*?

22. Mr. REUTER (Special Rapporteur) understood Mr. Ushakov's view to be that articles 48 to 50 should not be adapted to international organizations as though article 46 [9] did not exist. What Mr. Ushakov feared was that the representative of an international organization, who must be given specific authority and was generally not entitled to bind the organization by his signature alone, might commit fraudulent acts that would be attributable to the organization independently of article 46—a provision under which such acts might not be attributed to the organization. If that was Mr. Ushakov's position, he saw no objection to stating in the commentary that articles 48 to 50 should be understood as being without prejudice to cases in which a person negotiating a treaty with an international organization, acting in accordance with normal practice and in good faith, found that the representative of that organization was not acting in accordance with the relevant rules of the organization. Mr. Ushakov seemed to think that the differences that existed between States and international organizations were not reflected in articles 48 to 50. He would not be opposed to an article on fraud, and in particular fraud by an international organization, provided that such fraud was first and foremost the act of the organ empowered to conclude treaties. If the author of the fraud was not the organ entitled to conclude treaties, some reference should at least be made in the commentary to the restrictions imposed by article 46 in cases of action *ultra vires.*

23. Sir Francis VALLAT said that one point of principle had to be borne in mind: the mere fact that an act was wrongful did not necessarily make it *ultra vires* with respect to the international organization. It would be most unfortunate if the commentary were so

[6] See 1553rd meeting, paras. 13 *et seq.*

[7] See *Yearbook... 1978,* vol. II (Part Two), p. 78, document A/33/10, chap. III, sect. B, 1, article 3.

[8] *Ibid.*

[9] See 1550th meeting, para. 22.

phrased as to suggest that, because an act was wrongful, it automatically became *ultra vires*—a view that should be firmly rejected by the Commission. If the board of an international finance organization had certain powers to make loans and to enter into agreements with States for that purpose, it was not inconceivable that, acting within those powers, it might still commit a fraudulent act.

24. There had been a famous case in the United Kingdom involving the London General Omnibus Company, at a time when omnibuses had been horse-drawn vehicles. An accident had occurred because the horses had bolted. The court had drawn a distinction between cases in which a driver drove badly—for example, by making excessive use of the whip—on his proper route, and cases in which a driver did not take the proper route and, as the saying was in English law, went "on an expedition of his own". In the latter instance, the company would not, *prima facie,* be responsible for acts committed by the driver.

25. That example was perhaps somewhat elementary, but it illustrated the kind of distinction that could be drawn with regard to international organizations. Where an official representing an international organization committed a fraudulent act in the course of his duties, the organization had no right to allege that the act was *ultra vires.* On the other hand, if the official went "on an expedition of his own", an act committed by him might well be *ultra vires.* The Commission should note in the commentary that there might be few instances in which an international organization could commit a fraudulent act within the exercise of its competence, but it should none the less allow for such a possibility.

26. The CHAIRMAN suggested that the Commission should decide to refer draft article 49 to the Drafting Committee for consideration in the light of the discussion.

It was so decided. [10]

ARTICLE 50 (Corruption of a representative of a State or of an international organization)

27. The CHAIRMAN invited the Special Rapporteur to introduce draft article 50 (A/CN.4/319), which read:

Article 50. Corruption of a representative of a State or of an international organization

If the expression by a State or an international organization of consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State or negotiating organization, the State or organization may invoke such corruption as invalidating its consent to be bound by the treaty.

28. Mr. REUTER (Special Rapporteur) said that draft article 50 raised the question whether corruption could be the act of an international organization. Although cases of corruption by States were relatively numerous, there were few judicial decisions on the subject, and none on corruption by international organizations. Under a fairly broad definition of corruption, it was easy to imagine cases involving States, but which could also involve organizations. For instance, in negotiations on the withdrawal of reservations to a treaty, money might not necessarily be offered, but a promise might be given to nominate someone for a post or to support his election.

29. In considering article 50, the Commission would probably come up against an objection raised by Mr. Ushakov in regard to article 47 (1553rd meeting). When drafting articles 7 *et seq.*,[11] the Commission had had to resolve a terminological problem. The expressions "full powers", "ratification" and "expression of consent" had been replaced, for international organizations, by the expressions "powers", "formal confirmation" and "communication of consent". To take those differences into account, he had had the choice of dividing article 50 of the Vienna Convention into two parts, which would have made the text of the article under consideration clumsy, or of resorting to subtlety of drafting, which he had preferred. That was why he had opted for the formula "if the expression by a State or an international organization of consent" rather than for the formula "if the expression of a State's or international organization's consent".

30. Mr. USHAKOV pointed out that in article 50 the word "representative" meant a person empowered to bind a State or an international organization by a treaty, but he did not think the Commission had envisaged that possibility in regard to international organizations. Article 7, paragraph 4, in fact provided for the case in which "a person is considered as representing an international organization for the purpose of communicating the consent of that organization to be bound by a treaty". Thus whereas the representative of a State could "express" the consent of the State to be bound by a treaty, the representative of an international organization could only "communicate" the consent of the organization. In using the term "communicate" instead of the term "express" with reference to international organizations, the Commission had wished, as stated in paragraph (11) of its commentary to article 7, to make it clear that

the consent of an organization to be bound by a treaty must be established according to the constitutional procedure of the organization and that the action of its representative should be to transmit that consent; he should not, at least in the present draft article, be empowered to determine by himself the organization's consent to be bound by a treaty.[12]

31. The distinction made between States and international organizations in regard to the expression of con-

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

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

[12] *Yearbook...* 1975, vol. II, p. 176, document A/10010/Rev.1, chap. V, sect. B, 2, article 7, para. (11) of the commentary.

sent to be bound by a treaty was explained by logic and practice. A State could authorize a person in advance to conclude a treaty on its behalf without knowing the exact content of the treaty, because the representative of a State could keep in constant contact with the State to inform it of the progress of the negotiations and receive its instructions. In the case of an international organization, on the other hand, an organ that did not meet on a permanent basis, such as the Security Council or the General Assembly of the United Nations, could not authorize a person to conclude a treaty of which it did not yet know the content, because it was for that organ alone to decide whether the organization should be bound by the treaty. If the Secretary-General of the United Nations could sign a treaty on behalf of the Organization, it was not in his personal capacity but in his capacity as an organ of the United Nations. That was why article 7 did not provide that a person could be authorized to bind an international organization definitively. The same problem was also raised in article 47 and article 51.

32. Article 50 raised another problem that had also arisen in connexion with article 49: how could an international organization proceed to corrupt the representative of a State or of another international organization?

33. Mr. TABIBI supported draft article 50 and would recommend that it be referred to the Drafting Committee. He regarded the whole of section 2, on invalidity of treaties, as particularly important in view of the need to protect both States and international organizations against vitiation of consent. The growing involvement of organizations in the treaty-making process meant increasing opportunities for corruption.

34. Mr. SCHWEBEL said Mr. Ushakov's remarks prompted the thought that computers did not express the consent of an international organization to be bound by a treaty; even if they did, they would presumably be programmed by human agency. A person acted on behalf of an international organization to express consent or to communicate it; a person could also act on behalf of an organ and, in the case of the Secretary-General of the United Nations, the person and the organ were in a sense one and the same.

35. He appreciated the point behind the theory developed by Mr. Ushakov, but considered that it had a fatal flaw in that it did not square with the facts. By way of illustration, he referred the Commission to the exchange of letters constituting an agreement between the United Nations and the Government of Cyprus concerning the status of the United Nations Peace-Keeping Force in Cyprus.[13] Members would note that at no point in the two letters exchanged between the Secretary-General and the Minister for Foreign Affairs of Cyprus had any reference been made to ratification by the Security Council or the General Assembly. As far as he could see, the agreement had been regarded at the time, and was most probably still regarded, as one entered into by the Secretary-General and binding on the United Nations and the Government of Cyprus.

36. Mr. REUTER (Special Rapporteur) noted that Mr. Ushakov had raised two different questions: that of corruption by an international organization and that of corruption of the representative of an international organization. With regard to the first question, Mr. Ushakov had put forward the same considerations as for the preceding article; with regard to the second, he had invoked considerations both of vocabulary and of substance.

37. With regard to vocabulary, he thought that the term "communicate", provisionally adopted—rightly or wrongly—in article 7 in regard to the consent of international organizations, should not again be called in question. If it were, it would be necessary to abandon the relatively simple formula he had proposed for draft article 50 and adopt more complicated wording that dissociated the expression of consent, for States, from the communication of consent, for international organizations.

38. With regard to the substance of the question, he did not agree with Mr. Ushakov. The passage of the Commission's commentary to article 7 cited by Mr. Ushakov contained a very important restriction, expressed in the phrase "at least in the present draft article". The Commission had considered that under general international law there were certain persons—heads of State, heads of government and ministers for foreign affairs—who, by virtue of their functions, and without having to produce full powers, could express the consent of a State to be bound by a treaty. But since for the time being there was no general practice of international organizations, the Commission had not thought it possible, in the case of such organizations, to set out a general rule giving equivalent authority to persons.

39. Nevertheless, although there was no general practice common to international organizations, each organization had its own practice. Thus while an international organization could not authorize a representative to bind it by a treaty by virtue of general practice, it could do so by virtue of its own practice, and it was on that point that he disagreed with Mr. Ushakov. Certain international organizations sometimes, in fact, gave a representative powers that went beyond merely automatic transmission of consent.

40. He believed that the practice of each international organization should be respected and that international organizations should not be prevented from developing as they saw fit by the adoption of rules that were too inflexible. From the drafting point of view, he thought it would be wiser to separate the expression of consent by a State from the communication of consent by an international organization by indicating, in the commentary, how the word "com-

[13] United Nations, *Juridical Yearbook, 1964* (United Nations publication, Sales No. 66.V.4), pp. 40–50.

municate" had been interpreted by certain members of the Commission.

41. Mr. USHAKOV believed that to say that a person could be authorized by an international organization to bind it by a treaty would be contrary to the practice of international organizations and their constituent instruments, since it would permit persons to replace the competent organs of organizations and possibly to act against the will of those organs.

42. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 50 to the Drafting Committee.

It was so decided. [14]

The meeting rose at 1 p.m.

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

1558th MEETING

Friday, 22 June 1979, at 10.15 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Ushakov, Sir Francis Vallat.

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 51 (Coercion of a representative of a State or of an international organization)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article 51 (A/CN.4/319), which read:

Article 51. Coercion of a representative of a State or of an international organization

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

2. Mr. REUTER (Special Rapporteur) said that article 51 called for the same comments as article 50. It followed from the discussion on the latter text (1557th meeting) that article 51 should also be divided into two paragraphs, one dealing with States and the other with international organizations.

3. Mr. USHAKOV considered that article 51 raised the same problem as article 50. He therefore proposed that it be referred to the Drafting Committee.

4. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 51 to the Drafting Committee.

It was so decided. [1]

ARTICLE 52 (Coercion of a State or of an international organization by the threat or use of force)

5. The CHAIRMAN invited the Special Rapporteur to introduce draft article 52 (A/CN.4/319), which read:

Article 52. Coercion of a State or of an international organization by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

6. Mr. REUTER (Special Rapporteur) said that, apart from its title, draft article 52 reproduced without change the corresponding text of the Vienna Convention. [2]

7. Mr. USHAKOV wondered what was meant by "the threat or use of force" in the case of a treaty between two or more international organizations. He also wondered what was meant by the word "threat": was it the armed threat contemplated in the Vienna Convention, or any kind of political, diplomatic or economic pressure? In any case, he did not see how reference could be made to one international organization coercing another by the threat or use of force.

8. He therefore proposed that draft article 52 be divided into two paragraphs, one dealing with treaties between States and international organizations and the other with treaties between two or more international organizations.

9. Sir Francis VALLAT shared Mr. Ushakov's misgivings in so far as the United Nations Charter had in fact been drafted to govern relations between States, not relations between international organizations, and was worded accordingly. On the other hand, if regard were had to the principles of international law rather than of the Charter as such, there would seem to be a very real need for a provision on the lines of draft article 52, to cover the possibility of an international organization using force contrary to those principles.

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

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