

Document:-
A/CN.4/SR.1590

Summary record of the 1590th 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:-
1980, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

resumes its work on 5th May, 1980 hold elections to fill this causal vacancy.

At the same time the Government of the D.R.A. proposes as candidate for election to this post Dr. Mohammad Akbar *Kherad* the curriculum vitae of whom is attached.

(Signed) Shah Mohammad DOST
Minister of Foreign Affairs of the
Democratic Republic of Afghanistan

47. Mr. Ushakov stated that, under article 3 of the Statute of the Commission, the members of the Commission were elected by the General Assembly from a list of candidates nominated by the Governments of States Members of the United Nations. Under article 2 of the Statute, each member should be a national of one State and, in the event of dual nationality, a candidate would be deemed to be a national of the State in which he ordinarily exercised civil and political rights. Moreover, article 8 provided that the electors should bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that, in the Commission as a whole, representation of the main forms of civilization and of the principal legal systems of the world should be assured. In the case of Mr. Tabibi, the conditions prescribed by article 8 of the Commission's Statute were no longer fulfilled, with all that that implied. That was the view he wished to express on the matter.

48. He requested that the text of the letter from the Minister of Foreign Affairs of the Democratic Republic of Afghanistan which he had just read out should be reproduced in the summary record of the meeting and that his opinion should be reflected in the Commission's report.

49. The CHAIRMAN said that the letter read out by Mr. Ushakov raised a question which related to the interpretation of the Commission's Statute and which might give rise to controversy. Since Mr. Ushakov had raised the matter referred to in the letter as a point of order, the members of the Commission now had to decide whether to interrupt their work on the topic under consideration and how to deal with the statement made by Mr. Ushakov.

50. Mr. TSURUOKA proposed that discussion of the question whether the Commission could deal with the matter raised by Mr. Ushakov should be postponed.

51. Sir Francis VALLAT seconded the proposal made by Mr. Tsuruoka.

52. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission decided to postpone consideration of the matter raised by Mr. Ushakov.

It was so decided.

The meeting rose at 6 p.m.

1590th MEETING

Tuesday, 13 May 1980, at 10.10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Diaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/327)

[Item 3 of the agenda]

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

ARTICLE 66 (Procedures for judicial settlement, arbitration and conciliation)¹ (*concluded*)

1. Mr. FRANCIS said he agreed with the substance of draft article 66, in which the Special Rapporteur had skilfully adapted the text of article 66 of the Vienna Convention² to the case where several States and one or more international organizations were parties to a treaty.

2. Subparagraph 2 (*a*) of the draft article dealt with the case where, in the event of an objection made by or addressed to an international organization, any party to the dispute could ask a body competent under Article 96 of the Charter to apply to the International Court of Justice for an advisory opinion. The question as to which body such a request should be addressed had been brought into sharp focus at the preceding meeting by Sir Francis Vallat, who had pointed out that the General Assembly and the Security Council had broader competence than other bodies because they could request the Court to give an advisory opinion on any legal question. He (Mr. Francis) was of the opinion that subparagraph 2 (*a*) should also enable international organizations outside the United Nations family to apply to the Court for advisory opinions through the competent United Nations body, in order to encourage the development of the jurisprudence of the organizations concerned and to strengthen the peace-making role which the United Nations could play in its relations with other international organizations.

3. He agreed with the view that the advisory opinions of the International Court of Justice should be binding on the parties to the treaty. States might, of course,

¹ For text, see 1589th meeting, para. 1.

² See 1585th meeting, foot-note 1.

find that view somewhat daunting at first, but they should bear in mind the fact that, had a dispute arisen under similar circumstances between States only, a contentious issue would arise under subparagraph 1(a) for a decision by the Court in respect of a rule of *jus cogens*; that decision would, in any case, be binding under Article 59 of the Court's Statute. Although international organizations belonging to the United Nations family would probably not be reluctant to regard the advisory opinions of the Court as binding, the same might not be true of organizations outside the United Nations family, which should, however, be required to accept the binding nature of the Court's opinions as the price they had to pay for being allowed to request such opinions.

4. Lastly, he expressed support for the principle in paragraph 2 (b) of draft article 66.

5. Mr. BARBOZA said that, even though draft article 66 was in square brackets, it offered a number of viable options which the Commission had been able to consider and which States would be able to take into account in expressing their views. The main difficulties to which the draft article gave rise were difficulties of principle, as well as difficulties of a political or procedural nature. It also gave rise to problems of a drafting nature, which could be dealt with by the Drafting Committee.

6. In discussing draft article 66, the Commission must remember that it was restricted by, and could not stray too far from, the system established in article 66 of the Vienna Convention, which was not entirely perfect because it provided that a dispute relating to a peremptory norm of general international law should be submitted to the International Court of Justice unless the parties by common consent agreed to submit the dispute to arbitration. In his opinion, arbitration was not the best procedure for the settlement of a dispute concerning a rule of *jus cogens*, because a dispute of that kind could affect the interests of the entire international community. In view of its composition and its place in the international hierarchy, the International Court of Justice offered better guarantees than arbitration for the settlement of disputes of that kind.

7. The Commission had, however, to conform to the system established by the Vienna Convention, even in trying to solve problems like that raised in draft article 66, subparagraph 2(a), which provided that an international organization party to a treaty could indirectly request an advisory opinion from the Court. In that connexion, several members of the Commission had pointed out that it was not at all certain that the body competent under Article 96 of the Charter to request such an advisory opinion would, in fact, wish to make such a request of the Court. If that body was unwilling to do so, the parties to treaties like those covered by the draft articles would be more likely to submit their disputes to arbitration. Indeed, because of the constraints imposed by article 66 of the Vienna Conven-

tion draft article 66 seemed to give the preference to arbitration, with the imperfections inherent in that procedure for the settlement of disputes relating to norms of *jus cogens*. He realized, however, that legal solutions were often limited by political considerations and that the ones arrived at were often the best possible in the circumstances. Accordingly, he hoped that the Commission and the Drafting Committee would have further opportunities to consider draft article 66.

8. Mr. TABIBI said that the draft article under consideration would certainly contribute to the stability of treaties and of relations between States and international organizations. The article took account of the situation of international organizations, which were not, of course, covered in article 66 of the Vienna Convention. He therefore supported draft article 66, which should be removed from square brackets and referred to the Drafting Committee.

9. Mr. ŠAHOVIĆ, supplementing the statement he had made at the preceding meeting, said he agreed with other members of the Commission that all international organizations should be afforded an equal opportunity to request advisory opinions concerning the application or the interpretation of article 53 or article 64. The question should be considered in the light of the legal rules embodied in the Vienna Convention and in the Charter of the United Nations. Article 96 of the Charter, which regulated the right of international organizations to request advisory opinions, constituted a guarantee against possible abuses of the exercise of that right. That system was generally satisfactory and required no amendment. The Vienna Convention indicated the place to be occupied in international law by *jus cogens*, and required all parties to treaties to respect the peremptory norms of general international law. A distinction could not therefore be made between the parties to treaties, and certain international organizations could not be placed in a position of inferiority in relation to States or the United Nations so far as the right to request advisory opinions was concerned. It was thus, in the final analysis, necessary to follow the solutions proposed by the Special Rapporteur, who had shown that he was aware of the difficulties which would arise if the Commission failed to take account of the provisions of the Vienna Convention and of Article 96 of the Charter.

10. As he had stated at the preceding meeting, he was in favour of deleting the reference in subparagraph 2 (a) to the binding nature of advisory opinions, which was a very complex problem. Treaties in respect of which the Court could be asked for an advisory opinion could either be treaties between States and international organizations or treaties between international organizations. The situation might be more delicate in the first case than in the second because, in the second, only international organizations would be involved, whereas in the first an international organization might

request an advisory opinion on a point of *jus cogens*, and the opinion would then be binding on States. In his own view, at the current stage of the development of the law of treaties, it was not necessary to go that far in the study of the problem. It would be better to rely on practice, in whose evolution both States and international organizations would take part. What mattered was that international organizations should be able to obtain advisory opinions. It should also be noted that the draft was generally oriented towards greater equality between international organizations and States and that nothing should be done to hamper the progress that had already been made in that direction.

11. In conclusion, he said that he was in favour of the solutions proposed by the Special Rapporteur in subparagraph 2 (a). Perhaps the commentary should refer to the various criticisms which had been made of that provision, so that Governments might have a general idea of the situation. Once the Commission had received the comments of Governments, it might lean towards the adoption of other solutions.

12. Mr. DÍAZ GONZÁLEZ said that the square brackets should be removed from draft article 66 and that it should be referred to the Drafting Committee, for, as the Special Rapporteur had pointed out, the Commission should not refrain from presenting a draft article on the ground that the article was bound to give rise to a great many legal and political problems.

13. In that connexion, he noted that, if it had been difficult for the participants in the United Nations Conference on the Law of Treaties to reach a consensus on article 66, which related exclusively to subjects of international law such as States, it would be even more difficult to reach agreement on draft article 66, which related both to States and to international organizations.

14. In his opinion, draft article 66 was one which reflected the parallel between the growing legal capacity of international organizations and the progressive development of international law. It was perhaps because of that parallel that Article 33 of the Charter of the United Nations, on the pacific settlement of disputes, referred only to States, whereas Article 96 of the Charter referred expressly to international organizations and empowered them to ask the International Court of Justice for advisory opinions.

15. Draft article 66 consisted of two parts: one based on article 66 of the Vienna Convention and dealing only with relations between States, and another devoted exclusively to international organizations, which, perhaps because of the innovation it introduced by providing that international organizations could request advisory opinions from the International Court of Justice, had given rise to a lengthy discussion in the Commission. The basis for the second part of the article was thus Article 96 of the Charter, which stated in rather vague terms that organs of international

organizations could request advisory opinions from the Court. The problem in his mind was not only that, under draft article 66, subparagraph 2 (a), any one of the parties to a dispute could ask one of the bodies competent under the terms of Article 96 of the Charter to request an advisory opinion from the International Court of Justice, but also that it would be necessary to determine on what basis that body could be authorized to request such an opinion.

16. Mr. USHAKOV, referring again to the question he had asked the Special Rapporteur at the preceding meeting, said that the proviso "unless the parties by common consent agree to submit the dispute to arbitration", which was contained in subparagraph (a) of paragraphs 1 and 2 and which reproduced the wording of the Vienna Convention, was strange. By common consent, the parties were free, surely, to agree on any means for the settlement of disputes, and not only on arbitration. If they chose conciliation, it was quite normal that they should not be able to initiate any other means for the settlement of the dispute for so long as the consultation procedure had not been completed. Article 66 could not be interpreted to mean that not until on the expiry of 12 months after an objection had been made would the parties be able to resort to arbitration, and to arbitration only. It was thus the Vienna Convention which was not an entirely satisfactory starting point. Although the Commission had to follow the Convention as closely as possible, there was no reason why it should not decide to drop the words "unless the parties by common consent agree to submit the dispute to arbitration" from the article under consideration.

17. Mr. REUTER (Special Rapporteur), summing up the debate, said that the comments of members of the Commission could be divided into three broad categories—those relating to substance, those relating to procedure and those relating to drafting. It would be for the Drafting Committee to follow up the comments on drafting.

18. The members of the Commission had been even more concerned with matters of procedure than with matters of substance. Members seemed to be generally in favour of retaining draft article 66, although one of them had expressed doubts on one part of the solutions proposed. Many members even considered that the square brackets should be deleted. They felt that the corresponding article of the Vienna Convention played an important role. Some members had stressed that *jus cogens*, the existence of which was recognized by the Vienna Convention, was so important that failure to provide for any special procedure in the draft would be tantamount to according it a purely moral significance.

19. Like several members of the Commission, he believed that draft article 66 could be referred to the Drafting Committee. Nevertheless, it might be better that the Drafting Committee should not consider it until after the annex referred to in the draft article had been discussed.

20. With regard to substance, Mr. Šahović had suggested that the reference to the binding nature of advisory opinions should be deleted. The Drafting Committee or the Commission might come round to that view, if only because the ideal of placing international organizations on the same footing as States was quite unattainable. Even if the binding nature of advisory opinions was expressly stipulated, inequalities would still continue to exist in certain procedures. In the final analysis, the Commission was hampered by the formalism of the Statute of the International Court of Justice and the Vienna Convention. However, all members were convinced that, where a State or an international organization relied on *jus cogens*, the situation would be very serious because it would concern the entire international community. Consequently, it was not of paramount importance to state specifically that advisory opinions would have a binding character.

21. Personally, he subscribed to Mr. Ushakov's criticism of the passage "unless the parties by common consent agree to submit the dispute to arbitration", which appeared in the Vienna Convention. As Special Rapporteur, he wondered how that imperfection could be remedied. It would be for the Drafting Committee to find a solution, not only with regard to problems which might arise between States but also with regard to those which might emerge in the course of a procedure to which an international organization was a party. Furthermore, given the nature of *jus cogens*, it would be paradoxical to leave a matter involving a peremptory rule of general international law to be resolved by an arbitration procedure. How, in such a case, could States resort to an arbitration procedure without affording the other parties concerned an opportunity to intervene? In the Statute of the International Court of Justice, provision was made for intervention, whereas in arbitration proceedings, questions of procedure were determined by the parties which were not bound to make provision, in their agreement to arbitrate, for the possible intervention of others. Since, however, any question of *jus cogens* was of concern to the entire international community, it might—if referred to arbitration—be downgraded to a mere private problem, which was far from satisfactory.

22. Another question of substance had been described as one of drafting: whereas paragraph 1 referred to a certain type of treaty, paragraph 2 did not specify what treaties it covered. Nor was it specified in paragraph 2 that it applied also to a State which raised an objection against a claim made by an international organization. Such would be the case if an international organization relied on one of the articles of part V and a State raised an objection. Another comment—which really concerned drafting—had drawn attention to the asymmetrical structure of draft article 66, in that the Special Rapporteur envisaged the hypothesis of a bilateral dispute, while on occasion broadening the scope of that hypothesis.

23. No member of the Commission had speculated on the problems to which the operation of paragraphs 1 and 2 of draft article 66 might give rise. It was possible, for example, to conceive of a multilateral treaty to which at least two States, and at least one international organization, were parties. If, in such a case, one of the States invoked a ground for invalidating the treaty or suspending its operation, another State might set in motion one of the procedures provided for in paragraph 1 of article 66. However, the international organization party to that treaty could itself set in motion one of the procedures provided for in paragraph 2. In his opinion, there was a serious technical defect which ought to be remedied. It should be decided that, at least in the case of *jus cogens*, as soon as a State brought a dispute before the International Court of Justice, the other procedures were suspended. The other States parties to the dispute would then be able to intervene, as provided in the Statute of the Court. Although international organizations were not qualified to intervene in the same way, under Article 34 of the Court's Statute they could submit information. In that special situation, the Court would give a ruling which would have the force of *res judicata* between the two States but would not bind the international organization. In the final analysis, such a consequence was not particularly serious, since any decision by the Court on a question of *jus cogens* implied acceptance by the international community as a whole. A decision accepted by all States would also be accepted by international organizations. The Commission had expressed an opinion on that point earlier, when it had discussed the question of universal customary rules and had taken the view that, in that regard, international organizations were indistinguishable from States.

24. For the purposes of the article under consideration, international organizations could be divided into three categories—the United Nations, the specialized agencies entitled to request an advisory opinion, and the other organizations. Mr. Francis had expressed the view that means should be found of enabling the last-mentioned organizations to request advisory opinions. Another issue that had been raised was whether it was right that the specialized agencies should suffer some kind of *capitis deminutio* by the revocation of their right to request advisory opinions. It was conceivable that the specialized agencies communicated to the Secretary-General their intention to request an advisory opinion, and that consultations were then held to determine whether the question was sufficiently serious to be brought to the attention of the Security Council. In some cases, the issue would be not so much whether the request for an advisory opinion should be submitted by the General Assembly rather than by a specialized agency as whether a matter was so serious that it had to be referred, first, to the Security Council. Under the Charter, the Secretary-General was empowered to seize the Security Council with a question. If the Commission opted for the

solution involving application to the Secretary-General, the Secretary-General could then seize the Security Council with the question, with the recommendation that an advisory opinion should be requested from the International Court of Justice. While there was no provision in the Charter enabling the Secretary-General to place any matter whatever before the General Assembly, rule 13 (g) of the Rules of Procedure of the General Assembly nevertheless empowered him to include in the provisional agenda of an Assembly session any item he deemed it necessary to put before it. In that respect, therefore, there was no technical difficulty.

25. In conclusion, he wished to submit a purely provisional suggestion which would involve a departure, not from the substance, but from the structure of the Vienna Convention. In view of the lack of co-ordination between paragraphs 1 and 2 of the article under consideration, it would surely be reasonable, he thought, to refer to the conciliation procedure in a general clause at the beginning of draft article 66. Such a clause would apply equally to States and international organizations, and perhaps even in the event of an objection being raised by one State against another without an international organization party to the treaty being involved. That solution would mean that the Secretary-General would become involved. It would then be stipulated that, in the event of only two States being concerned, the clause in question would not prevent one of them from submitting a request to the International Court, in which case, all other procedures would cease. It would then be necessary to refer to the possibility of a request being made for an advisory opinion. As the conciliation procedure would be mentioned first, the intervention of the Secretary-General would already be provided for in the event of a request for an opinion. Such a solution would also dispose of the question of arbitration, a procedure which should be retained for States but might be dropped in the case of international organizations. It would also be consistent with a suggestion which a number of members of the Commission had not ruled out, namely that provision should be made for a general conciliation procedure. The inclusion of a reference to conciliation at the beginning of article 66 could be taken as an invitation to the General Assembly to make provision for a general conciliation procedure for the settlement of disputes concerning any provision of the draft.

26. Mr. FRANCIS said it had been possible to reach agreement on article 66 of the Vienna Convention precisely because a reference to arbitration had been included in that article in deference to the views of those delegations that had opposed the compulsory reference to the International Court of Justice of disputes arising out of the Convention. He therefore wondered whether the omission of such a reference from the draft articles might not violate the spirit of the Convention.

27. With regard to the Special Rapporteur's suggestion that draft article 66 should open with a provision for a conciliation procedure, he thought that little harm would be done if all that was involved was transposing the corresponding provisions of the Vienna Convention. He would, however, have certain reservations if the draft article were to be cast in such a way that the conciliation procedure took priority over arbitration or a reference to the International Court of Justice.

28. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission wished to refer draft article 66 to the Drafting Committee, together with a recommendation that the square brackets around the draft article should be removed.

*It was so decided.*³

ARTICLE 67 (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty)

29. The CHAIRMAN invited the Special Rapporteur to introduce draft article 67 (A/CN.4/327), which read:

Article 67. Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty

1. The notification provided for under article 65, paragraph 1, must be made in writing.

2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If an instrument emanating from a State is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers. An instrument emanating from an international organization shall be accompanied by the production of the powers of the representative of the organization communicating it.

30. Mr. REUTER (Special Rapporteur) said that draft article 67 established procedural guarantees for all acts having as their object to declare invalid, terminate, withdraw from or suspend the operation of a treaty.

31. The guarantees in the corresponding provision of the Vienna Convention related to three points. First, the acts declaring invalid, terminating, withdrawing from or suspending the operation of a treaty had to be in written form. The Vienna Convention even spoke of an instrument, i.e. a written document clothed with a certain solemnity. Secondly, the instruments in question had to be communicated to all the other parties. And thirdly, whereas the Convention allowed considerable latitude in the conclusion of treaties—apart from the case of the Head of State, there was no

³ For consideration of the text proposed by the Drafting Committee, see 1624th meeting, paras. 30 *et seq.*

categorical rule regarding the powers of the representative of the State who concluded a treaty—article 67 was more demanding where the issue was that of invalidating a treaty. The explanation was that the conclusion of a treaty was intrinsically a procedure characterized by common practices from which it was possible to infer the will of the parties, whereas the declaration invalidating or suspending the operation of a treaty was a unilateral act. That was why article 67 of the Convention provided that if the instrument was not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it might be called upon to produce full powers.

32. The guarantees in draft article 67 included the requirement that the notification had to be in writing and that the instrument had to be communicated to the other parties. The only problem which arose concerned the status of the representatives of an international organization communicating the instrument in question. In draft article 7 as adopted by the Commission,⁴ paragraph 4 stated:

A person is considered as representing an international organization for the purpose of communicating the consent of that organization to be bound by treaty if:

(a) he produces appropriate powers; or

(b) it appears from practice or from other circumstances that that person is considered as representing the organization for that purpose without having to produce powers.

If the intention was that, in the case of international organizations, the denunciation, suspension or declaration of invalidity of a treaty should be made more difficult than its conclusion—the solution for treaties between States that was adopted by the Vienna Convention—it should be stipulated that the instrument had to be accompanied by the production of the powers of the representative of the organization who communicated it. That was the solution which he proposed. Paragraph 2 of draft article 67, therefore, drew a distinction between an instrument emanating from a State, whose representative might be called upon to produce full powers, and an instrument emanating from an international organization, which had to be accompanied by the production of the powers of its representative. The other parties to the treaty should have that guarantee, for not all international organizations had an agent with general authority to represent them.

33. Mr. USHAKOV inquired why paragraph 2 of article 67 of the Vienna Convention referred to paragraphs 2 or 3 of article 65, whereas it was paragraphs 1 and 2 of that article which spoke of the suspension or invalidity of treaties.

34. Moreover, the question of the procedure applicable to objections was not settled either in the Vienna Convention or in the draft under consideration. He

thought that objections should be placed on the same footing as the declaration of invalidity or suspension and should conform to the same procedure, namely, that they should be expressed in writing and communicated to the other parties.

35. Mr. QUENTIN-BAXTER said he agreed entirely that there should be no implicit dispensation from the terms of draft article 67 in the case of an international organization.

36. He would point out that in article 7 the expression “full powers” appeared in reference to a State, whereas “appropriate powers” was the expression used in the case of an international organization. It would therefore seem advisable, for the sake of symmetry, to adopt the latter expression in draft article 67 in the context of an international organization.

37. Also, he noted that, in the English text, both the second and third sentences of paragraph 2 of the draft article referred to “an instrument”; in the French text, the definite article was used. Since it should be clear that, in both instances, the instrument had been referred to in the preceding sentence, he suggested that the definite article should be used in the English text as well.

38. He further suggested that the third sentence be reworded in its entirety to read: “If the instrument emanates from an international organization the representative communicating it shall produce appropriate powers”.

39. Mr. REUTER (Special Rapporteur) explained in reply to Mr. Ushakov’s comments that the procedure provided for in the Vienna Convention actually comprised several acts: first, a notification, for which no other formal condition was prescribed than that it should be in writing, then the objection, which was not subject to any formal condition. At that point, nothing was as yet final; as in a lawsuit, claims and counter-claims had been submitted. Not until later did the formal act take place, the declaration that article 67, more specific than article 65, mentioned in its paragraph 2. In a way, that act corresponded to a ruling by a court; it was a juridical title which the State conferred on itself. It was in connexion with that unilateral act of the State that the Convention spoke of an instrument and the production of powers. The reason why it did not require as much solemnity for the notification and objection was that the dialogue was still going on between the parties.

40. Mr. CALLE Y CALLE said that, under paragraph 1 of draft article 67 as he read it, any party to a treaty, whether a State or an international organization, could make a notification pursuant to paragraph 1 of draft article 65,⁵ subject to the sole condition that such notification be in writing.

⁴ See 1585th meeting, foot-note 3.

⁵ For text, see 1588th meeting, para. 30.

41. Paragraph 2 of the draft article, which dealt with cases where objections had been raised in accordance with the relevant procedure, then drew a distinction between States and international organizations, which he understood in the following way. In the case of a State, the instrument of notification, signed by the Head of State, Head of Government or Minister for Foreign Affairs, had to emanate from the State and had to be communicated to the other parties to the treaty. Alternatively, it could be communicated by the representative of the State, who might be required to produce full powers. In the case of international organizations, the production of powers was mandatory. In other words, the instrument had to emanate from the competent body of the international organization, and hence to comply with its internal rules, and full powers had to be produced at the time when the instrument of notification was communicated. That interpretation was borne out by article 7 of the draft, which provided for two alternatives: the second of those alternatives waived, in the cases covered by paragraph 4 (b) of the article, the production of the powers of representatives of international organizations. Thus, in such cases, the representative of an international organization could signify its consent to be bound by a treaty without producing powers. When, however, such a representative acted as intermediary by communicating a decision or an instrument relating to the procedure set in motion after an objection, he had to produce powers.

42. Mr. REUTER (Special Rapporteur) said that the provision was concerned with the act declaring invalid, terminating, withdrawing from or suspending the operation of the treaty—a decision which was the organization's own—and not with a notification or objection.

43. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer draft article 67 to the Drafting Committee.

*It was so decided.*⁶

ARTICLE 68 (Revocation of notifications and instruments provided for in articles 65 and 67)

44. The CHAIRMAN invited the Special Rapporteur to introduce draft article 68 (A/CN.4/327), which read:

Article 68. Revocation of notifications and instruments provided for in articles 65 and 67

A notification or instrument provided for in articles 65 or 67 may be revoked at any time before it takes effect.

45. Mr. REUTER (Special Rapporteur) said that article 68 of the Vienna Convention reflected the desire

to allow the State which had notified the other States of its intention to contest the validity of a treaty, to terminate it, to withdraw from it or to suspend its operation, or which had made a declaration under paragraph 2 of article 67, to change its mind and to revoke the notification or instrument before they had taken effect. There was no reason for not adopting a similar article concerning treaties to which international organizations were parties, and draft article 68 did not differ from the corresponding article in the Vienna Convention.

46. The draft article called for only one comment. Article 68 of the Vienna Convention did not lay down any formal condition, either for revoking the notification or for revoking the declaratory instrument. The question was whether the Commission should observe the same silence as regards treaties to which international organizations were parties. He had thought that, both with respect to States and with respect to international organizations, the same forms should be followed as in the case of notification and declaration. His view was open to the criticism that it should be made easier to drop the claim to terminate or suspend the operation of a treaty. However, if one followed that argument, one would have to differentiate between States and international organizations, and the trend of opinion was towards prescribing more stringent conditions for such organizations.

47. Mr. ŠAHOVIĆ said that, for the guidance of the members of the Commission and of States, it would be helpful to expand the commentary on draft article 68, in order to show what might be the consequences of approving its wording.

48. Mr. CALLE Y CALLE said that, in the case of States, notice of revocation of a notification or instrument might issue from a body subordinate to that from which such notification or instrument might have emanated, namely, the Head of State. In the case of an international organization, however, once a decision to revoke the instrument had been taken, that decision would have to be communicated either through its principal organ or through its representative, accompanied in both cases by appropriate powers. Consequently, it would be advisable to make it quite clear in the commentary that all such notifications and instruments should be revoked in the form in which they had been issued and subject to the same conditions as those laid down in draft article 67.

49. The CHAIRMAN, noting that there were no further comments, invited the Commission to refer draft article 68 to the Drafting Committee.

*It was so decided.*⁷

The meeting rose at 1 p.m.

⁷ *Idem.*

⁶ For consideration of the text proposed by the Drafting Committee, see 1624th meeting, paras. 30 *et seq.*