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Summary record of the 1647th meeting

Topic:
Treaties concluded between States and international organizations or between two or more international organizations

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attention to a number of agreements, mentioned in footnote 30 to his report (A/CN.4/341 and Add.1), for which the General Assembly had established a special conclusion procedure. It provided that the agreement had legal effect only with the General Assembly's "concurrence", but the word "concurrence" was in fact merely a clumsy way of designating genuine confirmation. He proposed that the expression "act of formal confirmation" should be retained, and pointed out that the Vienna Convention spoke of "confirmation", in the general sense.

64. He proposed that draft article 10 should be amended as indicated in paragraph 42 of his report, by using the expression "participants in the drawing-up", which was not new, as it was already used in article 9. Such an innovation might none the less raise a question the settlement of which had been deferred, namely, whether the concept of "participants in the drawing-up" need be defined in article 2, paragraph 1.

65. He himself was not in favour of including such a definition, which, he thought, would be justified only if it made clear that the words meant only those who could participate in the drawing-up of the treaty until the end of the process (excluding experts, for example). That restriction appeared to be self-evident, however, and it would be for the Commission to decide on the value of such a definition.

66. Mr. USHAKOV said that the concept of "participants in the drawing-up" was not defined in the Vienna Convention, and the Commission would therefore meet with difficulties if it tried to define it; for the Commission would be obliged to define a State and an international organization participating in the drawing-up of a treaty, in other words, to interpret the Vienna Convention and to supplement it on that point, which might not be desirable. The authors of that convention had refrained from defining the expression because they had considered it to be clear enough.

67. He saw that as a sufficient reason to refrain from using the expression "participants in the drawing-up". Apart from that reservation, he thought the articles could be referred to the Drafting Committee.

68. Sir Francis VALLAT, referring first to the expression "act of formal confirmation" defined in article 2, subparagraph 1 (*b bis*), said that, in his view, the use of the words "formal confirmation", as distinct from "ratification", was fully justified by the facts of the situation; it did not involve any distinction based on equality or inequality as between States and international organizations, which seemed to him quite irrelevant in the context. It might be confusing to use the word "ratification" in regard to international organizations, for in the case of States that word was often used in a dual sense, to mean both international ratification and referral to the constitutional processes. So far as he was aware, the same did not apply to international organizations, irrespective of the procedure followed to express the will of the international

organization concerned to give its formal consent to be bound by a treaty. It was necessary to recognize that an international organization had internal procedures which differed from those of a State and thus justified the use of a more general term.

69. On draft article 9, he endorsed Mr. Ushakov's point. The Commission, in referring to participants within the context of a convention, was dealing with something that was not in itself very precise, although the area was one in which practice might be developing. He was thinking, for example, of the position of those persons who might be present at a conference as observers at a time when it was contemplated that the international organization in question might, or would, become a party to the treaty. Bearing that kind of situation in mind, it would be wiser to adhere to the existing text, which gave an indication of what was meant by participants without drawing too sharp a line. For that reason and the other reasons given, he would prefer not to attempt a definition of "participants".

70. Mr. ŠAHOVIĆ observed that article 2, subparagraph 1 (*e*) contained definitions of the terms "negotiating State" and "negotiating organization". It was difficult to see what difference there was between those two concepts and that of a State or an organization "participating in the drawing-up".

71. The CHAIRMAN suggested that the Commission should refer articles 8, 9, 10 and 11 and article 2, paragraph 1, subparagraphs (*b*), (*b bis*) and (*b ter*) to the Drafting Committee.

*It was so decided.*¹²

The meeting rose at 12.55 p.m.

¹² For consideration of the texts proposed by the Drafting Committee, see 1681st meeting, paras. 22-23; *ibid.*, paras. 24-31, 1682nd meeting, para. 5, 1692nd meeting, paras. 1-7; 1681st meeting, paras. 32-33, and 1682nd meeting, para. 7; 1681st meeting, paras. 34-35; and *ibid.*, paras. 6-14.

1647th MEETING

Friday, 8 May 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Dadzie, Mr. Diaz González, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, 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.4/339 and Add.1–5, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION:
SECOND READING (*continued*)

ARTICLES 12–18 AND ARTICLE 2, PARA. 1, SUBPARAS.
(e) AND (f)

1. The CHAIRMAN invited the Special Rapporteur to introduce articles 12 to 18 and article 2, paragraph 1, subparagraphs (e) and (f), which read:

Article 12. Signature as a means of establishing consent to be bound by a treaty

1. The consent of a State to be bound by a treaty between one or more States and one or more international organizations is expressed by the signature of the representative of that State when:

- (a) the treaty provides that signature shall have that effect;
- (b) the participants in the negotiation were agreed that signature should have that effect; or
- (c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of an international organization to be bound by a treaty is established by the signature of the representative of that organization when:

- (a) the treaty provides that signature shall have that effect; or
- (b) the intention of that organization to give that effect to the signature appears from the powers of its representative or was established during the negotiation.

3. For the purposes of paragraphs 1 and 2:

- (a) the initialling of a text constitutes a signature when it is established that the participants in the negotiation so agreed;
- (b) the signature *ad referendum* by a representative of a State or an international organization, if confirmed by his State or organization, constitutes a full signature.

Article 13. An exchange of instruments constituting a treaty as a means of establishing consent to be bound by a treaty

1. The consent of States and international organizations to be bound by a treaty between one or more States and one or more international organizations constituted by instruments exchanged between them is established by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
- (b) those States and those organizations were agreed that the exchange of instruments should have that effect.

2. The consent of international organizations to be bound by a treaty between international organizations constituted by instruments exchanged between them is established by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
- (b) those organizations were agreed that the exchange of instruments should have that effect.

Article 14. Ratification, act of formal confirmation, acceptance or approval as a means of establishing consent to be bound by a treaty

1. The consent of a State to be bound by a treaty between one or more States and one or more international organizations is expressed by ratification when:

- (a) the treaty provides for such consent to be expressed by means of ratification;
- (b) the participants in the negotiation were agreed that ratification should be required;
- (c) the representative of the State has signed the treaty subject to ratification; or
- (d) the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.

2. The consent of an international organization to be bound by a treaty is established by an act of formal confirmation when:

- (a) the treaty provides for such consent to be established by means of an act of formal confirmation;
- (b) the participants in the negotiation were agreed that an act of formal confirmation should be required;
- (c) the representative of the organization has signed the treaty subject to an act of formal confirmation; or
- (d) the intention of the organization to sign the treaty subject to an act of formal confirmation appears from the powers of its representative or was established during the negotiation.

3. The consent of a State to be bound by a treaty between one or more States and one or more international organizations, or the consent of an international organization to be bound by a treaty, is established by acceptance or approval under conditions similar to those which apply to ratification or to an act of formal confirmation.

Article 15. Accession as a means of establishing consent to be bound by a treaty

1. The consent of a State to be bound by a treaty between one or more States and one or more international organizations is expressed by accession when:

- (a) the treaty provides that such consent may be expressed by that State by means of accession;
- (b) the participants in the negotiation were agreed that such consent might be expressed by that State by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be expressed by that State by means of accession.

2. The consent of an international organization to be bound by a treaty is established by accession when:

- (a) the treaty provides that such consent may be established by that organization by means of accession;
- (b) the participants in the negotiation were agreed that such consent might be given by that organization by means of accession; or
- (c) all the parties have subsequently agreed that such consent may be given by that organization by means of accession.

Article 16. Exchange, deposit or notification of instruments of ratification, formal confirmation, acceptance, approval or accession

1. Unless the treaty otherwise provides, instruments of ratification, formal confirmation, acceptance, approval or accession establish the consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations upon:

- (a) their exchange between the contracting States and the contracting international organizations;
- (b) their deposit with the depositary; or

(c) their notification to the contracting States and to the contracting international organizations or to the depositary, if so agreed.

2. Unless the treaty otherwise provides, instruments of formal confirmation, acceptance, approval or accession establish the consent of an international organization to be bound by a treaty between international organizations upon:

(a) their exchange between the contracting international organizations;

(b) their deposit with the depositary; or

(c) their notification to the contracting international organizations or to the depositary, if so agreed.

Article 17. Consent to be bound by part of a treaty and choice of differing provisions

1. Without prejudice to articles [19 to 23], the consent of a State or of an international organization to be bound by part of a treaty between one or more States and one or more international organizations is effective only if the treaty so permits or if the other contracting States and contracting international organizations so agree.

2. Without prejudice to articles [19 to 23], the consent of an international organization to be bound by part of a treaty between international organizations is effective only if the treaty so permits or if the other contracting international organizations so agree.

3. The consent of a State or of an international organization to be bound by a treaty between one or more States and one or more international organizations which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

4. The consent of an international organization to be bound by a treaty between international organizations which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Article 18. Obligation not to defeat the object and purpose of a treaty prior to its entry into force

1. A State or an international organization is obliged to refrain from acts which would defeat the object and purpose of a treaty between one or more States and one or more international organizations when:

(a) that State or that organization has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, an act of formal confirmation, acceptance or approval, until that State or that organization shall have made its intention clear not to become a party to the treaty; or

(b) that State or that organization has established its consent to be bound by the treaty pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

2. An international organization is obliged to refrain from acts which would defeat the object and purpose of a treaty between international organizations when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to an act of formal confirmation, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has established its consent to be bound by the treaty pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Article 2. Use of terms

1. For the purpose of the present articles:

...

(e) "negotiating State" and "negotiating organization" mean respectively:

(i) a State,

(ii) an international organization which took part in the drawing-up and adoption of the text of the treaty;

(f) "contracting State" and "contracting organization" mean respectively:

(i) a State

(ii) an international organization which has consented to be bound by the treaty, whether or not the treaty has entered into force.

2. Mr. REUTER (Special Rapporteur) said that the provisions under consideration had not elicited any comments, but they could still be the subject of drafting amendments. It seemed to him that the Commission was not in favour of shortening the texts, in particular by deleting the words "between one or more States and one or more international organizations". With regard to drafting, he was proposing the introduction of the expression "the participants in the negotiation" (A/CN.4/341 and Add.1, para. 46) and the expression "the contracting entities" (*ibid.*, para. 50), which should be defined in article 2. The use of those expressions would simplify the draft considerably.

3. The expression "the participants in the negotiation", which made its first appearance in the present wording of article 12, reappeared in draft articles 14 and 15. However, the terms "negotiating State" and "negotiating organization" had been defined in article 2, subparagraph 1 (e). It might be preferable simply to define the expression "the participants in the negotiation", since, in the whole draft, the terms defined in article 2, subparagraph 1 (e) appeared only in article 76.¹ If the Commission agreed to the proposed amendment, a single term could be used throughout the text and the present definition could be deleted.

4. With regard to article 16, the Commission would have to decide, also with a view to simplification, whether it wished to use the term "the contracting entities". It would then have to define that term too, in a provision of article 2. It should nevertheless be noted that such an amendment would affect other articles, in particular, articles 77 and 79.

5. The CHAIRMAN invited the members of the Commission to consider articles 12 to 18 and article 2, subparas. 1 (e) and (f), article by article.

¹ For the text of articles 1-80 adopted on first reading by the Commission, see *Yearbook . . . 1980*, vol. II (Part Two), pp. 65 *et seq.*

ARTICLE 12 (Signature as a means of establishing consent to be bound by a treaty)²

6. Mr. USHAKOV said he agreed that it would be better not to delete the words “between one or more States and one or more international organizations”. In his opinion, it would be preferable for the meaning of the articles to be clear enough not to require interpretation in the future.

7. In article 12, paragraph 1, the use of the expression “the participants in the negotiation” was not necessarily advisable, as it would be a departure from the terminology of the Vienna Convention,³ which referred to the “the negotiating States”. The choice of terms proposed by the Special Rapporteur might complicate comparison of a future convention with the Vienna Convention, although the Commission had resolved to follow the latter instrument as closely as possible.

8. The parallelism that was rightly being sought might be better achieved if the Commission decided to refer to the “negotiating States and negotiating international organizations”. It would then not have to amend a term that had already been defined, and would remain closer to the wording of the Vienna Convention, thus making the relationship between the two texts clearer.

9. In draft article 12, he would also like the Commission to use the wording of article 12, subparagraph 1 (b), of the Vienna Convention, which read:

[... when:] it is otherwise established that the negotiating States were agreed that signature should have that effect.

It would thus be clearly indicated that consent to be bound by a treaty was not established by the treaty itself. It would also be preferable to add the words “through their representatives” after the words “were agreed”. That addition would be very useful, because it would leave the international organization free to choose the means of expressing its consent.

10. It should be emphasized that, in the case of a State, the power of the representative of the State to bind it by signature could be conferred on him in two ways: either *ex officio*, in the case of the Head of State, the Head of Government or the Minister for Foreign Affairs, or by full powers granted to him. The situation was different, however, in the case of an international organization, in which a person was authorized to negotiate a text stipulating that the organization could be bound by the signature of its representative, although he was not authorized to bind the organization definitively. He doubted whether it could be said that the representative of an organization, if he did not first have the corresponding powers, was authorized to establish in the text of a treaty that his signature would

bind the organization he represented. On the other hand, if the text of the treaty provided that the organization was bound by its consent, not by the signature of its representative, the wording of subparagraph 2 (a) was not appropriate. It might be better for that provision to read:

(a) the intention to give that effect to the signature appears from the powers of its representative.

That wording would cover the case in which the organization granted the necessary powers to its representative through its competent organ.

11. With regard to the words “or was established during the negotiation” in subparagraph 2 (b), he doubted whether the intention of the organization could be established without any formal expression of will by the competent organ. Conversely, when the competent organ had formally expressed its will, the intention must, *ex hypothesi*, be expressly mentioned in the powers of the organization’s representative.

12. He would like the Commission to make a detailed analysis of article 12, subparagraph 2, which was of capital importance, since its purpose was to determine how the organization could be bound by the signature of its representative.

13. Sir Francis VALLAT said that subparagraph 2 (b) caused him no difficulty. Article 12, as its title indicated, dealt with the procedure for establishing consent to be bound by a treaty. To see from where the authority derived—Mr. Ushakov’s point—it was necessary to refer back to article 7. Obviously, however, if a person did not have the necessary authority he could not sign a treaty.

14. He fully agreed with the Special Rapporteur’s suggestion that in article 12, in the introductory part of paragraph 1, the words “between one or more States and one or more international organizations” could be omitted (A/CN.4/341 and Add.1, para. 46). It was clear from the context that the paragraph did not refer solely to treaties between international organizations, and no major juridical principle was involved.

15. Subparagraph 1 (b) of that article, on the other hand, gave rise to a most confusing situation. For in the French text of article 2, subparagraph 1 (e), of the Vienna Convention, the expression defined (and used in article 12 of that Convention) was “*Etat ayant participé à la négociation*”, whereas the expression used in the corresponding parts of the English version of the Convention was “negotiating State”. It was therefore clear that in the case of the Vienna Convention there had been no intention to attribute a different meaning to the two expressions. At the same time, the Commission was not bound to adhere to the exact wording of that convention. It would be necessary to compare the different language versions of the draft before a satisfactory solution could be found. One possibility, however, would be to define “negotiating State” and “State participating in the

² For the text, see para. 1 above.

³ See 1644th meeting, footnote 3.

negotiations” and attribute the same meaning to both expressions.

16. It would be better, however, for all the points he had raised to be considered by the Drafting Committee.

17. Mr. VEROSTA said that he, too, thought the terms “negotiating States” and “negotiating organizations” could be merged, possibly as proposed by Mr. Ushakov.

18. As to the wording of article 12, paragraph 2, the replacement of the word “or” by the word “and” could remove all doubt about the meaning of that provision, since if the organization was prepared to sign the treaty, the signature would have the effect of binding the organization and that effect would be provided for in the powers of its representative. The Drafting Committee might examine those suggestions.

19. Mr. SUCHARITKUL said he agreed with Mr. Verosta and noted that article 12 required, first, that the treaty should provide that signature would have the effect of binding the international organization and, secondly, that the intention of the organization to give that effect to its signature should be established.

20. Mr. PINTO agreed that the words “between one or more States and one or more international organizations” in the introductory part of article 12, paragraph 1, could be deleted. The term “treaty” had already been adequately defined and it was not being used in any unusual context.

21. He also agreed entirely with Sir Francis Vallat regarding article 12, paragraph 2, and the consent of an international organization to be bound. The origin of the authority to bind lay in article 7, and article 12 should be read in the light of that article. Otherwise, even the position of States might be open to question. Obviously, it was not the treaty which conferred authority to bind the parties, regardless of any possibility of signature by certain representatives of States who did not have special powers. Hence, he was not in favour of making any change in the wording of paragraph 2; to do so might well cause more problems than it would solve.

22. Mr. USHAKOV pointed out that draft article 7, paragraph 3, related not to authority to bind an organization by a treaty, but only to authority to adopt or authenticate the text of a treaty. He emphasized that the situation was entirely different in the case of a State, in which a number of persons were authorized *ex officio* to bind the State.

23. In the case of an international organization, it should be asked whether a representative authorized to adopt the text of a treaty was empowered to adopt such a text if it provided that the representative in question was authorized to sign the treaty and, by his signature, to bind the organization. He did not think that was the case and, in support of his view, he noted that draft article 12, paragraph 2, provided that the

powers of the representative of an international organization must specify that he was not only authorized to sign the treaty, but also to bind the organization.

24. He also noted that it might be advisable, in article 12, subparagraph 2 (b), to replace the word “established” by the word “expressed”, since only the organization could express its intention to be bound by the signature of its representative and the use of the word “established” left some doubt about the means of establishing the organization’s intention.

25. Sir Francis VALLAT said that in examining draft article 12 it was necessary to have regard to article 12 of the Vienna Convention, since the two articles had virtually the same purpose. The latter article had emerged from the long-standing difference of opinion among various States as to whether, on the face of the treaty, signature alone without subsequent ratification was sufficient to indicate consent to be bound. No direct solution had been found; instead, article 12 set out certain circumstances in which signature or initialling should be regarded as sufficient. Draft article 12, therefore, was concerned with the procedural stage of the expression or establishment of consent to be bound; it was not concerned with the source of the individual’s authority to bind his State or organization, which was to be found elsewhere. He had no doubt that, if one bore in mind the history and true purpose of article 12 of the Vienna Convention, Mr. Ushakov’s problem fell by the way.

26. Mr. ŠAHOVIĆ said he saw a direct relationship between draft article 12 and draft article 7. The powers of the representatives of international organizations must be understood in the light of article 7, and, in particular, of the content of the word “powers”, as defined in article 2, subparagraph 1 (c) *bis*. He thought that, taken in conjunction with the provisions of articles 7 and 12, that definition should dispel any doubts about the meaning of the latter provision.

27. Mr. USHAKOV pointed out that article 7 referred only to the situation in which a person was considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty, or for the purpose of communicating—not expressing—the consent of the organization to be bound by a treaty. Hence an international organization could be bound by the signature of its representative only if he was expressly authorized by his powers to sign the treaty and bind the organization.

28. Mr. REUTER (Special Rapporteur), summing up the discussion, said that a number of drafting points had been raised. The question of the simplification of article 12, paragraph 1, had come up again, and several members seemed to be in favour of it. The Drafting Committee would also have to consider whether the expression “the participants in the nego-

tiation” should be amended in accordance with Mr. Ushakov’s proposal.

29. The Commission had also raised a question of substance which was of capital importance, namely, the question whether, simply because there was generally no single person who fully represented the organization *ex officio* in all cases, no one could be given such powers in certain cases. But if it was agreed that an international organization could grant powers, it must also be agreed that there could be certain powers that were expressly given. On that point, he entirely disagreed with Mr. Ushakov. If Mr. Ushakov’s doubts were fully justified, the inevitable conclusion would be that no international organization could conclude a treaty by mere signature—but in practice there were hundreds, if not thousands of cases which disproved that assertion. He recognized that abuses did occur, but he was convinced that their prevention was a matter for the constitutional law of each organization concerned. He pointed out that the authors of the Vienna Convention had not wished to limit the rights of States, but that many South American States, which applied very restrictive rules to signature that could bind the State by a treaty, had, for that reason, made declarations on that point when signing that convention.

30. He would have no difficulty in agreeing to the introduction of a reservation referring to the relevant rules of the organization; but, on the other hand, he found it impossible to interpret the provisions of draft article 12 as invalidating all agreements concluded by mere signature.

31. Although articles 12 and 7 were indeed related, the expression “communicating the consent” in article 7, paragraph 4 had never been intended to signify that an international organization could not be bound by a treaty through signature alone. In any case, the Commission could not profess to draft a text that would be contrary to the current and established practice of international organizations. Article 7, paragraph 4, must certainly not be interpreted as obliging an international organization to have, in its constitutional law, a procedure preventing it from concluding agreements, in some cases, by signature alone. That was a matter for the internal law of each organization, and it was in that context that States must make any adjustments that they might consider necessary. To do otherwise and try to obtain the same result through a draft article would simply amount to preventing any action by international organizations.

32. He was in favour of referring the text of article 12 to the Drafting Committee.

33. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer draft article 12 to the Drafting Committee.

*It was so decided.*⁴

ARTICLE 13 (An exchange of instruments constituting a treaty as a means of establishing consent to be bound by a treaty)⁵

34. Mr. USHAKOV said that he had the same reservations concerning article 13, subparagraphs 1 (a) and 2 (a), as concerning article 12. In his opinion, if a treaty was concluded by an exchange of notes, the representative of the international organization could not be authorized by the text of a mere note to affirm that he was binding the international organization. He doubted whether there were cases in which a person representing an international organization could himself assume powers to bind that organization. He acknowledged that, in practice, the situation in regard to authentication of instruments was not the same. The particular situation of international organizations in that respect should be given special consideration, even if a simplified practice was followed in some cases. In any event, the commentary to the article should mention the doubts which certain provisions might give rise to.

35. Sir Francis VALLAT said that draft article 13, like draft article 12, was concerned not with the source of authority or of power, but with the procedural mode by which consent was expressed or established internationally. The point which had been raised was in fact even less valid in the case of article 13 than in that of article 12.

36. He considered that the Commission should still endeavour to simplify and shorten the text of the draft articles where that was appropriate and worth while, and draft article 13 was a case in point. The suggestion put forward in paragraph 47 of the Special Rapporteur’s report merited further examination, but it undoubtedly raised problems, which were mainly of a drafting character. What struck him most about draft article 13 was that the wording of subparagraphs 1 (a) and 1 (b) was virtually identical to that of subparagraphs 2 (a) and 2 (b). He wondered what was to be gained by such repetition. The only point which draft article 13 should deal with (and with which the Commission should therefore be concerned), was how consent was expressed or established.

37. Mr. REUTER (Special Rapporteur) said that the comments he had made on article 12 also applied to article 13.

38. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer article 13 to the Drafting Committee.

*It was so decided.*⁶

⁴ For consideration of the text proposed by the Drafting Committee, see 1681st meeting, paras. 36–39.

⁵ For the text, see para. 1 above.

⁶ For consideration of the text proposed by the Drafting Committee, see 1681st meeting, paras. 40–41.

Drafting Committee

39. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to appoint a Drafting Committee composed of the following members: Mr. Tsuruoka (Chairman), Mr. Aldrich, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Jagota, Mr. Njenga, Mr. Reuter, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov and (*ex officio*) Mr. Francis, Rapporteur of the Commission.

It was so decided.

The meeting rose at 11.40 a.m.

1648th MEETING

Monday, 11 May 1981, at 3.10 p.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, 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.4/339 and Add.1–5, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLES 12–18 AND ARTICLE 2, SUBPARAS. 1 (e) AND (f) (*concluded*)

ARTICLE 14 (Ratification, act of formal confirmation, acceptance or approval as a means of establishing consent to be bound by a treaty)¹

1. Mr. REUTER (Special Rapporteur) said that article 14 had not elicited any substantive comments, either in the written observations of Governments and international organizations or in the Sixth Committee. The Commission might simplify the wording of the article by deleting the words “between one or more States and one or more international organizations” in paragraphs 1 and 3.

¹ For text, see 1647th meeting, para. 1.

2. Mr. USHAKOV, referring to the terms “negotiating State” and “negotiating organization”, already defined in article 2, subparagraph 1 (e), and to the term “the participants in the negotiation”, which the Special Rapporteur, in the course of the discussion on article 12 (1647th meeting, paras. 2 and 3), had suggested as a replacement for those terms and had also proposed a definition in paragraph 46 of his report (A/CN.4/341 and Add.1), said that he preferred the two terms adopted on first reading, because some of the draft articles might relate not to “the participants in the negotiation”, but rather to a particular participating State or a particular participating organization. Moreover, just as the Vienna Convention² contained a definition of the term “negotiating State”, because the convention applied to treaties concluded between States, and States alone, the draft must also contain a definition of the term “negotiating State” and “negotiating organization”, because it applied to treaties concluded between these entities. According to article 3, the draft did not apply to international agreements to which one or more entities other than States or international organizations were parties, but the term “the participants in the negotiation” might give the impression of covering entities of that kind.

3. Mr. REUTER (Special Rapporteur) said that, if it was simply a matter of amending article 76,³ which was the only article in the draft to contain the terms “negotiating States” and “negotiating organizations”, something would be gained by replacing them by the words “the participants in the negotiation”, because the article was particularly long. In addition to his comment on the use of the term “the participants in the negotiation” in the plural, however, Mr. Ushakov had pointed out that the reference in article 3 to entities other than States or international organizations might give rise to confusion. The Drafting Committee would have to settle that question—but in order to do so, it might have to wait until article 76 had been referred to it by the Commission.

4. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer article 14 to the Drafting Committee.

*It was so decided.*⁴

ARTICLE 15 (Accession as a means of establishing consent to be bound by a treaty)⁵

5. Mr. REUTER (Special Rapporteur) said that article 15 had not given rise to any substantive comments. Since the two paragraphs of the article were nearly identical, they might be condensed into a single paragraph, which would read as follows (A/CN.4/341 and Add.1, para. 49):

² See 1644th meeting, footnote 3.

³ See 1647th meeting, footnote 1.

⁴ For consideration of the text proposed by the Drafting Committee, see 1681st meeting, paras. 42–45.

⁵ For text, see 1647th meeting, para. 1.