Document:-

A/CN.4/SR.1649

Summary record of the 1649th 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:-

1981, vol. I

distorted view of the significance of reservations. It was quite clear that a State could not alter by a formal reservation the legal position under the treaty as between two other States.

50. In that connection, he would point out that, from the definition of "reservation" contained in article 2, subparagraph 1 (*d*),[24] a reservation by an international organization would not affect the legal effect of the provisions of the treaty in their application as between States parties to the treaty, but only in their application to that international organization. If his understanding of the definition was correct, the idea that a reservation by an international organization altered the rights and obligations of the States as between themselves simply did not arise, because of the nature of the reservation. If an international organization wished to alter the rights and obligations under a treaty as between itself and other parties, whether States or international organizations, and if it was contemplated that that international organization would become a party to the treaty, then in principle it should be at liberty to formulate a reservation. It was important to start out from that basic principle and, if there were to be exceptions to it, to consider the exceptions.

51. Mr. REUTER (Special Rapporteur) said he was pleased to note that the statement by Mr. Calle y Calle was based on the same approach as the one he himself had adopted, for in his view too, it was not a matter of conferring equality on entities as such but of giving equal rights to the contracting parties to a treaty.

52. He also shared Sir Francis Vallat's view, which was, moreover, an illustration of the saying that "he who can do more can do less", since the mechanism of reservations made it possible only to limit commitments that had been undertaken. Sir Francis had been perfectly justified in saying that if the organization had the capacity to become a party to a treaty it could, by that very fact, and in the light of its nature and its own rules, also limit its commitments.

53. He fully grasped the meaning of the statement by Mr. Ushakov, who regretted that the suggestions he had made concerning reservations had been left out of the second version of the draft articles. It would be remembered that the question of the impossibility of entering reservations in the case of bilateral treaties had been considered at the United Nations Conference on the Law of Treaties, which had led to the Vienna Convention, but no decision had been taken on that question.

54. In proposing that a distinction should be made between treaties according to their nature, Mr. Ushakov had seemed to base his reasoning on the saying that "the accessory follows the principal", the idea being that entities which were parties to a treaty in an "accessory" manner were ranked with the "principal" parties. For his own part, he seriously doubted whether a distinction could, in practice, be made between treaties. He thought it necessary to propose straightforward solutions to the General Assembly, which might be averse to a text that was too subtle. One of the results of the Vienna Convention concluded in 1969 was that objections to reservations and acceptance of reservations had in the final analysis the same effect, although he was not entirely sure that that had been the original objective of the participants.

55. In the circumstances, he thought it would be preferable to say that international organizations were prohibited from formulating reservations in all cases. Indeed, Mr. Ushakov had nearly convinced him by stating that the international organization must be able to enter reservations when its participation was essential to the existence of the treaty. Nevertheless, in the text submitted to the Commission on first reading, he had, for the purposes of making a concession to that point of view, adopted an approach that was quite the reverse. Consequently, he was even more mistrustful about making the text inordinately complex.

The meeting rose at 6 p.m.

[24] *Ibid.*

1649th MEETING

Tuesday, 12 May 1981, at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Njenga, 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*)

ARTICLE 19 (Formulation of reservations in the case of treaties between several international organizations) *and*

ARTICLE 19 *bis* (Formulation of reservations by States and international organizations in the case of treaties between States and one or more international organizations or between international organizations and one or more States)[1] (*continued*)

[1] For texts, see 1648th meeting, para. 24.

1. Mr. BARBOZA said that many attempts had been made at codifying the subject of reservations, both regionally—for example, within the framework of the OAS, and internationally—as for example, in the Vienna Convention.[2] The fact that the latter, though up-to-date and complete, had not commanded unanimous support among writers was an indication of just how thorny the problem was. If that was the position in the case of treaties between such homogeneous entities as States, it was easy to appreciate how much more complicated was the case with which the Commission was now concerned, namely, treaties between such non-homogeneous entities as States and international organizations. It was therefore necessary to be extremely prudent when seeking to codify the subject, and to keep in mind the effect that a very general formulation could have on the practical life of organizations required to conclude an endless number of treaties.

2. He wished, in that connection, to remind the Commission of the advisory opinion of the International Court of Justice on *Reparation of injuries suffered in the service of the United Nations*,[3] which had developed case law on the question of the international personality of international organizations. Some aspects of that opinion were relevant to the topic before the Commission. The Court had, for example, underlined the need to vest with international personality the international organizations set up to perform certain functions which could not be carried out jointly by various Foreign Ministries. The most important feature of international personality was the capacity to conclude treaties. The Court, however, had held the capacity of international organizations differed from that of States and had laid down certain criteria for determining the nature of such capacity; it had, for instance, referred to the nature of the international organization, its internal rules, its objects, and the means afforded under its constituent instrument for the fulfilment of such objects.

3. It therefore seemed to him that, if the capacity to conclude treaties was such an important part of international personality, the faculty to formulate reservations must be part of that capacity. If the one was recognized, then the other must be recognized too, particularly since "reservation" was defined in the draft articles (art. 2, subpara. 1 (*d*))[4] as a statement which purported to exclude or to modify the legal effect of certain provisions of the treaty with respect to the part covered by the reservation. That quite clearly supplemented the capacity of the parties to the treaty, and particularly the capacity of international organizations. Were it otherwise, international organizations would feel bound, if certain provisions were unacceptable to them, to withdraw from a treaty, or not to accede to it in the first place, something which would detract from the universality of treaties.

4. There were two main elements to the capacity to conclude treaties, the first being the element of liberty, which was fundamental to all treaties. The other element was equality. States and international organizations, of course, were not equal; the capacity of the latter was limited, a fact that was specifically reflected in draft article 6,[5] which quite properly referred to the limitations imposed by the rules of the organization. But once the organization had negotiated the particular hurdle of its own limitations, there must be equality, for equality of the parties was of the very essence of any contract.

5. He had already pointed out that rather than opt for a general position of abstract principle, the Commission should adopt a pragmatic approach and seek to achieve a compromise between the two widest-removed trends of opinion within the Commission and the Sixth Committee of the General Assembly. In his view, such a compromise was apparent in the draft articles, although there was one important exception, regarding the capacity of an international organization to enter reservations. He had in mind article 19 *bis*, paragraph 2, which placed international organizations and States on an unequal footing; conceivably, an international organization whose participation was essential to the object and purpose of the treaty might wish to enter a reservation which did not run counter to that object and purpose, but it could not do so unless it had been expressly authorized. On that point, therefore, the difference between the position of States and of international organizations was significant, and as the ILO had indicated in its comments (A/CN.4/339), it could give rise to harmful consequences. Hence it would be inadvisable to go beyond the terms of article 19 *bis*, paragraph 2, in restricting the capacity of organizations.

6. Mr. PINTO reminded the Commission that he had already stated his view (1645th meeting) that it would not be particularly helpful to consider the question of reservations from the standpoint of the equality or inequality of States and international organizations in the matter of treaty making. International organizations were fundamentally different and, as he had said, might be described as the "robots" of the international community in that they were programmed by member States to act in a certain way; to that extent, they appeared to be dependent on States in a way that States were not dependent on them. Again, international organizations could be described as composite international persons. An international organization had an international personality and was therefore more than the sum of its parts, but those parts—the member States—played a continuing role in steering the operations of the organization, something which likewise resulted in a situation of depen-

[2] See 1644th meeting, footnote 3.

[3] *I.C.J. Reports 1949*, p. 174.

[4] See 1674th meeting, footnote 1.

[5] For text, see 1646th meeting, para. 36.

dence for the international organization and a difference of quality, and hence an inequality, between States and international organizations. It would be better to adopt the kind of pragmatic approach already advocated by some members of the Commission to determine what was required in a particular case and how to provide for it.

7. In paragraph 56 of his tenth report (A/CN.4/341 and Add.1), the Special Rapporteur had drawn attention to the practice whereby an international organization was recognized as having the right to require that a reservation to a treaty that would result in unilateral modification of the organization's privileges and immunities should not be made effective unless and until the organization consented to it. He (Mr. Pinto) saw in that a basis for recognizing the right of an international organization to make its own reservations, as the obverse of its right to reject reservations made by others, including States. He agreed with that approach, and also with the Special Rapporteur's general conclusions in paragraph 65 of the report regarding the freedom of international organizations to formulate reservations and the need to formulate an exception, if any, in general terms.

8. However, without pursuing the debate on equality, all the Commission needed to do was to provide the international organization with such treaty-making capacity as was necessary for the performance of its functions. What type of capacity would it be fair to recognize in an international organization? And what type of capacity would it be unfair to withhold if the organization was to perform what it was programmed to perform? In his opinion, there were perhaps two points to be borne in mind: on the one hand, the essentially programmed operation of the international organization, and on the other, the steering capability retained by its member States. Any general limitation on the power to make reservations, or indeed on any other power, should be viewed on the basis of the limitations set forth in the rules of the organization. After all, it was the steering capability of member States that lay at the root of an organization's right to reject a reservation to which it felt unable to give its consent.

9. In the precedent regarding reservations to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, cited by the Special Rapporteur in paragraphs 56 and 57 of his report, from where did the strength of the organization's refusal to accept a reservation derive? To his mind, it derived from the possibility of mobilizing opinion in the principal organ of the organization. There was what might be termed a current of conformity within that organ—an *opinio juris* within the constituent assembly, with the consequent threat of exposure of a particular Member to criticism. The report stated that the Secretary-General of the United Nations had urged that a reservation to the 1946 Convention on the Privileges and Immunities of the United Nations be withdrawn, and had stressed that he would be obliged to bring the matter to the attention of the General Assembly if, despite his objection, it was maintained. Thus, it seemed that, the current of conformity was in favour of recognizing the power to reject the reservation. Similarly, it seemed that the current of conformity would recognize, when functionally necessary, the right to make reservations. For that reason, he favoured without too much hesitation the statement in paragraph 3 of article 19 *bis* on the general freedom of an organization to make reservations. He would have no objection to the particular case provided for in paragraph 2 of the same article if the Commission found it necessary, although he did not think it added much in the way of safeguards.

10. The particular case referred to in paragraph 66 of the Special Rapporteur's report might be important, but one could well ask whether there would ever be treaties in which States chose international organizations as their treaty partners and in which the international organizations or the functions entrusted to them would not arguably be essential to the object and purpose of the treaty. If they were not, what business would the international organization have in concluding a treaty with the States in the first place? If a group of States conferred certain supervisory functions on an international organization and the organization thus became an essential treaty partner, surely the way to ensure that it did not evade its obligations was to ensure correct decisions within its controlling organs and a proper orientation of the rules of the organization, rather than to draft some more or less obscure provision which restricted the power of the international organization to make reservations.

11. Lastly, he noted from footnote 79 of the report that the Special Rapporteur considered it would be beyond the scope of the report to examine, even superficially, certain types of treaties. He (Mr. Pinto) found that regrettable, particularly since the Special Rapporteur's views had started to have an influence on the negotiations at the United Nations Conference on the Law of the Sea and elsewhere.

12. Mr. SUCHARITKUL said that there were two conflicting tendencies: one to assimilate the situation of States to that of international organizations, and the other, to make a distinction between the respective situations of those entities. The controversy lay in the problem of the equality of States and international organizations.

13. Like Sir Francis Vallat (1648th meeting), he was of the opinion that, for the purposes of the application of the provisions of a treaty once it had been concluded and had entered into force, States and international organizations were equal. He also agreed with Mr. Ushakov (*ibid.*) that States and international organizations could be placed on an equal footing.

14. As had been pointed out, however, equality existed only from the standpoint of treaty law: the fact

of the matter was that not even international organizations themselves were equal, as could be seen from draft article 6, which provided that the capacity of an international organization to conclude treaties was governed by the relevant rules of that organization—and those rules varied greatly from one case to another. By contrast, article 6 of the Vienna Convention, which related exclusively to States, stated: "Every State possesses capacity to conclude treaties", without any restriction. Hence, a State was necessarily different from an international organization.

15. It should none the less be noted that, in its draft articles and particularly in articles 27 and 46,[6] the Commission had endeavoured to maintain a constant parallel between the internal law of the State and the rules of the international organization. However, the internal laws of States differed, and their capacity to conclude treaties could be limited constitutionally. Earlier, the Special Rapporteur had cited the case of the French Fifth Republic, whose constitution was silent on the question of the capacity to formulate reservations. Moreover, the State itself changed and its capacity to conclude treaties was subject to changes by revisions of the constitution.

16. He therefore noted that the situation of States was not very different from that of international organizations in that regard. Yet no one could deny the obvious truth of the inequality of States and of international organizations in respect of their capacity to conclude treaties, as governed, in the case of States, by their basic law, and in that of international organizations, by their relevant rules.

17. He endorsed the Special Rapporteur's view with regard to international legal personality and also considered that, in the field of treaty law, particular attention should be paid to the existence of capacity to conclude treaties, not to the possession of distinct international legal personality, or certain characteristics such as the existence of a permanent secretariat.

18. Similarly, he was generally in favour of the solution proposed by the Special Rapporteur in connection with practice, because the majority of treaties concluded between international organizations and States were headquarters agreements or agreements relating to the privileges and immunities of international organizations. Three major general multilateral treaties came to mind in that regard, namely, the 1946 Convention on the Privileges and Immunities of the United Nations,[7] the 1947 Convention on the Privileges and Immunities of the Specialized Agencies[8] and the 1975 Vienna Convention.[9] In practice, those instruments had been the subject of many reservations, particularly with regard to the privileges and immunities of the nationals of the host country of an organization. The Commission should examine such practice in a more detailed manner before it formulated a final opinion on the matter.

19. He nevertheless considered that, since the capacity to conclude treaties was limited, the capacity to formulate reservations should likewise be limited. The possibility of formulating reservations should be governed by prior conditions, in particular the requirement that the treaty made provision for reservations or that reservations should meet certain conditions laid down in the treaty. The limitations on the capacity to conclude treaties should be the same as those on the capacity to formulate reservations.

20. Mr. ŠAHOVIĆ said that, at the 1648th meeting, the Special Rapporteur had described a number of ways of solving problems still outstanding. His own view was that on second reading the Commission should confine itself to improving the texts already adopted on first reading and to settling questions that had hitherto gone unanswered. He did not think it was necessary to resume a discussion that had already taken place, or that the wording of the draft should be radically altered. Sir Francis Vallat had already demonstrated how the right of international organizations to formulate reservations derived from draft article 6, and it should be noted that draft article 9, paragraph 2,[10] was similar in that it recognized that the "participants" in the drawing-up of a treaty had the right to state that they could not agree to the text of a treaty at the time of its adoption—a right which necessarily encompassed the right to formulate reservations.

21. With regard to the second major question, namely, that of equality between States and international organizations, the Special Rapporteur had been very precise when he had referred to the principles of the treaty regime, which was based on the freedom and equality of the parties. He personally had never had the slightest doubt: any discrimination as between States and international organizations that might slip into the draft would, in fact, signify an omission in the text prepared by the Commission. Admittedly, the various conflicting views had to be taken into account, but the Commission must none the less endeavour to promote the principle of equality between the parties to a treaty and deliberately avoid the use of a double standard, precisely for the purpose of promoting the progressive development of international law. He considered that, from the standpoint of progressive development, the Commission could freely propose a number of articles to States so that they could settle the issue later.

22. Lastly, he hoped that the Commission would move on to consider the actual text of the articles and seek to give definite shape to ideas already expressed during the first reading.

[6] See 1647th meeting, footnote 1.

[7] United Nations, *Treaty Series*, vol. 1, p. 15.

[8] *Ibid.*, vol. 33, p. 261.

[9] See 1644th meeting, footnote 7.

[10] For text, see 1646th meeting, para. 61.

23. Mr. VEROSTA said he shared Mr. Pinto's view that it might be necessary to give further consideration to State practice.

24. He noted that the legal opinion of the Secretary-General of the United Nations referred to by the Special Rapporteur in paragraph 56 of his report concerned a particular case that had been the result of the desire of the Member States of the Organization and the States parties to the Convention on the Privileges and Immunities of the Organization to ensure that it could adequately perform its functions.

25. He would also like the texts prepared by the United Nations Conference on the Law of the Sea mentioned earlier by Mr. Pinto to be submitted to the Commission before the end of the current discussion.

26. Lastly, he would like to know whether the practice of States and international organizations afforded other examples that might be helpful to the Commission, and, in particular, whether reservations had been made to the many treaties concluded by such a regional organization as the EEC, to which States had delegated many powers. If examples were lacking, he thought that the Commission could simply prepare a broadly worded text and leave the choice of the appropriate solution in each particular case to the member States which controlled the operations of organizations.

27. Mr. RIPHAGEN said that from the discussion it sometimes seemed as though treaties appeared out of the blue, whereas they were in fact the product of negotiations and the outcome, if not of unanimity among the negotiators, then of a majority decision reached at an international conference. In either case, there could be a lapse of time during which that product might be subject to a change of opinion. The institution of reservations, therefore, was often very necessary to save a treaty and to ensure that it was ratified by all participants. It was important to bear that in mind, particularly in the case of international organizations, which were less monolithic than States and were governed by their own internal rules. Hence it might prove necessary, in order to save a treaty and to secure the participation of the organization, to permit the organization to enter a reservation so that it could meet its obligations under its internal rules.

28. Reservations were, in a sense, a re-opening of negotiations; nobody was obliged to accept them, and they afforded an opportunity for everybody to explain his position. From the practical point of view, the Commission should be wary of any *a priori* limitation on the possibility of formulating reservations and, for that reason, he had some doubts about article 19 *bis*, paragraph 2.

29. Mr. REUTER (Special Rapporteur), referring to practice, said that in his report he had provided all the information he had been able to find on situations in which the problem of reservations had arisen. He had nothing to add on that point, particularly since in the Commission itself reservations had been expressed about the status of the EEC as an international organization. Moreover, he was of the opinion that the special rapporteur on a particular topic must, above all, endeavour at all times to guide and simplify the discussion of his draft articles. He did not, however, have any objection to a report being submitted to the Commission on the recent work of the Conference on the Law of the Sea. He also understood that some members would like to revert to the proposals made by Mr. Ushakov in 1977.[11]

30. In accordance with the comments made by Mr. Šahović, he said that he would pinpoint the major areas of agreement that had emerged from the discussions. First, the Commission seemed to recognize the equality of States and international organizations in matters relating to treaties. It also recognized that a basic limitation resulted from draft article 6, which strictly limited the capacity of international organizations to formulate reservations. In his opinion, it was the task of the Drafting Committee to decide whether reference should be made in every article to the limitations placed on reservations by article 6. In addition, the Commission agreed that a general limitation resulted, in the case of international organizations, from the definition of reservations itself, and that a third limitation lay in the provisions of the actual treaty, which could provide that certain reservations were precluded or that the right of an international organization to enter reservations was expressly limited.

31. Agreement on those points having been reached, difficulties then arose in trying to formulate the articles themselves. Most of the members of the Commission seemed to be in favour of the text prepared on first reading, which, in principle, offered the possibility of formulating reservations with certain minimum and additional limitations, while the draft submitted on second reading embodied only a single and relatively specific limitation. The real problem was one of deciding how to express limitations other than those on which the members were in agreement. Some members had been of the opinion that article 19 (*c*) of the Vienna Convention set a general limitation, namely, that of compatibility with the object and purpose of the treaty. He noted that draft article 19 *bis*, paragraph 2, did not use any other criterion.

32. He nevertheless wondered whether the criterion of the object and purpose of the treaty did not involve special limitations for international organizations and whether it would not be preferable to try, without using wording that was too strict, to state that the object and purpose of the treaty comprised, in the case of the participation of international organizations, limitations that should be enunciated in a single sentence, which might read: "Reservations by an international organization which ... may be contrary to the object

[11] See 1648th meeting, footnote 21.

and purpose of the treaty". The sentence would cite a number of cases as examples, including that of a contradiction between a reservation by an international organization and a reservation by a State. He was grateful to Mr. Ushakov for seeking to draw a general distinction between various categories of treaties, some of which were concluded chiefly between organizations and others chiefly between States. He did not, however, think it was possible to establish categories that the authors of the Vienna Convention themselves had abandoned the idea of establishing in the field of treaties between States. Admittedly, the object and the purpose of the treaty were vague criteria, but it should be possible to cite as examples certain cases that were characteristic of the particular situation of international organizations.

33. Mr. USHAKOV said he wished again to emphasize the fact that, although the provisions of the Vienna Convention relating to reservations applied to both multilateral and bilateral treaties, the draft articles relating to reservations must apply only to multilateral treaties. The United Nations Conference on the Law of Treaties had had good reasons for deciding to depart from the draft articles prepared by the Commission and not to confine itself to multilateral treaties alone. The deletion by the Special Rapporteur of the terms "treaty between one or more international organizations", "treaty between States and one or more international organizations" and "treaty between international organizations and one or more States" did not signify that the draft could be said to cover bilateral treaties between two organizations or between a State and an organization. In the case of treaties between States, it might, for political reasons, be useful for States to be able to formulate reservations not only to multilateral treaties but also to bilateral treaties. If the Parliament of one of the two States parties to a bilateral treaty ratified the treaty without any reservations and the other State party entered a reservation, all that was required was twelve months of silence for the reservation of the second State to be accepted, without the Government of the first State having to bring the matter before Parliament again. There did not, however, seem to be any reason for a similar rule in the case of bilateral treaties between two international organizations or between an organization and a State.

34. It should also be noted that the capacity to formulate reservations was in no way related to the capacity to conclude treaties. As indicated by article 6 of the Vienna Convention, there was no limit on the capacity of States to conclude treaties. Any State could conclude any treaty but, as was apparent from article 19 of the Vienna Convention, it could not formulate any reservation it pleased. The same was true of international organizations. The fact that an international organization possessed the capacity to conclude treaties did not mean that it could also formulate any reservation it pleased.

35. Again, in the matter of reservations there were at present no rules of customary international law that applied to the treaties to which international organizations were parties, and in particular to treaties concluded exclusively between international organizations. By proposing rules on the matter, the Commission was engaging not in the codification but in the progressive development of international law. However, the rules relating to reservations to treaties concluded between States had been codifed in the Vienna Convention on the basis of established practice and international legal decisions.

36. Turning to the draft article 19 (Formulation of reservations) which he had proposed,[12] he said that he attached more importance to clear legal situations than to simple wording.

37. Paragraph 1 of his proposal enunciated the rule that an international organization which was a party to a treaty between several organizations could formulate a reservation if such a reservation was expressly authorized by the treaty or if it was otherwise agreed that the reservation was authorized. That was a straightforward legal situation: when a reservation was authorized, there could be no possibility either of an objection to that reservation or of separate relations between the party which formulated the reservation and those which either accepted it or did not. It was clear that, for the time being, only limited multilateral treaties concluded between organizations could be covered. Multilateral treaties open to participation by all international organizations were inconceivable. Therefore, why not enunciate the rule that a reservation must be authorized, either in the treaty itself or after the conclusion of the treaty? It would complicate the situation to adopt the same solution for treaties between international organizations as for treaties between States. It should nevertheless be made clear that the treaties between organizations covered by the draft were exclusively limited treaties.

38. Paragraph 2 of the text he had proposed applied to treaties between States and one or more international organizations. Since such treaties chiefly governed relations between States, with the participation of one or more international organizations, the rule proposed was similar to that contained in article 19 of the Vienna Convention. Every State could, in principle, formulate reservations concerning its relations with the other States parties.

39. Paragraph 3 provided that in the case of such a treaty an international organization could formulate a reservation if the reservation was expressly authorized by the treaty or if it was otherwise agreed that the reservation was authorized. An international organization could not be authorized to formulate any reservation it pleased when the treaty essentially

[12] *Yearbook ... 1977*, vol. II (Part II), pp. 109–110, footnote 464.

involved the relations between the States that were parties to it. As in the case covered by paragraph 1, no problem of acceptance of the reservation or objection to the reservation would arise, because the reservation was authorized.

40. Paragraph 4 applied to those treaties between States and one or more international organizations in which the participation of the organization was essential to the object and purpose of the treaty. The situation of the States parties was then assimilated to that of the organization: they could formulate a reservation if the reservation was expressly authorized by the treaty or if it was otherwise agreed that the reservation was authorized. The rules whose implementation the organization was responsible for supervising did not directly concern the organization but were none the less of great importance to it, because reservations formulated by States could, by amending those rules, affect the organization's supervisory functions. Yet, when it concluded the treaty, the international organization undertook to carry out a particular type of supervision.

41. In paragraph 5, relating to treaties concluded by international organizations with the participation of one or more States, the situation of the State was assimilated to that of the organization. That solution also settled the problem of objections.

42. The first alternative for draft article 19 proposed by the Special Rapporteur (A/CN.4/341 and Add.1, para. 69) called for one final comment of a drafting nature. Paragraph 2 of that draft article, which concerned the capacity of an international organization to formulate reservations, used the words "a treaty" and stated that the organization could not formulate reservations to the treaty "with regard to the application of the latter by States". However, the term "a treaty" could apply to both multilateral and bilateral treaties. Obviously, a bilateral treaty between a State and an organization could be applied only by one State and not by States. Again, a treaty concluded between international organizations and a State could not be applied by States, in the plural, nor could a bilateral treaty between two organizations. Hence, it was not possible to refer to "a treaty" in that provision.

43. Mr. QUENTIN-BAXTER said he subscribed to the view of Sir Francis Vallat (1648th meeting) and other speakers that it would not be expedient to attempt to limit the power to enter reservations to treaties. He was, therefore, wholly sympathetic to the aim of achieving general equality between the parties to such instruments.

44. On the other hand, he also tended to share the doubts expressed by, for example, Mr. Riphagen, concerning the advisability of maintaining the substance of article 19 *bis*, paragraph 2, either as it had been adopted on first reading or as it was now proposed by the Special Rapporteur in paragraphs 69 and 70 of his report.

45. A provision of that kind did have some value, inasmuch as it sought to focus attention on the particular situation in which the participation of an international organization was essential to a treaty; but, as Canada had pointed out in its comments (A/CN.4/339), it was difficult to relate the phrase "essential to the object and purpose of a treaty" to the phrase "incompatible with the object and purpose of the treaty", which appeared in the present version of article 19 *bis*, subpara. 3 (*c*). The difficulty arose less from the exacting requirement of defining the "object and purpose" (or in other words, the "essence") of a treaty than from a confusion of thought, an attempt to align in the article two different prohibitions, namely, a ban on reservations by a party whose participation in a treaty was essential and a ban on reservations that touched the essentials of a treaty.

46. Still greater difficulty would be caused by replacing the text of article 19 *bis*, paragraph 2 and subparagraph 3 (*c*), by the version proposed by the Special Rapporteur in paragraph 70 of his report. In that respect, he very much agreed with the views of the ILO—which was to be commended for having responded, and responded to such constructive effect, to the Commission's appeal for comments—as recorded in paragraphs 12 to 14 of its comments (A/CN.4/339). If a treaty was built around the functions of a particular international organization, reservations by the organization that related to those functions would automatically be precluded as being incompatible with the object and purpose of the instrument. There did not, however, seem to be any real reason for precluding reservations by the organization that were incidental to the object and purpose of the treaty and that had no connection with the organization's special role.

47. The Special Rapporteur's proposal to delete article 19 *ter* (A/CN.4/341 and Add.1, para. 74) was all the more welcome because the difficulties to which he himself had alluded would be compounded if that provision was maintained in anything like its present form.

The meeting rose at 1 p.m.

1650th MEETING

Wednesday, 13 May 1981, at 11.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.
