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Summary record of the 1651st meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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34. In his opinion, the Commission was confronted not with a theoretical problem, but simply with the adoption of a specific decision on the wording of the article under consideration.

35. Mr. REUTER (Special Rapporteur) said that the situation was quite simple: first, the Commission wished to retain the wording of the text on reservations adopted on first reading; and second, it should explain in the commentary that the wording was being retained because the subsequent articles related to multilateral treaties, and the question of bilateral treaties remained open.

36. He thought that the Commission could refer articles 19 and 19 *bis* to the Drafting Committee.

37. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer articles 19 and 19 *bis* to the Drafting Committee.

It was so decided.[4]

Organization of work (*continued*)*

38. The CHAIRMAN informed the Commission of the conclusions adopted by the Enlarged Bureau at the meeting it had held on 13 May 1981.

39. With regard to the organization of the work of the thirty-third session, the Enlarged Bureau had tentatively adopted the following programme:

1.	Jurisdictional immunities of States and their property (item 7)	18–22 May
2.	Succession of States in respect of matters other than treaties (item 2)	25 May–12 June
3.	Question of treaties concluded between States and international organizations or between two or more international organizations (item 3)	15–19 June
4.	State responsibility (item 4)	22 June–3 July
5.	International liability for injurious consequences arising out of acts not prohibited by international law (item 5)	6–10 July
6.	Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (item 8)	13–17 July
7.	Adoption of the Commission's report	20–24 July

That programme was open to changes.

40. The Enlarged Bureau had also decided to establish a Planning Group composed of the following members: Mr. Quentin-Baxter (Chairman), Mr. Barboza, Mr. Bedjaoui, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Riphagen, Mr. Šahović, Mr. Tabibi, Mr. Ushakov and Sir Francis Vallat.

41. In addition, he (the Chairman) had considered the matter referred to him by the Secretariat concerning the request for information made by the secretariat of UNCITRAL and had decided to refer it to the Planning Group and authorize the Secretariat to send a tentative reply indicating that the matter was under consideration.

42. Lastly, the Enlarged Bureau had proposed that the Commission should meet on Ascension Day, Thursday, 28 May, but no meeting should be held on Whit Monday.

43. If there were no objections, he would take it that the Commission adopted the proposals by the Enlarged Bureau.

It was so decided.

The meeting rose at 12.30 p.m.

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[4] For consideration of the texts proposed by the Drafting Committee, see 1692nd meeting, paras. 19–24.

* Resumed from the 1643rd meeting.

1651st MEETING

Thursday, 14 May 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Diaz 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.

Statement by the Chairman

1. The CHAIRMAN expressed his horror at the acts perpetrated against His Holiness Pope John Paul II, to whom he extended his own and the Commission's best wishes for a quick recovery.

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 *ter* (Objection to reservations)

2. The CHAIRMAN invited the Special Rapporteur to present draft article 19 *ter*, which read:

Article 19 ter. *Objection to reservations*

1. In the case of a treaty between several international organizations, an international organization may object to a reservation.

2. A State may object to a reservation envisaged in article 19 *bis*, paragraphs 1 and 3.

3. In the case of a treaty between States and one or more international organizations or between international organizations and one or more States, an international organization may object to a reservation formulated by a State or by another organization if:

(*a*) the possibility of objecting is expressly granted to it by the treaty or is a necessary consequence of the tasks assigned to the international organization by the treaty; or

(*b*) its participation in the treaty is not essential to the object and purpose of the treaty.

3. Mr. REUTER (Special Rapporteur) reminded the Commission that, on the question of the right to submit objections to reservations, it had adopted on first reading an article 19 *ter* parallel to the provisions on reservations but enlarging the right of international organizations, which it authorized to submit objections in cases where they were not entitled to enter reservations. The Commission had, however, intimated that it was not entirely satisfied with that solution.

4. He noted that the Vienna Convention,[1] which applied only to States, contained no separate article on objections, which it dealt with incidentally in the articles on the acceptance of reservations, the effects of reservations, and the withdrawal of reservations and objections to reservations. Moreover, that instrument did not even define objections.

5. It was also quite clear that objections were less closely linked with the right to submit reservations than with the capacity of a State to become a contracting party or signatory to a treaty; for if a treaty prohibited reservations, States might nevertheless accompany their signatures or expressions of consent to be bound by the instrument with texts which they would call, for example, interpretative declarations. In such cases, States could not be prevented from objecting to what were, in fact, reservations.

6. It was essential to determine whether an objection to a reservation could only be based on a legal argument (the fact that no possibility of making reservations was provided for in the treaty, for example) or whether a legitimate objection could be based on grounds of interest alone. The Expert Consultant for the United Nations Conference on the Law of Treaties, to whom that question had been referred, had considered that a State could legitimately formulate an objection to a reservation on grounds of interest. In practice, however, States would advance a legal argument in support of their objection.

7. It should be noted that, under the regime of objections established by the Vienna Convention, the effect of a simple objection to a reservation was no different from that of acceptance of the reservation. Consequently, he very seriously doubted whether any useful purpose would be served by including an article on objections to reservations in the Commission's draft. He emphasized that, by deciding to go further than the Vienna Convention and attempting to clarify the question of objections, the Commission might raise difficulties which could affect that convention.

8. The faculty of making objections to reservations was linked with the status of contracting party, and the Commission certainly need not examine that problem. If it decided that international organizations never had the right to make objections to reservations, it would make them greatly diminished entities which would not even have any means of protecting their rights. It might therefore be wiser not to include a provision such as article 19 *ter*.

9. Mr. USHAKOV said he thought there was certainly some justification for article 19 *ter*. A treaty between States and one or more international organizations could create relations between States proper, as was shown by article 3 of the Vienna Convention. The Commission must therefore decide whether international organizations which were parties to such instruments could formulate reservations to provisions relating to States. Sir Francis Vallat (1648th meeting) had demonstrated that, by its very wording, draft article 2,[2] subparagraph 1 (*d*), precluded that possibility.

10. However, the situation seemed different where objections to reservations were concerned; for if the draft contained no definition of an objection, no limitation would be imposed by the text of the future instrument—which was not the case in regard to reservations. But although it was logical to think that an organization could not object to reservations formulated by States concerning their relations *inter se*, it must nevertheless be able to object to reservations by States if they changed relations between States created by the treaty and those relations were part of the very reason for which the organization intended to become a contracting party. Similarly, a State could obviously not object to reservations which concerned relations between international organizations *inter se*, but it must be able to make an objection if such reservations changed the conditions of its participation in the treaty.

11. He did not think the deletion of article 19 *ter* would, of itself, remove all the difficulties that article attempted to resolve. The wording he himself had proposed in 1977,[3] on the other hand, left no room for such problems, since it provided that international organizations could formulate reservations only if they were expressly authorized to do so by the treaty or if it was otherwise agreed that the reservation was authorized. Consequently, in the case of a treaty between States and one or more international organ-

[1] See 1644th meeting, footnote 3.

[2] See 1647th meeting, footnote 1.

[3] See 1649th meeting, footnote 12.

izations where the participation of one or more international organizations was essential to the object and purpose of a treaty, States were placed in the same position as international organizations and the question of objections no longer arose, since reservations must be agreed to, tacitly or expressly.

12. He urged the Commission to give further consideration to that question before deciding to delete article 19 *ter* from the draft.

13. Lastly, he stressed that it was necessary to adopt, in general, a vocabulary sufficiently precise to obviate, as far as possible, the need for interpretation, or at least strictly to limit the interpretations possible.

14. Mr. REUTER (Special Rapporteur) said he would like to know whether, according to the draft proposed by Mr. Ushakov, an international organization could make objections even when it was not entitled to formulate reservations—for example, if it considered that a reservation made by a State party was not one authorized for the States.

15. Mr. USHAKOV said that his proposal authorized international organizations to make reservations only if the parties had so agreed. Its purpose was to place States and international organizations which were parties to a treaty on an equal footing and to preclude reservations which might destroy the essence of the treaty. Hence the question of possible objections to reservations could not arise, and disputes could only relate to interpretation of the provisions of the treaty, in other words, to what reservations were permitted or prohibited. Conversely, since reservations had to be authorized by the treaty itself, or by some other form of agreement, a reservation could not, *ex hypothesi*, give rise to an objection. Any treaty provision was certainly open to different interpretations by the parties, but the problem which might arise on that account was not related to the definition of the faculty of making reservations or objections.

16. Mr. CALLE Y CALLE, noting that the draft articles dealt first with objections to reservations and then with acceptance of reservations, said it would have been more logical if those two points had been dealt with in the reverse order.

17. While draft article 19 *ter* could perhaps be deleted, provided that objections to reservations were properly dealt with in later articles, he thought it might be useful to retain it as drafted, since it provided for the possibility of making objections on the basis of the tasks assigned to the international organization by the treaty. That special circumstance was covered in both subparagraphs (*a*) and (*b*) of paragraph 3. Thus it would not be possible for either a State or an international organization to enter a reservation to a provision of a treaty if that provision defined the functions of the international organization. He considered, however, that paragraph 2 should refer not only to paragraphs 1 and 3 of article 19 *bis*, but also to paragraph 2 of that article.

18. The concepts of objection and acceptance were not defined either in the Vienna Convention or in the draft articles. Acceptance was of particular importance, since it was one way of entering into a commitment, of expressing consent. It was true, however, that the Vienna Convention only defined (in art. 2 (*b*)) "ratification", "acceptance", "approval" and "accession" as means of expressing consent—but not the most common way of giving consent, namely, signature.

19. Lastly, it had been said that some reservations were not really reservations: when reservations were prohibited they were called declarations. It had also been said that an objection had the same effect as acceptance. That was true, except when the objection was to the entry into force of the treaty.

20. Mr. RIPHAGEN said that there was a tendency to think of treaties, particularly multilateral treaties, as instruments which laid down the law, rather than as the result of negotiated interests. The whole idea of reservations had first been expounded in the well-known advisory opinion of the International Court of Justice[4] when it had dealt with a very special humanitarian convention in which the interests involved had been those of people, not States, and it was that idea which had subsequently been embodied in the Vienna Convention. There were many treaties whose provisions maintained a certain balance of interests, and that balance had great significance in the final elaboration of a treaty. A reservation could disturb the balance, and the fact that it automatically had reciprocal effect did not restore it. In some treaties, the balance was between interests that were not legally correlated at all. For those reasons, he inclined to the view that it would be neither right nor possible to place any limitation on objections to reservations, and he therefore agreed that draft article 19 *ter* should be deleted.

21. Mr. ŠAHOVIĆ said he was afraid the Commission might be attaching too much importance to objections to reservations, which were simply the consequence of the right to enter reservations. It might even be said that they were corollary to the right to enter reservations. The Commission should concentrate on the question whether article 19 *ter* was necessary to the draft. In particular, he wondered for what reasons Mr. Calle y Calle considered that paragraph 2 of article 19 *ter* should refer not only to paragraphs 1 and 3 of article 19 *bis*, but also to paragraph 2 of that article.

22. He himself was not convinced of the usefulness of articles 19 *bis* and 19 *ter*, the justification for which would vanish entirely if the Drafting Committee decided to deal with the question of the participation of

[4] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. Advisory Opinion: *I.C.J. Reports 1951*, p. 15.

international organizations in a provision of general scope.

23. There was no reason to attach so much importance to objections as a separate concept, and he thought the Commission could confine itself to dealing with the question in draft article 20,[5] on acceptance of reservations.

24. Mr. USHAKOV said the idea that because the treaty established a balance between the interests of the parties each of them should be able to make objections to any reservation, was acceptable only in the abstract and was contradicted by practice.

25. He pointed out that a treaty could contain provisions which, for example, concerned only States and their relations *inter se*, and that a contracting international organization could not be authorized to make reservations to provisions of that kind. On the other hand, if a reservation made the participation of the international organization useless, the organization could decide that the treaty would not enter into force between itself and the reserving State. Thus the problem was a complex one, and it could not be generally affirmed that any party could enter a reservation to any provision.

26. Sir Francis VALLAT said it had become increasingly clear to him that article 19 *ter* had no proper place in the draft. It was unnecessary, complicated, confusing and wrong in principle. It should not be there, just as it had no counterpart in the Vienna Convention.

27. It was wrong in principle because once the terms of a treaty had been drafted no party or potential party to that treaty should have the right unilaterally to alter the rights or obligations of another party without its consent. The system of reservations was the exception to that general principle, but the general principle remained. What paragraph 3 of article 19 *ter* sought to do was to divest international organizations in certain, not very clear, circumstances of the right even to object—which was perhaps one of mankind's most inherent rights and certainly a right that must attach to any party to a treaty. To his mind, the case was one in which the parties, whether international organizations or States, should be equal before the law, particularly in the context of the rather exceptional legal provisions relating to treaties. In his view, no convincing argument had been put forward in favour of the limitation imposed by paragraph 3 of article 19 *ter*, which was the only paragraph in the article with any real bite. He would be grateful, however, if somebody could explain to him how subparagraphs (*a*) and (*b*) of that paragraph would operate. They seemed to introduce a confusing element which it would be very difficult to interpret and which could only make life more difficult for international organizations, without any justification for doing so.

28. Mr. RIPHAGEN, referring to Mr. Ushakov's remarks, said that the possible effect of a reservation to a multilateral treaty would be to split up the treaty into bilateral provisions. An objection to a reservation did not in any way affect the relationship between the State making the reservation and the State accepting it; it was relevant only to the relationship between the State which made the reservation and the entity which objected to it. So there was no problem on that score, and, in his view, Mr. Ushakov's point served to strengthen his own (Mr. Riphagen's) argument.

29. In any event, he agreed with Sir Francis Vallat that article 19 *ter* had no place in the draft.

30. Mr. NJENGA said that an article on the lines of draft article 19 *ter* had wisely been omitted from the Vienna Convention. The right to object to a reservation was a corollary of the right to make a reservation, and that right was so basic that it could not be denied to the parties to a treaty, whether they were States or international organizations. Moreover, draft article 19 *ter* was worded in such a way that it could only cause international organizations unnecessary difficulties. As had already been pointed out, paragraphs 1 and 2 stated the obvious. Only paragraph 3 had any substance, and it was difficult to see how it would operate.

31. In the circumstances, he favoured the deletion of draft article 19 *ter* in its entirety.

32. Mr. CALLE Y CALLE, replying to Mr. Šahović, who had asked the reason for his suggestion that article 19 *ter*, paragraph 2, should include a reference to the corresponding paragraph of article 19 *bis*, said he believed that the right of a State to object to a reservation stood, even if the reservation was expressly authorized. Indeed, he thought that the right of objection remained unlimited, whatever the conditions to which the making of reservations was subject; the right of objection was, as Mr. Njenga had said, the corollary of the right of reservation.

33. Mr. USHAKOV stressed the fact that, according to the definition of the term "reservation" given in draft article 2, subpara. 1 (*d*), a State or an international organization could not make any reservations they pleased to a treaty. The only possible reservations were those relating to provisions of the treaty which were specifically applicable to the State or to the organization concerned. Thus, in the case of a treaty concluded between States with the participation of an organization, the organization could not make reservations to the provisions concerning the relations of those States *inter se*. It followed that, if article 19 *ter* was deleted, it would be possible to object to any reservation, whereas the possibility of formulating reservations was limited. In the case of a treaty between States in which an international organization was allowed to participate, the organization would thus be able to object to reservations relating to the relations between those States.

[5] See para. 47 below.

34. Mr. REUTER (Special Rapporteur) said that before summing up the discussion on article 19 *ter* he would reply to the questions put to him.

35. He had been asked whether he could explain and provide a clear justification for subparagraphs (*a*) and (*b*) of paragraph 3: the answer was that he could not. When he had drafted his tenth report (A/CN.4/341 and Add.1), he had found those provisions confusing. They did contain the shadow of an idea, but it was not possible to explain it or justify it clearly.

36. The question put by Mr. Calle y Calle, who had asked whether paragraph 2 of article 19 *bis* should not be mentioned as well as paragraphs 1 and 3 in article 19 *ter*, paragraph 2, prompted him to make a quite general comment. It was clear from the discussions at the United Nations Conference on the Law of Treaties that a number of States had assumed that objections to reservations must be based on a legal argument. That was, indeed, the position that the Commission had adopted in elaborating its draft articles on the law of treaties. But the Conference had not followed the Commission on that point. According to the Conference, when reservations were authorized, the machinery of reservations and objections enabled a State to choose, within the general framework of a treaty, according to its own interests alone and without any justification by a legal argument, which commitments it accepted and which it rejected. Mr. Ushakov had a definite opinion on that point: the regime of objections did not relate to the case in which the reason for the objection was a legal one. An objection was merely part of a mechanism that made it possible to determine the nature of the particular commitments undertaken within the general framework of a treaty. It could nevertheless be asked whether, in view of the wording of the Vienna Convention, the Commission was entitled to define the concept of an objection precisely. It could, of course, take the view that, according to that instrument, objections could be based solely on an assessment of interests. But did it necessarily follow that the mechanism of objections did not apply when the justification given for an objection was a legal reason? That seemed to be Mr. Ushakov's view; he considered that such cases were disputes which had nothing to do with the problem of objections. Personally, he (the Special Rapporteur) did not think it was possible to define an objection on the assumption that it could be based only on an assessment of interests. If it was based on a legal reason, it could give rise to a legal dispute, which would then be settled by the means available to the States concerned.

37. Reverting to the example of a treaty concluded between two States with the participation of the IAEA with a view to the transfer of fissionable material, he said that supposing one of the States parties formulated a reservation, the answer to the question whether the Agency could object to that reservation for a legal reason would depend on the treaty. If the reservation was prohibited by the treaty, the only effect of the Agency's objection would be to make its opposition known. The reserving State could then review its position. If it did not yield, the IAEA could and should go further: it would state that the objection was serious and that it did not regard that State as a party to the treaty. Since the treaty was a trilateral one, it could not then be concluded. It was essential for an organization placed in such a position to act in that way, since its honour was at stake. In the case in point, the Agency would not be able to guarantee operations which it did not consider legally justified. It was possible to go even further: one of the two States might enter a reservation which was authorized by the treaty and which the other State accepted, and the Agency might then find that the application of the treaty could give rise to liberties that would preclude any guarantee of the peaceful use of the fissionable materials. In view of its general policy, the Agency could not answer for such a risk. It would be quite normal for it to make an objection, even in the absence of a legal reason, and to renounce the conclusion of the treaty.

38. It could be retorted that an organization was not entitled to object to a reservation concerning the relations of States *inter se*; but it was extremely difficult, even in a trilateral treaty, to draw a line between what was the exclusive concern of the States and what the exclusive concern of the organization. In that respect, article 3 of the Vienna Convention was not sufficiently detailed: relations between States could, of course, be divided into categories, but only within certain limits. An international organization would, in fact, never raise objections on matters which did not concern it in any way; but it was obviously for the organization itself to decide in each case whether it was concerned or not.

39. If the International Sea-Bed Authority possessed capacity to conclude treaties, it might conclude a treaty with two or three States on matters relating to protection of the environment. The Authority would guarantee the treaty, which would be an open treaty making no provision for reservations. One State might subsequently make a reservation, which was accepted by another State. The Authority might then consider that some of the treaty commitments had been modified and had become contrary to its general policy of environmental protection. It would be quite normal for the Authority to be able to object to that reservation and, if the State concerned did not accept its objection, to be able to refrain from concluding the treaty, at least in its relations with the States concerned.

40. Consequently, if the Commission was moving towards a definition of an objection, it would have to take a decision; but it would not be able to affirm that the mechanism of objections did not apply to declarations containing criticism based on legal reasons. It was bound to follow the same line as the Conference on the Law of Treaties, whatever surprises that might bring. Hence, if the Commission could not define the

concept of an objection, it would be extremely difficult for it to discuss the effect of an article on objections.

41. Thus, Mr. Calle y Calle's suggestion that article 19 *bis*, paragraph 2, should be mentioned in article 19 *ter*, paragraph 2, could be justified only if it was accepted that an objection could be based on legal grounds; otherwise, the wording of article 19 *ter*, paragraph 2, was satisfactory.

42. In those circumstances, as the members of the Commission had expressed different views on the nature of objections, he was reluctant to retain article 19 *ter*. It would probably not be advisable for the Commission to adopt a position which would be more restrictive than that of the Conference on the Law of Treaties and might have indirect effects on the Vienna Convention. In any event, the members of the Commission seemed to agree that an objection had a broader effect than a reservation. An objection was a means of defending a basic right of an entity which was to become a party to a treaty.

43. Summing up the views expressed in the Commission on article 19 *ter*, he said that Mr. Ushakov had a personal opinion, based on the actual concept of an objection and on the idea that an international organization must never be put in the position of having to raise an objection. Mr. Ushakov also feared that, from the Commission's point of view, an organization was entitled to object to points involving relations between States. In that connection, he (the Special Rapporteur) stressed that it would be very difficult in practice to distinguish the relations of States *inter se* from the relations between States and international organizations, and that an international organization was never inclined to object to matters which did not concern it. States must either trust the judgement of the organization or not conclude a treaty with it.

44. Mr. Riphagen, Sir Francis Vallat and Mr. Njenga had all suggested that article 19 *ter* might not be necessary. Mr. Calle y Calle and Mr. Šahović had expressed similar views, but had thought that the article could be retained if it was possible to prove that paragraph 3 was useful and not contrary to other provisions.

45. It might be advisable to refer article 19 *ter* to the Drafting Committee to see whether a justification could be found for it.

46. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer article 19 *ter* to the Drafting Committee.

It was so decided.[6]

[6] For consideration of the text proposed by the Drafting Committee, see 1692nd meeting, paras. 19–24.

ARTICLE 20 (Acceptance of reservations in the case of treaties between several international organizations) *and*

ARTICLE 20 *bis* (Acceptance of reservations in the case of treaties between States and one or more international organizations or between international organizations and one or more States)

47. The CHAIRMAN invited the Special Rapporteur to present articles 20 and 20 *bis*, which read:

Article 20. Acceptance of reservations in the case of treaties between several international organizations

1. A reservation expressly authorized by a treaty between several international organizations does not require any subsequent acceptance by the other contracting organizations unless the treaty so provides.

2. When it appears from the object and purpose of a treaty between several international organizations that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. In cases not falling under the preceding paragraphs and unless the treaty between several international organizations otherwise provides:

(*a*) acceptance by another contracting organization of a reservation constitutes the reserving organization a party to the treaty in relation to that other organization if or when the treaty is in force for those organizations:

(*b*) an objection by another contracting organization to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving organizations unless a contrary intention is definitely expressed by the objecting organization;

(*c*) an act expressing the consent of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting organization has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty between several international organizations otherwise provides, a reservation is considered to have been accepted by an international organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

Article 20* bis. *Acceptance of reservations in the case of treaties between States and one or more international organizations or between international organizations and one or more States

1. A reservation expressly authorized by a treaty between States and one or more international organizations or between international organizations and one or more States, or otherwise authorized, does not, unless the treaty so provides, require subsequent acceptance by the contracting State or States or the contracting organization or organizations.

2. When it appears from the object and purpose of a treaty between States and one or more international organizations or between international organizations and one or more States that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation formulated by a State or by an international organization requires acceptance by all the parties.

3. In cases not falling under the preceding paragraphs and unless the treaty between States and one or more international

organizations or between international organizations and one or more States otherwise provides:

(*a*) acceptance of a reservation by a contracting State or a contracting organization constitutes the reserving State or organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force between the State and the organization or between the two States or between the two organizations;

(*b*) an objection to a reservation by a contracting State or a contracting organization does not prevent the treaty from entering into force

between the objecting State and the reserving State,
between the objecting State and the reserving organization,
between the objecting organization and the reserving State, or
between the objecting organization and the reserving organization

unless a contrary intention is definitely expressed by the objecting State or organization;

(*c*) an act expressing the consent of a State or an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State or organization has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a contracting State or organization if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

48. Mr. REUTER (Special Rapporteur) said he would leave aside the drafting problems raised by articles 20 and 20 *bis* and would deal only with a problem of substance.

49. That problem arose in connection with article 20 *bis*, but he would discuss it only in relation to article 20, paragraph 4. In its written comments (A/CN.4/339), the Soviet Union had stated the question of principle raised by article 20 in the following terms: "It would seem that any actions by an international organization relating to a treaty to which it is a party must be clearly and unequivocally reflected in the actions of its competent body". Article 20, paragraph 4, set a time-limit of twelve months for the acceptance of reservations. If no objection to a reservation was made within that time and there was no special act of acceptance, the reservation was considered to have been accepted. The difficulties to which that rule gave rise were probably due to the fact that, at the United Nations Conference on the Law of Treaties, reference had been made to tacit acceptance. The Conference could have stated a rule to the effect that the right to make an objection was extinguished after a period of twelve months. The criticism made of the rule in paragraph 4 was that it implied a kind of acquiescence, which had been allowed for States, but which could not be allowed for international organizations, since such tacit acquiescence did not adequately protect the member States of an organization. In that connection, he pointed out that, if the rule had been reversed—an international organization's silence amounting to an objection after twelve months—the same criticism could have been made of it. That rule would, however, have had other consequences, because an objection could be withdrawn, whereas an acceptance could not. Hence reversing the rule would not suffice to resolve the question of principle. Besides, other articles of the draft provided for the mechanism of tacit acceptance, in particular articles 45 and 65.[7] Mr. Ushakov had found the time limit set in article 65 rather short for international organizations.[8] If the Commission now took a position on the question of principle similar to that of the Soviet Union, it would come up against further problems when considering those other articles.

50. It should also be noted that the notion of tacit acceptance was not entirely satisfactory. Two cases must be distinguished: the State which expressed its consent to be bound by the treaty might already have been informed of the reservation or it might not. In the first case, it was not so much tacit acceptance as implicit acceptance by a formal act. The State accepted, but it knew that a reservation had been entered and did not take the opportunity of making an objection. An act thus followed the reservation. In the second case, the silence really did amount to tacit acceptance, without any subsequent formal act. Perhaps that distinction did not make any difference, but it was necessary to draw attention to it. The Commission would probably not wish to take a position on the point independently of the question of principle.

51. In that connection, it was important to mention the problem of the guarantees to be given to the member States of an international organization. The member States must, of course, be protected, but so must other States. If the rule that silence amounted to tacit acceptance after twelve months applied to States acting on their own, States acting collectively through an international organization would be favoured by being given an indefinite time in which to make their positions known. In practice, however, and particularly in the case of a restricted treaty, things necessarily became clear after a certain time, for it was essential to know how the treaty was going to be applied. Difficulties only arose when there was a large number of States parties to a treaty. He therefore believed that, from the practical point of view, the criticism that had been made could be ignored.

52. If the Commission did not agree with him, it could either make a distinction between the two cases to which he had drawn attention, or fully accept the criticism of article 19 *ter* and apply its implications not only to that article but also to article 45, and even article 65, in which it would certainly not suffice to extend the time-limit set.

The meeting rose at 12.55 p.m.

[7] See 1647th meeting, footnote 1.

[8] See *Yearbook ... 1980*, vol. I, p. 21, 1588th meeting, para. 34.