Document:-
A/CN.4/SR.1674

Summary record of the 1674th 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

anyone who was not competent to do so under the rules of the organization. Moreover, the violation of those rules had to be manifest; in other words, it had to be within the cognizance of both parties: the other party had to know that the party signing was not competent.

40. An international organization could, moreover, invoke its rules to challenge the validity of a treaty only if, at the time when the treaty had been signed, the rules did not empower the organization to conclude such a treaty, in which case the matter would come under article 46. If, on the other hand, the treaty had been validly signed, and the organization had been empowered by its rules to conclude such a treaty, then paragraph 2 of article 27 would apply. The question which then arose was whether the organization could invoke its internal rules in a case where, although it had signed the treaty, it was unable to perform it. Again, the provision was couched in negative terms. The difficulty was that paragraph 2 incorporated an exception and it was the interpretation of that exception that was at issue. In his view, the phrase "subject to the exercise of the function and powers of the organization" did not mean that the organization in question could adopt new rules that were inconsistent with its treaty obligations since, in any event, the latter would prevail. If, however, the phrase was interpreted as referring to methods of implementing treaty obligations, there should be no difficulty.

41. Mr. ALDRICH said that he often failed to understand why a distinction was drawn between international organizations and States. His initial reaction had been that there might be some justification for having two different rules in view of the exception in the case of international organizations incorporated in paragraph 2 of article 27, but the more he listened to the discussion the less certain he was that there really was any difference. If a treaty involving an international organization provided that the organization could modify a requirement under the treaty by a decision of its organs, that might appear as if the organization was citing its own internal rules as an excuse for non-compliance, but in fact there was no question of non-compliance, since that was the intent of the treaty. Such cases could occur not infrequently in practice, since international organizations often provided the forum in which States worked out policy arrangements. It was easy to conceive of a case where the parties to the treaty would in effect permit the treaty to be amended as a consequence of a decision by one party to it, if that party was an international organization whose functions included decisions on issues of that kind. On that basis, therefore, it seemed to him that the provision was an unnecessary one, and he was inclined to revert to his earlier position, namely, that there was no difference between the right of a State to cite internal law and of an international organization to cite internal rules as a justification for non-performance.

42. He would have thought it was hardly necessary to make a cross-reference to article 46, since article 27 dealt with the justification for non-performance and article 46 with questions of invalidity. Consequently the two articles were not inconsistent. It might, however, be desirable for reasons of clarity to have such a cross-reference and, since there was one in the Vienna Convention, he would not object to its inclusion in the draft. He saw no real value, however, in having a cross-reference to article 73: it was a saving clause and therefore no such reference was needed to render it effective.

The meeting rose at 12.55 p.m.

1674th MEETING

Thursday, 18 June 1981, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Reuter, Mr. Riphagen, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, 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.1–7, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

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

ARTICLE 27 (Internal law of a State, rules of an international organization and observance of treaties[1] (*concluded*)

1. Mr. PINTO said that the basic meaning of paragraph 1 of article 27 seemed to be that a State might not cite its internal law as an excuse for failure to perform a treaty obligation. By contrast, paragraph 2 seemed to say that an international organization might cite its rules, including its charter, relevant decisions and resolutions, and established practice, as an excuse for failure to perform a treaty obligation. It could only do so, however, when all the other parties to the treaty intended, in the sense of understanding and agreeing, that that would be the case. In other words, a plea that the organization's rules would excuse non-performance would succeed only if it had been recognized and agreed at the outset that that was one of the "rules of the game".

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[1] For text, see 1673rd meeting, para. 4.

2. What could be cited as justification for failure to perform? Article 27, paragraph 2, spoke first of the rules of the organization, but, further on, it could be read to mean that the organization's rules could be cited as justification for failure to perform if the parties to the treaty had intended that performance would be required only if the exercise of its functions and powers so permitted. Possibly, therefore, some element which went beyond the rules but fell within the range of functions and powers conferred upon the organization, either by statute or by necessary implication, could be cited to justify failure to perform. The doubt that remained in his mind was whether justification for failure to perform, when provided for, was to be based on the rules or on the exercise of the rules. Since the privilege of justifying failure to perform by citing the rules of the organization was clearly made subject to the intention of the parties, that might not matter, even though the limits of the exception were not altogether clear. The introduction of the element of intention itself raised certain problems, however. For instance, should the intention of the parties to the treaty be demonstrated by being "manifest", express, or merely implied? And should the intention have been demonstrated at the time of the conclusion of the treaty or at the time of the failure to perform the obligation.

3. The reason why a special rule was contemplated in the case of international organizations seemed to derive from the dependent nature of such organizations. Organizations were composite persons, and their structure, policies and functions were in the hands of Member States. Such policies and functions were not within the control of the entity that entered into the contract and that could therefore be held responsible for change. Any changes in corporate structure, functions or policies that might affect treaty performance were, therefore, in the nature of supervening events, and treaty partners were on notice to take account of those features when entering into agreements with organizations.

4. In the text proposed by the Special Rapporteur (see 1673rd meeting, para. 20), the exception provided for in paragraph 2 of article 27 was stated to be "without prejudice" to articles 46 and 73.[2] In other words, that exception was precluded from having any effect on articles 46 and 73, although it was difficult to see how paragraph 2 of article 27 could have such an effect since the two articles in question dealt with unrelated matters. He agreed that the reference to article 46 could be retained so as to mirror the corresponding provision in the Vienna Convention.[3] He also agreed, however, that while article 46 was in the nature of a substantive rule and so logically could be the subject of a saving clause, the same did not apply to article 73. It was true that article 73 had a superficial affinity with paragraph 2 of article 27, since paragraph 2 of article 73 also referred to supervening events to which organizations were prone and States were not—but the burden of the paragraph was simply a disclaimer, and he therefore considered that the cross-reference to article 73 should be deleted.

5. He had wondered whether article 27 should provide for different rules for treaties between organizations and States, on the one hand, and treaties between organizations, on the other. It might, for instance, be necessary to supplement the rights of a State in cases where an organization invoked its rules as justification for non-performance. That could apply in particular where a State which was a member of an organization and a party to a treaty with that organization objected, as a member, to a decision taken within the organization regarding non-performance of a treaty obligation. Since, however, the privilege of pleading rules for non-performance was to be conferred only by agreement of the parties, he would have no objection to the application of paragraph 2 of article 27 to both types of treaties.

6. He also had no objection to the substance of article 27 as a whole, but he considered that its meaning should be clarified by the Drafting Committee.

7. Mr. SUCHARITKUL said that article 27, in the wording proposed by the Special Rapporteur, created no difficulties for him. The only possible stumbling block was the notion of intention. Although the intention of the parties was often difficult to establish, it was an essential element in the article. In that regard, a distinction should be made between treaties concluded between an international organization and one or more States and treaties concluded between international organizations. In the first case, it would be necessary not only to establish the intention of the organization and the State or States parties to the treaty but also to consider whether the State or States were members of the organization or not. In the second case, in which treaties could be either bilateral or multilateral, it would be necessary to establish the intention of the international organizations concerned, and that would not always be easy.

8. Draft article 73, which related to the termination of the existence of an organization and termination of participation by a State in the membership of an organization, should be mentioned in article 27, paragraph 2, as proposed by the Special Rapporteur. In that connection, he referred to the South-East Asia Treaty Organization, from which Pakistan had withdrawn and of which France had ceased to be an active member, and to certain treaties concluded by that organization with one or more member States concerning the establishment of research centres.

9. Lastly, he referred to the very rare phenomenon of successor bodies to international organizations. An example was provided by the circumstances which had led to the creation of the Association of South-East Asian Nations. He noted that situations of that kind were not mentioned in draft article 73.

[2] See 1647th meeting, footnote 1.

[3] See 1644th meeting, footnote 3.

10. Mr. VEROSTA said that he was glad the Special Rapporteur had endeavoured to take account of the comments made in the Sixth Committee, but thought it preferable to revert to the wording of article 27 adopted by the Commission on first reading. It was inelegant to reduce the article to two paragraphs each beginning with a reservation in respect of article 46, and unnecessary to introduce a saving clause regarding article 73 in paragraph 2. He thought also that the words "according to the intention of the parties" in paragraph 2 could be deleted if that was the view of the Drafting Committee, to which article 27 might be referred.

11. Mr. USHAKOV reverted to the question of the retroactive application of new rules of the internal law of a State or of new relevant rules of an international organization. No provision was made in any article of the Vienna Convention or of the draft for retroactive application in that respect. The question was unrelated to the concerns of the Commission.

12. In his view, the intention of the parties had no bearing whatsoever on rules as important as those relating to the functions and powers of an organization. If, for example, the Security Council, having decided to send peace-keeping forces to a particular area, concluded an agreement with a State to place 10,000 troops at the disposal of the United Nations for that purpose, but subsequently decided that a contingent of 8,000 troops was sufficient, the State concerned could not argue that its intention had been to provide 10,000 troops. There was no point in referring to a notion as vague as that of the intention of the parties. Similarly, if the United Nations decided to establish a subsidiary body with a substantial secretariat and concluded a headquarters agreement with a State but subsequently decided to transfer the headquarters, the host State could not plead its intention, which had been to keep the headquarters of the body on its territory. A State could not invoke its intention when the international organization with which it had concluded a treaty took decisions in accordance with its own functions and powers. In that regard, he thought that in the case in respect of which the International Court of Justice had recently given an advisory opinion,[4] the host State should comply with the decision taken by the organization in question and that it could not rely on its intention as an argument. He therefore thought that the words "according to the intention of the parties" should be deleted from paragraph 2.

13. Mr. JAGOTA said that one of the main questions raised during the discussion was whether the intention of the parties was relevant in the context of paragraph 2. In that connection, Mr. Ushakov had cited certain examples of what could be termed the internal legal order of an organization: under that order, an organization could take certain decisions which, once adopted, would be binding on members even if they had voted against the decision in question. That would apply, for instance, to decisions to move the headquarters of a subsidiary body of the United Nations, to adopt a budget, or to elect the members of certain bodies, and he agreed entirely that such examples of the internal legal order of an organization bore no direct connection to the intention of the parties. If, however, the words "according to the intention of the parties" were omitted from paragraph 2 of article 27, the necessary implication would be that any treaty between a State and an international organization would be subject to the internal legal order of that organization so far as the exercise of its functions and powers was concerned. If that were indeed the implication to be drawn, why was it necessary to refer to the intention of the parties at all? Either their intention had a bearing on the question of performance or it did not. He would be grateful for the Special Rapporteur's response to that point.

14. Again, there was the question of the scope of the phrase "the exercise of the functions and powers of the organization", which was nowhere defined. In his view, that phrase related to the internal legal order of an organization. It did not, however, enable an organization to invoke its rules and so evade its obligations under a treaty. Were it able to do so, then it would not be a treaty governed by international law but some other form of agreement. A treaty could not confer on one party the right to evade its terms by changing its internal rules or law, and that was the context in which article 27 must be read. In the final analysis, therefore, the question to be settled was whether the phrase "the exercise of the functions and powers of the organizations" referred to the internal functioning of the organization, to the modalities for the performance of treaties, or to the powers of the organization to amend its rules and thereby to evade its treaty obligations. Again, he would be grateful for the Special Rapporteur's reaction.

15. Mr. ALDRICH said that he was grateful for the examples given by Mr. Ushakov, since he had felt that there was a lack of a clear understanding of what was being considered in connection with paragraph 2 of article 27.

16. He continued to think that organizations and States were not very different in that respect, except that in practice treaties involving organizations were perhaps more likely to be subject to change as a consequence of the decision-making procedures of such bodies. Under United States of America law, if a commitment was made for the future expenditure of funds that had not been appropriated by the Congress, the official who entered into such a commitment was guilty of a crime. None the less, once such an agreement had been concluded, it was a binding agreement even though it had been made unlawfully under United States internal law unless, of course, the intention of

[4] Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion: *I.C.J. Reports 1980*, p. 73.

the parties, as expressed in the agreement, was to make the obligation subject to the availability of appropriated funds. There were numerous agreements of that kind, mostly in the aid field, which called for the future expenditure of money that had not yet been appropriated by the Congress. In such cases, the clear meaning of the agreement was that the obligation to make aid available was subject to certain internal action by one of the parties.

17. The position seemed to be the same in the case of most of the examples that had been cited regarding international organizations. The main question to determine was what did the agreement mean? For instance, did an agreement by a country to supply troops to a peace-keeping force mean that the organization agreed to use these troops whether or not it changed its original decision? He did not think so. No doubt a careful examination of its terms would reveal quite clearly that it was an agreement by a country to supply forces for so long as they were needed. As he understood it, therefore, the reference in paragraph 2 of article 27 to the intention of the parties was no more than an oblique way of asking what the agreement meant, and he had some doubts whether there was any difference in principle between organizations and States in that regard.

18. There might in practice be a difference of degree in that it was more likely that an organization would make some change that would undo the agreement or bring it to an end, but, in his view, the true meaning and intent, in the cases provided for in paragraph 2 of article 27, was that there would be no treaty violation since the treaty itself included within its own terms a limitation based upon the operation of the organization as an organization. There was therefore no need for an excuse, since it was really a matter of interpreting the treaty. The reference to the intention of the parties seemed to mean something different from the actual scope of the obligations as laid down in the treaty. He doubted whether there was in fact such a difference, and would be grateful for any examples to show that there was.

19. Mr. USHAKOV said that the internal law of a State and the rules of an organization could not be placed on the same footing. The rules of an organization consisted, on the one hand, of procedural rules and, on the other, of rules of international law, such as the rules set forth in Chapter V of the Charter which concerned the functions and powers of the Security Council. On the other hand, all the rules of internal law of a State were rules of pure internal law. The rules which an international organization could not invoke as justification for its failure to perform a treaty, according to article 27, paragraph 2, were obviously not procedural but rules governed by international law, such as those that defined the capacity to conclude treaties. In the final analysis, the internal law of a State could be assimilated only to the procedural rules of an organization.

20. Mr. REUTER (Special Rapporteur), speaking as a member of the Commission, said he thought it preferable not to mention article 73 in article 27. In addition to the reasons mentioned by other members of the Commission, the two paragraphs of article 27 under consideration were not symmetrical, since the first referred only to article 46 while the second referred to articles 46 and 73. The asymmetry was not justified, since article 73 was equally relevant in the case of States. The members of the Commission seemed to be generally in favour of deleting the reference to article 73. The reference had been made as a result of earlier discussions in the Commission and because of the commentary to draft article 73.[5] It should be noted, however, that although the reservation relating to article 73 was only a saving clause, the article had an important—if negative—legal effect in the light of paragraph 3 of article 42. A case which was not covered by article 73 would be subject to the rules of the draft. It would therefore be important to consider article 73 carefully in due course.

21. Like other members of the Commission, he thought that the phrase in paragraph 2 "unless performance of the treaty, according to the intention of the parties, is subject to the exercise of the functions and powers of the organization" was not good because it required interpretation, and considered that it would be better to avoid any reference to the intention of the parties. He noted that the Vienna Convention referred only incidentally to the intention of the parties, for example, in article 31, paragraph 4. Articles 28 and 29 of that convention began with the words "Unless a different intention appears from the treaty or is otherwise established" because there was no way of avoiding that form of words. The only reason for retaining a corresponding formula in paragraph 2 of the article proposed by the Special Rapporteur had been a desire to make as few changes as possible in the text adopted on first reading. He would have no objection to its deletion, but pointed out that in the present wording the concept of intention of the parties was counterbalanced by that of the exercise of the functions and powers of the organization. If the former were deleted, he would not be content with a mere reference to the latter. The formula should be reconsidered as a whole.

22. As a member of the Commission, he agreed with Mr. Aldrich that in pure law the question that arose in the case of international organizations also arose in the case of States, although more rarely. That was probably why the Vienna Convention made no reference to it. A State might adopt a law under which foreign residents who would otherwise be subject to military service would be exempted. The exemption would be subject to conditions (such as the performance of military service in the resident's country of origin) and co-operation with other States would be required to ensure they were complied with. Any

[5] See *Yearbook ... 1980*, vol. II (Part Two), pp. 91 *et seq.*

agreements concluded in that connection would depend on the application of a law which continued to be governed by the sovereignty of the State that adopted it. However, the law was not thereby brought within the sphere of international law. If it was amended, the agreements would cease to be applicable. Normally a State did not conclude agreements of that kind to enforce a unilateral national measure, but the situation was much less uncommon in the case of international organizations. In general, they had no power to ensure the application of their decisions by States and had to conclude agreements with them for that purpose. A degree of asymmetry was therefore to be expected in the two paragraphs of article 27.

23. He had the impression that the Commission tended toward the wording of article 27 adopted on first reading, providing there was a change in the wording of the exception in paragraph 2. The Commission was clearly not required to resolve all the problems that might arise. If an organization concluded a treaty in conformity with its relevant rules and later modified the rules relating to its treaty-making capacity, the modification would not have a retroactive effect. On the other hand, if an organization concluded a treaty with a non-member State and subsequently modified its constituent rules, thereby making performance impossible, the situation would be one that had no parallel in the Vienna Convention. Indeed, if a State concluded a treaty with another State and then concluded a second treaty with a third State and the two treaties, although valid, were in conflict, the problem was not covered by the Vienna Convention but by the rules relating to State responsibility. Nor need the Commission concern itself with a situation in which a treaty might be concluded between an international organization and a State and the organization's constitution—which was a treaty between States—might be modified if that modification was in conflict with the first treaty.

24. Continuing to speak as a member of the Commission, he said that the matter raised by the ILO (see A/CN.4/339) to which Mr. Pinto and Mr. Jagota had referred, might be of interest to organizations of a universal character. If an organization of that type concluded a treaty with one of its member States and at a later stage made changes in its rules that were binding on all its member States, its constitution might be in conflict with the treaty and with a treaty right or a right derived from a treaty. The Commission was not required to resolve problems of that type, since they constituted a special case of conflict, which was covered by the rules of each organization. Mr. Calle y Calle (1673rd meeting) had referred to such a case, a situation which involved rules of international law, but rules of a particular nature. The issue would be settled by the established practices of the organization.

25. Speaking as Special Rapporteur, he suggested that article 27 might be referred to the Drafting Committee.

26. The Commission appeared to be generally in favour of deleting the reference to article 73 and again having an article 27 divided into three paragraphs. Most members of the Commission favoured the deletion of the reference to the intention of the parties. If that was done, another form of words would have to be found to express the underlying idea, which was not irrelevant. In the case, for example, of an assistance treaty concluded in accordance with the relevant rules by one international organization with another international organization or with a State whereby the organization undertook to provide assistance, in the form of a certain sum of money over a period of three years, the organization would be bound by its commitment for a period of three years. If the organization undertook to pay a certain sum in the first year and to pay other amounts the following two years provided that it had the necessary funds, it was setting a condition. In introducing in article 27 the reservation in paragraph 2, the Commission had had in mind a particular condition, i.e. the adoption or maintenance of a decision of the organization. The organization gave an undertaking subject to the adoption of a particular decision or the maintenance of a decision already taken. But it was obvious that all the commitments entered into by an organization were not subject to such a condition. It was difficult to apply a general criterion in order to differentiate between them. The Commission did not seem prepared to adopt the criterion of the intention of the parties. In the final analysis, everything depended on the text of the agreement and on the conditions which it might contain. When an agreement was concluded for the implementation of a decision of the Security Council, it was clearly dependent on the maintenance of that decision. What was needed was a simple wording, which would refer to the rules for the interpretation of the treaty, under which a treaty should be interpreted in good faith, with due regard to its object and purpose and other circumstances establishing whether it was subject to the adoption or maintenance of a decision.

27. The CHAIRMAN suggested that article 27 should be referred to the Drafting Committee.

It was so decided.

ARTICLE 28 (Non-retroactivity of treaties),

ARTICLE 29 (Territorial scope of treaties between one or more States and one or more international organizations), *and*

ARTICLE 30 (Application of successive treaties relating to the same subject-matter)

28. The CHAIRMAN invited the Special Rapporteur to introduce articles 28 to 30, which constituted Section 2 (Application of Treaties) of Part III of the draft articles, and which read:

Article 28. Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. Territorial scope of treaties between one or more States and one or more international organizations

Unless a different intention appears from the treaty or is otherwise established, a treaty between one or more States and one or more international organizations is binding upon each State party in respect of its entire territory.

Article 30. Application of successive treaties relating to the same subject-matter

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated [or suspended in operation under article 59], the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(*a*) as between two States, two international organizations, or one State and one international organization which are parties to both treaties, the same rule applies as in paragraph 3;

(*b*) as between a State party to both treaties and a State party to only one of the treaties, as between a State party to both treaties and an international organization party to only one of the treaties, as between an international organization party to both treaties and an international organization party to only one of the treaties, and as between an international organization party to both treaties and a State party to only one of the treaties, the treaty which binds the two parties in question governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice [to article 41], [or to any question of the termination or suspension of the operation of a treaty under article 60 or] to any question of responsibility which may arise for a State or for an international organization from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards a State or an international organization not party to that treaty, under another treaty.

6. The preceding paragraphs are without prejudice to Article 103 of the Charter of the United Nations.

29. Mr. REUTER (Special Rapporteur) said that the Sixth Committee had not commented on the three articles given and no written comments had been received from Governments.

30. With regard to article 30, he had two comments. First, the brackets in paragraph 3 of the article, concerning article 59, and those in paragraph 5, concerning articles 41 to 60, should be deleted, since the text had been adopted in first reading.

31. Secondly, noting that the Commission had never been in favour of simplifying the draft texts but that many Governments—in particular the Government of Romania (see A/CN.4/339/Add.7)—regularly asked in their written comments that the text should be made less involved, he suggested that the Commission should consider the possibility of adopting the simplified wording for paragraph 4 proposed in paragraph 89 of his report (A/CN.4/341 and Add.1).

32. The CHAIRMAN suggested that the Commission should refer the title of Section 2 (Application of treaties) and articles 28 and 29 to the Drafting Committee, and take up article 30.

It was so decided.

33. Mr. USHAKOV observed that article 30 was an important provision, since it concerned the application of successive treaties and sought to define the rules establishing the priority of one treaty over another. He noted that the text gave rise to a serious difficulty owing to the different meanings of the word "treaty" in the context, in which it referred both to treaties between States and international organizations and to treaties between international organizations. The example of the Vienna Convention was not entirely satisfactory, since the convention referred to only one category of treaties, those concluded between States. However, where international organizations parties to a treaty between organizations were also parties to a treaty between States and international organizations relating to the same subject-matter, it would be difficult to determine which obligations should prevail.

34. He would not propose a formal amendment, but hoped the Commission would study the problem further and take a position on the issue, at least in the commentary. Another solution might be to draft articles governing the relationship between treaties of the same category. While the resulting text might be much more complicated, it would have the advantage of facilitating the understanding, application and interpretation of the future convention. For his part, he was as a matter of principle always in favour of a more comprehensive wording that would avoid future difficulties of application.

35. In addition, he thought that article 29, on the territorial scope of treaties between one or more States and one or more international organizations, which related solely to the obligations of States parties to a treaty with one or more international organizations, constituted further evidence of the importance of distinguishing between the category of treaties.

36. Mr. ALDRICH said that although there might in some cases be good reasons for drawing a distinction between treaties involving States and treaties involving international organizations, the Commission had, in general, followed the model of the Vienna Convention whenever possible, and the Special Rapporteur's suggestion concerning the wording of article 30, paragraph 4, was a perfect example of a case in which the Commission could and should follow that model.

37. In his discussions with Government officials and academics in the United States of America concerning

the Commission's work, it had been repeatedly stated that many articles of the draft under consideration seemed unnecessarily complicated, as though the Commission was going out of its way to cast aspersions on the qualifications of international organizations which were, in some ways, treated as second-class citizens compared to States. It had also been considered retrogressive for the Commission to try to place the actions of international organizations—which had, after all, been established by States to serve purposes that States themselves could not serve and thus had an important role to play in the modern-day world—in a category that was different from and somehow inferior to the category of the actions of States.

38. The Commission should therefore be aware of the fact that further criticism of the draft might be forthcoming if it could not clearly explain why it had, in some cases, decided to move away from the wording of the Vienna Convention.

39. Mr. REUTER (Special Rapporteur) said he did not believe that there could be any difference in quality of character between treaties concluded exclusively between international organizations and those concluded between States and international organizations. From the beginning of its work on the draft articles under consideration, the Commission had recognized and accepted the fact that the existence of two major categories of treaties raised problems. Mr. Ushakov's comments seemed to express a regret that was perhaps somewhat belated. As Special Rapporteur, he thought that a different wording of article 30, separating the various possible cases, would necessarily be long and complicated and would involve difficult discussions. In addition, if the Commission decided to lay down as a principle the view that the consent expressed in treaties between international organizations and that expressed in treaties between States and international organizations had a different legal value, it would have to reconsider the entire concept of the draft as a whole. Given a suitable definition, treaties concluded between international organizations could of course be regarded as international instruments of a lesser type, but any such affirmation might meet with a hostile reception in a diplomatic conference and frighten possible parties to the future instrument.

40. Mr. USHAKOV said he did not believe that the value of treaties depended on the character of the parties. All were equal from the legal standpoint, but it was for the Commission to decide, in draft article 30, which obligations prevailed in a case where successive treaties related to the same subject-matter. However, it was possible to envisage the specific case of a treaty concluded between two international organizations one of which subsequently concluded a treaty with a State, dealing with the same subject-matter. It was important to determine which obligations prevailed and for which reasons.

41. Mr. REUTER (Special Rapporteur) took note of Mr. Ushakov's statement of principle and said that the same problem arose with regard to the interpretation of paragraph 2 of article 30 of the Vienna Convention, which he himself took to mean that that provision applied only between the same parties to two successive treaties. However, if transposed to the sphere of the Vienna Convention, the example given by Mr. Ushakov would concern a first treaty concluded between State A and State B, and a second treaty concluded subsequently between State B and State C, a case for which, in his opinion, no provision was made in article 30 of the Vienna Convention.

42. Mr. USHAKOV observed that interpretation of the provisions of the Vienna Convention was relatively easy, since the word "treaty" had only one possible meaning in the Convention.

43. In the case of the draft articles before the Commission, a satisfactory solution might be found by indicating in the commentary to article 30 that the problem mentioned earlier arose in that connection and should be resolved by following the spirit of the Vienna Convention.

44. Mr. REUTER (Special Rapporteur) said he had no objection to stating in the commentary to draft article 30 that article 30 of the Vienna Convention was difficult to interpret, but that as the Convention had entered into force and its interpretation rested with the States parties to it, the Commission had deliberately refrained from interpreting it. The commentary might go on to say that since the text of the Commission's draft was more complex because of the various types of treaties involved, it was bound to raise problems that were similar but even more delicate.

45. In view of the comments which had been made, he thought that article 30 might be referred to the Drafting Committee.

46. Mr. VEROSTA said that he was inclined to support the simplified wording proposed by Mr. Reuter in paragraph 89 of his report. As a compromise, he suggested that, if the Commission opted for that text, the text adopted by the Commission on first reading should be included in the commentary to article 30 in the interests of clarity.

47. The CHAIRMAN pointed out that the Commission could not begin to draft a detailed commentary to article 30 until the Drafting Committee, which would have to give its views on a possible modification of the text, had completed its work.

48. He suggested that the Commission should refer article 30 to the Drafting Committee.

It was so decided.

ARTICLE 31 (General rule of interpretation),

ARTICLE 32 (Supplementary means of interpretation), *and*

ARTICLE 33 (Interpretation of treaties authenticated in two or more languages)

49. The CHAIRMAN invited the Special Rapporteur to introduce articles 31 to 33, which constituted Section 3 (Interpretation of treaties) of Part III of the draft articles, and which read:

Article 31. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(*b*) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) leaves the meaning ambiguous or obscure; or

(*b*) leads to a result which is manifestly absurd or unreasonable.

Article 33. Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

50. Mr. REUTER (Special Rapporteur) remarked that draft articles 31, 32 and 33 reproduced the corresponding articles of the Vienna Convention without modification. As the Sixth Committee had made no comments on the articles and no written comments had been received from Governments, he suggested that the title of Section 3 and the three articles should be referred to the Drafting Committee.

51. Mr. CALLE Y CALLE said he agreed that the articles should be referred to the Drafting Committee, although he considered the text should be retained unaltered.

52. Mr. ALDRICH also agreed that articles 31 to 33 should be referred to the Drafting Committee. He noted, however, that in accordance with what he had said (1673rd meeting) in connection with article 27, paragraph, 2, where as he saw it, the problem was one of the interpretation, not the observance, of treaties, he might make some suggestions in the Drafting Committee concerning article 31 in order to deal with the problem to which article 27 gave rise.

53. The CHAIRMAN suggested that the Commission should refer the title of Section 3 (Interpretation of treaties) and articles 31, 32 and 33 to the Drafting Committee.

It was so decided.

The meeting rose at 1 p.m.

1675th MEETING

Friday, 19 June 1981 at 10.10 a.m.

Chairman: Mr. Robert Q. QUENTIN-BAXTER

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Ushakov, 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.1–7, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

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

ARTICLE 34 (General rule regarding third States and third international organizations),

ARTICLE 35 (Treaties providing for obligations for third States or third international organizations),

ARTICLE 36 (Treaties providing for rights for third States or third international organizations), *and*