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A/CN.4/SR.1700

Summary record of the 1700th 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:-

1982, vol. I

and the problems considered by the Commission should be reflected in the commentary to the article, or that the exception should be redrafted in the following way:

"2. An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty, unless the latter [the treaty], by reason of its subject, depends on the adoption or maintenance of a decision of the organization."

30. In their comments and observations, Governments and organizations wondered what happened to a treaty properly concluded by an international organization if that organization changed, either because it had altered its structure, revised its constituent instrument or lost a large proportion of its members. In that respect, he would point out that draft article 73 expressly referred to cases that fell outside the scope of the draft. However, at the previous session, the members of the Commission had decided that it was not necessary for article 27 to include a *renvoi* to article 73.[6]

31. Lastly, to round out his comments, he wished to refer to the Convention recently adopted by the Third United Nations Conference on the Law of the Sea, which had decided that the Convention would be open to signature by some international organizations. Consequently, the Conference had established the conditions for their participation, more particularly in annex IX, article 4, paragraph 7, according to which:

7. In the event of conflict between the obligations of an international organization under this Convention and its obligations arising under the terms of the agreement establishing the organization or any acts relating to it, the obligations under the present Convention shall prevail.[7]

It was a provision which reflected a trend that would have to be borne in mind in considering the pros and cons of the two solutions for article 27, paragraph 2, proposed in the eleventh report on the topic under consideration.

The meeting rose at 12.50 p.m.

[6] *Ibid.*, pp. 159 *et seq.*, 1673rd meeting, paras. 23, 35, 36 and 42; 1674th meeting, paras. 4, 10 and 26.

[7] The Convention on the Law of the Sea was adopted on 30 April 1982 at the eleventh session of the Third United Nations Conference on the Law of the Sea. For the text, see A/CONF.62/122 and Corr.3 and 8.

1700th MEETING

Wednesday, 5 May 1982, at 10 a.m.

Chairman: Mr. Paul REUTER

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/341 and Add.1,[1] A/CN.4/350 and Add.1-11, A/CN.4/353, A/CN.4/L.339, ILC (XXXIV)/Conf. Room Doc. 1 and 2)

[Agenda item 2]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING[2] (*continued*)

ARTICLE 27 (Internal law of a State, rules of an international organization and observance of treaties)[3] (*concluded*)

1. Mr. NI said that, although the ultimate decision concerning the final form of the draft articles would be taken by the General Assembly, the draft already seemed to have assumed the shape of a convention that would be a counterpart of the Vienna Convention and would be a very useful instrument in view of the growing number of international organizations.

2. It was perhaps the content that would determine the structure of article 27, rather than the reverse. In fact, article 27 was intended to prevent a State or an international organization from invoking its internal law or its constituent rules as justification for failure to perform treaty obligations, whereas article 46 was intended to prevent a State or an international organization from invoking its internal law or its constituent rules as grounds for invalidating consent already given. The two articles thus covered two different situations. However, in order to mirror the corresponding provision of the Vienna Convention, a *renvoi* to article 46 might be retained in article 27. Article 73 was an entirely different matter, since it related to subsequent events that bore no relation to what was provided for in article 27. Moreover, article 73 also applied in the case of States, as rightly pointed out by the Special Rapporteur.[4] It was therefore perplexing to find a *renvoi* to article 73 in paragraph 2 of article 27 and not in paragraph 1.

3. As far as the structure of the article was concerned, it might be preferable to revert to the three-paragraph formula adopted on first reading and to refer to article 46 in paragraph 3. With regard to paragraph 2, the second alternative proposed by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 17)[5] called for further reflection. The exception contained therein might not be necessary at all, but if it was, some drafting changes would be required. He suggested that the word "latter" should be replaced by "treaty" and that the words "by reason of its subject" should be replaced by "by the nature of its subject-matter". The problem was one that would have to be referred to the Drafting

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] The draft articles (arts. 1 to 80 and annex) adopted on first reading by the Commission at its thirty-second session appear in *Yearbook ... 1980*, vol. II (Part Two), pp. 65 *et seq.* Draft articles 1 to 26, adopted on second reading by the Commission at its thirty-third session, appear in *Yearbook ... 1981*, vol. II (Part Two), pp. 120 *et seq.*

[3] For the text, see 1699th meeting, para. 27.

[4] *Yearbook ... 1981*, vol. I, p. 165, 1674th meeting, para. 20.

[5] For the text, see 1699th meeting, para. 29.

Committee if the Commission opted for that alternative.

4. Sir Ian SINCLAIR said that article 27 gave rise to problems mainly because of the exception provided for in paragraph 2. In his view, there was no need to retain the exception, which covered the case in which an international organization might be unable to perform a treaty because a competent organ of the organization had failed to adopt or maintain a decision on the basis of which the treaty had been concluded. The problem could also arise in connection with treaties concluded by States, but in his country, for example, there was a constitutional convention that any treaty whose performance required expenditure of public funds needed the approval of Parliament, and it was thus customary to include in the text of treaties a provision making payment of funds contingent on parliamentary approval.

5. Any treaty concluded by an international organization should allow for failure by the competent organ of the organization to adopt or maintain the decision on the basis of which the treaty was concluded. Since treaty drafting was a flexible exercise, international organizations could always protect themselves against that kind of contingency, for instance, by negotiating a clause arranging for automatic termination of the treaty in the event of such a contingency. The solution, therefore, was to delete the exception contained in paragraph 2, as suggested by the Special Rapporteur in the first alternative he had proposed (*ibid.*).

6. Another question that would have to be answered when article 27 came to be drafted in its final form was whether the reference to article 46 should appear in paragraphs 1 and 2, as was now the case, or in a separate paragraph. The question was essentially one of presentation, but he would prefer that a new paragraph 3 be added.

7. Mr. RAZAFINDRALAMBO said that, as it was for the General Assembly, and not the Commission, to take the final decision on the future of the draft articles, the best course was to give them the form of a convention, since it would be easier to turn a draft convention into a straightforward declaration than to do the opposite.

8. In the article under consideration, it seemed necessary to retain paragraph 2, concerning international organizations, if only for reasons of symmetry with paragraph 1, concerning States. The Special Rapporteur had spoken of the concern caused by the peremptory formulation of the principle stated in the two paragraphs. The exception to the principle was relegated to a third paragraph, whereas both the rule and the exception were contained in a single paragraph in the corresponding article of the Vienna Convention. It would perhaps be preferable if the draft article were formulated along the lines proposed by the Special Rapporteur in his tenth report (A/CN.4/341 and Add.1, para. 88[6]), even if it meant shifting the exception to the end of each paragraph, so that the rule preceded the exception.

9. In the new wording he was proposing for paragraph 2 of article 27, the Special Rapporteur had been right to delete the reference to the intention of the parties, which was a difficult concept to grasp and interpret, and had properly dispensed with the reference to the exercise of the functions and powers of the organization, since the term "powers" was particularly vague. The proposed new wording tempered the rule and appeared to be a significant improvement.

10. Lastly, the reference to article 73 might prove to be a useful clarification, since that article, like article 46, was an exception to the rule enunciated in paragraph 2 of article 27. However, the reference was not absolutely essential.

11. Mr. CALERO RODRIGUES said that article 27, which was intended to adapt the provisions of the Vienna Convention to the situation of international organizations parties to treaties, made the basic and certainly sound statement that failure to perform a treaty could not be justified, in the case of a State, by invoking the provisions of its internal law, or in the case of an international organization, by invoking the rules of the organization, without prejudice, in either instance, to article 46, which referred to a manifest violation of a provision regarding competence to conclude treaties as a cause for invalidity.

12. There were, however, two questions that had to be answered in connection with article 27. The first was whether or not to retain, in the case of international organizations, the exception adopted on first reading: "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". In his eleventh report (A/CN.4/353, para. 17), the Special Rapporteur was proposing either to delete or to recast the exception. His own view was that the exception in paragraph 2 could be deleted, for if a problem arose on that account between two international organizations, it could be solved through interpretation of the provisions relating to the application, validity and termination of the treaty. Deletion of the exception would, moreover, add to the clarity of the paragraph.

13. The second question to be resolved was whether there should be an exception not only with regard to article 46 but also with regard to article 73. In that connection, he agreed with the view expressed by the Special Rapporteur in his eleventh report that there was no point in including a *renvoi* to article 73, which would add nothing to the text of article 27, paragraph 2 (*ibid.*, para. 14).

14. He was therefore in favour of the text of article 27 adopted on first reading, provided the words "according to the intention of the parties" in paragraph 2 were deleted and the formulation of paragraph 1 was simplified by deleting the words "between one or more States and one or more international organizations".

[6] For the text, *ibid.*, para. 27.

15. Chief AKINJIDE said that he fully agreed with Sir Ian Sinclair's views on the problem relating to the exception in article 27, paragraph 2. Indeed, the constitutional convention mentioned by Sir Ian was part and parcel of the practice followed in his own country, where no treaty had the force of law unless it had been ratified by the legislature and where the performance of any treaty providing for an expenditure of funds was contingent on legislative approval.

16. Mr. FRANCIS said that he shared the views expressed in the Special Rapporteur's eleventh report (*ibid.*, para. 14). It was agreed that a reference in article 27 to article 73 would be pointless, but he wished to suggest that a *renvoi* could be made to article 46 in an introductory phrase that would read "Without prejudice to article 46," and would apply to both paragraph 1 and paragraph 2 of article 27.

17. Mr. FLITAN said that, in the main, he concurred with Mr. Calero-Rodrigues. The Vienna Convention should be followed as closely as possible, which meant taking the text of article 27 of the Vienna Convention as the point of departure and transposing it to the draft articles. The simplest solution would seem to be the best.

18. Article 27 should, as the Special Rapporteur proposed, consist of three paragraphs (*ibid.*, para. 17). In the case of paragraphs 1 and 3, the wording adopted on first reading could be retained. For paragraph 2, the Special Rapporteur appeared to prefer the first of the two alternatives he proposed, which was also the simpler. The second alternative, which sought to be more precise, posed two difficulties. First, the formulation used and the clarification made departed from the Vienna Convention. Second, the proposed wording did not seem to meet the repeated demands for clarity made not only in the Commission and in the Sixth Committee but also in the comments of Governments and international organizations. The phrase "maintenance of a decision of the organization" was particularly vague. In addition, no reference to article 73 was necessary.

19. As to any difficulties connected with internal law, to which some members of the Commission had alluded, the same difficulties existed in the case of treaties concluded between States; yet a straightforward solution had been adopted in article 27 of the Vienna Convention.

20. Mr. EL RASHEED MOHAMED AHMED said that, although the exception in article 27, paragraph 2, sought to protect international organizations against any violation of their rules, he thought, as did Sir Ian Sinclair, that it should be deleted. The concern it endeavoured to allay was unfounded. Moreover, a fine distinction had been drawn between articles 27 and 46, but those provisions were in fact quite different, because article 27 related to failure to perform a treaty, whereas article 46 related to consent.

21. He therefore preferred the first of the alternatives proposed by the Special Rapporteur (*ibid.*), for it would strike the necessary balance between the obligations of States vis-à-vis international organizations and the obligations of international organizations vis-à-vis States.

22. Mr. USHAKOV said that he had always advocated the inclusion of a paragraph 2 dealing with international organizations, in view of the enormous differences between the position of a State and that of an international organization in the matter under discussion. What was the significance of article 27 of the Vienna Convention from the standpoint of the internal law of a State concluding a treaty with another State? It meant that the State was master of its internal law and that, if it concluded a treaty contrary to the provisions of its internal law, it must modify those provisions in the light of the obligations which it had assumed under the treaty. The situation could not be otherwise, and the State could not invoke its internal law as justification for failure to perform the treaty, unless it had inserted in the treaty a clause whereby performance of the treaty was subordinated to its internal law. Similarly, when a State undertook by treaty to perform a financial obligation requiring the authorization of its parliament and then failed to obtain such authorization, it could not invoke that fact unless, at the time when the treaty was concluded, it had made its commitment subject to that condition.

23. The situation was quite different in the case of international organizations. In principle, although an international organization was master of its constituent instrument, the organ of the organization which concluded a treaty was not. If the Security Council concluded a treaty entailing an amendment to the Charter, it could not make the amendment itself, since such action was the prerogative of the Member States. It was that fundamental difference between States and international organizations that had to be taken into account in order to protect organizations against an obligation requiring an amendment of its rules or of its constituent instrument. Unlike States, international organizations were not obligated to amend their constituent instruments when one of their organs assumed an obligation involving a change to that instrument and did not take the precaution of making performance of the obligation subject to the rules of the organization. It was necessary either for international organizations to stipulate a restriction in every case or for a rule to be established in order to protect them in the event of omission.

24. The text of paragraph 2 adopted on first reading included a reference to the intention of the parties, a concept which he had consistently argued against, for it was unnecessary. Such a reference added nothing when the intention of the parties, duly expressed, had been to formulate a reservation to the application of the treaty, in which case it was for the international organization concerned to make that intention clear. Consequently, in order to protect international organizations it was sufficient to state the rule in the following terms: "unless performance of the treaty is subject to the exercise of the functions and powers of the organization". It

would be advisable, however, to replace the words "the exercise of the functions and powers of the organization" by a clearer and more precise phrase.

25. The other solution proposed by the Special Rapporteur, namely, to temper the rule with the words "unless the latter [the treaty], by reason of its subject, depends on the adoption or maintenance of a decision of the organization", was not entirely satisfactory, since the conclusion of a treaty by an international organization was always dependent on the adoption or maintenance of a decision of an organ of the organization. Moreover, the proposed wording could give rise to problems of interpretation. Could an organization, after taking a decision to conclude a treaty, take a decision to the contrary? In the final analysis, the wording proposed by the Special Rapporteur in his tenth report (see 1699th meeting, para. 27) seemed more felicitous, although it was open to improvement. Within the limits of the exercise of the functions and powers of the organization, it enabled a decision to be taken to revoke the decision to conclude the treaty and justify failure to perform it.

26. Lastly, it was unnecessary to include a *renvoi* to article 73, which was a straightforward safeguard clause that did not establish any rule calling for a reservation.

27. Mr. THIAM noted that the discussion seemed to centre mainly on paragraph 2, which stated a principle and an exception. There could be no objection to the principle, which was none other than the fundamental principle of *pacta sunt servanda*. However, unlike Mr. Ushakov, he doubted whether it was really necessary to provide for an exception in the case of international organizations. Clearly, when a treaty was signed, a State could make all kinds of reservations, including reservations of ratification. However, international organizations, as legal entities, had the same scope for limiting the extent of their commitments and making the performance of a treaty subject to certain conditions. Hence, in that respect there was no reason to treat organizations differently from States. In general, the exception to the principle would be invoked only in the event of a dispute, in which case the treaty must be interpreted in accordance with clearly defined rules governing interpretation. Article 31 of the draft contained provisions for that precise purpose, and if an international organization was unable to perform a treaty, those provisions would doubtless make it possible to determine whether there was a genuine legal impediment. Consequently, he would prefer that the text of paragraph 2 should contain no exception. The differences between States and international organizations should be taken into account only when they were quite evident, which did not appear to be the case in the present instance.

28. The *renvoi* to article 46 would be better placed in a third paragraph, rather than at the beginning of each of the first two paragraphs.

29. Mr. OGISO, referring to paragraph 14 of the Special Rapporteur's eleventh report (A/CN.4/353), said he too agreed that the use of the words "the intention of the parties" in article 27, paragraph 2, was open to criticism. In his view, the provisions of the draft articles should be as close as possible to those of the Vienna Convention, and the words "the intention of the parties" would make article 27 unnecessarily ambiguous and arbitrary.

30. Again, the example of the Security Council given in the eleventh report (*ibid.*, para. 15), did not seem to him to justify the exception included in article 27, paragraph 2. Certainly, after the Security Council adopted a resolution concerning the conditions of a cease-fire and the United Nations concluded an agreement with one or more States to implement that resolution, if the Security Council were then to revise the resolution or adopt another, the United Nations might no longer be in a position to fulfil its obligation under the agreement. Account should then be taken of two possibilities. First, if, after the conclusion by the United Nations of an agreement with one or more States, the international situation changed and the cease-fire became unnecessary, the United Nations would, even without the exception provided for in article 27, paragraph 2, automatically cease to perform the agreement it had concluded for the purpose of implementing the Security Council resolution. Secondly, the Security Council might adopt a resolution and the United Nations might conclude an agreement with a State to implement that resolution, but the Security Council's membership might alter subsequently and the United Nations might no longer be in a position to continue to perform the agreement. The exception provided for in article 27, paragraph 2, might then give excessive protection to international organizations vis-à-vis States, and he was not sure that that should be the case since States, under article 27, paragraph 1, could not invoke a change in their internal law as justification for failure to perform a treaty.

31. He therefore preferred the first alternative proposed by the Special Rapporteur (*ibid.*, para. 17). The problem caused by the exception provided for in article 27, paragraph 2, could be avoided altogether if it were clearly stipulated in any agreement concluded between the United Nations and one or more States with a view to implementing a Security Council resolution that any change in the resolution would make it difficult for the United Nations to fulfil its obligations under the agreement.

32. Mr. PIRZADA said he too considered that it was unnecessary for article 27 to contain a reference to article 73. As for the *renvoi* to article 46, it should be noted that in the Vienna Convention article 46 ruled out the case of treaties concluded in violation of a provision of a State's internal law if the violation was manifest and concerned a rule of its internal law of fundamental importance, for such treaties were void *ab initio*. Accordingly, the question of the internal law of the States parties would not normally arise, and he saw no justification for drawing a distinction, in that regard, between international organizations and States. Hence,

the exception contained in article 27, paragraph 2, should be deleted.

33. Mr. McCAFFREY said he thought that the same formula should be used in paragraph 1 and paragraph 2 of article 27, especially in the light of the clear analogy between changes in the internal law of a State and changes in the rules of an international organization. If no exception was included in paragraph 1, there was no reason to insert one in paragraph 2. Either a State or an international organization would be free to negotiate the inclusion in a treaty of a clause providing that there would be no obligation under the treaty in the absence of the requisite internal acts. Deletion of the exception also would have the advantage of dispensing with the somewhat troublesome "unless" clause, including the open-ended "intention test".

34. With regard to the cross-reference to article 46, he favoured a three-paragraph structure, since it was a more streamlined presentation than the inclusion of a proviso clause in each of the two paragraphs concerning States and international organizations respectively.

35. There was no reason to mention article 73, since it did not relate to the subject-matter of article 27.

36. Lastly, he was of the opinion that the draft should take the form of a convention, rather than a declaration.

37. Mr. QUENTIN-BAXTER said he agreed with the general sentiment that there was no need for article 27 to include a reference to article 73, and he was in favour of the three-paragraph approach.

38. The Commission's aim was not to improve on the Vienna Convention in relation to treaties between States, but to introduce differences in treatment that were warranted in the case of international organizations. For that reason, Mr. Ushakov had been entirely right to point out essential differences in the competence of States and of international organizations. However, in the particular context of article 27, the question remained of whether it was necessary to include a special exception in favour, so to speak, of international organizations. Certainly, everyone agreed that the purpose of such an exception would not be to allow an international organization to escape freely accepted obligations. In the case of a change in policy by the organization, there was no reason to give more latitude to international organizations than to States. In his view, the question hinged on the point evaluated by the Special Rapporteur in his eleventh report (A/CN.4/353, para. 18): Was article 46 sufficient to preserve the essential interests of an international organization? In fact, there were no adequate grounds for disagreeing with the view expressed in that paragraph; in all cases of application of article 27, treaties to which organizations were parties would be covered by article 46. He therefore considered that the Commission could take a step towards simplification by deleting the proposed exception in paragraph 2, especially in view of the difficulty of formulating it.

39. As to the final form of the draft articles, he noted that the Commission had begun by placing great emphasis on even formal differences between States and international organizations, but it now tended to move towards narrowing the real range of differences between the draft articles and the Vienna Convention.

40. Mr. SUCHARITKUL said that he shared the views of the Special Rapporteur and agreed with the preference the Special Rapporteur had expressed for one of the alternatives proposed in his eleventh report (*ibid.*, para. 17).

41. In order to dispel the concern, mentioned in paragraph 18 of the report, that the protection afforded by article 46 would not be sufficient for international organizations, the Commission could broaden the scope of article 46, although the content need not be altered. The proviso that the terms of article 27 were without prejudice to article 46 should be retained. Such a solution, while satisfactory, would not be sufficient to allay the concern expressed by Mr. Ushakov. The question was, therefore, whether the Commission could create middle ground between observance of the obligation entered into and the invalidity of treaties.

42. By way of information, he wished to cite the most recent version of article 4, paragraph 7, of annex IX to the Convention on the Law of the Sea:

> 7. In the event of a conflict between the obligations of an international organization under this Convention and its obligations arising under the terms of the agreement establishing the organization or any acts relating to it, the obligations under the present Convention shall prevail.[7]

He stressed that the parties to a treaty, whether States or international organizations, were always at liberty to seek solutions to conflicts arising between two types or two sorts of obligation.

43. The CHAIRMAN, speaking in his capacity as Special Rapporteur, said that the discussion could be reduced to a number of very simple points. In general, the members of the Commission had expressed their views on a fairly large number of questions, some of which, while relating to questions of principle, were not closely linked to the substance of the matter. The overall opinion in the Commission was that the *renvoi* to article 73 should be deleted—a possible solution that was not difficult to accept.

44. The value of the discussion lay in some questions of principle raised in connection with article 27, paragraph 2. The Commission had expressed an almost unanimous preference for a simple wording, largely for two reasons. First, if a reservation of the type proposed in the paragraph was called for in the case of international organizations, it would also be necessary in the case of States. However, no such proviso was contained in the Vienna Convention, and the members of the Commission had consistently refrained, in respect of States, from going beyond the provisions of that Convention, even though some of them could be further clarified in certain instances. Secondly, such a reserva-

[7] See 1699th meeting, footnote 7.

tion was conceivable, for a number of reasons, but it was extremely difficult to formulate it clearly. In the circumstances, it would be preferable to dispense with such an exercise, since it was unnecessary.

45. Among the members of the Commission who had spoken, Mr. Ushakov alone had called for a special reference to be made to international organizations. Clearly, as many members had noted, international organizations must be afforded protection. A rule did exist for that purpose, namely, the one laid down in article 46, and there could be no others. It could not be stated as a general principle that, where the powers and functions of an international organization were involved—which was always the case—that organization could withdraw from an obligation, or that, where its powers and functions were involved, all of its obligations were entered into subject to a basic proviso, namely, that the organization could regard its functions and powers as compelling it to withdraw from its obligations. Such a condition was provided for in French law under the name "potestative condition": one whereby a person entering into a commitment reserved the right to free himself from that commitment at his discretion. To incorporate it into the draft articles—and he did not believe that that was the intention of Mr. Ushakov, who did not consider that international organizations were unable to enter into an irrevocable commitment—would be tantamount to saying that the rule of *pacta sunt servanda*, stated in article 46, was not applicable to international organizations. It was Mr. Ushakov's view that, in the case of the Security Council, for example, the real question was whether the Council, if it so desired, could sign an agreement which froze and immobilized a resolution. In Mr. Ushakov's opinion, it could not do so and that was why he wished the principle in question to be reiterated. It might be pointed out that that was no absolute answer to the questions raised, since it was possible to say—although the Commission was not competent to do so—that the Security Council, acting under the provisions of Chapters VI or VII of the Charter, could never, even by the insertion of a clause in an agreement, freeze its competence, and that if it did so, the agreement was unconstitutional. Consequently, protection was afforded by article 46, and it was not necessary to include a special reference in the article under consideration. Either article 46 was applicable, or it was not.

46. Nevertheless, there remained the question of whether the article under consideration could include a reference to some sort of exception, one which, logically speaking, was not absolutely necessary but would nevertheless meet the concern expressed by Mr. Ushakov.

47. Consequently, he proposed that the article should be referred to the Drafting Committee, which should, in particular, take into account the criticisms expressed on the alternatives proposed in the eleventh report and find satisfactory formulations.

It was so decided.[8]

[8] For consideration of the text proposed by the Drafting Committee, see 1740th meeting, paras. 2, 13 and 14.

48. Mr. USHAKOV said he agreed that the article should be referred to the Drafting Committee. He reserved the right to reply, at the following meeting, to the Special Rapporteur's interpretation of his statement at the beginning of the meeting.

The meeting rose at 1 p.m.

1701st MEETING

Thursday, 6 May 1982, at 11.20 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

Filling of casual vacancies in the Commission (article 11 of the Statute) (*concluded*)* (A/CN.4/355 and Add.1 and 2)

[Agenda item 1]

1. The CHAIRMAN announced that at a private meeting, Mr. Ahmed Mahiou had been elected to fill the casual vacancy in the Commission caused by the election of Mr. Bedjaoui to the International Court of Justice. He read out a telegram which had been sent to Mr. Mahiou congratulating him and inviting him to join the Commission at Geneva.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/341 and Add.1,[1] A/CN.4/350 and Add.1-11, A/CN.4/353, A/CN.4/L.339, ILC (XXXIV)/Conf. Room Doc. 1 and 2)

[Item 2 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING[2] (*continued*)

ARTICLE 28 (Non-retroactivity of treaties)

2. The CHAIRMAN invited the Commission to consider draft article 28, 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.

3. Mr. USHAKOV said that article 28 had not given rise to any difficulties in the Commission and was ab-

* Resumed from the 1699th meeting.

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] The draft articles (arts. 1-80 and annex) adopted on first reading by the Commission at its thirty-second session appear in *Yearbook ... 1980*, vol. II (Part Two), pp. 65 *et seq.* Draft articles 1 to 26, adopted on second reading by the Commission at its thirty-third session, appear in *Yearbook ... 1981*, vol. II (Part Two), pp. 120 *et seq.*