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A/CN.4/SR.1722

Summary record of the 1722nd 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:-

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ted consent that had been expressed by another organ. The entire wording was based on the deliberately ambiguous meaning of the term "communicate" agreed on as a result of a laborious compromise. The question at issue was thus one of semantics and it was therefore unnecessary to request the Secretariat to provide information. That being so, he would obviously not object if the Drafting Committee had another look at article 7, as well as all the other articles in which the words "communicate" and "express" were used to refer to consent. With regard to article 7, however, the task would be far from easy, because a basic disagreement seemed to divide the members of the Commission.

The meeting rose at 6 p.m.

1722nd MEETING

Tuesday, 8 June 1982, at 10.10 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

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 50 (Corruption of a representative of a State or of an international organization)[3] (*concluded*)

1. The CHAIRMAN drew the Commission's attention to the fact that the comments by the United Nations on the draft articles, in particular, on article 2, subparagraphs 1 (*c*) and (*c bis*), provided detailed information on the practice of the United Nations concerning the expression and communication of consent to be bound by a treaty.[4]

2. Mr. BALANDA said he understood from the explanations given by the Special Rapporteur (1721st meeting) that, while recognizing that the fact of consent was identical whether a State or an international organization was concerned, the Commission had wished to designate the mode of expression of consent by two different words, using the word "express" for a State and the word "communicate" for an international organization. The suggestion made by Mr. Al-Qaysi (*ibid.*, para. 42) at the previous meeting that the words "the communication by" should be added before the words "an international organization", was therefore pertinent. But in order to end the controversy that had arisen over a question of terminology, it might perhaps be advisable to simplify the text of article 50 by amending it to read: "If the consent of a State or of an international organization to be bound by a treaty has been procured through the corruption ...".

3. Mr. REUTER (Special Rapporteur) said he thought the Drafting Committee should determine, in the context of article 7, the exact scope of the words "express" and "communicate" and, in the light of its decision on that point, decide to retain unchanged or to amend article 50, and also article 47. Article 50 could therefore be referred to the Drafting Committee, since any further discussion in plenary meeting would be sterile.

4. Mr. USHAKOV said that the danger of corruption of a representative of an international organization by direct or indirect action was hardly conceivable unless the representative was authorized to bind the organization by treaty, by his signature. The word adopted to designate the mode of expression of consent by an international organization was therefore of very great importance. He reminded the Commission that he preferred the word "express", because he considered the word "communicate" to be synonymous with "transmit". The Drafting Committee would therefore have the task of finding an adequate formulation that would make it possible to overcome the difficulties which had arisen in regard to both article 50 and article 47 and which would arise in regard to other articles also.

5. The CHAIRMAN said that if there were no objections he would take it that the Commission agreed to refer article 50 to the Drafting Committee.

It was so decided.[5]

ARTICLE 51 (Coercion of a representative of a State or of an international organization)

6. The CHAIRMAN invited the Commission to consider draft article 51, which read:

Article 51. Coercion of a representative of a State or of an international organization

The expression by a State or an international organization of consent to be bound by a treaty which has been procured by the coercion of the representative of that State or that organization through acts or threats directed against him shall be without any legal effect.

7. Mr. REUTER (Special Rapporteur) said that no Government or organization had submitted comments on article 51 and he himself had none to make.

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[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 1721st meeting, para. 39.

[4] See *Yearbook ... 1981*, vol. II (Part Two), annex II, sect. B.1, II.

[5] For consideration of the text proposed by the Drafting Committee, see 1740th meeting, paras. 2 and 55.

8. The CHAIRMAN proposed that draft article 51 be referred to the Drafting Committee.

It was so decided.[6]

ARTICLE 52 (Coercion of a State or of an international organization by the threat or use of force)

9. The CHAIRMAN invited the Commission to consider draft article 52, which read:

Article 52. Coercion of a State or of an international organization by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

10. Mr. REUTER (Special Rapporteur) said that article 52 had not been the subject of any comments by Governments or by international organizations.

11. Mr. USHAKOV observed that the title of article 52 did not entirely correspond to the text of that article, which was good. It might be possible to simplify the title to read: "Coercion by the threat or use of force", or to use only the word "Coercion" as the title. Although it was possible to imagine that a State might be a victim of a threat or use of force, it was difficult to conceive that an international organization could be placed in such a situation. He would like the Drafting Committee to consider that suggestion.

12. Mr. REUTER (Special Rapporteur) said that the title of article 52 of the Vienna Convention, "Coercion of a State by the threat or use of force", did not correspond either to the text of the article, which referred to the case in which a State was the author of a threat or use of force and to the case in which a State was the victim. It was true that the title of draft article 52 referred only to coercion against a State and not by a State and to coercion against an organization, not by an organization, whereas in the relevant commentary adopted by the Commission, unlawful coercion by an international organization was also contemplated.[7] That possibility had not been challenged, at least during the first reading. The title of draft article 52 was obviously not in conformity with the commentary and, that being so, it would be well to amend it as proposed by Mr. Ushakov, even though that would mean departing from the title of article 52 of the Vienna Convention.

13. On the other hand, he doubted whether Mr. Ushakov's comment was justified. Without going so far as to imagine large-scale military operations or acts of aggression against the headquarters of an international organization, he could conceive that a representative of an international organization might be subjected to physical coercion and that popular demonstrations might be made against the headquarters of an international organization in order to obtain certain measures from it. In that connection, he referred to the case of an official of an international organization who had been roughly handled when on mission to a certain country and to the case of representatives of international organizations who had been murdered. It was unlawful acts of violence of that kind which were contemplated in draft article 52.

14. Mr. JAGOTA, referring to the suggestion made by Mr. Ushakov, said that, although it would be possible to amend the title of article 52 to read: "Coercion by the threat or use of force", and thus maintain the distinction between the titles of articles 51 and 52, he himself would have no objection if the title of article 52 was retained as it stood. The real distinction between the titles of articles 51 and 52 would, however, he made on the basis of the text of article 52, which referred to the "principles of international law embodied in the Charter of the United Nations". It seemed to him that the principles in question were probably those mentioned in Article 2, paragraph 4, of the Charter, and in that connection it could be asked whether the text of article 52 covered the question of the coercion of an international organization and, if so, how. In other words, were the principles of international law embodied in Article 2, paragraph 4, of the Charter broad enough to cover the question of the coercion of an international organization?

15. Mr. REUTER (Special Rapporteur) replied that the Commission had preferred to avoid an express reference to the text of the Charter, so that nullity of certain treaties concluded before the Charter could be justified. That was why it had adopted the expression "in violation of the principles of international law embodied in the Charter of the United Nations". It had thus avoided the difficulties which might arise from a reference to article 2, paragraph 4, of the Charter. Moreover, it was perfectly conceivable that an international organization as such might suffer coercion by armed force which induced it to conclude an agreement.

16. Mr. AL-QAYSI, referring to Mr. Jagota's question concerning Article 2, paragraph 4 of the Charter, said he thought that Article 1, which stated the Purposes of the United Nations referred to in Article 2, provided a very general context that could serve as a basis for a sound argument in favour of draft article 52 as it stood. The wording of Article 1 of the Charter was very general and was not addressed to States only. Indeed, what were international organizations if not institutions designed to promote the purpose referred to in Article 1, paragraph 3, namely, the achievement of international co-operation? He therefore believed that it would be unwise for the Commission not to model article 52 on the corresponding provision of the Vienna Convention, which had, as members would recall, been very carefully worded to take account of the question of peace treaties.

17. Mr. YANKOV said that since it was extremely difficult to find examples of the coercion of an international organization, that problem was a somewhat artificial one. Moreover, an international organization's

[6] *Idem*, paras. 2 and 56.

[7] *Yearbook ... 1979*, vol. II (Part Two), pp. 155-156, para. (6) of the commentary to article 52.

decision-making power depended entirely on the activities, positions and resolutions of its member States and any pressure on an international organization to conclude a particular treaty would be exerted not by its secretariat, but by the States which composed it and could use their influence to determine the decisions it took. Thus, when reference was made to the coercion of an international organization, what was, in fact, meant was the coercion of that organization by its member States.

18. He had raised that point because he did not think the substantive problem raised by article 52 could be solved simply by amending its title. Nor was it easy to see what practical effect article 52 would have, since specific examples of the coercion of an international organization by the threat or use of force certainly did not abound. Although he did not think that article 52 needed to be included in the draft, he would not formally propose its deletion. He would merely suggest that the meaning of the words "Coercion ... of an international organization by the threat or use of force" should be further clarified.

19. Mr. FLITAN expressed reservations about the explanations given by the Special Rapporteur, namely, that draft article 52 referred not only to the case in which a State or an international organization had been a victim of the threat or use of force, but also to the case in which a State or an international organization had resorted to the threat or use of force. What concerned the Commission was not so much the fact that a State or an international organization had resorted to the threat or use of force as the fact that consent had been invalidated by the very fact that a State or an international organization had been subjected to the threat or use of force. In other words, the Commission should deal with the case in which a State or an international organization had been a victim of the threat or use of force. In that respect, the title of article 52 of the Vienna Convention, "Coercion of a State by the threat or use of force", was perfectly appropriate, and the same applied to the title of draft article 52. As to the substance of the article, he thought the Commission could retain the very controversial case, even though it was improbable, of an international organization which was subjected to the threat or use of force, and therefore could retain draft article 52.

20. Mr. AL-QAYSI said that the Commission could not afford to omit article 52, for, without it, the draft would give the impression that the coercion of an international organization to procure the conclusion of a treaty was allowed. Moreover, article 52 referred to an international organization as a separate legal entity from the States which composed it and did not raise the question of how pressure could be exerted by such States on the organization. It raised only the theoretical question whether, if such pressure were exerted, an international organization could be made to agree to the conclusion of a treaty and whether such a treaty would be valid.

21. Mr. STAVROPOULOS said that he supported Mr. Ushakov's suggestion that the words "of a State or of an international organization" in the title of article 52 should be deleted. It was unnecessary to distinguish between States and international organizations, because the title of the article itself made it quite clear that such a distinction was intended. Moreover, articles were given titles only for convenience and titles did not constitute legal rules. Although he agreed with Mr. Yankov that coercion of an international organization by the threat or use of force was unlikely to occur, life was so full of surprises that the possibility of such a case should be provided for in the draft.

22. Mr. YANKOV said he wished to make it clear that he had no objection to the general rule stated in article 52. He had had some difficulty with that provision only because he did not think that coercion of an international organization by the threat or use of force was actually possible. That difficulty might be overcome by specifically stating the rule in the title of article 52 and merely providing in the text that the treaty would be void if its conclusion had been procured by any kind of coercion.

23. Mr. NJENGA said that without article 52 the draft would be incomplete. It was true that the threat or use of force against an international organization was not a frequent occurrence and that specific examples were hard to find. But the possibility of such a threat or such use of force could not be ruled out, and article 52 should provide for it. It would, for example, be quite possible for the organs of an international organization that were competent to conclude treaties, such as its secretary-general or secretariat, to be coerced by the threat or use of force into acceptance of a treaty relationship. In the case of a convention on the privileges and immunities of an international organization, which was almost always concluded by the head of the organization's secretariat and the host country, it was not inconceivable that unlawful pressure or force could be used against the head of the organization with a view to limiting its privileges and immunities. Another pertinent example had been given in paragraph (5) of the commentary to article 52 adopted at the Commission's thirty-first session.[8]

24. Mr. REUTER (Special Rapporteur), said he accepted Mr. Flitan's comments on the title of draft article 52; in fact, he was willing to accept any title, whatever it might be. He was rather surprised that Mr. Yankov had difficulty in imagining cases to which article 52 would apply. In that connection, he pointed out that pressure exerted on an organ of an international organization consisting of representatives of States, was in fact pressure on the international organization itself, and not pressure on a State.

25. He would refer as an example, since it was unfortunately suggested by present circumstances, to the case of a United Nations peace-keeping force and the powers of the Secretary-General in regard to it. He then quoted

[8] *Ibid.*, p. 156.

article 15 of the Regulations for the United Nations Emergency Force (1957) which read:

15. *Authority of the Secretary-General.* The Secretary-General of the United Nations shall have authority for all administrative, executive and financial matters affecting the Force and shall be responsible for the negotiation and conclusion of agreements with Governments concerning the Force. He shall make provisions for the settlement of claims arising with respect to the Force.[9]

It was possible to imagine that the Secretary-General might be induced, perhaps in order to save human life, to conclude agreements amending certain other agreements concerning a peace-keeping force concluded by the United Nations. The new agreements would thus be concluded under coercion by armed force; some States might perhaps challenge them as being contrary to the principles of the Charter, and they would have the right, under article 52, themselves to invoke the nullity of those agreements, which, unlike that in cases of error or fraud, was a nullity *erga omnes*.

26. The CHAIRMAN said that if there were no objections he would take it that the Commission agreed to refer article 52 to the Drafting Committee.

It was so decided.[10]

ARTICLE 53 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*))

27. The CHAIRMAN invited the Commission to consider article 53, which read:

Article 53. Treaties conflicting with a peremptory norm of general international law (jus cogens)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

28. Article 53 had not been the subject of any comments by Governments or by international organizations. If there were no observations by members, he would take it that the Commission decided to refer article 53 to the Drafting Committee.

It was so decided.[11]

ARTICLE 54 (Termination of or withdrawal from a treaty under its provisions or by consent of the parties)

29. The CHAIRMAN invited the Commission to consider article 54, which read:

Article 54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties

The termination of a treaty or the withdrawal of a party may take place:

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties, after consultation with the other contracting organizations, or with the other contracting States and the other contracting organizations, or with the other contracting States, as the case may be.

30. Mr. AL-QAYSI suggested that the Drafting Committee should try to simplify the text of subparagraph (*b*) by regrouping the different classes of parties.

31. Mr. USHAKOV said he was not sure how article 54 should be interpreted if article 36 *bis* was retained in its present form. When the States members of an international organization had consented to be bound by the Treaties it concluded, must they give their consent, in accordance with subparagraph (*b*) of article 54, to the termination of a treaty or the withdrawal of a party? Other articles of the draft would raise similar questions if article 36 *bis* was retained.

32. Mr. REUTER (Special Rapporteur) said that was one of the reasons why he had stipulated in article 73, paragraph 2, that the draft did not prejudge any question that might arise in regard to a treaty from "the termination of participation by a State in the membership of the organization".

33. Mr. USHAKOV said that the situation referred to in article 73 was quite different. In the case he had in mind, the member State retained its status as a member and assumed obligations in conformity with article 36 *bis*; as it was bound by the obligation deriving from the treaty, although that did not make it a party to the treaty, must it be consulted in the case of termination of the treaty or withdrawal of a party, or did the organization decide in its place? Article 73 would apply, for example, in the different case in which an international organization saw the number of its member States decreased by half.

34. Mr. REUTER (Special Rapporteur) explained that, in the case considered by Mr. Ushakov, if the member State was not a party to the treaty it would not be included among the other contracting States, and hence would not be consulted in a case of termination or withdrawal; it was the organization that would be consulted in its place. As a member, it might be consulted under the rules of the organization, but that was a different question. A problem might arise if one accepted the existence of a collateral agreement that created direct relations between a State member of an international organization and the contracting entity of that organization. Article 54 did not specify whether the member State must then be consulted, any more than the Vienna Convention dealt with the question of the effects on a collateral agreement of amendments made to the main agreement. Moreover, the term "collateral agreement" did not even appear in that instrument. Both the Vienna Convention and the draft articles being prepared left aside all questions which might be raised by situations of that kind.

35. Mr. USHAKOV thought that the question raised was quite different. Article 37 of the draft did not con-

[9] ST/SGB/UNEF/1.

[10] For consideration of the text proposed by the Drafting Committee, see 1740th meeting, paras. 2 and 57.

[11] *Idem*, paras. 2 and 58.

cern the treaty as such or the termination of the treaty or withdrawal of a party, but the obligations and rights of third States and third international organizations. The question regarding article 54 was whether, in the case referred to in article 36 *bis*, a member State was free to announce its withdrawal from a treaty with the consent of all the other parties, or whether it was the organization of which it was a member that must take such a decision.

36. Mr. RIPHAGEN pointed out that the Vienna Convention had provided for the situation of third States that had rights and obligations under a treaty to which they were not parties, but had not taken the matter any further. The question whether those States could withdraw from a treaty, like many other questions raised by treaties, was not settled by the Vienna Convention. The Commission was not called upon to try to settle that point, since it was following the Vienna Convention.

37. The CHAIRMAN said that if there were no further comments he would take it that the Commission agreed to refer article 54 to the Drafting Committee.

It was so decided.[12]

ARTICLE 55 (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force)

38. The CHAIRMAN invited the Commission to consider article 55, which read:

Article 55. Reduction of the parties to a multilateral treaty below the number necessary for its entry into force

Unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force.

39. Article 55 had not been the subject of any comments by Governments or international organizations. If there were no observations by members, he would take it that the Commission decided to refer article 55 to the Drafting Committee.

It was so decided.[13]

ARTICLE 56 (Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal).

40. The CHAIRMAN invited the Commission to consider article 56, which read:

Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(*a*) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(*b*) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

41. Mr. REUTER (Special Rapporteur) said that neither the title nor the text of article 56 had attracted any comments by Governments or international organizations, but the commentary to the article had been criticized in the Sixth Committee of the General Assembly. The Commission had been reproached for citing headquarters agreements as examples of treaties to which subparagraph 1 (*b*) of article 56 would apply. According to the representative who had made that criticism, it was not customary for the Commission to give concrete examples of the application of the rules it enunciated. In his opinion, that custom was not well established, though the Commission had on several occasions referred to fundamental human rights as examples of *jus cogens*. It should also be noted that in the advisory opinion of the International Court of Justice on *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*[14] the example of headquarters agreements, mentioned by the Commission, had been cited. It was also interesting to note that the Court had attached some importance to draft articles which had only been adopted on first reading.

42. Mr. USHAKOV said he was not sure whether the international organization referred to in article 36 *bis*, which bound its members when concluding a treaty, could subsequently denounce the treaty on their behalf. Since obligations arose for the member States as a result of the conclusion of the treaty, it might well be thought that the treaty could not be denounced without their consent. Those questions had not yet been answered.

43. The CHAIRMAN proposed that draft article 56 be referred to the Drafting Committee.

It was so decided.[15]

ARTICLE 57 (Suspension of the operation of a treaty under its provisions or by consent of the parties).

44. The CHAIRMAN invited the Commission to consider draft article 57, on which there had been no comments, and which read:

Article 57. Suspension of the operation of a treaty under its provisions or by consent of the parties

The operation of a treaty in regard to all the parties or to a particular party may be suspended:

(*a*) in conformity with the provisions of the treaty; or

(*b*) at any time by consent of all the parties, after consultation with the other contracting organizations, or with the other contracting States and the other contracting organizations, or with the other contracting States, as the case may be.

45. Mr. USHAKOV, referring to article 36 *bis*, said he was not sure whether a decision taken by an organiza-

[12] *Idem.*

[13] *Idem.*

[14] *I.C.J. Reports 1980*, p. 73.

[15] For consideration of the text proposed by the Drafting Committee, see 1740th meeting, paras. 2 and 58.

tion to suspend the application of a treaty entailed suspension of the obligations of its member States.

46. Mr. AL-QAYSI said the comments he had made on article 54, subparagraph (*b*) also applied to article 57, subparagraph (*b*). Perhaps the Drafting Committee could simplify the text of that subparagraph.

47. Mr. JAGOTA said he would like some clarification of Mr. Ushakov's comments on article 54, subparagraph (*b*), and article 57, subparagraph (*b*), particularly with regard to the effects of article 36 *bis*. Both article 54, subparagraph (*b*) and article 57, subparagraph (*b*), used the word "parties": if article 36 *bis* was adopted, would the member States of an organization, which had rights and obligations under a treaty, become parties to the treaty? If not, how did articles 54 and 57 concern them? The termination, denunciation or suspension of a treaty could only be effected by the parties, which for the purposes of article 36 *bis*, meant the international organization. Article 36 *bis* treated the member States of an international organization as third States, and hence as not being parties; the question whether the treaty created rights and obligations for member States was a separate matter. Perhaps Mr. Ushakov could define the meaning he ascribed to the word "parties" in articles 54 and 57.

48. Mr. USHAKOV pointed out that, with reference to article 36 *bis*, he had maintained that the member States of an organization enjoying exclusive competence to conclude treaties were not formally parties to its treaties, but that in practice they were not really third States. That was the core of the problem. In his opinion, it was clear that member States which transferred to an organization exclusive competence to conclude treaties relating to certain matters were no longer free to act in those matters. The organization might thus have exclusive competence in regard to denunciation or suspension, for example. But article 36 *bis* did not deal with these points, so that all the questions raised by article 54 and the subsequent articles remained unanswered. Article 36 *bis* mentioned only the relevant rules of the organization providing that member States were bound by the treaties it concluded, and did not mention all the other acts which the organization might perform on behalf of its member States. By reason of other existing rules, the member States might truly be third States. There might, for instance, be relevant rules of the organization on reservations, under which member States transferred their competence in that matter to the organization. But in the absence of such rules, it might be asked whether the member States could formulate their own reservations.

49. He therefore considered it essential to settle the many questions raised by the case dealt with in article 36 *bis*. That provision concerned only one aspect of the matter; the other aspects should be dealt with in the corresponding articles of the draft, or, otherwise, in a separate draft, which would be preferable. All the questions to which he had drawn attention were thus of a very real nature. The draft contained no answers, but perhaps they could be found in the practice of organizations.

50. Mr. JAGOTA said that, if he understood Mr. Ushakov's argument correctly, the question at issue concerned the exclusive competence to conclude treaties, which States members of an international organization might have transferred to it; Mr. Ushakov believed that the real situation in the international community was that, in some cases, although an international organization was competent to conclude a treaty, the rights and obligations deriving from the treaty, as well as other matters relating to responsibility and liability, were the direct concern of its member States. Either the point should be clarified in general terms, by stating that the competence of the international organization was exclusive, or, if a duality subsisted, all ambiguity should be removed wherever the problem arose in the draft articles. That was why Mr. Ushakov was concerned, in regard to articles 54 and 57, about the effects, for member States of an international organization, of the termination of a treaty or the suspension of its operation.

51. What was not clear to him was how the effects of formal termination of, withdrawal from, or denunciation of a treaty by an international organization were relevant to articles 54 and 57. Those articles dealt with conditions under which a treaty continued to produce its effects. What happened to the rights and obligations of member States when the treaty was terminated was a separate question. Unless that issue somehow arose from the definition of the word "parties" it was not relevant. Referring to his earlier question, he said that if the word "parties" meant parties to the treaty, the question of the relations between an international organization and its member States was irrelevant. The member States were treated under article 36 *bis* as third States, and, according to article 2, subparagraph 1 (*h*), third States were not parties to the treaty. Therefore, the only party to a treaty competent to give consent to terminate, withdraw from or denounce that treaty was the international organization. The question of a change in the original membership of the organization was also irrelevant, since that matter was regulated by the treaty which had constituted the international organization. If, however, the word "parties" was understood in a broad sense as including the States members of an international organization, then the concept of third States would have to be reconsidered in article 36 *bis* and article 2, subparagraph 1 (*h*). Perhaps Mr. Ushakov could give some specific examples to illustrate his remarks.

52. Mr. REUTER (Special Rapporteur) noted that Mr. Ushakov was urging the Commission to deal with organizations to which exclusive competence had been transferred. However, as Special Rapporteur he had said from the start that that special case would not be considered. Mr. Ushakov was free to deplore the fact and make comments, which, moreover, were very pertinent and interesting, but they were not relevant to the subject being studied by the Commission.

53. Mr. USHAKOV said that the answer would be easy if the Commission really dealt, in a general way, with international organizations having exclusive competence. However, it had confined itself to the case in which the rules of the organization provided that a treaty it concluded created obligations for member States. If an ordinary organization, having concluded a treaty that created obligations for its member States which they had explicitly accepted in writing, then withdrew from the treaty, it was clear that the obligations accepted by the member States under collateral agreements, would subsist. But the draft did not say what would happen in such a case to the obligations assumed by States members of an organization to which they had transferred exclusive competence to conclude treaties. It was because article 36 *bis* dealt with the case in which that competence had been transferred, that it was necessary to solve the problems arising from that case in other articles of the draft.

54. Mr. LACLETA MUÑOZ said that the question whether States members of an international organization were third parties with respect to a treaty concluded by the organization had been discussed extensively at the Third United Nations Conference on the Law of the Sea, in connection with the legal nature of the exclusive economic zone. Technically, member States were third parties, yet substantively, they had the same rights and obligations as if they were parties. However, article 36 *bis* was worded in such a way as to dispel doubts. From a technical-legal point of view, the member States were third parties, and for that reason articles 57, 56 and 54 should be read technically: it was the conduct of the international organization which was decisive in matters of termination of, withdrawal from, or denunciation of a treaty. Read in that way, those articles raised no difficulties.

The meeting rose at 1.00 p.m.

1723rd MEETING

Wednesday, 9 June 1982, at 10.05 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

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]

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

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

ARTICLE 57 (Suspension of the operation of a treaty under its provisions or by consent of the parties)[3] (*concluded*)

1. The CHAIRMAN, noting that members of the Commission had no further comments to make, suggested that article 57 should be referred to the Drafting Committee.

It was so decided.[4]

ARTICLE 58 (Suspension of the operation of a multilateral treaty by agreement between certain of the parties only)

2. The CHAIRMAN invited the Commission to consider article 58, which had not given rise to any comments by Governments or international organizations and which read:

Article 58. Suspension of the operation of a multilateral treaty by agreement between certain of the parties only

1. Two or more parties to a multilateral treaty may conclude an agreement to suspend the operation of provisions of the treaty, temporarily and as between themselves alone, if:

(*a*) the possibility of such a suspension is provided for by the treaty; or

(*b*) the suspension in question is not prohibited by the treaty, and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) is not incompatible with the object and purpose of the treaty.

2. Unless in a case falling under paragraph 1 (*a*) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of those provisions of the treaty the operation of which they intend to suspend.

3. Mr. USHAKOV said that, if article 36 *bis* was retained in its present form, article 58 would give rise to the same type of difficulties as the preceding articles. Under articles 35 and 36 of the draft, it was by means of a collateral agreement that a third State could assume obligations arising for it from a treaty. Direct relations were thus established between the parties to the collateral agreement and the rights and duties deriving from it subsisted, regardless of the fate of the treaty. There was obviously nothing to prevent the parties to the collateral agreement from deciding to amend that agreement. It could be asked whether collateral agreements also existed in the case covered by article 36 *bis*. If so, the rights and obligations of the member States would not depend on the fate of the treaty. If, however, the treaties concluded by the organization really automatically gave rise to rights and obligations

[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 1722nd meeting, para. 44.

[4] For consideration of the text proposed by the Drafting Committee, see 1740th meeting, paras. 2 and 58.