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A/CN.4/SR.1588

Summary record of the 1588th 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:-

1980, vol. I

53. Sir Francis VALLAT said that he wished to give further examples to illustrate the problem to which he had referred earlier in the discussion. The European Economic Community could, for instance, make commercial treaties and it might be possible to argue that the termination of any representation there might be between a State non-member of the United Nations and the European Communities could have an effect on such commercial treaties. Another more relevant example was that of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations.[14] If draft article 63 did not mention relations between States and organizations, it might be possible to argue that, in the event of the severance of those relations, that kind of treaty would be terminated. It would be unfortunate if the Commission, by omitting a specific provision on the point from article 63, might be thought to imply that, by withdrawing its permanent representation, a host State could cast doubt on the validity, standing or operation of a headquarters agreement.

54. The CHAIRMAN said it was clear from the comments made by members of the Commission that draft article 63 would require further consideration.

Drafting Committee

55. The CHAIRMAN said that, in the absence of objections, he would take it that the Commission decided to appoint a Drafting Committee composed of 12 members: Mr. Verosta (Chairman), Mr. Barboza, Mr. Díaz González, Mr. Evensen, Mr. Jagota, Mr. Njenga, Mr. Reuter, Mr. Schwebel, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat and (*ex officio*) Mr. Yankov, Rapporteur of the Commission.

It was so decided.

Absence of a member of the Commission

56. The CHAIRMAN said that he had received a letter from Mrs. Dadzie informing him that her husband, Mr. Emmanuel Dadzie, would be unable to attend the current session of the Commission because he was seriously ill.

57. If the members of the Commission agreed, he would write to Mrs. Dadzie expressing the Commission's wishes for Mr. Dadzie's speedy recovery.

It was so decided.

The meeting rose at 1.05 p.m.

[14] United Nations, *Treaty Series*, vol. 11, p. 11.

1588th MEETING

Friday, 9 May 1980, at 10.10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/327)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 63 (Severance of diplomatic or consular relations)[1] (*concluded*)

1. Mr. FRANCIS said that, for the purpose of establishing the connexion—which was missing in the text as drafted—between draft article 63 and the draft articles as a whole, a provision should be added in the article on the lines of the passage in the Special Rapporteur's commentary which stated that in the case of the treaties under discussion the rule laid down could apply only to a special group of treaties: those to which at least two States and one or more organizations were parties.

2. Referring to the questions of substance that had been raised at the previous meeting by Mr. Ushakov and Sir Francis Vallat and that should be taken into account in improving the commentary, he said it was generally agreed, as was quite obvious from the text of draft article 63, that heads of mission accredited by States to international organizations were not ambassadors, and that diplomatic and consular relations existed only between States. Hence he suggested, for the purposes of draft article 63, that the words "relations of representation" be used to describe the reciprocal relations between States and international organizations.

3. In the case of the issue of relations between South Africa and the United Nations, it could be said that there had been a severance of representational relations which could, by analogy, be compared to a severance of diplomatic relations between States. In such a case, he did not think that it could justifiably be claimed that a treaty between the State and the

[1] For the text, see 1587th meeting, para. 40.

international organization in question ceased to be operative. That example substantiated the more general comment made by Sir Francis Vallat.

4. Mr. THIAM queried whether it was possible to affirm purely and simply, as the Special Rapporteur had done in his commentary to the article in question, that diplomatic and consular relations existed only between States, while disregarding similar forms of representation. The function of a diplomat was to act in a representative capacity, to negotiate and sometimes to sign agreements. He pointed out that organizations like UNDP and UNESCO had agents in certain States who were responsible for representing them as well as for negotiating and signing agreements on their behalf. Those agents were quasi-diplomats, and their status was generally akin to that of diplomats. Likewise, the agents of regional organizations, such as the Organization of African Unity, had authority to negotiate and sign agreements.

5. Mr. SCHWEBEL inquired if the Special Rapporteur would consider expanding the commentary or even draft article 63 itself to take account of what would, in practical terms, be a likelier situation than that visualized in the draft article as it stood. There might, for example, be some merit in including wording along the following lines:

> "Subject to Articles 5 and 6 of the Charter of the United Nations, the withdrawal or expulsion of a representative or mission accredited to an international organization does not affect the legal relations between the sending State and the international organization, between the sending State and the host State, and between the other parties to the treaty."

6. He asked whether in the Special Rapporteur's opinion such wording fell within the scope of the draft articles as a whole. After all, the Commission's discussion of draft article 63 had shown that there were practical matters of that kind that had to be taken into account. For example, it might happen that a State, in withdrawing its representation to an international organization, attached legal consequences to that fact. In 1978, there had been a case in which a head of mission had been expelled from a delegation accredited to the United Nations on a charge of having engaged in espionage activities. Although no one had suggested that the expulsion had any effect on the legal relations of the States concerned, he referred to it in order to stress that cases of that kind should be dealt with in the commentary to draft article 63. As the article now stood, however, its practical relationship to the draft as a whole appeared quite marginal.

7. Mr. ŠAHOVIĆ said it would be desirable to specify in article 63 that the treaties covered by it were those concluded between at least two States and one or more international organizations. In addition, like Mr. Thiam, he thought the article should attach a broader meaning to diplomatic and consular relations and the reciprocal character of those relations should not be over-emphasized. In particular, the new kinds of relations which might be established between States and international organizations should be studied in greater depth. It would be for the Drafting Committee to enlarge the scope of article 63, while not straying beyond the limits of the actual legal situation in the modern world.

8. Mr. USHAKOV said he was entirely satisfied by the Special Rapporteur's answers to the two questions he had asked at the previous meeting.

9. So far as substance was concerned, he found draft article 63 perfectly acceptable, for in his view diplomatic or consular relations did not exist between States and international organizations. The relations between the member States of an organization and that organization flowed exclusively from the fact of their membership in the organization. Whether a State maintained or did not maintain a permanent representation with an organization, the relations between that State and that organization remained unaffected. If a State member of an organization abolished its permanent mission to the organization, their relations were not changed by that fact and the State retained its status as a member. Consequently, relations of that kind could not be regarded as comparable to diplomatic and consular relations between States, and still less could the relations resulting from the presence of an observer for a non-member State in an international organization, or the relations involved in sending an observer for one international organization to another international organization.

10. The subject matter of article 63 was the severance of diplomatic or consular relations between States. Even between States it was possible for diplomatic or consular relations to exist without embassies having been opened. Such relations could also exist if an embassy had been closed and authority to represent the State which had taken that step was entrusted to another State. Nor was there any severance of relations if a member State of an organization withdrew from it; the only result was a break in its membership in the organization. The eventuality of a severance of relations between two international organizations was even less conceivable.

11. Mr. QUENTIN-BAXTER said that article 63 of the Vienna Convention[2] stated such a self-evident proposition that it would be totally unreasonable for the Commission to advance the contrary proposition in the case of relations between States and international organizations. He did not think that, even if the Commission remained silent on the question of relations between States and international organizations, the article allowed any kind of argument

[2] See 1585th meeting, foot-note 1.

a contrario. Nevertheless it had been demonstrated by Sir Francis Vallat and other members of the Commission that the commentary should indicate that the Commission's decision not to extend the scope of draft article 63 in no way implied a belief on its part that a conclusion to the contrary could be drawn from a failure to state the self-evident fact that a break in a State's relations with an international organization could not in any way affect a treaty relationship.

12. Mr. BARBOZA said that it was not the Commission's task to determine whether relations between the member and non-member States of an international organization and that international organization were diplomatic relations. Such relations should, however, no matter what they are called, be duly recognized in international law, because they had taken on increasing importance.

13. In his opinion, the severance of such relations, for example, where a State withdrew its permanent representative to an international organization, could not affect the treaties concluded by that State and that international organization, just as the severance of diplomatic relations between States could not affect the treaties they had concluded. Nor was it the Commission's task to determine whether the two types of relations to which he had just referred were equal: for all practical purposes, it would be enough to say in the commentary to draft article 63 that relations between States and international organizations—which did not have to be further defined—would not affect the treaties concluded by those States and international organizations.

14. Some members of the Commission apparently thought that a State's membership in an international organization would be affected by a severance of relations. In his view, that was not possible, for the treaty laying down the conditions for membership in an international organization was a multilateral treaty concluded with other States, not with the international organization.

15. He considered that the wording of draft article 63 should not be changed, except possibly by the drafting improvements suggested by Mr. Ushakov (1587th meeting, paras. 47 and 48) and Mr. Šahović, and that the commentary should take account of the examples referred to in the discussion.

16. Mr. VEROSTA said that in his opinion it was very dangerous to compare the departure of a State's representative to an international organization to a severance of diplomatic relations. In law, the only material cases to be taken into consideration were those of a State's withdrawal from an organization and a State's expulsion; all other cases, however significant politically, had no legal implications. Inasmuch as the rule in article 63 covered only treaties concluded between at least two States and one or more organizations, the article should say so expressly.

17. Mr. REUTER (Special Rapporteur), summing up the debate, said that the proposed drafting changes seemed to him to be acceptable. The article should specify, first, that the diplomatic or consular relations which were severed were relations between States parties to a treaty "between two or more States and one or more international organizations", and should state, secondly, that all the legal relations established by the treaty in question remained unaffected, and not only those between the two States which had severed relations. For that purpose, it would be sufficient to delete the words "between those States" in the phrase "the legal relations established between those States by the treaty".

18. Several members of the Commission had suggested that the scope of article 63 should be enlarged by expanding the text of the article or the commentary thereto so as to make it clear that the severance of relations between an international organization and a State did not affect any treaties concluded between them. In that connexion, Mr. Barboza had properly observed that, in order for article 63 to operate, there must exist between the international organization and the State in question a treaty within the meaning of the draft articles, i.e. a treaty to which an international organization was a party. However, the constituent charters of organizations did not come within the terms of that definition. It followed that, if a member State of an organization practised the empty chair policy or recalled its representative to that organization, the article which would apply was not the one under consideration but article 63 of the Vienna Convention.

19. As Sir Francis had pointed out at the previous meeting, other cases were conceivable. There might be a treaty between an organization and one of its member States to which that State was a party by virtue of some circumstance other than its membership of the organization; *a fortiori* it was possible to conceive of a treaty between an organization and a non-member State, a case illustrated by the Headquarters Agreement concluded between Switzerland and the United Nations.[3] The relations between the two parties to that treaty were managed by certain administrative services, and it was possible to imagine that some dispute might arise between them which could not be settled by way of discussion. Would the headquarters agreement be affected by it? Another case that could be visualized was that where an international organization by a treaty concluded with one of its member States vested in that State a special trusteeship function to be performed on behalf of the organization. If their reciprocal relations were institutionalized in the shape of some machinery which suddenly broke up, was the State in question still bound by the treaty? In its Advisory Opinion of 1971

[3] United Nations, *Treaty Series*, vol. 1, p. 163.

concerning Namibia (South West Africa), the International Court of Justice had in effect given an answer in stating that certain essential obligations still remained in spite of the expiry of the mandate.[4]

20. In order to make provision for such possibilities, the Commission could either add a second paragraph to article 63 or else discuss the possible situations in the commentary. As regards the first solution, he drew attention to the proviso at the end of article 63. In the situations which had been mentioned, that proviso should be taken into account. For that matter, those situations were indirectly envisaged in article 60,[5] since the severance of relations would lead to the non-performance of the treaty. If the Commission should decide to add a paragraph to article 63, the additional paragraph would have to provide that where permanent relations of a special character were established for the execution of a treaty between an international organization and a State, the severance of those relations would not *per se* invalidate the treaty, except in so far as the existence of those relations was indispensable for the application of the treaty.

21. Mr. SCHWEBEL said that, in his view, the problems raised during the discussion of draft article 63 should be dealt with in the commentary, because the subject-matter of the draft article was not altogether of a speculative nature, even in the specific context in which the Special Rapporteur had placed it.

22. If, for example, a State and an international organization, such as the World Bank, the IMF or UNDP, concluded a treaty which provided for assistance to that State and surveillance of the use of that assistance by a team sent to that State by the international organization, but the State found, perhaps as a result of a change of Government, that the conditions attaching to such assistance were unduly onerous and expelled, or requested the withdrawal of, the team sent by the international organization, would the surveillance of the assistance be a condition for the maintenance of relations between the State and the international organization? Such a case was not a purely hypothetical one, and it should, in his opinion, be dealt with in the commentary to draft article 63.

23. Sir Francis VALLAT said that, since he had raised the question of the effect on a treaty of the termination of a State's representation to an international organization without really attempting to answer it himself, he was grateful to the Special Rapporteur and to the members of the Commission for their comments, which had convinced him that the question should be dealt with in the commentary, not in the draft article itself.

24. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to refer draft article 63 to the Drafting Committee for consideration in the light of the discussion.

It was so decided.[6]

ARTICLE 64 (Emergence of a new peremptory norm of general international law (*jus cogens*))

25. The CHAIRMAN invited the Special Rapporteur to introduce his draft article 64 (A/CN.4/327), which read:

***Article 64. Emergence of a new peremptory norm of general international law* (jus cogens)**

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

26. Mr. REUTER (Special Rapporteur) said that the commentary to article 64 had been kept very brief, because article 53,[7] in which the question of *jus cogens* had arisen before, had been adopted by the Commission virtually without discussion. Draft article 64 simply dealt with a specific point.

27. Mr. USHAKOV said that article 53 contained a definition of the concept of a peremptory norm of general international law. The article should be interpreted as meaning that a peremptory norm of general international law, recognized by the international community, was binding also on international organizations.

28. Mr. ŠAHOVIĆ expressed the hope that the commentary to the article under consideration would be expanded.

29. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer article 64 to the Drafting Committee.

It was so decided.[8]

ARTICLE 65 (Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty)

30. The CHAIRMAN invited the Special Rapporteur to introduce his draft article 65 (A/CN.4/327), which was the opening clause of section 4 (Procedure) of the draft articles and which read:

Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

1. A party which, under the provisions of the present articles, invokes either a defect in its consent to be bound by a treaty or a

[4] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports 1971*, p. 16.

[5] See 1585th meeting, foot-note 3.

[6] For consideration of the text submitted by the Drafting Committee, see 1624th meeting, paras. 30 *et seq.*

[7] See 1585th meeting, foot-note 3.

[8] For consideration of the text submitted by the Drafting Committee, see 1624th meeting, paras. 30 *et seq.*

ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor.

2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed.

3. If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

4. Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

5. Without prejudice to article 45, the fact that a State or an international organization has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation.

31. Mr. REUTER (Special Rapporteur) said that, of the four articles in section 4, only articles 67 and 68 actually dealt with questions of procedure. Articles 65 and 66 were essential articles which, while they admittedly related to procedure, were concerned mainly with the settlement of disputes. Normally, such articles formed part of the final clauses of conventions and were not drafted by the Commission. However, article 65 of the Vienna Convention had initially been drafted by the Commission itself. The Commission had taken that initiative because it had felt it essential to include safeguards in section 4. Never before had an international instrument set out in such a systematic way all the circumstances which could cause the substance of a treaty to disappear or destroy its efficacy. The object was to ensure that the rule *pacta sunt servanda* retained its significance, to prevent a State from voiding a treaty of its substance or rendering it ineffective. The United Nations Conference on the Law of Treaties had considered the problem and, with great difficulty, had drafted an article 66. Some States had wanted to supplement the safeguards of article 65 with procedures involving third parties. In the form in which it had been adopted, article 66 provided for a conciliation procedure and, as far as *jus cogens* was concerned, for an application to the International Court of Justice. In his draft, he had placed article 66 in square brackets in order to indicate that it raised a question of principle and method. The Commission might decide not to submit any article 66 at all, to submit an article in square brackets, or to make proposals which went still further. In submitting such a draft article, his intention was not to exert pressure on the Commission, but simply to provide it with a basis for its deliberations.

32. Returning to draft article 65, he said that at the Conference on the Law of Treaties the corresponding article had been adopted by 106 votes to none, with two abstentions.[9] The article should not present any special difficulties as far as the international organizations were concerned. It provided three safeguards. First, notification was necessary. Secondly, the notification had to be supported by a statement of reasons. In that connexion, it was interesting to note the development that had taken place in the drafting of the treaties relating respectively to nuclear tests,[10] non-proliferation[11] and disarmament.[12] States wishing to denounce the first of those treaties could do so if they felt that higher interests were at stake. In the case of the other two treaties, by contrast, a denunciation had to be substantiated by reasons. Under the procedure described in article 65 the State was both judge and party, but that was inevitable in view of the sovereignty of States. Thirdly, provision was made for a moratorium in order to allow time for reflection and for possible negotiation.

33. The safeguards provided for States were even more justified in the case of international organizations. Consequently, subject to a few minor drafting changes, the text of the article was similar to that of article 65 of the Vienna Convention.

34. Mr. USHAKOV said that in principle he supported draft article 65 as proposed by the Special Rapporteur. However, he thought that a clause should be added stipulating, on the basis of article 45, paragraph 3,[13] that as far as international organizations were concerned, the notification and objection referred to in paragraphs 1 and 3 of draft article 65 were governed by the relevant rules of the organization. His second point was that he was not sure that the three-month period mentioned in paragraph 2 was sufficient for international organizations, whose procedure was slower than that of States and whose competent organs were not permanently in session.

35. His third comment concerned paragraph 3: were the means contemplated in Article 33 of the Charter of the United Nations for the pacific settlement of disputes between States applicable also to the settlement of disputes between international organizations or between States and international organizations? He did not think, for example, that an international organization could apply to the International Court of Justice for a judicial settlement, for the Statute of the Court provided only for the settlement of disputes

[9] See A/CN.4/327, foot-note 15.

[10] Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water (United Nations, *Treaty Series*, vol. 480, p. 43).

[11] Treaty on the Non-Proliferation of Nuclear Weapons (*ibid.*, vol. 729, p. 161).

[12] Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Strategic Offensive Arms (text reproduced in document CD/28 of 27 June 1979).

[13] See 1585th meeting, foot-note 3.

between States. Nor did he think that an international organization could apply to regional bodies. Accordingly, the reference to Article 33 of the Charter was a potential source of difficulties in respect of the settlement of disputes between international organizations or between States and international organizations, for not all the modes of settlement mentioned in that Article were valid for international organizations. Perhaps provision should therefore be made for special means of settlement where international organizations were concerned.

36. Mr. ŠAHOVIĆ said that the Special Rapporteur had been right to devote section 4 of his draft articles to questions of procedure and to rely on the terms of article 66 of the Vienna Convention, in spite of the difficulties encountered in the drafting of that article.

37. With regard to draft article 65, he considered, like Mr. Ushakov, that the Drafting Committee should endeavour to devise language more in keeping with the special situation of international organizations that were parties to treaties. On the other hand, he could not see the need for a reference to the relevant rules of international organizations, for that was a question of principle which had been resolved earlier in the draft by a more general wording.

38. Mr. SCHWEBEL, expressing support for draft article 65, said that it was of necessity a modest provision since the Commission, having decided to align the draft articles on the text of the Vienna Convention, could hardly depart very far from the terms of that Convention. He doubted whether any modification of article 65 was required, particularly since, as Mr. Šahović had stated, it was understood that, in the case of an international organization, notification must be authorized in accordance with the rules of that organization.

39. In connexion with paragraph 2 of the draft article, Mr. Ushakov had asked a question which perhaps required further consideration. He had rightly stated that organs of international organizations were not generally in continuous session, although that remark did not perhaps apply to such bodies as the World Bank and the IMF, which, in effect, were directed by their Executive Directors, who were in continuous session. One question which did, however, merit further reflection was which organ would have authority in a particular case to give notification. While such an organ could normally be convened in emergency session, it might not always be convenient to do so.

40. He saw no problem regarding the reference in paragraph 3 of the draft article to the means indicated in Article 33 of the Charter of the United Nations. Reviewing those means *seriatim*, one could see that, although some might not seem entirely feasible so far as international organizations were concerned, all were conceivable. That remark was applicable also to judicial settlement, since while the Statute of the International Court of Justice provided at the moment that only States could be parties in contentious cases, it could in the future be amended to broaden its scope. Moreover, as the Special Rapporteur had pointed out, certain treaties in force provided that an advisory opinion delivered by the court in a case to which an international organization was a party was binding upon all the parties. In effect, therefore, judicial settlement would apply to international organizations even within the context of the International Court. Furthermore, the reference in question seemed to him to be aptly worded for, as he read it, it was not made subject to the condition laid down in Article 33 of the Charter of the United Nations. In other words, under the terms of draft article 65, a dispute did not have to be one "the continuance of which is likely to endanger the maintenance of international peace and security"—it could be any kind of dispute.

41. For those reasons, he would recommend that draft article 65 should be referred to the Drafting Committee.

42. Sir Francis VALLAT said that he too supported draft article 65, subject possibly to certain minor drafting changes.

43. Paragraph 2 of the draft article dealt, in his view, with only one question, not with two questions. In other words, the reference to the period of three months was to be read in conjunction with the expression "except in cases of special urgency". The three-month period was a minimal period and—subject to the proviso of "special urgency"—there was no reason why it could not be longer. The nub of the problem, therefore, was which cases should be regarded as cases of "special urgency" for the purpose of determining the length of the period. If the Commission thought it advisable, he was prepared to consider a longer period in the case of international organizations, but he did not think it was really necessary.

44. Article 33 of the Charter of the United Nations mentioned a variety of means for the specific settlement of disputes from among which the parties could choose. The parties were not required to select any particular means; indeed, as was well known, they could refuse to negotiate and could opt for settlement by arbitration. Consequently, even if it were correct that judicial settlement was not open to international organizations—and that, as Mr. Schwebel had observed, was not strictly accurate in the modern world—it would still not be inappropriate to refer to Article 33 of the Charter of the United Nations in the case of international organizations.

45. In a somewhat broader context, he said that mentally he placed not only draft article 66 between square brackets but also draft article 65. The reason was that, in his capacity as a member of the Commission, he continued to hold the view which he had propounded as leader of the United Kingdom

delegation to the United Nations Conference on the Law of Treaties, namely, that the provision embodied in draft article 65, standing on its own, was inadequate and unsatisfactory. If draft article 65 was to be included in the draft articles, it should be based on the provision embodied in draft article 66.

46. Mr. REUTER (Special Rapporteur) said that for a number of reasons he was hesitant to accept the idea of allowing a longer period where international organizations were concerned. If the dispute arose between two States, the extension of the period was unnecessary. If it arose between two international organizations, or between a State and an international organization, the extension of the period could be justified if the international organization was the object of the notification, but not if the international organization was the author of the notification. Hence, in the last-mentioned case it was debatable whether there was really any need to draw a distinction between the situation of States and that of international organizations.

47. With regard to the reference to the means of peaceful settlement of disputes indicated in Article 33 of the Charter, he said that Article 33 should be considered simply as a catalogue; it was open to each State and to each international organization to choose the preferred mode of settlement. Personally, he believed that the best settlement procedure for international organizations was perhaps conciliation, which was the most flexible procedure and included inquiry. In that connexion, he pointed out that article 66, paragraph (*b*) of the Vienna Convention provided for recourse to the conciliation procedure only in the case of disputes concerning the application or interpretation of the provisions of Part V of that Convention, and he suggested that recourse to that procedure should perhaps be envisaged in the case of all disputes.

48. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer draft article 65 to the Drafting Committee.

It was so decided.[14]

The meeting rose at 12.50 p.m.

[14] For consideration of the text submitted by the Drafting Committee, see 1624th meeting, paras. 30 *et seq.*

1589th MEETING

Monday, 12 May 1980, at 3.10 p.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/327)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 66 (Procedures for judicial settlement, arbitration and conciliation)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article 66 (A/CN.4/327), which read:

**[*Article 66. Procedures for judicial settlement, arbitration and conciliation*

1. When, in the case of a treaty between several States and one or more international organizations, the objection provided for in paragraphs 2 and 3 of article 65 is raised by one or more States with respect to another State and under paragraph 3 of article 65 no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(*a*) Any State party to a dispute concerning the application or the interpretation of article 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration.

(*b*) Any State party to a dispute concerning the application or the interpretation of any of the other articles in part V of the present articles may set in motion the procedure specified in the annex (section 1) to the present articles by submitting a request to that effect to the Secretary-General of the United Nations.

2. When the objection provided for in paragraphs 2 and 3 of article 65 is raised by one or more international organizations parties to the treaty or involves one or more international organizations parties to the treaty and under paragraph 3 of article 65 no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(*a*) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or 64 may ask one of the bodies competent under the terms of Article 96 of the Charter to request an advisory opinion from the International Court of Justice, unless the parties by common consent agree to submit the dispute to arbitration; the parties shall regard the advisory opinion of the Court as binding;

(*b*) Any one of the parties to a dispute concerning the application or the interpretation of any of the other articles of part V of the present articles may set in motion the procedure specified in the annex (section II) to the present articles by submitting a request to that effect, as appropriate, to the Secretary-General of the United Nations or to the President of the International Court of Justice.]