Document:-

A/CN.4/SR.1644

Summary record of the 1644th meeting

Topic:

Treaties concluded between States and international organizations or between two or more international organizations

Extract from the Yearbook of the International Law Commission:-

1981, vol. I

negotiated the terms of that letter and prepared the way for a debate in talks with the Chairman of the Fifth Committee, the Chairman of the Advisory Committee on Administrative and Budgetary Questions, and certain influential delegations, such as those of Egypt and Trinidad and Tobago. As a result, a substantial increase in the level of honoraria had been approved in the Fifth Committee by a vote of 53 to 11, with 19 abstentions. The corresponding resolution (35/218 of 17 December 1980) was adopted at a plenary meeting of the General Assembly by 111 votes to 12 with 13 abstentions. The text of that resolution was set out in paragraph 17 of Information Circular No. 169: the honorarium of a member had been raised from $1,000 to $3,000, and that of a Special Rapporteur increased by $1,000. The additional honorarium payable to the Chairman had been increased from $1,500 to $2,000, and the requirement that he should be paid that sum only upon presentation of a "Specific Report" had been lifted. For the achievement of that result, credit was due to the efforts of his predecessors, to the delegations of Egypt, Mexico and Trinidad and Tobago, and to the Commission's secretariat.

7. The General Assembly's views on the length and cycle of the Commission's sessions and on the Commission's records and documentation were set out in paragraphs 20–25 of the Information Circular. There had been no apparent reduction in the facilities afforded the Commission. The Committee on Conferences, however, might wish to propose, pursuant to General Assembly resolution 35/10 of 3 November 1980, that the Commission's sessions be shortened, although such a step could only be taken after "due consultation" with the Commission.

8. As to co-operation with other bodies, he had attended the session of the Inter-American Juridical Committee held early in 1981. It had not, however, been possible to send an observer to attend the meeting of the European Committee on Legal Co-operation. The meeting of the Asian–African Legal Consultative Committee had been postponed until May 1981. One matter which the Commission might wish to discuss in its Planning Group was ways and means of ensuring more effective co-operation between the Commission and the Inter-American Juridical Committee. That suggestion had been made not only by the Committee's representative at the Commission's preceding session,[4] but also by the Deputy Secretary-General of the League of Arab States in charge of legal affairs and the observer for the Arab Commission for International Law. His own view was that the Commission's reaction should be positive.

9. Lastly, speaking on behalf of all members of the Commission, he paid a tribute to Mr. Pierre Raton, who was shortly due to retire.

[4] See *Yearbook ... 1980*, vol. I, p. 148, 1611th meeting, para. 31.

Election of officers

Mr. Thiam was elected Chairman by acclamation.

Mr. Thiam took the Chair.

10. Mr. THIAM thanked the members of the Commission for the confidence they had shown in him and assured them that, inspired by the example of his eminent predecessors, he would do his best to further the progress of the Commission's work with the help of all its members.

Mr. Quentin-Baxter was elected first Vice-Chairman by acclamation.

Mr. Šahović was elected second Vice-Chairman by acclamation.

Mr. Tsuruoka was elected Chairman of the Drafting Committee by acclamation.

Mr. Francis was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/336)

The provisional agenda (A/CN.4/336) was adopted unanimously.

Organization of work

The Commission decided to begin its work with the consideration of item 3 of the agenda (Question of treaties concluded between States and international organizations or between two or more international organizations).

The meeting rose at 5.25 p.m.

1644th MEETING

Tuesday, 5 May 1981, at 10.15 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Boutros Ghali, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, 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 (A/CN.4/339 and Add.1–4, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

INTRODUCTORY STATEMENT BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Special Rapporteur to introduce his tenth report on the question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/341 and Add.1), prepared for the Commission's second reading of the draft articles it had adopted on the topic at its thirty-first session.[1]

2. Mr. REUTER (Special Rapporteur) reminded the Commission that it had requested States and interested international organizations to submit comments and observations on the draft articles it had adopted on first reading. In preparing his tenth report, he had taken account of the fact that the Commission had decided to settle certain points on second reading, when it had a better general view of the draft; he had also taken the recent discussions in the Sixth Committee into consideration. With regard to Governments and international organizations, it was only on draft articles 1 to 60 that they had been asked to submit their comments by 1 February 1981; they had been given until 1 February 1982 to comment on articles 61 to 80. He had assumed that the Commission would be able to examine half the draft articles at the current session, and had therefore dealt only with articles 1 to 41 in his tenth report. Despite the valuable assistance of the Secretariat, which had enabled him to delay drafting his report until the last possible moment, he had been unable to take account of all the comments of States and international organizations, some of which had been submitted too late. So far, ten Governments and four international organizations had submitted comments;[2] two other organizations had merely intimated that they would do so in due course. In addition, Mr. Suy, Under-Secretary-General for Legal Affairs, the Legal Counsel, had submitted a number of provisional observations, which did not constitute official comments by the United Nations.

3. In introducing his report, he thought it advisable to begin with three general comments, two of which would require decisions by the Commission. He believed that it would probably be wise to confirm the positions taken when preparing the draft, but that would be for the Commission to decide.

4. His first general comment related to two trends of opinion which had appeared both in the Commission and in the observations of Governments and international organizations. To reconcile them, the Commission had resorted to compromises which it must now re-examine to decide whether they were reasonable and understandable. Some critics had maintained that they were not. The Commission would therefore have to make a number of choices, and if it could not reach agreement as usual, but a majority appeared, it would have to take note of that fact. However, it should avoid dwelling on matters which had already been discussed at length.

5. The trends in question related primarily to the precise nature of the differences between States and organizations and, secondarily, to the differences that could result in regard to treaties concluded either between one or more States and one or more international organizations, or between several international organizations. The differences between States and international organizations were undeniable. It was because those differences necessarily appeared in all matters connected with the capacity and constitutional status of international organizations that draft article 6 restricted the competence of organizations as compared with that of States. It had been accepted that, in regard to internal procedures for the conclusion of agreements, international organizations were so different from States that reference must be made to the particular rules of each organization. On the other hand, there had been differences of opinion in the Commission—and also in the written comments received—concerning the status of an agreement once it had been concluded. Did it imply a fundamental equality between the parties? In his opinion, it would be no use discussing that question at length in the abstract.

6. It seemed to be generally agreed that, for reasons of clarity, the two categories of treaty to which the draft articles applied should be examined separately. Nevertheless, besides drafting problems, the existence of those two categories sometimes raised questions of substance. For example, treaties between international organizations were, paradoxically, more akin to treaties between States than to treaties between one or more States and one or more international organizations, since they involved entities of a similar nature and standing. That was another point on which there should not be any general discussion. Where specific cases were concerned, the Commission should only take a position if a problem of substance arose.

7. His second general comment concerned the independence of the draft articles from the Vienna Convention on the Law of Treaties.[3] Both the Commission and the States and international organizations that had submitted comments thought it necessary to follow the text of the Vienna Convention as closely as possible. There remained the problem of the relationship between the draft articles and the Vienna Convention, which depended on what the General Assembly decided to do with the draft. Some Governments and international organizations had already submitted opinions on that point which could not be ignored. The Commission must prepare a draft adapted to the maximalist solution, namely, the elaboration of a convention; that was why it had given its work the form of draft articles. Some people had

[1] For the text of the articles, see *Yearbook ... 1980*, vol. II (Part Two), pp. 65 *et seq.*, arts. 1 to 60.

[2] See A/CN.4/339 and Add.1–4.

[3] For the text of the Convention, see *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publications, Sales No. E.70.V.5), p. 287. The Convention is hereinafter called "Vienna Convention".

therefore raised the question of the relationship between the draft articles and the Vienna Convention. There were two possibilities.

8. The first would be to harmonize the texts of the draft convention and the Vienna Convention so as to form a coherent whole. If such harmonization were decided on, the most radical solution would be to make the draft articles a protocol to the Vienna Convention. Various drafting questions would then have to be settled at the outset; for instance, that of the term "treaty", which appeared very frequently in both texts and which in one case would apply to treaties concluded between one or more States and one or more international organizations or between international organizations and in the other case to treaties concluded between States. Furthermore, it would not be possible fully to conserve the provisions of article 3 (*c*) of the Vienna Convention, according to which that instrument could apply to the relations of States as between themselves under international agreements to which other subjects of international law, such as international organizations, were also parties. The Vienna Convention itself would have to be amended. To be supplemented, it would have to be revised; but since it contained no revision clause, it was article 40 that would apply, so that the initiative for revision would lie with the Contracting States. Hence it was hard to see how the draft articles could be integrated with the Convention while respecting the rights of the States Parties to that instrument. That being so, it seemed preferable to keep to an instrument independent of the Vienna Convention to which other States could become parties. Furthermore, if the General Assembly decided to convene a conference of plenipotentiaries, that conference could, if necessary, undertake the task of harmonization. If, on the other hand, the General Assembly opted for a resolution giving the draft a status different from that of the Vienna Convention, it would be better for the draft to be independent of that Convention. At least one Government and one international organization considered the latter approach to have certain advantages.

9. The second possibility would be to make the draft less independent in substance, but more so in form. It was in that spirit that he had suggested to the Sixth Committee that the text should be simplified by using the method of "*renvoi*". By way of example, he had prepared a draft article containing a *renvoi* to those rules of the Vienna Convention which had exactly the same wording as the corresponding provisions of the draft (see A/CN.4/341 and Add.1, para. 11). Other draft articles could be similarly formulated. The method was not, however, one which the Commission had previously employed. Thus in the four conventions on privileges and immunities elaborated on the basis of drafts prepared by the Commission, namely, the 1961 Vienna Convention on Diplomatic Relations,[4] the 1963 Vienna Convention on Consular Relations,[5] the 1969 Convention on Special Missions[6] and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,[7] not a single *renvoi* was to be found. There were probably two reasons why the Commission had refrained from using that method. First, a *renvoi* to a convention entitled the States Parties to that convention to interpret its text and, in consequence, implied acceptance of their interpretation. Secondly, there was the question whether, in the event of amendment of the convention to which a *renvoi* related, it should be deemed to refer to the original or to the amended text. Personally, he did not recommend the method of *renvoi*, but the question would, of course, be for the Commission to decide.

10. His third general comment concerned the drafting of the articles as such. Some considered it unnecessarily heavy and complicated. When drafting the articles examined on first reading, he had aimed at clarity rather than concision. In view of the comments subsequently made, he had endeavoured, in the report under discussion, to simplify the text wherever possible; but when a question of substance was involved, the substantive difficulty must be overcome before the drafting could be clear. Moreover, even when there was no problem of substance and it seemed that the wording could be simplified, clarity might be incompatible with elegance. In preparing the draft articles in his tenth report, he had sometimes gone so far as to sacrifice clarity for brevity. For the moment, the Commission should not dwell too much on the general problem of drafting. It should, however, decide in principle either to retain the former wording in all cases, or to simplify it as much as possible.

11. The CHAIRMAN congratulated the Special Rapporteur on the brilliant presentation of his tenth report.

12. He invited the members of the Commission to state their views on the three general comments the Special Rapporteur had made.

13. Mr. TABIBI said that he had always agreed with the Special Rapporteur's general approach to his topic. There was, of course, no doubt that States and international organizations were different, but the creation, through the collective will of States, of a large number of international organizations had ushered in a new era, and account must be taken of that fact in formal international law.

14. In view of the importance of the topic and the relatively small number of States and international

[4] United Nations, *Treaty Series*, vol. 500, p. 95.

[5] *Ibid.*, vol. 596, p. 261.

[6] General Assembly resolution 2530 (XXIV), annex.

[7] *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207. Hereinafter called "1975 Vienna Convention".

organizations that had submitted written comments on the Commission's draft articles, he thought the Special Rapporteur should make a further request to those concerned to state their opinions on his work.

15. Mr. BOUTROS GHALI said that, for purely practical reasons, he supported the Commission's approach of making the draft an independent whole containing no references to the Vienna Convention. It was far more convenient in practice not to have to consult several instruments.

16. Mr. VEROSTA also thought that whatever the General Assembly decided to do with the draft, it should be independent and not contain any *"renvois"*.

17. With regard to the two trends to which the Special Rapporteur had referred, he maintained that, although international organizations differed from States in many ways, they could have the capacity to conclude treaties. The texts so far drafted by the Special Rapporteur and the Commission appeared to bear out that fact.

18. The Commission should devote its forthcoming meetings to drafting problems. As appeared from the Commission's discussions and the observations of Governments and international organizations, the wording of many of the draft articles could be simplified. That phase of the Commission's work would only begin when it began to examine the draft article by article.

19. Sir Francis VALLAT said he believed that the most efficient way for the Commission to discuss such fundamental questions as the status of international organizations relative to States would be to do so in connection with specific articles. He therefore suggested that the Commission should proceed forthwith to discuss the draft article by article.

20. He further believed that the Commission had been right to draw up a series of draft articles, rather than a set of amendments or some kind of protocol to the Vienna Convention. It was, indeed, because the latter course had been rejected by the United Nations Conference on the Law of Treaties that the General Assembly had entrusted the topic to the Commission, asking it, in effect, to devise an adaptation of the Vienna Convention to the needs of international organizations.

21. Mr. REUTER (Special Rapporteur) said he had made a point of speaking to the Commission about the observations on the draft articles made by States and international organizations.

22. Mr. USHAKOV said that the fate of the draft would certainly depend on the decision taken by States in the General Assembly, but that it was usual for the Commission to make a recommendation upon concluding its work. At present, it was too soon to take a position, even in the form of a recommendation.

23. The question of the possible participation of international organizations in the convention which might result from the draft articles had been raised several times. That question, too, depended on what the General Assembly decided to do with the draft. It was only if the draft served as the basis for a convention that it would be necessary, in due course, to find some means of making that convention binding on international organizations.

24. There was no denying the differences in nature between States and international organizations. In paragraph 5 of his report, the Special Rapporteur pointed out that those differences were sometimes reflected in matters of vocabulary. In that connection, he observed that it was necessary to take account of questions of substance. It was not possible to settle, in a general way, the problem of the legal equality of the parties. States and international organizations were in principle on an equal footing as parties to a treaty, but that could not be so in all cases. In the matter of reservations, for instance, an international organization could not commit itself tacitly in the same way as a State.

25. With regard to the drafting of the articles as a whole, it was necessary to avoid producing a draft that was easy to read but difficult to interpret and apply. For a draft to be easy to read, it was better for it to be concise; for it to be easy to interpret and apply it was better to reproduce all the provisions borrowed from other instruments. Thus the Commission's task was to simplify the text of the draft articles without complicating their interpretation and application.

26. Lastly, he questioned whether it was sufficient to define an international organization as being an "intergovernmental organization", as the Commission had done in article 2, paragraph 1 (*i*). Some entities were of a kind which made them sometimes resemble States and sometimes international organizations: for example the European Communities, or subsidiary bodies of international organizations such as UNCTAD and GATT.

27. The CHAIRMAN invited the members of the Commission to examine the draft article by article and, if necessary, to give their views on the three general observations made by the Special Rapporteur.

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 1 (Scope of the present articles) *and*

ARTICLE 2 (Use of terms), subparas. 1 (*a*) ("treaty") and (*i*) ("international organization")

28. The CHAIRMAN invited the Special Rapporteur to present article 1, which was worded as follows:

Article 1. Scope of the present articles

The present articles apply to:

(*a*) treaties concluded between one or more States and one or more international organizations, and

(*b*) treaties concluded between international organizations.

29. The corresponding provisions of the article that contains the definitions read as follows:

Article 2. Use of terms

1. For the purpose of the present articles:

(a) "treaty" means an international agreement governed by international law and concluded in written form:

(i) between one or more States and one or more international organizations, or

(ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

...

(i) "international organization" means an intergovernmental organization;

30. Mr. REUTER (Special Rapporteur) said that article 1 made the basic distinction between the two kinds of treaty to which the draft applied—a distinction which was necessary whatever might happen later.

31. With regard to article 2, subpara. 1 (*a*), it had been suggested that the special category of treaties concluded with an international organization by a State which was a member of it should also be distinguished. That case did indeed raise theoretical problems. At the beginning of his work, he had questioned a number of international organizations about it, but they had concluded that the question was of no practical importance. He therefore considered that the Commission could safely ignore such a marginal case; after all, no rule could fit every imaginable situation perfectly.

32. Several members of the Commission had commented on article 2, subpara. 1 (*i*), which defined an international organization as an "intergovernmental organization". It had been suggested that that definition should be expanded by specifying that for the purposes of the draft the expression "international organization" meant an intergovernmental organization "having the capacity to conclude treaties". In his view that was unnecessary. Either an international organization did not have the capacity to conclude treaties or it had that capacity, if only for a single treaty (for example, a treaty with another organization or a headquarters agreement), and that would be enough to make the draft articles applicable to it.

33. Mr. Ushakov had raised the question of entities which were international organizations in some respects, but in others were not or claimed not to be. He had expressly mentioned the European Communities. If the draft articles served as the basis for a treaty, the final provisions of that instrument would have to specify which international organizations came within its scope. At a certain stage in the work, he had himself proposed that the United Nations should be excluded from the field of application of the draft.

34. Mr. Ushakov had also raised the problem of agreements concluded by subsidiary bodies of international organizations, expressly mentioning the case of UNCTAD. If the question of competence—which came under the internal rules of the organization—were excluded, it was indeed necessary to determine whether an agreement concluded by a subsidiary body was binding on that body alone or also on the organization itself. On that point he [the Special Rapporteur] had consulted the United Nations Secretariat at the beginning of his work. He had then thought it better to leave the matter aside because it could not be settled absolutely, but would have to be examined in the particular case of each organization considered, since it was a question of institutional law and must therefore be judged by each international organization, which would itself have to decide its position on what might be called the decentralization of international personality.

35. In conclusion, he proposed that the texts of draft article 1 and of draft article 2, paragraph 1, subparagraphs (*a*) and (*i*) should be left as they stood.

36. The CHAIRMAN said that, if there were no objections, he would take it that the Commission wished to refer the texts of draft article 1 and of the draft article 2, paragraph 1, subparagraphs (*a*) and (*i*) to the Drafting Committee.

It was so agreed.[8]

ARTICLE 2 (Use of terms), subpara. 1 (*j*) ("rules of the organization") and para. 2

37. The CHAIRMAN invited the Special Rapporteur to present article 2, subpara. 1, (*j*) and paragraph 2, which read as follows:

Article 2. Use of terms

1. For the purpose of the present articles:

...

(j) "rules of the organization" means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meaning which may be given to them in the internal law of any State or by the rules of any international organization.

38. Mr. REUTER (Special Rapporteur) said that the other provisions of draft article 2 would be examined subsequently, with the articles to which they directly related.

39. He reminded the Commission that the definition of the expression "rules of the organization" in draft article 2, subparagraph 1 (*j*) had been formulated in connection with the text of draft article 27, in 1977.[9] It

[8] For consideration of the texts proposed by the Drafting Committee, see 1681st meeting, paras. 6–14.

[9] See *Yearbook ... 1977*, vol. II (Part Two), p. 119.

had been taken from article 1, paragraph 1 (34) of the 1975 Vienna Convention.[10] The Commission had stated at the time that the adoption of that definition was only a provisional solution. Perhaps the time had come to re-examine that choice.

40. He pointed out that the text of the draft articles contained some variations in terminology, as indicated in paragraph 27 of his tenth report (A/CN.4/341 and Add.1, para. 27). Three expressions were used, the most general ("rules of the organization") being the one used in the provision under consideration; in other cases, only part of the rules were referred to—and there the expression was "relevant rules"—or the subject-matter of the rules was designated precisely, as in article 46, which referred to "rules of the organization regarding competence to conclude treaties".

41. These differences made it necessary to consider whether the definition covered all the rules of an organization, whether a general definition of the rules of the organization need be retained in the draft, and whether the reference to the "relevant rules", which appeared in some articles was adequate.

42. The expression "relevant rules" was perfectly suited to the 1975 Vienna Convention, which applied only to specific subject-matter. It did not, however, cover all the rules of an international organization since, besides the constituent instruments and established practice of an organization, it referred only to the organization's relevant decisions and resolutions, thus using very precise terms of limited scope. However, in the text under consideration the words "in particular" gave the subsequent enumeration the value of examples only. An expression such as "normative instruments" would have a wider scope, but the wording adopted hitherto nevertheless seemed adequate.

43. He believed it would be useful to retain the definition of "rules of the organization" in the draft articles, for besides the constituent instruments and relevant decisions and resolutions, it had the advantage of mentioning the "established practice of the organization", which was an essential source of its law. Some international organizations, in their comments, had regretted that "established practice" had been included in the definition, since they did not find that expression sufficiently innovative. It should be pointed out, however, that the Commission had never intended in any way to freeze an international organization's possibilities of establishing new practices.

44. In conclusion, he proposed that the text of article 2, subpara. 1 (*j*) should be retained without change. He pointed out, however, that since that provision was intended to define an expression in a very general sense, it might be more logical to delete the adjective "relevant" from the definition, since in fact all the rules of an organization should be covered.

[10] See footnote 7 above.

45. The text of paragraph 2 of the same draft article could also be retained as it stood.

46. Mr. USHAKOV said that where a definition had already been formulated, it was better to leave it as it was, since the deletion of only one word could change the whole meaning.

47. The relevant decisions and resolutions referred to in subparagraph (*j*) were obviously those that concerned certain internal rules of the organization. If the adjective "relevant" were deleted, all decisions and resolutions of an international organization would have to be considered as establishing rules of the organization. However, in that provision, the Commission intended to refer only to the decisions and resolutions which established internal rules of an international organization. Hence, the inclusion of the adjective "relevant" was useful, since it showed that the reference was to decisions and resolutions concerning the internal law of the organization, for example, the functions and powers of organs of the organization or of the organization itself.

48. At that stage in the work, the Commission seemed to have a choice only between adopting the Vienna Convention definition without change and trying to formulate a new definition for the draft articles which would be perfectly suited to them, just as the former definition was suited to the Vienna Convention.

49. It seemed to be too early to determine the best choice, but in any case the Commission should not lose sight of the fact that it was the international organization itself to decide what constituted its rules.

50. Mr. VEROSTA said that the inclusion of the adjective "relevant" in the English text appeared to be no more indispensable than that of the adjective "*pertinentes*" in the French text. In preparing its draft, the Commission was not bound by the text of the 1975 Vienna Convention, though it was endeavouring to follow that of the Vienna Convention on the Law of Treaties.

51. Mr. REUTER (Special Rapporteur) said that he had no objection to the Commission's deciding to retain the adjective "relevant".

52. Sir Francis VALLAT said his first inclination would be to delete subparagraph 1 (*j*) of article 2, first, because it laid down the kind of definition that was not really a definition, inasmuch as it did not define the limits of the concept, and, secondly, because, by introducing a number of terms, it complicated the issues that might arise in the course of interpretation. He reminded the Commission of the experience of the International Court of Justice in the *Aegean Sea Continental Shelf* case, when the words "*et, notamment,*" in the reservation of Greece, had constituted a very serious stumbling block in the reasoning developed by the Court.[11] That expression immediately

[11] See Aegean Sea Continental Shelf, Judgment, *I.C.J. Reports 1978*, pp. 20 *et seq.*

raised the question how much was to be included in the definition. An element of doubt was also present in that the definition did not actually mention the rules expressly adopted by the organization. Moreover, the expression used initially, for instance, in article 6, was "relevant rules of the organization"; that concept was then extended to cover "relevant decisions", which raised the question what was meant, in the particular case, by "relevant".

53. Since the differences in drafting already created enough difficulty, he considered that, if there was to be a definition, that adopted in article 1, paragraph 1 (34) of the 1975 Vienna Convention should not be altered. Rather than creating fresh doubts about new language, it would be better to leave well alone and let time work out a solution of the problem.

The meeting rose at 1 p.m.

1645th MEETING

Wednesday, 6 May 1981, at 10.30 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Filling of casual vacancies in the Commission (article 11 of the Statute) (A/CN.4/377 and Add.1)

[Item 1 of the agenda]

1. The CHAIRMAN said that at a private meeting the Commission had selected Mr. George H. Aldrich to fill the vacancy left by the resignation of Mr. Schwebel, who had been elected a judge of the International Court of Justice.

2. A telegram had been sent to Mr. Aldrich inviting him to take part in the work of the Commission as soon as possible.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/339 and Add.1–4, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

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

ARTICLE 2 (Use of terms), subpara. 1 (*j*) ("rules of the organization"), and para. 2[1] (*concluded*)

3. Mr. ŠAHOVIĆ said that, after hearing the Special Rapporteur, he thought it would be preferable, in the definition in article 2, subpara. 1 (*j*), to retain the adjective "relevant", the presence of which was in fact justified by the Commission's decision on first reading to define the "rules of the Organization". Without that adjective, the formula adopted would be too broad, since the word defined the nature of the decisions and resolutions to be taken into consideration as delimiting the field of application of the draft. The expression "relevant rules of the organization" was as it were the parallel, *mutatis mutandis*, of the formula "internal law of the State".

4. Although the content of articles 6 and 27 of the draft[2] might seem to militate in favour of retaining the definition of the expression "rules of the organization", he pointed out that it was perhaps only the novelty of the expression that had made the Commission wish to define it, whereas the expression "internal law of the State" did not need to be defined. The Commission would probably be better able to take a final position on that point when it had examined all the articles and had been able to study the use of the expression in the various texts forming the draft. For his part, he was inclined to favour the inclusion of a definition of that expression in the draft.

5. As to the question whether the mention of "relevant rules" in numerous articles of the draft was sufficient, the final answer would also depend on the consideration of each provision as the Commission's work advanced. On the whole, however, the present text appeared to be satisfactory in that respect.

6. With regard to draft article 2, paragraph 2, he observed that the expression "rules of any international organization" must clearly be interpreted in accordance with subpara. 1 (*j*) of the same article. He pointed out, however, that the 1975 Vienna Convention[3] did not refer, in its article 1, paragraph 2, to the rules of international organizations but to "other international instruments". The Commission should perhaps consider what latitude it had in regard to that formula, for its draft introduced a set of new notions resulting from the special situation of international organizations and originating in documents of the most diverse kinds.

7. Mr. SUCHARITKUL said he supported Mr. Šahović. He noted that article 2, subpara. 1 (*j*) listed three kinds of sources of rules and that the concept of constituent instruments was somewhat imprecise. The draft defined an international organization as an intergovernmental organization, and thus excluded non-governmental organizations such as the Inter-

[1] For the text, see 1644th meeting, para. 37.

[2] See 1644th meeting, footnote 1.

[3] *Ibid.*, footnote 7.