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Summary record of the 1344th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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There was no such agreement between States in regard to economic or other unions.

62. The problem of the impact of economic unions on most-favoured-nation clauses was not one of framing any special rule on the subject; it was simply a problem of conflicting treaty obligations. A conflict of that kind had to be settled in accordance with the appropriate rules of the general law of treaties. The interesting idea had been put forward by Mr. Tsuruoka that the draft would probably contain a non-retroactivity provision and would apply only to future economic unions, not to existing ones, so that States would have time to provide for the necessary exceptions in their treaties. For the present, he did not see how it was possible to claim that the mutual obligations of members of such economic groups should have absolute priority over the ordinary rules of the law of treaties, and that the members of those groups were relieved from their most-favoured-nation commitments.

63. The CHAIRMAN declared the discussion on article 0 closed. He suggested that the article be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed. [14]

The meeting rose at 1.10 p.m.

[14] For resumption of the discussion see 1352nd meeting, para. 126.

1344th MEETING

Friday, 4 July 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Most-favoured-nation clause

[Item 3 of the agenda]

(*continued*)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 0 (*continued*)

1. Sir Francis VALLAT said he wished to place on record that the discussion on article 0 had not been completed. He and other members who still had some comments to make on that article had only agreed to its being referred to the Drafting Committee at that stage in order not to delay the work of the Commission, which was now due to take up the next item on its agenda.

2. The CHAIRMAN said that members who wished to comment on draft article 0 would be able to do so when it came back from the Drafting Committee.

Question of treaties concluded between States and international organizations or between two or more international organizations

(A/CN.4/281; A/CN.4/285)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 7 AND

ARTICLE 2, PARAGRAPH 1 (*c*)

3. The CHAIRMAN reminded the Commission that at its previous session it had begun the first reading of the draft articles on treaties concluded between States and international organizations or between international organizations, and had provisionally adopted article 1, most of article 2, and articles 3, 4 and 6, together with the commentaries thereto. [1] He invited the Special Rapporteur to report on the progress of his work and to introduce his fourth report (A/CN.4/285), with particular reference to article 7 and paragraph 1 (*c*) of article 2, which read:

Article 7

Full powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States and international organizations concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(*a*) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(*b*) representatives accredited by States to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ or of a treaty with that organization.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the organization to be bound by a treaty if:

(*a*) he produces appropriate full powers; or

(*b*) it appears from the practice of the States and international organizations concerned or from other circumstances that their intention was to consider that person as representing the organization for such purposes and to dispense with full powers.

Article 2

Use of terms

1.

...

(*c*) "full powers" means a document emanating from the competent authority of a State or international organization and designating a person or persons to represent the State or organization for negotiating, adopting or authenticating the text of a

[1] *Yearbook ... 1974*, vol. II, Part One, document A/9610/Rev.1, chapter IV, section B.

treaty, for expressing the consent of the State or organization to be bound by a treaty, or for accomplishing any other act with respect to a treaty;

4. Mr. REUTER (Special Rapporteur) said that the articles provisionally adopted by the Commission were very closely modelled on the corresponding articles of the 1969 Vienna Convention on the Law of Treaties. [2] His fourth report contained about 30 articles, which corresponded to those in the first part of the Vienna Convention. The new articles proposed could be divided into the following groups: five articles were identical with the corresponding articles of the 1969 Vienna Convention, namely, the articles relating to the *pacta sunt servanda* principle, to the non-retroactivity of treaties and to the interpretation of treaties; nine articles differed only in minor points of drafting from the corresponding articles of the 1969 Vienna Convention and should not present any difficulty; three others also differed only in drafting, but might present some difficulties; and thirteen raised problems of substance. To begin with, he thought the Commission should deal at some length with six questions, namely, full powers to bind an international organization (article 7), the adoption and authentication of the text of a treaty (articles 9 and 10), means of expressing consent to be bound by a treaty (article 11 and article 2, paragraph 1 (*b*)), reservations to treaties (articles 19 to 23), the territorial scope of treaties (article 29) and the application of successive treaties relating to the same subject-matter (article 30). He might have overlooked some problems which would come up during the discussion; but generally speaking, it should be possible to deal quickly with the proposed new articles, since they were based on a Convention which the Commission had worked on for a long time.

5. He was glad that the excellent study prepared by the Secretariat on "Possibilities of participation by the United Nations in international agreements on behalf of a territory" (A/CN.4/281) had been issued in final form. The conclusion, on 14 March 1975, of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character had settled an awkward question: that of the participation of international organizations in general multilateral treaties and, in particular, in treaties relating to matters directly affecting international organizations. The solution adopted showed that governments were not always in favour of the participation of international organizations in international conventions as parties assimilated to States.

6. Draft article 7 corresponded to article 7 of the 1969 Vienna Convention, on the full powers of representatives of States. Since the Commission had decided that the draft convention in course of preparation should form an independent whole, which could enter into force independently of the entry into force of the Vienna Convention, it was important to include provisions on the full powers of the representatives of States. Those provisions formed paragraphs 1 and 2 of draft article 7, which were nearly identical with the corresponding provisions of the Vienna Convention. Paragraph 3 dealt with the full powers of the representatives of international organizations.

7. The innovations introduced in paragraphs 1 and 2 were the following: paragraph 1 (*b*) referred not only to the practice of States, but also to that of international organizations, since it applied to representatives of States in their dealings with international organizations; article 7, paragraph 2 (*b*) of the Vienna Convention was not reproduced in draft article 7, since the future convention would never apply to treaties concluded between two States; as compared with article 7, paragraph 2 (*c*) of the Vienna Convention, paragraph 2 (*b*) of draft article 7 contained an additional reference to treaties concluded between a State and an organization. With regard to the expression "accredited representatives", which was used in the 1969 Vienna Convention on the Law of Treaties, he had reached the conclusion that, for the purposes of the present draft, it was equivalent to the expression "head of mission", used in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. [3]

8. Representatives of international organizations were not usually required to have full powers. So far, no international organization had become a party to any general multilateral treaty. Hence, the need for full powers could only have been felt during the negotiation of bilateral treaties; but such negotiations normally took place in a climate of confidence and began with an exchange of correspondence which enabled those concerned to know who would represent the international organization. Moreover, in the case of all international organizations having a structure similar to that of the United Nations and a secretariat directed by a head, the latter would have both to issue the full powers and to represent the organization. In fact, the accepted practice was that not only the head of the secretariat, but also his immediate colleagues, could commit the organization without full powers, for acts relating to the conclusion of treaties. Powers were nevertheless issued in certain cases. He had found hardly any examples in the practice of the United Nations, but the European Communities frequently issued full powers for the conclusion of important agreements involving a complicated procedure.

9. In that *de facto* situation, two attitudes were possible. He believed that there was a basic legal rule that representatives of international organizations must produce full powers, but that it was necessary to take practice into account and provide for a broad exception to that rule. On the basis of practice, the Institute of International Law considered that it was not necessary to produce full powers, but that they must be produced if the other party demanded them. In sum, the Institute of International Law accepted the rule that full powers were necessary, but introduced an exception based on practice or function. On the latter point the Commission had maintained, with regard to representatives of States, that certain persons who represented the State in virtue of their functions

[2] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 289.

[3] Document A/CONF.67/16.

could be dispensed from producing powers and they were listed in article 7, paragraph 2, of the 1969 Vienna Convention. In his opinion, it was hardly possible to assimilate certain high officials of international organizations to such persons and dispense them from producing powers; for it was a characteristic of international organizations that they had very different structures. Article 85 of the 1975 Vienna Convention contained special provisions regarding high officials of international organizations. That article applied only to international organizations of a universal character, however, and the notion of high officials could not be applied to organizations whose secretariats were divided into departments so independent that each organ had its own secretariat. Moreover, the notion was so broad that, in the case of officials of organizations in the United Nations system, the practice was that several high officials could be at the head of an organization: in the United Nations, for example, Under-Secretaries-General had the same status as the Secretary-General so far as full powers were concerned. In those circumstances, he had preferred not to rely on the notion of high officials.

10. With regard to the term "full powers", during the preparation of the draft which had led to the 1969 Vienna Convention, the Commission had questioned whether or not that term implied an act in solemn form. It had finally decided to retain the term, which was hallowed by usage, although of the opinion that it did not imply any solemn form.

11. Article 2, paragraph 1 (*c*), differed only in minor points of drafting from the corresponding provision of the 1969 Vienna Convention.

12. Mr. USHAKOV said that the draft articles should not be modelled too closely on the 1969 Vienna Convention. With regard to the definition of the term "full powers" in draft article 2, paragraph 1 (*c*), he doubted whether it was really advisable to adopt the definition used in the 1969 Vienna Convention, where "full powers" meant a document which emanated from the competent authority of a State and was thus issued in the exercise of its governmental authority. That definition could not apply to full powers issued by an international organization, for there was no authority in an international organization which was competent to issue them. If an organ of an international organization issued full powers, it was because it was empowered to do so by the constituent instrument of the organization. In any case, full powers emanating from the competent authority of a State could not be equated with full powers issued by an international organization. In an international organization, distinctions might be made between full powers for negotiating, for adopting and even for authenticating the text. Negotiating powers were sometimes issued pursuant to a decision of an organ of the organization, taken by a simple majority, whereas full powers to express consent to be bound by a treaty were conferred by another procedure. Consequently, it was not enough merely to make drafting changes in the definition of the term "full powers" given in the 1969 Vienna Convention.

13. In draft article 7, he had no difficulties with paragraph 1 or with paragraph 2 (*a*). With regard to paragraph 2 (*b*), however, he was not sure whether all the persons referred to in that provision could really be considered as representing their State or whether, in the light of the 1975 Vienna Convention, only heads of mission should be included. As to the reference to treaties concluded with an international organization, which the Special Rapporteur had added at the end of paragraph 2 (*b*), he would like to know whether or not it applied to all kinds of treaties, whether bilateral or multilateral. That provision would enable not only heads of mission, but all accredited representatives to bind an international organization. Consequently, it was important to know what treaties and what representatives were covered by article 7, paragraph 2 (*b*).

14. As to the expression "appropriate full powers" in paragraph 3 (*a*), it was doubtful whether it meant anything more than "full powers", as defined in article 2, paragraph 1 (*c*). For the purposes of paragraph 3 (*b*), although there was practice of States, there was no practice of international organizations. In view of the diversity of international organizations and their practice, it was impossible to speak of the practice of international organizations with respect to full powers, so there was no justification for paragraph 3 (*b*).

15. Mr. KEARNEY said he found the text of the Special Rapporteur's article 7 completely satisfactory. The same applied to the proposed adaptations in paragraph 1 (*c*) of article 2. Those provisions could therefore be referred to the Drafting Committee without much discussion.

16. The problems which had been raised by Mr. Ushakov were not basically connected with article 7 as such. They revolved mainly round the theory that international organizations had the authority to issue full powers for the purposes of negotiating or concluding a treaty. Mr. Ushakov doubted whether the practice of international organizations was sufficiently advanced to permit the adoption of the principle regarding full powers embodied in article 7. It was true that, as pointed out by the Special Rapporteur himself, there was no standard practice relating to the use of the institution of full powers by international organizations; but that was not a sufficient reason for not including article 7 in the draft. The article had a very modest purpose: it said no more than that, if an organization wished to avail itself of the method of full powers, it could not be prevented from doing so.

17. He also found it appropriate to adopt, as was done for States in the Vienna Convention on the Law of Treaties, a broad approach to the question of what constituted full powers. The Vienna Convention did not specify by whom, or in what manner, full powers should be issued. The reason was that it would be dangerous and futile to do so, because of the great variety of State practice. Similar considerations applied to draft article 7. There was no reason to place any restrictions on an international organization in a matter that was governed by its own statute and practice. It would serve no useful purpose to go any further than to recognize the existing position, as stated in draft article 7, paragraph 3 (*b*).

18. Mr. HAMBRO said he shared the Special Rapporteur's view that the Commission should be able to deal

with the set of draft articles in the fourth report without much delay. He had therefore heard Mr. Ushakov's remarks with some concern. It was his impression, however, that Mr. Ushakov's point of view was based essentially on his position regarding the nature of international organizations and their capacity to conclude treaties. That position was, of course, founded on a certain philosophical conception.

19. His own views differed altogether from those of Mr. Ushakov. His feeling was that the Commission should adopt practical and pragmatic solutions which would facilitate the work of the international organizations and enable them to take their natural place and fulfil their necessary role in the life of the international community. Bearing in mind the increasingly important role which international organizations were bound to play in the future, he fully shared the views of Mr. Kearney and had no difficulty in accepting the ideas embodied in article 7. He agreed that it should be referred to the Drafting Committee for consideration in the light of the discussion.

20. Mr. CALLE Y CALLE said that article 7, paragraph 2, of the 1969 Vienna Convention on the Law of Treaties dispensed certain classes of persons from the requirement of producing full powers; that provision was based on the assumption that, in virtue of their functions, those persons could be considered as representing their States, at least for the purpose of adopting the text of a treaty. Parapraph 2 (*c*) of that article made specific reference to "representatives accredited by States to an international conference or to an international organization or one of its organs", in other words, to the class of persons covered by paragraph 2 (*b*) of draft article 7. In March 1975, however, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character had been adopted, and that Convention dealt extensively with permanent representatives who headed missions to international organizations.

21. He therefore suggested that an additional sub-paragraph should be introduced into paragraph 2 of draft article 7 to deal with those permanent representatives separately from the representatives mentioned in paragraph 2 (*b*). There were obvious reasons for adopting two sets of provisions to deal with those two separate classes of representatives. Paragraph 2 (*b*) covered the question of accreditation of representatives of States to an international conference or to a meeting at which the text of a multilateral treaty was to be discussed and adopted. The additional sub-paragraph he proposed would cover the question of the full powers of a permanent representative for the purpose of concluding a bilateral agreement with an organization. Such bilateral agreements were commonly adopted for the recruitment and payment of experts; they were usually concluded with the organization by the head of the permanent mission concerned. It was all the more necessary to amend paragraph 2 in that manner because the 1975 Vienna Convention did not define the notion of "representatives accredited by States to an international conference or to an international organization or one of its organs", whereas it did define the terms "head of mission" and "permanent representative". Moreover, article 10 of that Convention dealt with the credentials of the head of mission, and article 11 with the accreditation of permanent representatives to organs of an international organization.

22. In all other respects, he found draft article 7 fully satisfactory. The point raised by Mr. Ushakov, that the practice of one organization might not be valid for another, seemed to him amply covered by the fact that paragraph 1 (*b*), specifically referred to the practice of the "international organizations concerned". The reference was thus clearly to the particular practice of individual organizations.

23. Mr. ELIAS said that draft articles 7 to 33 in the Special Rapporteur's fourth report, and the consequential paragraphs on the use of terms to be incorporated in article 2, should prove readily acceptable; the Commission ought to be able to refer them to the Drafting Committee without unduly long discussion.

24. After studying the articles, he had arrived at a classification similar to that made by the Special Rapporteur in his introduction: five articles of the draft were identical, and nine almost identical, with the corresponding articles of the 1969 Vienna Convention on the Law of Treaties. The remaining articles raised questions of substance, especially articles 7, 9, 11, 29 and 30.

25. He appreciated the logic of the points raised by Mr. Ushakov, but he saw no other way of dealing with the problems before the Commission than by adopting the solutions put forward by the Special Rapporteur. For example, Mr. Ushakov was not satisfied with the contents of paragraph 2 (*b*) of draft article 7, but it was difficult to see what other approach could have been adopted. For his part, he was fully convinced by the reasons given by the Special Rapporteur in his commentary for drafting article 7 as he had done.

26. As to the provisions of paragraph 3 (*a*) on the production of "appropriate full powers", the difficulty mentioned by Mr. Ushakov was connected with his approach to the fundamental issues involved. In its advisory opinion on *Reparation for Injuries suffered in the Service of the United Nations*, the International Court of Justice had found that the United Nations had international personality. [4] Recognition that international organizations had such personality, and hence could conclude treaties, made it possible for the Commission to refer in draft article 7 to full powers issued by an international organization. That did not mean, however, that an international organization had the same life as a State in international law. He was satisfied with the Special Rapporteur's approach, which seemed the most realistic way of dealing with the representation of international organizations in the conclusion of treaties. As to terminology, he saw no alternative to using the time-honoured expression "full powers".

27. He supported the suggestion that article 7 should be referred to the Drafting Committee and hoped that, when that Committee had revised it in the light of the discussion, the text would prove acceptable to Mr. Ushakov.

[4] See *I.C.J. Reports 1949*, p. 187.

28. Mr. SETTE CÂMARA said that he had no difficulties with draft article 7 as submitted by the Special Rapporteur. All the members of the Commission knew that international organizations had juridical personality, since that had been affirmed by the International Court of Justice. It was, however, a personality *sui generis*, so it could not be expected that all rules pertaining to States could automatically be extended to international organizations. In that respect, the Special Rapporteur had shown great skill in making his rules sufficiently flexible.

29. It was very important to bear in mind what the Special Rapporteur had said about full powers. The contemporary practice of States, and especially of international organizations, no longer required the presentation of an elaborately formal *lettre de cabinet*. The general rule was now that full powers took the form of a simple letter or even, as in the case of no less a body than the Security Council, a telegram. In making the necessary amendments and additions to his model, article 7 of the Vienna Convention on the Law of Treaties, the Special Rapporteur had wisely recognized that, while it was not yet a matter of practice for representatives of international organizations to present full powers for the purpose of adopting or authenticating the text of a treaty, such cases could arise. That was why he had included paragraph 3 (*a*), followed immediately by the flexible rule in paragraph 3 (*b*), which recognized that the presentation of full powers was not always necessary. He found that rule objective and practical.

30. The situation of international organizations was in many ways different from that of States. As the Special Rapporteur had said, international organizations often did not have a single chief executive; it would therefore be impossible to provide in the article that full powers must be issued on behalf of an organization by such a person. On the other hand, where such a person did exist, his situation was similar to that of a Head of State in that, since they both held supreme administrative authority, no one could confer full powers on them. That difficulty could easily be resolved by accepting that full powers would be dispensed with in such a case.

31. Mr. Ushakov's question as to the identity of the "competent authority" mentioned in draft article 2, paragraph 1 (*c*) merited attention. His own understanding was that the Special Rapporteur had used the term to indicate that the document must be issued "according to the relevant rules of the organization concerned". Perhaps some such wording could be included in the article in place of the expression "competent authority". Consideration should also be given to the suggestion by Mr. Calle y Calle that heads of mission should be entitled to represent their State and sign a treaty on its behalf without presenting full powers, especially as that proposal was consistent with the terms of article 12, paragraph 1, of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

32. Mr. PINTO said that the Special Rapporteur was to be complimented on the high quality of the texts and the extensive commentary he had presented in his fourth report. He had no objection to the principles stated in draft article 7, though he thought the Drafting Committee might be able to make the text clearer. That was particularly true of paragraph 1 (*b*) and paragraph 3 (*b*), which seemed to indicate that, where a representative did not produce the appropriate full powers, it must be possible to deduce from the practice of the States and the international organizations concerned a common intention that full powers could be dispensed with. That might not be easy, since international organizations often had little practice in the matter, or only practice marked by internal contrasts. He supposed that, if no such common intention could be found, the representative would be asked to produce full powers.

33. He saw no difficulty in applying the concept of full powers, so he had no problem with article 2, paragraph 1 (*c*), which referred to full powers as "emanating from the competent authority of a State or international organization". While he quite understood the difficulties occasioned to Mr. Ushakov by the lack, or varied nature, of practice in regard to the determination of the "competent authority" of an international organization, it was clear to him that the words referred to the competent executive organ as defined by the charter of the organization. In his view, the full powers accorded by such an organ would, to the extent that they were accorded pursuant to the rules laid down in the charter of the organization, be on a par with those accorded by the competent authority of a State. In the case of an organization, the situation was really a contractual one, since the member States would have agreed that full powers granted in accordance with the charter could be accepted as such, at least by the membership of the organization. He could accept either the retention of the expression "competent authority", or its replacement by a reference to a decision taken in accordance with the relevant rules of the organization.

34. Referring to the draft articles as a whole, he explained that he took a particular interest in the Special Rapporteur's topic because he had himself advised both States and international organizations on their relations with each other. His experience had shown him that the statement that a State was not an international organization and an international organization not a State, although a truism, could not be disregarded. The Special Rapporteur had submitted a set of draft articles which could be applied to any State entering into an agreement with any international organization, and that was as it should be. The organizations with which States most often concluded agreements, however, were those of which they were members; that fact, and the differences between States and international organizations, coloured their relations before and after the conclusion of the treaty.

35. Being sovereign, which organizations were not, States had experience of living within their own borders in juxtaposition with other Powers. As members of an organization, States knew within what framework of rules the organization could act, and were able to change those rules; they knew that the organization had to devote its attention to achieving a specific objective, rather than to the multifarious problems which they themselves had to consider; and they could be confident

that the organization would be free from the local political pressures that might influence the way they discharged their own obligations. Consequently, States were likely to be more confident in their dealings with international organizations than vice versa. That seemed to be the consideration underlying paragraph (4) (*a*) of the commentary to draft article 7. While it was desirable that the articles should be flexible, texts which were generally applicable were likely to raise problems; that applied to draft article 9, paragraph 3, which referred to organizations possessing the same rights as States at a conference. He could think of no instance in which that had been the case. As the Special Rapporteur had said, the point would require further study.

36. Mr. TSURUOKA said that he had no difficulty in accepting article 7 as proposed by the Special Rapporteur. The notion of full powers raised no particular problems as far as he was concerned. He would, however, like to have some clarification of paragraph 3 (*b*). For it was possible to imagine a situation in which some States recognized from the practice that a certain person represented the organization concerned, while other States did not. In such a case, would the person in question have to be accepted as the organization's representative by all States, or only by those which recognized him as such, or would he be refused that status by all States? He would like to know the Special Rapporteur's intention in that respect.

37. Mr. RAMANGASOAVINA said that draft article 7 carried a double guarantee: first, that of the Vienna Convention on the Law of Treaties, on which it was based—the Special Rapporteur had well brought out the similarities and differences between draft article 7 and the corresponding article of the Vienna Convention and had taken the special nature of international organizations into account; and secondly, the guarantee provided by the Special Rapporteur's special knowledge of the subject. That double guarantee explained why the new draft articles submitted at the present session enjoyed the favour of the Sixth Committee of the General Assembly, which had underwritten the rest of the draft after examining the articles the Commission had submitted to it in the report on its previous session.

38. The term "full powers", used by the Special Rapporteur in paragraph 1 (*a*) of draft article 7, was defined in paragraph 1 (*c*) of draft article 2 (Use of terms), which reproduced the definition in article 2, paragraph 1 (*c*), of the Vienna Convention on the Law of Treaties. The Special Rapporteur referred, as did article 7 of the Vienna Convention, to "appropriate" full powers, since they were special powers relating to the treaty in question, which must, of course, be issued by the competent authorities of each State in accordance with its practice. The Special Rapporteur had relaxed that condition in paragraph 1 (*b*), as did the Vienna Convention, by invoking State practice, which was extremely diverse.

39. Paragraph 2 of draft article 7, like the corresponding paragraph of the Vienna Convention, dealt with persons who, by virtue of their functions, were empowered to take all decisions in international relations on behalf of their country.

40. The wording proposed by the Special Rapporteur in paragraph 3, concerning the representatives of international organizations, was entirely appropriate. There, too, he had introduced, in sub-paragraph (*a*), the notion of "appropriate full powers", which he had softened, in sub-paragraph (*b*), by allowing for the practice of States and international organizations.

41. Subject to a few minor changes, which could be made by the Drafting Committee, he thought article 7 was entirely satisfactory.

42. Mr. AGO said that the Special Rapporteur's experience and competence in what was a most delicate and complex subject were extremely valuable. It would be a mistake to believe that the rules of the Vienna Convention concerning treaties concluded between States could be very easily adapted, by a few minor changes, to the situations contemplated in the draft articles under consideration. For the subject-matter of treaties between States had been consolidated by centuries of practice, whereas that of treaties with international organizations was still new and in process of formation. That was evident merely from the fact that draft article 7 dealt with two separate questions: that of treaties concluded between a State and an international organization, and that of treaties concluded between two or more international organizations. Those were two entirely different subjects which might need different rules. Besides, a reference to treaties concluded between a State and an international organization also covered very different situations. In some cases, the international organization acted as an entity quite separate from its member States: for example, when the United Nations concluded a headquarters agreement with Switzerland or the United States, or when the European Communities concluded such an agreement with Belgium. On the other hand, when the European Communities concluded a treaty on behalf of their member States with other States, granting the latter certain treatment in regard to customs or trade, the situation was entirely different, since the Communities then appeared more as an instrument by which the member States could conclude a single treaty with other States than as an entity entirely separate from the member States. Consequently, it was necessary to proceed with great caution when taking a rule from the Vienna Convention on the Law of Treaties and trying to adapt it to the needs of the present draft. In taking the Vienna Convention as a model, the Special Rapporteur had followed an excellent guide, but at every point the Commission would have to consider whether the rule taken from the Vienna Convention did not need further modification to adapt it to the situations under study.

43. The wording of paragraph 1 of draft article 7 was identical with that of paragraph 1 of article 7 of the Vienna Convention on the Law of Treaties, but it might be useful to clarify the purpose of the draft by referring to the consent of the State to be bound by a treaty "concluded with one or more international organizations".

44. There might be some doubt about the precise significance of the rule in paragraph 1 (*b*): was it a residuary rule? In his opinion, the rule really acquired its full force when considered in conjunction with paragraph 2,

which set out all the classes of persons who did not have to produce full powers. The rule in paragraph 1 (*b*) was thus intended to cover only certain more or less marginal cases. In the Vienna Convention on the Law of Treaties, that rule covered, for example, the case in which the commander-in-chief of a State's armed forces could conclude a cease-fire agreement or an armistice without having to produce full powers. The situation might obviously be different in the case of a treaty between a State and an international organization, although the possibility could not be excluded that, for example, the commander-in-chief of United Nations forces might conclude an agreement for the cessation of operations in a certain country. There might also be technical agreements—a more common case—concluded, for example, between the representative of a national treasury and an international organization.

45. He approved of the wording used in paragraph 1 (*b*). But since only bilateral agreements were involved so far, it might perhaps be better to speak of "the practice of the State and the international organization concerned". It seemed difficult to refer to "the practice of the States and international organizations concerned", as it was not known whether there was any generalized practice of States and international organizations in the matter.

46. He had reservations about paragraph 2 (*b*), which seemed to him to mix up two very different situations. For instance, Italy's representative to the International Labour Conference was empowered to adopt an international labour convention at that Conference without having to produce full powers, because that was a treaty between States, and such a case came within the scope of article 7, paragraph 2 (*c*) of the Vienna Convention. But Italy's representative to the International Labour Conference was not empowered to conclude a treaty between Italy and the International Labour Organisation, if he did not produce full powers. So perhaps paragraph 2 (*b*) should be drafted differently, to cover only the case of a treaty concluded between a State and an international organization.

47. Article 7 of the Vienna Convention was a simple article, as it related only to treaties between States. The article under consideration, on the other hand, related both to the representative of a State who had to negotiate with an international organization, and to the representative of an international organization. And whereas in the first case the situation was a simple one, since it concerned a treaty between a State and an international organization, in the second case there were two possibilities, since the representative of an international organization could negotiate either with the representative of a State or with the representative of another international organization, so that the situation would not always be the same. Paragraph 3 should therefore specify that the treaty could be one concluded with a State or with another international organization, to show that the rule stated was applicable to both cases.

48. He would be interested to hear the Special Rapporteur's reply to Mr. Ushakov's comments before expressing an opinion on paragraph 3 (*b*). He doubted whether it was appropriate to speak of the practice of the States and international organizations concerned in that context.

49. With regard to paragraph 1 (*c*) of article 2 (Use of terms), he was not sure that Mr. Ushakov's criticism of the phrase "a document emanating from the competent authority" was justified. He would like to know whether there were any cases in which a written document could really be dispensed with? The Special Rapporteur, with his great experience of the subject, would certainly be able to answer that question. It also seemed necessary to indicate, at the end of paragraph 1 (*c*), that the treaty in question was one concluded between an international organization and a State or between two or more international organizations.

50. He would also like the Special Rapporteur to say whether treaties concluded between international organizations were real treaties concluded by representatives who had produced full powers, or mere agreements. For example, could the Andean Altiplano co-operation agreements concluded between international organizations such as the United Nations, the ILO, WHO and UNESCO really be called treaties, or were they simply working agreements? That point should be clarified, for the subject under consideration was very complicated and still evolving; it had not yet been crystallized by centuries of practice like the law of treaties between States.

51. Mr. USHAKOV said that, in his opinion, the assumption that a treaty concluded with an international organization could, in practice, bind anyone at all, was absolutely inadmissible.

The meeting rose at 1.10 p.m.

1345th MEETING

Monday, 7 July 1975, at 3.50 p.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Rossides, Mr. Šahović, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Welcome to Mr. Rossides

1. The CHAIRMAN, speaking on behalf of all the members of the Commission, welcomed Mr. Rossides, and said he hoped he would be able to take part in the work of the Commission until the end of the session.

2. Mr. ROSSIDES said he wished to express to members of the Commission his apologies and regret for his absence, which had been occasioned by the grave circumstances in which his country had found itself after two consecutive attacks against it, and the tragic developments that had followed its invasion together with the continuing foreign military occupation of almost half its territory. The implications of the neglect of fundamental principles of law in those and other circumstances