Document:-

A/CN.4/SR.1594

Summary record of the 1594th meeting

Topic:

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

Extract from the Yearbook of the International Law Commission:-

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organization. One part of the annex dealt with each of those categories of disputes.

62. As noted by the Commission in connexion with article 66, provision should also be made for the case of a dispute arising out of a multilateral treaty that occurred not only between States themselves but also between one or more organizations and one or more States. It was conceivable that, pursuant to section I, a State might institute conciliation proceedings against another State in connexion with a dispute arising out of a multilateral treaty to which an international organization was likewise a party and that the organization might institute proceedings pursuant to section II. In order to avoid such a situation, should a procedural measure be introduced requiring all the parties to a multilateral treaty to be informed of the institution of conciliation proceedings? In preparing the draft annex, he had not borne that possibility in mind, but during the Commission's consideration of paragraph 1 of the annex it should take a decision on that point.

63. Section I did not call for any comment, since it was reproduced in full from the Vienna Convention, but section II required at least some preliminary clarification. The conciliation procedure provided for under the Vienna Convention was organized entirely around the Secretary-General of the United Nations. In the draft annex, the same function had been vested in him, except in the case of disputes to which the United Nations might be a party. The Secretary-General had been chosen as an independent third party placed above the parties, and it was difficult to see how he could act in such a capacity for that category of dispute when he was, after all, an organ of the United Nations. For that reason, he (Mr. Reuter) had proposed that in such cases the Secretary-General should be replaced by the President of the International Court of Justice. In order to relieve the Court of the material problems which conciliation proceedings entailed, he had nevertheless suggested that the functions of the President of the Court should be confined to decision-making, since the administrative functions could be carried out by the Secretary-General with complete impartiality.

64. Lastly, he stressed that the nationality of the conciliators was always of great importance in constituting a conciliation commission between States. The conciliation procedure applicable to cases involving an international organization had had to be modified somewhat, since there was no nationality link between an individual and an organization.

65. The CHAIRMAN suggested that the Commission should consider paragraph 1, section I and section II of the annex, one by one, as proposed by the Special Rapporteur.

It was so decided.

The meeting rose at 6 p.m.

1594th MEETING

Tuesday, 20 May 1980, at 10.05 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Calle y Calle, Mr. Diaz González, Mr. Evensen, Mr. Jagota, 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*)

ANNEX (Procedures established in application of article 66)[1] (*continued*)

1. Mr. REUTER (Special Rapporteur), introducing paragraph 1 of the annex, said that the paragraph differed in only two minor respects from the corresponding paragraph of the annex to the Vienna Convention.[2] Paragraph 1 referred to a phase prior to any dispute, the drawing up of the list of conciliators. In the draft annex it had been necessary to make provision not only for the nomination of conciliators by States but also for the nomination of conciliators by international organizations. The reason why his draft used the words "any international organization to which the present articles have become applicable" was that he did not want to prejudge the question as to how the organizations might become bound by the articles. For example, they might become parties to a convention incorporating the draft articles or, without being parties to it, they might declare themselves bound by the convention. At the end of the paragraph he had added a clause to the effect that a copy of the list should be transmitted to the President of the International Court of Justice. If the Commission accepted the suggestion that the President of the Court should intervene in the event of a dispute in which the United Nations was involved, it would of course be necessary for the President to have cognizance of the list.

2. The risk of several procedures being instituted simultaneously was not, he thought, a real one. The annex to the Vienna Convention itself referred to the case of a dispute in which several States were joint parties, for it spoke of "the State or States constituting

[1] For text, see 1593rd meeting, para. 58.

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

one of the parties to the dispute" and "the State or States constituting the other party to the dispute", expressions which clearly envisaged such a case. The authors of the Vienna Convention had fully realized that in the case of a multilateral treaty several States might, for example, invoke a ground for invalidating or voiding the treaty and that one and the same objection might be raised by more than one State. Accordingly, that eventuality was covered in the annex to the Vienna Convention. The point still to be settled was under what conditions, when, and how several States took joint action. They would have to adopt the same position as to substance and rely on the same ground in any particular case. There would be as many actions, and consequently as many possible cases of conciliation, as there were different causes of invalidity of a treaty invoked by States, or as there were different grounds for the objections raised by States.

3. Under paragraph 1 of article 65 of the Vienna Convention, the party to a treaty which intended to invoke either a defect in its consent to be bound by the treaty or a ground for impeaching the validity of the treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. In that way, the States parties learned if one of the grounds mentioned in part V of the draft was invoked by several States, or if the same objection was raised by several States, and they would then decide how to proceed under the terms of article 65. What happened if one State invoked a ground bringing part V into operation, another State raised an objection, and the other States parties to the multilateral treaty remained silent? Did the latter, which had notice of the ground invoked under part V—though not perhaps of the objection, since notice of the objection did not have to be given under article 65—forfeit the right to invoke a clause of the treaty after the expiry of the three-month deadline?

4. On that point the Convention merely stated, in paragraph 2 of article 65, that in the absence of any objection, the party which had made the notification was free to carry out the measure which it had proposed. That did not mean that the parties which had kept silent automatically forfeited the right to invoke any of the clauses of invalidity, termination, withdrawal or suspension which might be contained in the treaty. Paragraph 3 of the annex to the Vienna Convention stipulated that, with the consent of the parties to the dispute, the Conciliation Commission might invite any party to the treaty to submit to it its views orally or in writing. That provision would be meaningless if a party to a treaty which had not become party to a dispute did not have the right to press legal arguments.

5. Paragraph 3 of article 65 of the Vienna Convention contained another ambiguity. It stated:

> 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.

The parties in question were not, as might be thought, the parties to the treaty, but the parties to the dispute, as was clear from subparagraphs (*a*) and (*b*) of article 66.

6. Under the terms of the Vienna Convention, all the States parties to a treaty were therefore informed of the setting in motion of the procedure referred to in article 65. If the conciliation procedure was subsequently initiated in conformity with subparagraph (*b*) of article 66, it would be between parties to an already existing dispute. For the purposes of the treaties that were the subject of the draft articles, it was important to determine when the parties should take joint action. It was either States, or international organizations, or States and international organizations, which could take joint action. In all cases, the parties to the treaty must have taken a position on the existence of the dispute by the time of the expiry of the three-month time limit. Thereafter, an international organization, for example, would not be able to claim, in the case of a dispute between two States for which the procedure referred to in section I of the draft annex had been set in motion, to take part in the dispute and to join in the action of one of the States. In order that the international organization should obtain a hearing before the Conciliation Commission, it would have to be invited by that Commission, with the consent of the parties to the dispute, to submit to it its views orally or in writing, unless the Commission had made express provision in its procedure for the possible intervention by the organization. What mattered was that there should not be several procedures under way once the dispute had arisen.

7. Mr. EVENSEN suggested that the Drafting Committee might clarify the way the draft was presented, since the method of numbering paragraphs was somewhat confusing.

8. Paragraph 1 was generally acceptable to him. In particular, he considered that the last sentence, which stated that a copy of the list of conciliators should be transmitted to the President of the International Court of Justice, was an improvement, since it would greatly assist the President in carrying out not only the functions entrusted to him under subsequent parts of the annex but also the more general functions regarding the appointment of conciliators. It would however be preferable if the last sentence were placed after the first sentence of paragraph 1.

9. He agreed that, as the list of conciliators would in any event be made available to all Member States, there was no need to provide expressly for its circulation to parties to the treaty.

10. Mr. USHAKOV thought that it would be useful to make a distinction, not only in the annex under discussion but also in article 66, between three categories of disputes: disputes between two or more States parties to a treaty concluded between two or more States and one or more international organ-

izations, disputes between two or more international organizations parties to a treaty concluded either between one or more States and two or more international organizations or between international organizations alone, and disputes between one or more States and one or more international organizations parties to a treaty concluded between one or more States and one or more international organizations.

11. Furthermore, the annex was closely linked with articles 65 and 66; why then did draft article 66 contain a cross-reference to paragraphs 2 and 3 of draft article 65, whereas article 66 of the Vienna Convention did not refer to the corresponding paragraphs in article 65? Nor was it clear to him why those paragraphs should be mentioned in the two section titles of the draft annex.

12. The passage "any international organization to which the present articles have become applicable" in paragraph 1 of the draft annex was not as innocuous as it appeared, since it raised the question of the participation of international organizations in the future convention. The question should not be discussed until the second reading, when the Commission would be making recommendations concerning the disposition of the draft articles. Moreover, if all the international organizations to which the future convention became applicable were to nominate conciliators, the list might well be a long one, in view of the great number of international organizations both large and small. Another question was whether the persons so nominated could be officials of the international organization concerned, officials of another organization, or even nationals of a particular State.

13. Referring to paragraph 2 (*b*) of section I of the draft annex, he said that the list in question—described in paragraph 1—was not identical with that provided for in the Vienna Convention, a fact which in itself constituted a departure from the procedure applicable to disputes between States in accordance with that Convention. It might indeed be better not to mention the list of conciliators in the draft annex, for the Commission would then not need to discuss the question of the nomination of conciliators by international organizations

14. Mr. SCHWEBEL, referring to Mr. Ushakov's point regarding the appointment of conciliators by international organizations, said the fact that there were a large number of international organizations was not in itself a great drawback. There were also a large number of States, many of which had appointed boards of arbitrators and conciliators; the Permanent Court of Arbitration was a case in point. In the main, however, such lists lay dormant and the fact that they were not drawn upon posed no great problem.

15. A more interesting point raised by Mr. Ushakov concerned the character of the nominees of international organizations and although, there again, there was no great difficulty, he considered that in practice international organizations would have to proceed with care. The fact that provisions existed for the participation of organizations in international arbitration presumably meant that they would appoint arbitrators: for instance, in a dispute arising under a headquarters agreement between the United Nations and the United States of America, the Secretary-General could have recourse to arbitration against the United States. There was no reason in theory why that procedure could not extend to conciliation or why the conciliator so appointed could, or could not, be an official of the organization. Almost certainly such an official would be a national of some State, but that posed no more of a difficulty than the election of a judge who was also a national of a State but, when acting in his judicial capacity, did so, or should do so, with due regard to his oath as a judge and within the confines of his responsibility. In the same way, the Secretary-General, Director-General or competent organ of an international organization should be able to appoint a conciliator who, though a national of a given State, would act not as an official of that State but within the confines of his responsibility as a conciliator and in a way in which an international servant acted or should act.

16. Sir Francis VALLAT said that the Commission, which until that point had been dealing with the codification of rules and principles, had moved into an entirely different sphere involving matters of application and procedure. He therefore had some doubts whether the technique of adaptation adopted initially was appropriate for dealing with the settlement of disputes, which, after all, was a political matter. What made him feel a little uneasy was not that the Commission was going too far in its adaptation but that it might not be going far enough.

17. There had been significant developments regarding the settlement of disputes since the United Nations Conference on the Law of Treaties in 1969, and procedures that had been regarded with considerable hesitation by many States had become much more widely acceptable. One point that had concerned him about the Vienna Convention was that the disputes procedure was applicable only to Part V of the Convention. He had felt that the possibility of disputes relating to Parts I to IV of the Vienna Convention was just as real as the possibility of disputes relating to Part V, and that, even though the former would not affect the validity or continuation of a treaty as such, they might be just as important for the States concerned as disputes which went to the root of the treaty. Indeed, the questions which had come before the International Court of Justice and other international tribunals had on the whole related not to Part V but to other parts of the Vienna Convention, and in particular to articles dealing with the rules or principles of interpretation. His fear, therefore, was that, if the pattern of the Vienna Convention were followed too closely, it would stifle the progressive development of international law in the direction of the more liberal application of

disputes procedures. He had the same kind of misgivings regarding conciliation and, while he recognized that the Commission's mandate was to adapt the provisions of the Vienna Convention, he did feel that, as a member of the Commission, the least he could do was to express those misgivings in the hope that they would be reflected in the summary record and also in the Commission's report to the General Assembly.

18. Referring to specific points raised during the discussion, he said that he would first echo Mr. Schwebel's comments. His initial reaction on reading paragraph 1 of the annex was that if each international organization nominated two conciliators the procedure might be rendered unduly cumbersome. On reflection, however, he did not think that was a serious problem, partly because it was unlikely that all organizations would fall within the category of those to which the draft articles became applicable, but also because he doubted whether the actual number of names on the list really mattered.

19. One problem which did deserve the Commission's special attention, however, concerned the possibility of placing some limitation on the kind of person or the particular character of the person who might be nominated as a conciliator. Specifically, he had in mind the possibility of providing at the outset that an international organization should not nominate one of its own officials as a conciliator; in his view, there would be an element of reason and justice in such a restriction. Certainly, in subsequent paragraphs of the annex, a distinction should be drawn between officials of the international organization and other persons; that, however, was probably as near as one could come to a distinction between nationals and non-nationals.

20. Lastly, he considered that if separate provisions were to be retained for international organizations, the last sentence of paragraph 1 of the annex should be modified.

21. Mr. CALLE Y CALLE, agreeing that the Commission was examining a point of procedure and not one of substance, said that, in his view, the procedure provided for in the annex should follow as closely as possible that laid down in the Vienna Convention.

22. Although under the Statute of the International Court of Justice an international organization could not be a party to a dispute before the Court, that restriction did not apply in the case of other international courts. Under the Andean system, for instance, a court had been established to settle disputes arising out of agreements such as the Cartagena Agreement.[3] Also, when it was not possible to reach an amicable agreement, recourse could be had to conciliation. In the case of international organizations, the conciliation procedure was carried out by conciliators appointed from a list containing the names of persons nominated by States and international organizations. After the conciliation procedure had been completed, a report was submitted, although its conclusions were not binding on the parties and were simply referred to the parties with a view to promoting an amicable settlement.

23. Mr. JAGOTA, agreeing that the question under consideration had procedural and political implications, said that the Conference on the Law of Treaties had had great difficulty in working out the compromise which had finally been agreed with regard to the settlement of disputes. At that time, however, it had not been possible to predict the importance which the concept of compulsory conciliation had come to assume at other conferences, including the Third United Nations Conference on the Law of the Sea.

24. The points on which opinions had differed at that conference were whether compulsory conciliation should be the only method of settling disputes or whether it should be accompanied by other methods such as arbitration and adjudication, and, in the latter eventuality, whether the dispute should be referred to the I.C.J. or whether a new institution, such as a law of the sea tribunal, should be established for the purpose. There had been a marked change of position among those who had supported adjudication in preference to arbitration, the paramount rule now being that the question of the compulsory settlement of disputes should be left to the choice of the parties.

25. The Third Conference on the Law of the Sea had also been concerned with three broad categories of disputes relating, in turn, to the interests of the land-locked and geographically disadvantaged States, the exercise of rights in the exclusive economic zone of a State, and the delimitation of the maritime boundary. The negotiating groups appointed to consider the procedure for the settlement of those three categories of dispute had each opted for a system of compulsory conciliation and, in so doing, had in his view been guided by article 66 of the Vienna Convention as well as the annex to it. More recently, reference had again been made to compulsory conciliation within the context of the consideration of the settlement of disputes arising out of marine scientific research operations carried out at a distance of more than 200 miles from a coastal State. Even countries that had been completely opposed to third party settlement had now largely reconciled themselves to compulsory conciliation.

26. From all those developments it could be inferred that the conciliation procedure conceived at the Conference on the Law of Treaties would exercise a continuing influence in other forums. Although, both under the Vienna Convention and under paragraphs 6 and 6 *bis* of the annex as proposed by the Special Rapporteur, compulsory conciliation would not be binding on the parties to a dispute, the views of a conciliation commission, particularly if unanimous,

[3] Subregional integration agreement [Andean pact] (Bogotá, 26 May 1969).

would carry considerable persuasive authority. It could not therefore be argued that the Special Rapporteur's proposed procedure would be of only little practical value.

27. The annex to the draft articles was inevitably somewhat cumbersome, given the nature of its subject matter. There were two separate aspects to both section I and section II, the first of which related to the parties to the dispute and the second to the subject matter of the dispute. Section I, however, was concerned solely with cases in which an objection under article 65, paragraphs 2 and 3 affected two States. Since the procedure was modelled on that laid down in the Vienna Convention and reflected settled law, there had been no need to introduce any change. In section II, on the other hand, which laid down the procedure that would apply in cases where an objection was raised by an international organization, or indeed by a State against an international organization, it had been necessary to make certain adjustments to make allowance for the competence of international organizations.

28. In that connexion, he suggested two minor drafting changes. In the heading of section I, the expression "several States" might well be replaced by the expression "one or more States". Secondly, in the heading to section II, he suggested that the words "when raised by a State or an international organization" be added before the words "with respect to an international organization"; that would make it quite clear that section II applied to cases where the subject matter of a dispute involved an international organization. Indeed, his point was borne out by the opening clause under paragraph 2 *bis* of the annex, which read, "If one or more States constitute one of the parties . . .", and thus clearly contemplated the possibility that a dispute could be between States and international organizations.

29. An important question, and one which to his mind related to joinder of issues, had been raised regarding the procedure to be followed in the event that several disputes arose out of the subject matter of the same treaty. He fully agreed that the Commission should consider whether separate conciliation commissions should be appointed to deal with such disputes, irrespective of whether or not those disputes occurred simultaneously, or whether some procedure should be evolved whereby the same commission could deal with disputes between the same parties to a treaty, with a view to avoiding a multiplicity of procedures.

30. Another point raised related to cases where an international organization, though not initially a party to a dispute between States, subsequently indicated that it considered itself to be involved and that it would prefer, rather than filing a written submission under paragraph 3 of section I of the annex, to become a direct party to the dispute by way of intervention or otherwise. The question then to be decided was whether the conciliation commission established under section I would become *functus officio*, so that a new commission would have to be appointed under section II, or whether some other procedure should be found. In his view, there were two possibilities which merited the Commission's careful consideration: either the first commission could cease its work and refer the matter to the Secretary-General of the United Nations or to the President of the International Court of Justice with a view to the appointment of another conciliation commission under section II (which would be a time-consuming procedure); or two more members could be nominated by the international organization wishing to become a party to the dispute to serve on the existing commission.

31. Lastly, with regard to disputes between international organizations, it might be useful to refer by way of comparison to the annex on conciliation procedure that had been prepared in connexion with the United Nations Conference on the Law of the Sea.[4] He noted, for example, that the annex to the draft articles provided that the costs of conciliation procedure would be borne by the United Nations, which might not be appropriate in cases where the subject matter of a dispute between two international organizations was technical and of interest only to those organizations. Under the conciliation procedure provided for at the Conference on the Law of the Sea, the costs of such procedures would be borne by the parties to the dispute, and the Commission might therefore wish to consider whether the full costs should be defrayed by the United Nations or whether some other procedure should be evolved.

32. Mr. USHAKOV drew a distinction between three cases of the use of the list of conciliators provided for in paragraph 1. In the case of a dispute between States, it was the States which had to choose, from that list, persons designated by States. On the other hand, if the parties to the dispute were exclusively international organizations, it might be provided that the conciliators would be chosen from a list of persons designated by international organizations. Lastly, if the parties to the dispute were States and international organizations, it would be necessary to determine what list would be used for the choice.

33. In order to avoid that type of problem, it would perhaps be better, in the final analysis, that the draft should make provision for only a single list for the three categories of disputes.

34. Mr. QUENTIN-BAXTER said it would be unfortunate if it could be argued that the Commission's loyalty to the provisions of the Vienna Convention on the Law of Treaties was freezing progress. Indeed, he felt that all members of the Commission tended to agree with the emphasis which the Special Rapporteur had placed on the need to remain within the para-

[4] See "Informal Composite Negotiating Text/Revision 2" (see 1586th meeting, foot-note 10), annex V.

meters of the Vienna Convention. Time and again, the Commission had made the point that it was extending the scope of an existing system. If the time came when that system needed updating in certain respects, that updating could be expected also to affect the draft articles under consideration. The Commission was therefore right, as the Special Rapporteur had pointed out in paragraphs (9) and (10) of the commentary to the draft annex (A/CN.4/327), to note that, if the draft articles were not governed by the Vienna Convention, they might present a different emphasis to take account of recent developments in international practice, but that there was, at present, an overwhelming advantage in maintaining as much parallelism as possible with the Vienna Convention.

35. With regard to the question of parallelism, he said he was of the opinion that the Special Rapporteur had been justified both in dividing the draft annex into a section I devoted exclusively to cases of disputes between States and a section II devoted to cases in which the objection provided for in draft article 65 was raised by or with respect to an international organization, and in raising the question whether States and international organizations could have the same interests in a dispute.

36. Since the distinction between such cases had been imposed upon the Commission by the structure of the Statute of the International Court of Justice, it would be desirable to keep the provisions relating to disputes between States parallel with the corresponding provisions of the Vienna Convention. Although it might not make a great deal of difference that, in one case, a multilateral convention happened to be concluded by States only and that, in another, a single international organization happened to be a party to such a convention, nevertheless, from the point of view of substance, that factor affected the methods for the settlement of disputes.

37. It was, however, quite impossible to separate the role of States from that of international organizations parties to a treaty so far as the interests involved were concerned. It could hardly be assumed that, when there was a dispute, those which had one particular interest would always be either States or international organizations and that the opposite point of view would always be held only by States or only by international organizations. It therefore seemed to him that section II of the draft annex must take account of the case in which some States and an international organization challenged an objection made by a State—or, in other words, of the possibility that the parties to certain disputes could be not only one or more international organizations, but also one or more international organizations and one or more States.

38. To his mind, the meaning of draft article 66 was clear: when an international organization party to a treaty asserted its position, either by raising an objection or by responding to an objection, the dispute would come under section II of the draft annex, even though a State might also have raised the same objection. It seemed to him that the plain meaning of that draft article and the logic of the situation to which it referred required the Commission to recognize that, when once an international organization was involved in a dispute, section II of the draft annex automatically applied. It also seemed to him that the procedure for requesting an advisory opinion from the International Court of Justice which had been discussed in connexion with draft article 66 was entirely adequate as a means of dealing with the case in which both States and international organizations were involved as parties to a dispute.

39. In view of the need for parallelism with the Vienna Convention and of the fact that States and international organizations were different when they were parties to treaties, the Commission had to do its best to provide a parity of position between them. It should therefore place in square brackets the words "and any international organization to which the present articles have become applicable" in paragraph 1 of the draft annex. The final form in which that passage would be drafted would, in his opinion, depend on questions that had quite deliberately been left aside at the current stage of the discussion. For example, account would subsequently have to be taken of the role which international organizations might play in the adoption of a convention based on the draft articles under consideration and of the question whether they could become parties to such a convention. For the time being, therefore, he suggested that it might be better to draft the passage in question to read: "any international organization which is a party to a treaty to which the present articles apply".

40. Mr. EVENSEN said it was obvious to him that international organizations should be allowed to nominate conciliators. Moreover, he agreed with the idea that the persons so nominated might be required to have some special qualifications. It might, however, complicate matters if there was one list of conciliators for States and another list for international organizations. Any list drawn up would, of course, give the names of the nominees and their nationalities and would thus show who had nominated whom.

41. In his view, the Secretary-General of the United Nations was the obvious choice as the person who should maintain the list of conciliators, because the United Nations was a general international organization and that function went well with the Secretariat's obligation to register treaties.

42. He had found Mr. Ushakov's proposal for distinguishing three categories of parties to disputes an intriguing one, but had had second thoughts about it when Mr. Jagota had expressed concern about an increase in the number of categories of parties and types of disputes.

43. The CHAIRMAN, speaking in his capacity as a member of the Commission, said that, since the

Commission had decided to remove the square brackets from draft article 66 and to refer it to the Drafting Committee, it should also agree to remove the square brackets from the draft annex under consideration.

44. In connexion with what Sir Francis Vallat had called the technique of adaptation, he inquired whether the Special Rapporteur had considered the possibility of providing for further methods for the settlement of some categories of disputes and, in particular, those involving international organizations only. Such methods might include advisory opinions with binding effect, or even compulsory arbitration.

45. His second question related to the difficulty involved in making a clear-cut distinction between two parties to a dispute, when the possibility of differing interests was almost infinite. In that connexion, he referred to the case in which a dispute existed between three international organizations, the first of which was a lending institution, the second, an executing agency, and the third, the recipient of funds from the first. The interests at stake in such a case could vary considerably.

46. With regard to the question of the parallel institution of procedures which had been raised by the Special Rapporteur, he mentioned the example of an agreement to which at least two States and two international organizations were parties. If one of the States raised an objection with respect to the other State, the dispute would come under section I of the draft annex. If, on the other hand, one of the international organizations raised an objection and tried to bring the dispute within the scope of section II of the draft annex, it could be said that parallel procedures were being instituted and that they were the type of procedures to which the Special Rapporteur had referred. In his opinion, the lack of a device by which all the parties could be brought together in the conciliation procedure or by which the procedures in one section could be subordinated to the procedures in the other section would leave room for doubt as to the interpretation of the meaning of the draft annex.

47. Mr. REUTER (Special Rapporteur) noted that the comments of the members of the Commission on paragraph 1 fell into two categories. First, there had been very specific proposals concerning the form of the text; those proposals would be considered by the Drafting Committee. Secondly, the members of the Commission—specifically Mr. Ushakov and Mr. Schwebel—had expressed some very general opinions. The Commission would have to decide whether to make recommendations concerning the form of the final text of the draft articles. It would even have to determine whether to make such recommendations at all, and, if so, at what time.

48. The Commission could not, obviously, make up its mind before receiving the comments of Governments. However, it should enter into consultations with the international organizations of the United Nations family without waiting for those comments. In fact, representatives of those organizations ought to attend some private meetings of the Commission, at which they would be able to speak freely. The Commission should not be under any illusions: the international organizations were not favourable to the draft articles, not least because the draft was deliberately aimed at limiting their liberties.

49. Many questions had been raised concerning international organizations. The most basic issue was certainly whether those organizations could be parties to an international dispute. If they could not, there was little point in continuing the work on the topic assigned to him.

50. The Commission had decided not to keep the text of draft article 66 in square brackets. If it maintained that decision, there would no longer be any justification for keeping the text of the annex in square brackets. On the other hand, he approved Mr. Quentin-Baxter's proposal for putting in square brackets the passage "and any international organization to which the present articles have become applicable" in paragraph 1 of the draft annex.

51. Mr. Ushakov had stated his objections with regard to the system of the list of conciliators, and had argued that the point would have to be settled in the light of the Commission's choice concerning the position to be attributed to international organizations. He (Mr. Reuter) could not agree with that point of view and thought that, if there was to be a list, the international organizations should share in the designation of the conciliators on the list. On the other hand, he was prepared to reconsider the entire procedure to be envisaged.

52. The essence of the system was that there should be, from the beginning, machinery for appointing the Chairman of the Conciliation Commission and for taking the necessary steps in any case where the parties failed to act. It was admittedly possible to dispense with the list altogether, in which event there would be no problem, and in addition greater latitude would be given to the parties and to the organ responsible for appointing the Chairman of the Conciliation Commission. The experience of the Bank for International Settlements and the Permanent Court of Arbitration, for example, indicated that the system of a list of conciliators was quite ineffectual. In his personal opinion, lists of conciliators were of hardly any use and hence, if only for that reason, he would not object if the reference to them was dropped from the draft articles.

53. The main question, however, was whether the Commission wanted to follow the Vienna Convention fairly closely, whether it wanted to propose a system of its own, or whether it declined to offer any solution. A solution must be found, and the Commission would certainly have some difficulty in taking a decision, to judge by the diversity of the opinions reflected in the statements of the members of the Commission.

54. With regard to the effectiveness of conciliation, Mr. Jagota had rightly drawn attention to one favourable precedent. Actually, nobody yet had any clear idea of what conciliation was, for the procedure was not very well defined and practice had hardly more than a dozen cases to show.

55. The most important aspect of the Vienna Convention concerning that point was that it attributed the central role to the Secretary-General of the United Nations. If the Commission decided to set up some general conciliation machinery, it would have to be very cautious about the role of the Secretary-General, for all international disputes involved an international treaty, and the future machinery would therefore become applicable to all future disputes. The discussions seemed to show that the Commission wished to adhere to the main lines of the machinery established by the Vienna Convention.

56. The Chairman, speaking as a member of the Commission, had asked several questions that broadened the horizon of its work. The problem of parallel procedures touched on extremely complex subjects, which it might be better to consider in the Drafting Committee rather than in plenary. Concerning the other points, he (Mr. Reuter) thought that the report might mention the possibility of specific procedures for certain specified cases. He added that the decision on the subject of the annex would necessarily have repercussions on the drafting of draft article 66 and the commentary thereto.

The meeting rose at 1.05 p.m.

1595th MEETING

Wednesday, 21 May 1980, at 10.15 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, 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*)

ANNEX (Procedures established in application of article 66)[1] (*continued*)

1. Mr. REUTER (Special Rapporteur), introducing section I of the draft annex, said that the text as a whole called for few additional comments.

2. In his view, the question whether a distinction should be made between two types of case, as in the draft articles, or three types of case, as suggested by Mr. Ushakov at the previous meeting, should be considered when the Commission discussed section II of the annex.

3. Section I merely reproduced the provisions of the Vienna Convention.[2] The heading of the section in the draft would certainly have to be amended and subsequently brought into line with the final heading of section II, and should be as concise as possible.

4. Mr. Ushakov had raised an important point, and it would be for the Commission to decide whether it should depart substantially from the Vienna Convention by dispensing with the provision concerning the list of conciliators or whether to keep the reference to the list. If the reference to the list was dropped, the States, the Secretary-General of the United Nations and the President of the International Court of Justice would be given full latitude; that would raise no great difficulty from the merely technical viewpoint, but there might be two major objections: in choosing that course the Commission would be departing from the Vienna Convention and, at the same time, from the general trends in the matter of conciliation and arbitration as reflected, *inter alia*, in the most recent draft texts of the Third United Nations Conference on the Law of the Sea, which provided for conciliation machinery based on a list of conciliators.[3]

5. The question of the number of lists, if any, should preferably be considered in connexion with section II of the annex.

6. He added that a number of members of the Commission had rightly expressed the view that the discussion on section I of the annex should offer them an opportunity for making some additional observations on the problem of parallelism.

7. Mr. RIPHAGEN said that, during the discussion of draft article 66 (1589th and 1590th meetings) and the draft annex, he had been struck by the paradox that, as international lawyers, the members of the Commission were used to the situation in which sovereign States unilaterally determined the extent of their obligations under international law and even the extent of the obligations of other sovereign States under international law and then drew therefrom conclusions concerning their own conduct. However,

[1] For text, see 1593rd meeting, para. 58.

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

[3] "Informal Composite Negotiating Text/Revision 2" (see 1586th meeting, foot-note 10), annex V.