

Chapter II

QUESTION OF TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

A. Introduction

1. HISTORICAL REVIEW OF THE WORK OF THE COMMISSION

12. During the preparation of the draft articles on the law of treaties from 1950 to 1966, the Commission considered on several occasions the question whether the draft articles should apply not only to treaties between States but also to treaties concluded by other entities, and in particular by international organizations.² The course finally adopted was to confine the study undertaken by the Commission to treaties between States. The Commission accordingly included in the final draft articles' an article I which read: "The present articles relate to treaties concluded between States." The draft articles were subsequently transmitted³ as the basic proposal to the United Nations Conference on the Law of Treaties, which, having met at Vienna in 1968 and 1969, adopted on 23 May 1969, the Vienna Convention on the Law of Treaties.⁴ Article 1 of the Commission's draft became article 1 of the Convention, reading as follows: "The present Convention applies to treaties between States." However, in addition to the provision of article 1, the Conference adopted the following resolution:

Resolution relating to article 1 of the Vienna Convention on the Law of Treaties

The United Nations Conference on the Law of Treaties

Recalling that the General Assembly of the United Nations, by its resolution 2166 (XXI) of 5 December 1966, referred to the Conference the draft articles contained in chapter II of the report of the International Law Commission on the work of its eighteenth session,

Taking note that the Commission's draft articles deal only with treaties concluded between States,

Recognizing the importance of the question of treaties concluded between States and international organizations or between two or more international organizations,

² See the first report of the Special Rapporteur (*Yearbook ... 1972*, vol. II, p. 171, document A/CN.4/258), and the historical survey in the working paper published by the Secretary-General at the Commission's twenty-third session (A/CN.4/L.161 and Add.1 and 2).

³ *Yearbook ... 1966*, vol. II, p. 177, document A/6309/Rev.1, part II, chap. II

⁴ The draft articles were transmitted to the Conference by the Secretary-General under paragraph 7 of General Assembly resolution 2166 (XXI) of 5 December 1966.

⁵ Referred to hereafter as the "Vienna Convention". The Vienna Convention entered into force on 27 January 1980.

Cognizant of the varied practices of international organizations in this respect, and

Desirous of ensuring that the extensive experience of international organizations in this field be utilized to the best advantage,

Recommends to the General Assembly of the United Nations that it refer to the International Law Commission the study, in consultation with the principal international organizations, of the question of treaties concluded between States and international organizations or between two or more international organizations.⁶

13. The General Assembly, having discussed that resolution, dealt with it in paragraph 5 of its resolution 2501 (XXIV) of 12 November 1969, in which the Assembly

Recommends that the International Law Commission should study, in consultation with the principal international organizations, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations, as an important question.

14. In 1970, at its twenty-second session, the Commission decided to include the question referred to in resolution 2501 (XXIV), paragraph 5, in its general programme of work, and it set up a Sub-Committee composed of thirteen members to make a preliminary study.⁷ The Sub-Committee submitted two reports, the first in the course of the Commission's twenty-second session⁸ and the second during its twenty-third session.⁹ In 1971, on the basis of the second report, the Commission appointed Mr. Paul Reuter Special Rapporteur for the question of treaties concluded between States and international organizations or between two or more international organizations.¹⁰ In addition, it confirmed a decision taken in 1970 requesting the Secretary-General to prepare a number of documents, including an account of the relevant practice of the United Nations and the principal international organizations, "it being understood that the Secretary-General will, in consultation with the Special Rapporteur, phase and select the studies required for the preparation of the documentation...".¹¹

⁶ *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. 287.

⁷ See *Yearbook ... 1970*, vol. II, p. 310, document A/8010/Rev.1, chap.V, para. 89.

⁸ *Ibid.*

⁹ See *Yearbook ... 1971*, vol. II (Part One), pp. 348-349, document A/8410/Rev.1, chap. IV, annex.

¹⁰ *Ibid.*, p. 348, document A/8410/Rev.1, chap. IV, para. 118.

¹¹ *Ibid.*