# United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations

Vienna, Austria
18 February – 21 March 1986

Document:-
**A/CONF.129/C.1/SR.12**

**12th meeting of the Committee of the Whole**

Extract from Volume I of the *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

should not formulate a reservation incompatible with its constituent instrument. But that surely was self-evident. International organizations must in all cases act in conformity with their own constituent instruments and rules. Moreover, application of such a provision would prove difficult, indeed impossible, because no constituent instrument determined expressly or implicitly what possible reservations would be incompatible with an organization's constitution. It was up to the organization itself to ensure that reservations were in conformity with its law. In any case, article 6 already implicitly contained the notion embodied in the proposed amendment, the adoption of which, as the United Kingdom representative had remarked, could result in further complications.

50. The second part of the Cape Verde amendment and the German Democratic Republic amendment seemed to address themselves to the same concern, that an international organization should not enter reservations concerning provisions that were not applicable to it. Again, that seemed to go without saying: Why should an organization enter a reservation to exclude the application of a provision not applicable to itself? But if the question proved to be more than academic, and a reservation of the type envisaged was made, what would be the legal consequences? The effect would merely be to double the inapplicability of the provisions in question to the organization concerned.

51. The CHAIRMAN suggested that the Cape Verde, German Democratic Republic and Soviet Union representatives should consult together with a view to merging their proposals for paragraph 2, which could not be referred to the Drafting Committee since they involved matters of substance, in a single text for further consideration by the Committee of the Whole.

*The meeting rose at 1.05 p.m.*

# 12th meeting

**Thursday, 27 February 1986, at 3.25 p.m.**

*Chairman*: Mr. SHASH (Egypt)

*In the absence of the Chairman, Mr. Nascimento e Silva (Brazil), Vice-Chairman, took the Chair.*

**Consideration of the question of the law of treaties between States and international organizations or between international organizations, in accordance with General Assembly resolutions 37/112 of 16 December 1982, 38/139 of 19 December 1983, 39/86 of 13 December 1984 and 40/76 of 11 December 1985 (A/CONF.129/4)**

[Agenda item 11] (*continued*)

*Article 19* (Formulation of reservations) (*continued*)

1. Mr. NAGY (Hungary) said that his delegation shared the views of the sponsors of the amendments concerning the special limitations to which the capacity of international organizations to formulate reservations was subject proposed by Cape Verde (A/CONF.129/C.1/L.34), the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.38) and the German Democratic Republic (A/CONF.129/C.1/L.40). It was clear from the discussions in the International Law Commission on the whole process of treaty-making that the capacity of international organizations to formulate reservations to a treaty could not be greater than their capacity to conclude the treaty itself. The amendments reinforced that well-established principle by defining the capacity of international organizations to formulate reservations. His delegation would, however, prefer a more general expression to cover the sources of that capacity than that used in the Soviet Union amendment. Accordingly, it suggested that "constituent instrument of the international organization" should be replaced by "rules of the organization", an expression defined in article 2, subparagraph 1 (*j*).

2. Mr. VAN TONDER (Lesotho) said that his delegation considered the International Law Commission's draft of article 19 satisfactory, since it allowed for investigation of the intention of the negotiators of a treaty, through reference to considerations such as the preparatory documents, in the absence of any clear provision in the treaty itself. The latter parts of subparagraphs 1 (*a*) and 2 (*a*) provided that essential flexibility which existed in the general rules concerning the interpretation of treaties. Paragraph 2 of the Cape Verde amendment was difficult to understand, since international organizations would obviously not formulate reservations to treaty provisions that did not affect them. Even if an organization were to do so, the action would be without legal significance, since the organization would remain unaffected.

3. Regarding the amendments put forward by the Soviet Union and the German Democratic Republic, his delegation believed that it was absurd to provide that international organizations should have the capacity to negotiate a treaty but no right or capacity to formulate a reservation in regard to certain parts of that treaty, if the treaty permitted reservations. Any restrictions on the formulation of reservations should be those imposed by the treaty itself. If an international organization agreed to a treaty which forbade it to formulate reservations, it would of course be bound by it. On the other hand, if a treaty provided for reservations, an international organization, as a negotiator of equal status, should have the same right as the other parties to formulate reservations if it so desired. As the repre-

sentative of the European Economic Community had pointed out at the previous meeting, the Committee was discussing a contractual relationship voluntarily negotiated and entered into, and if one of the parties felt that it was being shortchanged it would not agree to the provision in question. The provision would thus be ignored and the question would become academic at best, as the representative of Greece and the Expert Consultant had noted at the previous meeting.

4. His delegation was unable to support any of the proposed amendments. It would endorse the draft proposed by the International Law Commission, on the understanding that the problem regarding the words "formally confirming" in paragraph 2 would be resolved.

5. Mr. CANÇADO TRINDADE (Brazil) said that it would be helpful if a single formulation could perhaps be found for the amendments introduced by Cape Verde, the Soviet Union and the German Democratic Republic, all of which were intended to qualify the freedom of international organizations to formulate reservations. He regretted that it had not yet been possible for those delegations to submit a joint amendment. With regard to the amendment of the Soviet Union, he found it difficult to envisage the likelihood of an international organization—or, more precisely, one of its organs—formulating a reservation that was not compatible with its constituent instrument, or with its rules or established prctice. The amendment proposed by the delegations of Austria, Italy, Japan and Tunisia (A/CONF.129/C.1/L.36), which, for the sake of clarity and precision reverted to the formula in the 1969 Vienna Convention on the Law of Treaties,[1] was acceptable. He noted that there appeared to be no strong opposition to that proposal.

6. Mr. FOROUTAN (Islamic Republic of Iran) said that his delegation fully supported the draft article proposed by the International Law Commission, as it was clear, precise and unambiguous. The four-Power amendment proposed that the latter part of subparagraph 1 (*a*) should be deleted in order to make it clear that, for the purposes of the subparagraph, reservations were strictly prohibited. There might be circumstances in which reservations were not explicitly prohibited, but there might be an understanding to that effect among the negotiating States and international organizations. He would have difficulty, therefore, in supporting the joint amendment or paragraph 1 of the amendment of Cape Verde. However, if there was a consensus in the Committee of the Whole to send those amendments to the Drafting Committee, his delegation would not object.

7. He fully supported the objective of the second part of the amendment of Cape Verde, but the proposed subparagraph needed to be clarified and brought into harmony with the rest of the article. The formulation in the Soviet Union amendment corresponded more closely to the preceding subparagraphs of the article, but it did not cover the whole scope of the amendment of Cape Verde. His delegation could, however, support both of those amendments.

8. Mr. CAMINOS (Organization of American States) said that his organization could not support those amendments which tended to restrict the capacity of international organizations to formulate reservations to multilateral treaties to which they were parties or to enter objections to reservations formulated by other parties. As the Expert Consultant had pointed out at the previous meeting, such restrictions impaired the equality of legal status that should exist between all parties to a treaty. His organization shared the views expressed at the previous meeting by the representatives of Austria, the Council of Europe and the European Economic Community regarding the proposed amendments to article 19. In particular, it wished to express its concern regarding the difficulties that might arise from the incorporation into the convention of the criterion of compatibility of reservations with the constituent instruments of international organizations. In sum, it supported the text proposed by the International Law Commission.

9. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that a number of delegations appeared to object to the amendments proposed by the Soviet Union, the German Democratic Republic and Cape Verde. They stressed the need to preserve equality between States and international organizations in the matter of formulating reservations. In their view, the amendments proposed would prevent international organizations from exercising their right to make reservations. However, that was a somewhat simplistic and unilateral approach.

10. During the discussion of articles 2, 5 and 6, all delegations had recognized that international organizations were a derivative subject of international law with a special treaty-making capacity, that of concluding treaties which fell within the scope of their aims and functions. An important element of that capacity was the right to formulate reservations. That was a concrete right which must be implemented, but within the scope necessary for the pursuit of their aims and the exercise of their functions, and not on an equal footing with States. That was the fundamental difference between them.

11. A distinction should be drawn between the material and the procedural aspects of the problem. On the procedural plane, as parties to a treaty international organizations and States were truly equal. On the material plane, however, that equality was not present. States enjoyed a broad universal right under international law to enter reservations. Since international organizations could formulate only such reservations as were compatible with their field of competence and their constituent instrument, that situation should be reflected in the article. The amendments attempted to do that and to draw a clear distinction between the powers of States and those of international organizations.

12. The representative of the United Kingdom had said at the previous meeting that he knew of no cases in which international organizations had formulated reservations outside the framework of their functions and

[1] *Official Records of the United Nations Conference on the Law of Treaties* (United Nations publication, Sales No. E.70.V.5), p. 287.

contrary to their respective charters. While such cases might not yet have arisen, there were established cases in which international organizations had acted counter to the provisions of their constituent instruments. To proceed on the presumption of the absolute innocence of international organizations took no account of reality. The merit of the amendments of the Soviet Union and the German Democratic Republic was that they were a means of preventing international organizations from formulating reservations that went beyond their field of competence and contravened their constituent instruments. He hoped that it might be possible to combine the proposals and to present a consolidated amendment to article 19 which would not limit the right of international organizations to formulate reservations but would take due account of their special status in regard to such reservations.

13. Mr. JESUS (Cape Verde) said that he would try to answer the questions raised in connection with his delegation's proposed addition of a new subparagraph to article 19. The representative of the United Kingdom had said that a special case could not serve as a basis for drawing up a general rule. He believed that the case he had posited was not a special case but one that did occur, and that a provision should therefore be drawn up to cover it. If that was not done, difficult problems of interpretation could arise. The representative of the United Kingdom had also said that the good faith of international organizations could be relied on not to formulate reservations to provisions which did not apply to them. The same could be said to apply to States, but language must, nevertheless, be provided to take care of such situations.

14. He believed that the proposed addition of the subparagraph was useful, particularly with regard to the possible effect of article 20, paragraph 5. If there was an explicit provision saying that an international organization could not formulate a reservation to a provision that did not aply to it, States would not have to decide whether to accept or reject the reservation, and the tacit acceptance effect of paragraph 5 would be neutralized.

15. Other amendments had been proposed which sought to deal with the matter through different language. His delegation would not favour any wording which made the formulation of reservations dependent on conformity with the rules of the organization or its constituent instruments. In his view, the capacity to formulate reservations should be measured not against the rules of an international organization or its constituent instruments but against the applicability to that entity of the provision which was the object of the reservation. His delegation's proposal would apply only to treaties between States and international organizations, and not to those between international organizations. The case he had in mind could occur, and although he was ready to compromise, he felt that there was a place in the convention for his delegation's language.

16. Mr. VIGNES (World Health Organization) said that he understood the effect of the amendments proposed by the Soviet Union and the German Democratic Republic to be that an organization would be unable to formulate reservations if it was unconstitutional for it to do so. As a number of representatives had pointed out, that would not in practice make a significant difference. It was highly unlikely that his own organization would formulate any reservations at all to treaties to which it was a party, and that it would do so in violation of its Constitution was inconceivable. The substance of both amendments could be understood as expressing a lack of confidence in international organizations. As far as the World Health Organization was concerned, that would be tantamount to expressing a lack of confidence in its Assembly, consisting of 160 sovereign States, which would presumably be the organ deciding on a reservation.

17. A further aspect that should be considered was the state of uncertainty that could arise, theoretically at least. Normally, questions concerning the invalidity of a reservation under the other provisions of article 19 would be raised promptly by the depositary or by another party. Article 20 also imposed certain limitations on objections to reservations. However, compatibility with the constitution of an international organization could depend on complex legal interpretations. The question of unconstitutionality might be raised only after a number of years, when the international organization might already have invested much time and effort in performing its obligations, for example under a technical co-operation agreement, and a host of bilateral agreements might then have been concluded within the framework of the technical co-operation agreement. It was not clear what the legal consequences would be if the reservation was suddenly invalid after such a lapse of time.

18. Mr. RASOOL (Pakistan) said that, in his delegation's view, the amendments of Cape Verde, the Soviet Union and the German Democratic Republic did not seek to place new limitations on the right of international organizations to formulate reservations or to lower the status of such organizations. It felt that the status and the equality of international organizations would not be adversely affected by the amendments. There was, however, a fundamental difference between article 6 of the 1969 Vienna Convention and article 6 of the present draft: the latter contained an encumbrance absent from the former. That encumbrance might be regarded by international organizations, and by some States, as an evil, but it was an unavoidable evil which ran through a number of situations that had already been covered and some that still remained. Whenever an international organization negotiated a treaty or became a party to a treaty, it was subject to that encumbrance, in other words, to conformity with its own rules.

19. The amendments he had mentioned issued a reminder to international organizations of their own status and limitations, namely, the requirement of conformity to their rules. Their approach might seem to be over-cautious and to display a certain suspicion that was disliked by some delegations, but his delegation would have no insurmountable difficulty in accepting those amendments, particularly with the drafting improvements which, at the previous meeting, the representative of the German Democratic Republic had

offered to make. He noted, however, that the amendments had a bearing, however remote, on the question of the settlement of disputes and on article 20, paragraph 5.

20. On the whole, his delegation favoured the International Law Commission's draft. It was, however, prepared to accept the substance of the three amendments, possibly in the form of a combined and redrafted text.

21. Mrs. THAKORE (India) said that article 19 dealt with a very difficult but important matter which had given rise to widely divergent opinions in the Sixth Committee of the United Nations General Assembly and in the written observations of governments and international organizations. It had also been the subject of lengthy debate in the International Law Commission. The compromise text finally adopted by the Commission adopted a liberal approach that granted international organizations, as the contracting parties to a treaty, the same rights as were enjoyed by States.

22. Her delegation was therefore unable to accept the amendments of Cape Verde, the Soviet Union and the German Democratic Republic, which tended to impose undesirable restrictions on the power of international organizations to formulate reservations, restrictions that would not only give rise to insurmountable difficulties but also reflected a lack of confidence in international organizations. Her delegation, like that of the United Kingdom, found it difficult to conceive of a situation in which an international organization would formulate reservations that were incompatible with its constituent instrument, which was fundamental in nature and constituted the organization's supreme law. It therefore supported the present text of article 19 of the Commission's draft, as modified by paragraph 1 of the Cape Verde amendment, and the four-Power amendment to subparagraphs 1 (*a*) and 2 (*a*) of the article.

23. Ms. KASHUMBA (Zambia) said that amendments such as those of the Soviet Union and the German Democratic Republic could create problems of interpretation: an international organization became a party to a treaty in accordance with the rules of its constituent instrument. It would be monotonous to refer to those rules every time the question of the organization's competence arose. In her view, the matter was adequately covered in article 6. Her delegation was therefore unable to support those two amendments.

24. Mr. DALTON (United States of America) said that if language similar to that proposed in the Cape Verde amendment for subparagraph 2 (*d*) was inserted into paragraph 1, the provision would become patently ridiculous; no State would formulate a reservation on a provision which did not apply to it. The hypothesis was equally absurd in the case of an international organization, and the wording proposed was therefore inappropriate in an international convention.

25. The amendments of the Soviet Union and the German Democratic Republic were on the common theme of reservations incompatible with the constituent instrument of an international organization. Such wording would compel the States party to a treaty to form a judgement as to whether or not reservations formulated by international organizations which were also parties were in conformity with their constituent instruments. National legal advisers on treaty matters did not have the knowledge to address that task. Such amendments were mischievous and should be rejected.

26. Mr. RIPHAGEN (Netherlands) said that he could accept the four-Power amendment, which returned to the formulation used in the Vienna Convention on the Law of Treaties, provided there was also a return in article 20, paragraph 2, to the formulation in the corresponding article 20, paragraph 2, of that Convention, as the two provisions were linked.

27. On the matter of reservations, he referred the Committee to the definition in article 2, subparagraph 1 (*d*), which described a reservation as "a unilateral statement . . . made by a State or by an international organization . . . whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State or organization". That meant that a reservation could be made only in respect of a party's own obligations. It was impossible to make distinction between States and international organizations in the matter, and he was opposed to any amendment which sought to do so.

28. Mr. MORELLI (Peru) said that the International Law Commission's draft of article 19 tended to equate the legal position of States and international organizations with respect to the formulation of reservations. However, without prejudice to the rule concerning the contractual equality of parties to treaties, the Commission's draft in several other places did take account of the differences between international organizations and States. While his delegation did not wish to comment specifically on any of the amendments to article 19, it would be glad if the Drafting Committee were to give thought to means of differentiating between the full sovereign powers of States and the possibly limited competence of international organizations with respect to the formulation of reservations.

29. Mr. RAMADAN (Egypt) asked whether it was conceivable, in the case of a State formulating reservations to a treaty, that other States would attempt to argue that the reservations were incompatible with that State's constitution. Such conduct would be regarded as interference in its internal affairs. If States and international organizations were equal partners in treaty-making, it was illogical to have a provision stating that reservations by international organizations must be compatible with their constituent instruments. The point was adequately covered by article 6, and any reiteration showed mistrust of the good faith of international organizations and was tantamount to imposing an external censorship on their decision-making.

30. Mr. KHVOSTOV (Byelorussian Soviet Socialist Republic) said that some delegations had expressed concern that the changes proposed in paragraph 1 of the Cape Verde amendment and in the Soviet Union and German Democratic Republic amendments were designed to impair the capacity of international organizations to conclude treaties. Those amendments should not be understood as restricting the right of interna-

tional organizations to formulate reservations. That right was secured in article 19, paragraph 2, and no one would call it into question.

31. Cases in which international organizations could not formulate reservations were not fully taken into consideration in subparagraphs (*a*), (*b*) and (*c*) of article 19, paragraph 2. The amendments he had just cited filled that gap and indicated another important case: when a reservation was incompatible with the constituent instrument of an international organization.

32. During the discussion of article 6 an understanding had been reached that the treaty-making capacity of an international organization was determined by its rules. The rule on formulating reservations was one of the elements of that general treaty-making capacity, as sometimes reservations put forward could have serious legal consequences, for example, in differing with the intentions of parties to a treaty or in departing from the international organization's framework of competence.

33. His delegation considered it logical for article 19, paragraph 2, to maintain the provision reflecting the need for the substance of reservations to be in conformity with the provisions of the constituent instrument of the international organizations.

34. Mr. ALMODÓVAR (Cuba) proposed to pass over in approving silence the changes proposed in paragraph 1 of the Cape Verde amendment and in the four-Power amendment. With regard to the proposed changes in paragraph 2 of the Cape Verde amendment and the Soviet Union and German Democratic Republic amendments, he shared the view of their sponsors that a limit should be placed in the draft articles on the capacity of international organizations. If a group of States or even a group of international organizations set up an international organization and gave it a constituent instrument conferring on it the widest powers under international law, including that of treaty-making, it was clear that the other contracting parties to any treaty to which that organization was also a party would have to acknowledge its powers. What was excessive was that the International Law Commission should propose by means of a general rule to confer such powers on all the international organizations so far established.

35. Mr. WOKALEK (Federal Republic of Germany) said that his delegation could not accept the amendments of the Soviet Union and the German Democratic Republic, which introduced a discriminatory element. The proposed convention was intended to provide a treaty-making environment for States and international organizations, and it was unfair to limit the powers of one of the two categories of entities. Furthermore, there was no practical reason for attempting to do so, and he fully endorsed the comments of the United Kingdom representative on the subject at the previous meeting. His delegation could support the modification proposed in paragraph 1 of the Cape Verde amendment.

36. Mr. AL-JUMARAD (Iraq) said that he had no difficulty with the International Law Commission's text and could accept the four-Power amendment for the reasons already given by previous speakers.

37. Mr. WANG Houli (China) said that the Commission's text was acceptable to his delegation. With regard to paragraph 1 of the Cape Verde amendment and the four-Power amendment, he understood from the explanation given by the Expert Consultant at the previous meeting that no harm would be caused by the deletions in subparagraph (*a*) of paragraph 1 and 2 of article 19 which both those amendments proposed. His delegation was therefore prepared to accept them. He had no strong objection to the amendments of the Soviet Union and the German Democratic Republic, but he felt that the reference to the constituent instrument of an organization was unnecessary.

38. Mr. SKIBSTED (Denmark) said that the International Law Commission's draft, perhaps amended as proposed in the four-Power amendment, would ensure a reasonable balance between States and international organizations by establishing approximate equality in the formulation of reservations. The amendments of the Soviet Union and the German Democratic Republic seemed to involve undesirable restrictions on the powers of international organizations. For the reasons already stated by the United Kingdom representative, those amendments were not acceptable to his delegation.

39. Mr. KANDIE (Kenya) supported the proposed reformulation in paragraph 1 of the Cape Verde amendment. His delegation had no quarrel with the view that for purposes of treaty-making, States and international organizations had of necessity to be treated on an equal basis. However, he wondered whether there should not be different rules for international organizations on the question of formulation of reservations and on other matters if there was agreement in a conference on the codification of international law that decision-making powers should be vested only in States.

40. On the question of the formulation of reservations, his delegation had some sympathy with the International Law Commission's draft, for reasons which had been well explained by the United Kingdom representative. The likelihood of an international organization formulating a reservation of the type that the amendments of the Soviet Union and the German Democratic Republic were designed to prevent seemed very remote. If that did occur, articles 20, 21, 22 and 23, dealing with objections to reservations, could resolve the problem.

41. Mr. GERVÁS (Spain) said that his delegation merely wished to reiterate its support for uniform terminology for both States and international organizations, particularly with regard to the ratification of treaties. It also supported the proposals submitted in paragraph 1 of the Cape Verde amendment and in the four-Power amendment.

42. Mr. KOTSEV (Bulgaria) said that the issue of formulation of reservations by international organizations was a new one. The text adopted must be sufficiently broad to cover a variety of cases. A distinction had to be made between States and international organizations because their capacity to formulate reservations was not equal. A State could formulate or refrain from formulating reservations for political, economic

or social reasons. An international organization, on the other hand, had no such choice, since its grounds for the formulation of reservations were based on its rules and limited by its competence. As the representative of Greece had pointed out at the previous meeting, the amendments of the Soviet Union and the German Democratic Republic dealt, in fact, with a self-evident situation. He failed to understand why there was such opposition to inserting a provision which stated the obvious. The wording proposed in the Soviet amendment was in his view sufficiently flexible. He would support some compromise formulation between that text and those in paragraph 2 of the Cape Verde amendment and in the German Democratic Republic amendment.

43. The CHAIRMAN, summing up, said that there appeared to be general acceptance of the amendment proposed by Austria, Italy, Japan and Tunisia and of paragraph 1 of Cape Verde's proposal, while the few delegations which had been somewhat reluctant to abandon the Commission's draft had made it clear that their position would not hamper the Committee's approval of the amendments. On that understanding, therefore, he proposed that those amendments, as revised, should be considered accepted and referred to the Drafting Committee, together with the Commission's draft of article 19 up to and including subparagraph 2 (*c*). The proposed new subparagraph 2 (*d*) was a matter of substance, and the decision on it should be postponed to allow the delegations of Cape Verde, the Soviet Union and the German Democratic Republic time to explore ways of embodying the basic idea of their amendments into a single text which could be discussed later by the Committee. That text should take the form of an overall rule which would apply throughout the draft article.

*It was so decided.*

44. The CHAIRMAN said he believed the Committee should also bear in mind the observation made by the representative of the Netherlands that article 20 should be brought into line with article 19. He suggested that the representative of the Netherlands should submit a specific proposal in that regard.

*Article 20* (Acceptance of and objection to reservations)

45. Mr. WANG Houli (China), introducing the amendment proposed by his delegation (A/CONF.129/C.1/L.18), said that it had been submitted in an effort to provide an equal and reasonable time-limit for the objections of States and international organizations to reservations.

46. Paragraph 5 of article 20 established a 12-month time-limit for objections by States but made no provision for objections by international organizations, even though paragraph 2 of the article stated that "a reservation requires acceptance by all the parties". If a time-limit were not established for international organizations, then treaties to which international organizations were parties would be left in a state of perpetual uncertainty. Such a defect would give international organizations the privilege of raising objections at any time they wished, and was not conducive to the proper observance of treaties. The Chinese delegation therefore considered that States and international organizations should be given the same time-limit for raising objections to reservations.

47. Since the organs of international organizations competent to accept reservations might not meet every year, and since the practice in any case varied from one international organization to another, a 12-month time-limit might not be sufficient for some. The Chinese delegation had therefore proposed an 18-month time-limit for both States and international organizations alike. If the competent organs of an international organization did not meet in that period, then a standing body could be empowered to deal with the matter.

48. Mr. HERRON (Australia), introducing his delegation's amendment (A/CONF.129/C.1/L.32), said that its purpose was to fill a gap consciously but unacceptably left open in the draft text by the International Law Commission. Since the proposal dealt only with paragraph 5 of article 20, it followed that Australia found the other paragraphs of the Commission's draft satisfactory.

49. The Commission in paragraph 5 had reproduced paragraph 5 of article 20 of the 1969 Vienna Convention on the Law of Treaties, and his delegation wished to keep that rule intact for States within the present draft convention. The Commission had not, however, formulated a parallel rule for international organizations, the principal reason for not doing so being concern at the administrative difficulty some organizations might have in organizing responses to reservations within one year.

50. The administrative difficulties for organizations were indeed real, particularly for those which were scrupulous in submitting questions of treaty obligations for decision to their competent organs but which could do so only infrequently because of extended periods between meetings of those organs.

51. The Australian delegation did not regard administrative difficulties as a sufficient reason for not placing organizations on the same footing as States with regard to tacit acceptance of reservations. Not to treat organizations equivalently was to leave them in a favoured situation compared with States, and was a departure from the principle of accountability of organizations.

52. The adjectival rule in paragraph 5 of article 20 of the 1969 Vienna Convention had greatly simplified the management of reservations for the treaty departments of Foreign Offices and for depositaries, and had made the extent of substantive obligations more certain. A like provision for organizations would also be useful. That view appeared to be generally held by a number of States and organizations, as was shown by comments submitted to the International Law Commission and other proposals relating to paragraph 5. Some of those proposals were simpler and more direct than Australia's. China's proposal did not appeal to his delegation, however, as it prescribed a different period for tacit acceptance of reservations by States than obtained for them under the 1969 Vienna Convention.

53. Australia would favour a simple, direct solution, provided it was convinced that the solution was a prac-

tical one. Because it was not yet convinced of the practicality of fixed-term solutions, it had proposed a more elaborate scheme under which organizations, like States, should have 12 months in any case in which to object to a reservation and, like States, should have the full period to the date when they expressed consent to be bound by the treaty, which might be a date later than 12 months from when they were notified of the reservation. Additionally, to obviate administrative difficulties entirely, an organization would have a period of up to one month after the next meeting of its competent organ after notification of the reservation in which to raise objection to the latter. That period could in some cases be longer than 12 months and in others end after the date on which the organization expressed consent to be bound by the treaty. In all cases, however, there would be adequate opportunity for the competent organ to deal with a reservation, and the position of the organization would be made certain either by its objection or by consent implied by expiry of the relevant period. Furthermore, although the maximum period involved would vary from organization to organization, it would be a simple matter in the case of any organization to establish whether a given reservation had been accepted tacitly, by verifying the date of the last meeting of the competent organ.

54. One small improvement to the Australian proposal had been suggested privately, namely, the deletion of the word "plenary" from its subparagraph 5 (*b*) (ii). The intended meaning was adequately established by the reference to "competent" organ. For some organizations the organ competent to deal with treaty questions would not be the plenary organ, and use of the adjective might cause confusion. The amendment should therefore be modified accordingly.

55. The Australian delegation was well aware that its proposal was an elaborate one, but it regarded the solution as practical and believed it was the only one before the Committee that was practicable for all organizations. In that regard, the views of the organizations participating in the Conference should be taken into account. If their needs could be met by a simpler rule acceptable to the Committee, the Australian delegation would be only too pleased to withdraw its proposal.

56. Mr. TUERK (Austria), introducing his delegation's amendment (A/CONF.129/C.1/L.33), said that apart from paragraphs 2 and 5 of article 20, Austria found the Commission's draft satisfactory. With regard to paragraph 2, whereas the Commission's draft referred only to the object and purpose of the treaty, the same paragraph in the 1969 Vienna Convention referred also to a limited number of negotiating States. His delegation saw no reason to modify the rule laid down in the 1969 Vienna Convention to enlarge the scope of paragraph 2. On the contrary, it considered that the two texts should be harmonized as far as possible.

57. The Austrian delegation saw no reason to make a distinction between States and international organizations in paragraph 5, notwithstanding the practical difficulties which might be involved where international organizations were concerned. A 12-month period could also be applied to international organizations, since all of them had organs of limited composition which were empowered to act on behalf of the organization in such matters and were convened at least once a year.

58. Mr. JESUS (Cape Verde) said that his delegation's proposal (A/CONF.129/C.1/L.35) had been submitted for reasons similar to those given by Austria. The article should be based on the principle of reciprocity. If after 12 months acceptance of a reservation by a State was implicit, the same period should also apply in the case of international organizations, notwithstanding possible internal difficulties. His delegation could therefore support the Austrian proposal.

59. The Chinese and Australian proposals were in some degree similar, but the open-ended period suggested by Australia was unacceptable. If the Conference were to accept the proposed 18-month period, it should provide a safeguard clause such as that suggested by his delegation whereby the present draft convention would not prevail over the 1969 Vienna Convention, because, when it came to relations between States, the two periods would conflict.

60. Mr. ULLRICH (German Democratic Republic) said that his delegation's amendment (A/CONF.129/C.1/L.41) was a logical consequence of its amendment to paragraph 2 of article 19. The fundamental conclusion should also be valid *mutatis mutandis*, and to the same degree, for acceptance of and objection to reservations by international organizations. The differentiation was not made clear enough in article 20, and his delegation's two proposals were designed to eliminate any uncertainty or doubt. The purpose of the proposed addition was to make clear that what was required was acceptance of the reservation by all States and by all affected organizations, according to paragraph 2 of article 19. The same consideration had prompted his delegation to propose an amendment to paragraph 4, subparagraph (*b*). Since throughout the draft convention the provisions relating to States and those relating to international organizations were generally kept separate, his delegation deemed it appropriate from the standpoint of both substance and form to deal separately with objections by States and objections by international organizations. The second part of his delegation's amendment was of a drafting nature and might be referred to the Drafting Committee.

61. The CHAIRMAN said that the Committee would have to decide whether the phrase "pursuant to the rules of those organizations" in the amendment proposed by the German Democratic Republic should be included in article 19. If it did so decide, the phrase would automatically be included in article 20. If the Committee decided not to include it in article 19, then it would not appear in article 20. He therefore suggested that the Committee, in the course of its debate, should not touch upon that issue for the time being.

62. Mr. MORAWIECKI (Poland) said that the issues dealt with in article 20 were highly controversial. In the 1969 Vienna Convention the corresponding article 20 on acceptance of and objection to reservations was in some respects less complex. His delegation therefore had no wish to raise unnecessary difficulties, but it had, in particular, doubts regarding the text of subpara-

graph 4 (*c*) and the wisdom of retaining in paragraph 3 the exact wording of the 1969 Vienna Convention. Despite those misgivings, it would not, however, insist on any changes.

63. Most of the amendments submitted concentrated on paragraph 5 of the article and reflected a common concern to establish time-limits within which an international organization might raise objections to reservations. His delegation shared that concern, and was inclined, after careful consideration, to support the amendments of Cape Verde and Austria, which established a time-limit of 12 months applicable both to States and to international organizations.

64. In the case of paragraph 2, the Austrian amendment and that of the German Democratic Republic had the common and unexceptionable aim of bringing the text more closely into line with that of the 1969 Vienna Convention. The proposal of the German Democratic Republic deserved particular attention in that it reaffirmed the crucial principle that an international organization should strictly observe its own rules and act within its competence as affirmed by the consent of its member States. Adherence to that principle should not be seen as lack of confidence in international organizations, but as recognition of the need to establish limits to their freedom of action. The proposal to include a safeguard provision was an attempt to contribute to confidence-building between the organization and its member States. In that connection, he drew attention to the fact that some delegations which were insisting on the need to "trust" international organizations represented Governments which had threatened to withdraw from certain international organizations.

65. Mr. BERMAN (United Kingdom) said that he would refrain from commenting on the question of trust between international organizations and member States except to say that those who made a fetish of the principle of sovereignty of States were often the first to express criticism of an international organization for abuse of that trust.

66. On the question of paragraph 5 of article 20, he agreed with previous speakers that the omission of international organizations from the text was unfortunate, but he recognized the practical problems involved in drafting a rule that would provide for tacit consent within a specific time-limit. He accordingly agreed with the view expressed by the Commission in its commentary to paragraph 5 of the article.

67. After careful examination of the proposals submitted by China, Austria and Cape Verde, his delegation had concluded that it would be best to apply the same time-limit to States and to international organizations, with the proviso that it should always be possible for an international organization to enter a precautionary objection to a reservation. That objection could be withdrawn subsequently if the governing body of the organization found it undesirable. In general, his delegation favoured a 12-month time-limit, that being the rule established in the 1969 Convention and in international practice.

68. He could not concur with the Chairman's view that acceptance of the amendment to article 19 submitted by the German Democratic Republic implied acceptance of its proposal to change article 20; the two issues were not identical, and it was up to the Committee of the Whole to work out a satisfactory solution. In both instances, it would be useful if the delegation of the German Democratic Republic could clarify the wording of its amendments, which in their present form fell short of their intended purpose.

69. Mr. ADEDE (International Atomic Energy Agency) said that the acceptance of objections to reservations was an area in which international organizations had relatively little experience, since there had been few occasions on which an organization had had to respond to reservations formulated in respect of a multilateral treaty. In general, he felt that the Commission's approach, which did not establish a time-limit for acceptance by an international organization of reservations, was the correct one, although his own organization, the International Atomic Energy Agency, would have no difficulty with the 12-month period which some delegations had proposed as the time-limit for both States and international organizations. If there were to be such a rule, however, he felt that the Australian proposal would provide the necessary flexibility for those organizations whose policy-making organs would be unable to act within a 12-month period.

70. Mr. SCHRICKE (France) said that article 20 was broadly acceptable to his delegation in the form submitted by the International Law Commission. However, both article 20 and article 19 gave rise to the same technical difficulties as had arisen in connection with the corresponding articles of the 1969 Vienna Convention. Those difficulties derived from the fact that the text did not differentiate between the legal effect of a reservation to which there were objections and a reservation with no objections. If, however, it was generally agreed that such a differentiation was implicit in the 1969 Convention, his delegation would not seek to raise the issue at the present Conference.

71. Virtually all the amendments proposed modification of paragraph 5, on which his delegation had no very strong opinions. As formulated by the International Law Commission, the article did not exclude customary rules, so that there was perhaps no need to impose on an international organization a specific time-limit for acceptance of or objection to reservations.

72. Mr. NEUMANN (United Nations Indusrial Development Organization) said that he largely agreed with the comments made by the representative of the International Atomic Energy Agency, but felt that, even if the text were left in its present form, there must be an implicit time-limit within which an international organization could raise an objection to a reservation if it were not to be considered as having acquiesced in that reservation. The lack of a specific time-limit could give rise to legal uncertainties, but in establishing a rule, account must be taken of the constituent instruments of the various organizations. In the case of the United Nations Industrial Development Organization, for example, the competent organ was the General Conference, which normally met every two years, although it could hold special sessions. The difficulty it would have in complying with a 12-month time-limit would be

shared by other organizations of the United Nations system. Accordingly, he favoured the flexible time-limit proposed by Australia in its amendment.

73. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said his delegation supported the German Democratic Republic's amendment, which developed the reasonable concept set out in that country's amendment to article 19 (A/CONF.129/C.1/L.40). Those amendments did not discriminate against international organizations and in no way restricted their freedom to formulate and accept reservations and to object to them. They only stated on a general plane the existing situation, in which each international organization could formulate and accept reservations and object to them only to the extent that they were in accordance with the aims and functions established in its constituent instrument.

74. Equalizing, or creating a balance in, the competence of international organizations and States with regard to reservations, as representatives of several countries and international organizations had called for, would lead to an artificial and unwarranted levelling of the status of the subjects of international law, so different in their nature. Such an approach would contradict the declarations already made by delegations on the inadmissibility of equalizing the international personality of States and international organizations.

75. Under that approach, international organizations would be granted abnormally wide competence. Any international organization could participate in the elaboration of any international treaty, formulate reservations to it and accept or object to reservations. Thus international organizations, the number of which far exceeded the number of States, could block the efforts of States in the process of the creation of international norms.

76. The concept of equalizing the competence of States and international organizations with regard to reservations contradicted the provision generally acknowledged by general international law that a specific international organization was competent to participate only in those treaties necessary for its own aims and functions as defined in its constituent instrument, while a State possessed, on the strength of its sovereignty, a legally unrestricted treaty-making capacity and decided independently questions as to when, how and with which subjects of international law, and on which issues, to conclude international treaties.

77. In the light of all this and in view of the efforts already made in the Conference to equalize the status of international organizations and States with regard to reservations, which was fraught with very dangerous practical consequences, the German Democratic Republic's amendment to article 20 was especially valuable and timely. It fixed in a particularly economical, precise and clear way the existing general norm, reflecting the specific right of international organizations on acceptance of and objections to reservations.

*The meeting rose at 6.05 p.m.*

# 13th meeting

**Friday, 28 February 1986, at 11.20 a.m.**

*Chairman*: Mr. SHASH (Egypt)

*In the absence of the Chairman, Mr. Nascimento e Silva (Brazil), Vice-Chairman, took the Chair.*

**Consideration of the question of the law of treaties between States and international organizations or between international organizations, in accordance with General Assembly resolutions 37/112 of 16 December 1982, 38/139 of 19 December 1983, 39/86 of 13 December 1984 and 40/76 of 11 December 1985 (A/CONF.129/4)**

[Agenda item 11] (*continued*)

*Article 20* (Acceptance of and objection to reservations) (*continued*)

1. Mr. BARRETO (Portugal) said that a firm belief in the principles of equality, non-discrimination and reciprocity prompted his delagation to view with sympathy any attempt to secure identical treatment for States and international organizations in regard to the acceptance of reservations. That being said, he recalled that certain international organizations had stated that for structural reasons they might have difficulty in taking a position on a reservation even within the reasonable time-limits proposed in the amendments of China (A/CONF.129/C.1/L.18) and Austria (A/CONF.129/C.1/L.33) to paragraph 5 of the article. The more flexible proposal by Australia on that point (A/CONF.129/C.1/L.32) seemed to leave a number of problems unsolved and might make the régime too rigid, and thus impracticable to apply. His delegation therefore tended to favour the International Law Commission's draft of paragraph 5.

2. The other part of the Austrian proposal sought to introduce into paragraph 2 of the article, and in keeping with the 1969 Vienna Convention on the Law of Treaties,[1] a reference to a limited number of negotiating parties. The Austrian representative had made an interesting statement on the matter at the previous meeting, whereas the Commission's position was confined to a gloss on paragraph (2) of its commentary to the article

[1] *Official Records of the United Nations Conference on the Law of Treaties* (United Nations publication, Sales No. E.70.V.5), p. 287.