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

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14th 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)*

51. Mr. RODRÍGUEZ CEDEÑO (Venezuela) supported the International Law Commission's text for article 20, which was based on the corresponding provision of the 1969 Vienna Convention. As for the time-limit set in paragraph 5, it should be the same for States as for international organizations. The internal difficulties faced by certain organizations should not be a reason for establishing a different time-limit for organizations. His delegation favoured a time-limit of 12 months, which was to be found in the corresponding provision of the 1969 Vienna Convention. It supported the Australian amendment and the second part of the Austrian amendment, which improved the text of the article.

52. Mr. DROUSHIOTIS (Cyprus) said that his delegation was quite satisfied with the Commission's text for draft article 20, but it could accept the amendments by Australia, Cape Verde and China if the majority considered them as improvements.

The meeting rose at 12.55 p.m.

14th meeting

Friday, 28 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 20 (Acceptance of and objection to reservations) (*continued*)

1. Mr. TEPAVICHAROV (Bulgaria) said that in the discussion of article 20 a number of speakers had stressed the need for equal treatment of States and international organizations. However, equality of capacity could apply only in certain specific areas, since, as subjects of international law, States and international organizations differed both in status and raison d'être. The applicable rules did not refer to any context other than international conferences on multilateral treaties.

2. The issue raised by paragraph 5 was procedural. If guidelines were required, the time-limits suggested by Australia (A/CONF.129/C.1/L.32) were appropriate, as they applied to both States and international organizations. The provisions of the paragraph proposed had the merit of being short, clear and comprehensive.

3. The Austrian amendment to paragraph 2 (A/CONF.129/C.1/L.33) had the effect of adding a further criterion to those proposed by the International Law Commission and of restricting the application of the rule requiring acceptance of the reservation by all the parties to the treaty. His delegation approved that amendment.

4. It also supported the amendment submitted by the German Democratic Republic (A/CONF.129/C.1/L.41). Whether or not the wording proposed for paragraph 2 would prove acceptable in other articles, it was undoubtedly quite satisfactory in the context of articles 19 and 20. The new wording proposed for paragraph 4 clarified the text and made it more comprehensive. In addition, paragraph 4 (*b bis*) would ensure greater stability in the contractual relations between States and international organizations parties to the same treaty, thus closely reflecting existing legal realities.

5. Mr. MORALES (Cuba) stressed the importance of article 20 and outlined the differences between States and international organizations under international law. He said that his delegation approved the Chinese amendment (A/CONF.129/C.1/L.18), the Australian amendment and the proposal by Cape Verde (A/CONF.129/C.1/L.35).

6. His delegation was also in favour of the amendments proposed by the German Democratic Republic and approved the inclusion of the words "pursuant to the rules of . . .".

7. Mr. TALALAEV (Union of Soviet Socialist Republics) said that the final version of article 20 proposed by the International Law Commission presented a number of important shortcomings when compared with the corresponding provisions adopted by the Commission in first reading. States and international organizations were now placed on an equal footing with regard to objections to reservations, an approach with which his delegation could not agree. For a State, the formulation of objections to reservations was a matter of sovereign right. He took the statement made by the representative of the United States at the 12th meeting of the Committee to mean that, if the amendment of the German Democratic Republic were accepted, that would imply that States should also be subject to certain limitations in the matter of objection to reservations; i.e., they could object only to reservations which concerned them. That implication was incorrect: all reservations were of relevance to States, since they possessed sovereignty and not mere capacity. International organizations, on the other hand, were secondary subjects of international law, and therefore enjoyed only the limited capacity of objecting to reservations on matters

within their competence as established by their sovereign member States. It was precisely that situation which was reflected in the proposal submitted by the German Democratic Republic. It was regrettable that the Commission's article 20 went so far as to give some precedence to international organizations in the matter of reservations: in particular, its paragraph 3, which was taken in its entirety from the 1969 Vienna Convention on the Law of Treaties,[1] was unacceptable, because it limited the sovereign right of a State to formulate a reservation to a treaty with an international organization in connection with the constituent instrument of that organization.

8. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that his delegation wished also to refer to the question of time-limits. The representative of one international organization had stated that his organization's competent organ met once every two years. In view of the difficulties that would arise with regard to acceptance of and objection to reservations in such a case, the delegation of the Soviet Union would favour the adoption of a flexible but realistic time-limit.

9. A number of delegations had referred to the "equality" of States and international organizations, but he considered the notion of equality inapposite, not only in paragraph 5 but in all the paragraphs of article 20. In paragraph 5, amendments that would tend to equate the status of States and international organizations would give rise to practical difficulties in the case of tacit acceptance of a reservation. A case might arise in which the competent organ of an international organization was considering a particular reservation. If certain States represented in that organ were in favour of the reservation while others opposed it, the organ would be unable to reach a decision, with the result that the organ's silence could be interpreted as tacit acceptance. Since that was obviously inadmissible, there was a need to provide in paragraph 5 that an international organization must state its acceptance of or objection to a reservation.

10. Mr. GOHO-BAH (Côte d'Ivoire) said that his delegation supported the concept of non-discrimination between States and international organizations which were parties to the same treaty. It would therefore support any solution designed to provide in paragraph 5 for equality of treatment both between States and international organizations and between international organizations themselves, even though the latter were secondary subjects of international law, and it would accordingly support a text based on the amendments to that paragraph proposed by Cape Verde and Austria, without, however, rejecting any other time-limit that would be acceptable to both States and international organizations. The Australian amendment was certainly ingenious, but it would have the unacceptable effect of introducing legal uncertainties.

11. Mr. VOGHEL (Canada) said that his delegation approved the Austrian amendment to paragraph 2. It was, however, totally opposed to the German Democratic Republic's amendments to paragraphs 2 and 4 because of their general tendency to restrict the right of international organizations to formulate objections to reservations.

12. All proposals for specific time-limits in paragraph 5 should take into account the possibility of tacit acceptance of a reservation or of an objection to a reservation. His delegation would prefer a time-limit of approximately 12 months, but would not oppose a longer period of up to 18 months, or even two years, if that were thought necessary. In that connection there was no reason to limit in any way the prerogatives of international organizations, which, as parties to a treaty, must enjoy equality of rights with the other parties.

13. Mr. DEVLIN (World Health Organization) said that information had been requested from individual international organizations on suitable time-limits. In the case of his own organization, the World Health Assembly met annually but would have difficulty in reaching a decision if a reservation was notified only a few months before its session. He believed that a time-limit of 18 months, as proposed by China, would be sufficient.

14. Mr. CANÇADO TRINDADE (Brazil) said that, in his delegation's view, as the treaty-making power of international organizations was not always expressly mentioned in their constituent instruments themselves, in view of the apparent absence of constitutional limitations and the little practice so far on that particular point, their organs could adapt their practice to the rule in article 20, paragraph 5.

15. His delegation could endorse the amendments proposed by Cape Verde and Austria providing for equality of treatment of States and international organizations in this particular respect.

16. His delegation also supported a common time-limit for raising objections to reservations, for both States and international organizations.

17. Mr. MIMOUNI (Algeria) said that his delegation found the text of article 20 as proposed by the International Law Commission satisfactory. However, it supported the idea of inserting the words "or an international organization" in paragraph 5, as proposed by the delegations of Cape Verde, China and Austria.

18. With regard to the period to be allowed for raising an objection to a reservation, his delegation preferred a balance between States and international organizations. A 12-month period could be relatively short for some international organizations and could raise practical problems. Nevertheless, his delegation favoured the period of 12 months referred to in the Commission's text.

19. The Australian amendment allowed some flexibility, but did not call for equal treatment of States and international organizations. His delegation therefore preferred the Commission's text.

20. Mr. WOKALEK (Federal Republic of Germany) said that his delegation welcomed the amendments of Austria and Cape Verde because of the new clarity they introduced into the text.

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

21. It might be best to retain the time-limits laid down in the 1969 Vienna Convention, but there was much to be said for the flexibility that would be introduced by adoption of the Australian proposal. The Committee might perhaps even examine the possibility of allowing an international organization to establish its own time-limit.

22. With regard to the amendment of the German Democratic Republic, that proposal gave rise to difficulties similar to those created by the same delegation's proposal (A/CONF.129/C.1/L.40) for amendment of article 19.

23. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that there was no question of introducing inequality of rights between international organizations and States where equality was appropriate. His delegation was not, for example, opposed to the participation of international organizations together with States in conferences directly related to the interests of both parties, or to the participation of those organizations in voting at such conferences.

24. In the context of article 20, however, to speak of equality of rights would give rise to difficulties at the international level, particularly for the depositary. If there was no consensus in the competent organ of an international organization on a particular reservation, and the 12-month period were to elapse, the depositary, one of whose functions was to communicate all relevant documentation received by him to the parties to the treaty, would be unable to fulfil that obligation. Thus silence would be held to indicate the tacit consent of the international organization to the reservation formulated. He asked all delegations to take that particular example into account in considering the issue of "equality" between States and international organizations in the context of article 20.

25. The CHAIRMAN, summing up, said that, while international organizations were naturally concerned to secure equality of treatment in the matter of time-limits, they were not seeking positive discrimination on their own behalf. Most delegations had expressed a willingness to be flexible in the matter, whatever their individual preferences. One representative of an international organization had pointed out that most such organizations had as yet had little experience of having to react to reservations formulated by States to multilateral treaties. He drew attention to the fact that the rule established in article 20 would only enter into effect in some five or six years, when the convention had received the necessary ratifications. Consequently there was ample time for the international organizations to express their views regarding any time-limit laid down in the convention.

26. The constituent instruments of international organizations generally included no specific provision concerning acceptance of or objection to reservations. It had been pointed out that, while the circumstances were different, in the context of the 1969 Vienna Convention States too might have difficulties in that regard. It was clear, however, that in the case of multilateral treaties some time-limit should be imposed; in his opinion, the Committee accepted the 12-month period.

27. The new wording for paragraph 2 which was proposed in the Austrian amendment appeared to enjoy considerable support, and the Drafting Committee should therefore be asked to determine whether it improved the text or not. In the former case it could recommend adoption of the amendment by the Committee of the Whole; otherwise, it should be rejected.

28. The German Democratic Republic's amendments clearly involved a matter of substance, which should not be prejudged, in view of its close links to articles 11 and 19. It would therefore be preferable to postpone taking a decision on those amendments until the wording of those two articles could be agreed upon.

29. As for the various time-limits which had been proposed, he insisted that all of them seemed to be acceptable, but there appeared to be a tendency in favour of adoption of a 12-month period in order to avoid any discrimination and to simplify the work of the depositary. The Drafting Committee could be asked to indicate whether in its view specification of a 12-month time-limit would present any difficulties, on the understanding that the matter could be considered further at a later stage in the Committee of the Whole.

30. Mr. HERRON (Australia) said that when he had introduced his delegation's amendment (12th meeting), he had said that a simpler solution than that text would be preferable if one could be found. It now seemed that that would be possible, and he therefore withdrew the amendment. He expressed his delegation's gratitude for the support the amendment had received.

31. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that he would not object to reference of the amendments to the Drafting Committee, on the understanding that his delegation's comments would be taken into account. He feared that if the Austrian amendment was accepted, the convention would be stillborn. Several delegations were unable to accept that amendment because of the problems that would arise for the depositary if there was emphasis on the principle of equality between States and international organizations. Real equality of status was not what was at stake in the context of article 20.

32. The CHAIRMAN said that, in the absence of objection, the amendments would be referred to the Drafting Committee together with his own comments and those of delegations.

It was so decided.

Article 7 (Full powers and powers) (*concluded*)*

33. Mr. PISK (Czechoslovakia), speaking as Chairman of the Working Group on Article 7, said that, owing to the constructive spirit of co-operation which had prevailed in the Working Group and the spirit of compromise displayed by the sponsors of the amendments to the article, it had been possible to draw up a consolidated text of article 7 (A/CONF.129/C.1/L.43). That text was not a new proposal but was rather a procedural solution, based on the specific proposals put forward by Austria, Cuba, Japan and the United Kingdom, and

* Resumed from the 10th meeting.

the Soviet Union. It also took account of some other suggestions and of the trend of the discussion which had taken place in the Committee of the Whole. The sponsors of the amendments had agreed that all differences of a substantive nature should be referred to the Drafting Committee. That agreement did not solve the problems of the title of the article and the use of terms, questions which would, however, be resolved within the framework of article 22.

34. He endorsed the Chairman's appeal to the sponsors of different amendments to the same article to initiate negotiations with the aim of combining their various proposals, if possible, in a compromise text. That was one of the most effective ways of speedily dealing with those articles which gave rise to problems, and would avoid the necessity of recourse to voting. It would enable the Conference to adopt a convention enjoying general support, or at least the support of the overwhelming majority of the participants, and thus an instrument of greater value.

35. In conclusion, he drew attention to two small linguistic changes to be made, on the recommendation of the representative of the United Kingdom, in subparagraph 3 (*b*) of the consolidated text. The word "the" should be inserted before the word "circumstances" and the phrase "in conformity with the rules of the organization" should be replaced by "in accordance with the rules of the organization".

36. The CHAIRMAN thanked the Working Group for its most useful work. In the absence of objection, he would take it that the Committee approved the consolidated text proposed by the Working Group and decided to refer it to the Drafting Committee.

It was so decided.

Mr. Pisk (Czechoslovakia), Vice-Chairman, took the Chair.

Article 27 (Internal law of States, rules of international organizations and observance of treaties)

37. Mr. GOLITSYN (United Nations), introducing his organization's proposal for amendment of paragraph 2 (A/CONF.129/C.1/L.37), said that, while the United Nations appreciated the extensive consideration given by the International Law Commission to paragraph 2 of article 27, as described in its commentary (see A/CONF.129/4), it was not entirely satisfied that the provision, though analogous to paragraph 1 of the same article and to the corresponding provision of the 1969 Vienna Convention, adequately took account of the difference between subordinating ordinary domestic law to a treaty and subordinating one treaty to another, as would be the case under paragraph 2. That applied particularly in the case of the United Nations, whose constituent treaty, the Charter, had been generally recognized as having pre-eminent status. That status was specifically mentioned in Article 103 of the Charter, which applied not only to treaties concluded by States Members of the Organization but also, in his delegation's understanding, to those concluded by international organizations, and from which they could not derogate. His delegation had therefore found it necessary to propose an amendment to draft article 27 calling for the insertion of the words "Without prejudice to Article 103 of the Charter of the United Nations" at the beginning of paragraph 2.

38. He noted that there were precedents for such reference to Articles of the Charter of the United Nations. Article 30, paragraph 1, of the 1969 Vienna Convention referred to Article 103 of the Charter, as did also article 30, paragraph 6, of the International Law Commission's text which was before the Conference.

39. Mr. TALALAEV (Union of Soviet Socialist Republics), introducing his delegation's amendment to article 27 (A/CONF.129/C.1/L.39), said that that article did not make it clear that international organizations entering into commitments under treaties must do so in the light of their constituent instrument. The answer to the question whether an international organization could require modification of its rules in order to carry out an obligation assumed under a treaty lay in the different legal contexts of the foundation of an organization and the internal laws of a State. As had frequently been pointd out, States possessed unlimited rights as sovereign entities, and their status as participants in an international treaty was unchanged even if the treaty conflicted with and required changes in their internal law. On the proposal of Pakistan, supported by the Soviet Union, an appropriate correction had been made to what was then draft article 27 of the 1969 Vienna Convention. The position of international organizations was different, and recognizing a similar norm for them would run counter to the limitations placed on them by earlier articles.

40. An international organization simply could not conclude an agreement or treaty which was contrary to its constituent instrument. If it did enter into such a treaty, the latter could not be performed and the organization's obligations under it could not be fulfilled. It was no accident, therefore, that, in first reading, the International Law Commission had adopted a different text, as was indicated in paragraph (3) of its commentary to article 27. That text, which had reflected more concretely the special position of international organizations, had unfortunately been abandoned in second reading. As a result, under the present draft article 27 an international organization could not invoke its constituent instrument as justification for its failure to perform a treaty. Yet, an organization's mandate derived precisely from its constituent instrument, which established its legal status and its authority to conclude treaties. In principle, therefore, an international organization could not act in violation of its constituent instrument and adopt a position that was contrary to it. International organizations nevertheless entered into dozens of international commitments every day, and unforeseen conflicts might well arise, even though the organizations had acted in good faith. It must be clearly stated, therefore, that if an international organization's commitment under a treaty was in conflict with its constituent instrument, the latter had priority. Any treaties concluded by an international organization must be secondary to the primary document from which the latter derived its mandate. It was agreed that in any hierarchy of international agreements, the norms of the Charter of the United Nations, must take precedence

over all of the treaties. The amendment proposed by the United Nations was therefore a useful one. It could perhaps be combined with the Soviet amendment, although that was narrower in scope.

41. Mr. RIPHAGEN (Netherlands) said that Article 103 of the Charter of the United Nations was a very special provision: it dealt not with the hierarchy of treaties but with the hierarchy of international obligations. If a treaty could not be performed without contravening Article 103, the treaty itself could not be performed, not because of the relationship between treaties but because of the relationship between the obligations arising from treaties. All States Members of the United Nations were bound by Article 103 of the Charter, but it was not clear where a reminder of the importance of that Article should be placed in the convention. He did not think that article 27 was the right place. As he saw it, Article 103 was no more the purely internal law of the United Nations than, for instance, the prohibition of aggression, which was also enunciated in the Charter but would never be advanced as an internal law of the Organization. Article 103 was a rule of general international law.

42. He was afraid that the United Nations amendment might create confusion as to the sense and character of Article 103, making it appear to be simply an internal rule of the Organization, a confusion which was to a certain extent aggravated by the Soviet Union amendment. While in the case of the United Nations some confusion of the Organization's internal law with the rules of general international law might be possible, that body being a universal organization of a very special character, the same could not be said of other international organizations, particularly regional organizations. He failed to see how a regional organization could invoke one of the rules of its constituent instrument against a third party which was not a member of the organization but with which the organization had concluded an international treaty.

43. He recognized the importance of including in the convention a general rule precluding derogation from Article 103 of the Charter, but he believed that article 27 was not the right place for it.

44. Mr. DEVLIN (World Health Organization) said that the substance of the Soviet Union amendment appeared to be wholly justified as far as treaties concluded between an international organization and one of its member States were concerned. However, account should be taken of the comment of the Netherlands representative regarding treaties between international organizations and non-member States. Good faith seemed to call for some qualification of the International Law Commission's draft of article 27, paragraph 2. If a State party to a treaty which was also a member of an organization sought to force that organization to act in violation of the obligations imposed by its constituent instrument, to which the State had assented, it would be acting in bad faith towards the other States members of the organization.

45. The World Health Organization delegation also supported the United Nations amendment to article 27.

46. Mr. ECONOMIDES (Greece) said that he supported the article proposed by the International Law Commission. He could not approve the Soviet Union amendment, which would be contrary to article 46, paragraph 3, under which an international organization could invoke only manifest violations of an important rule to free itself from contractual obligations towards a State or another international organization. The question of responsibility for an international organization's becoming improperly party to a treaty would have to be settled within the organization itself, and not at the expense of a third party acting in good faith. That was a basic rule of the 1969 Vienna Convention as far as States were concerned. The importance of safeguarding treaty obligations took precedence over other considerations unless it involved a manifest violation of an internal law of fundamental importance. He approved the United Nations amendment in principle, but had doubts as to its proper place in the draft articles. The amendment should be referred to the Drafting Committee for consideration.

47. Mr. RAMADAN (Egypt) said that the problem was to decide where Article 103 of the Charter of the United Nations, an important principle of international law, should be referred to in the draft articles. One possibility was a general reference in the preamble.

48. The International Law Commission had placed a proviso relating to Article 103 of the Charter in article 30, paragraph 6, but that provision was in deliberately ambiguous terms. His delegation accepted the argument that Article 103 did apply to international organizations, because it was inconceivable that in their collective action States should be free of constraints to which they were subject individually.

49. His delegation could not accept the Soviet amendment, as it appeared to be inconsistent with article 27, paragraph 1. Furthermore, a similar and more explicit safeguard, modelled on the 1969 Vienna Convention, appeared in article 46, paragraph 3. In his view the purpose of the Soviet amendment would be achieved by incorporation of a reference to Article 103 of the Charter of the United Nations at an appropriate place in the draft articles.

Mr. Nascimento e Silva (Brazil), Vice-Chairman, resumed the Chair.

50. Mr. ULLRICH (German Democratic Republic) said that his delegation had no objection in principle to the draft article 27 proposed by the International Law Commission and it approved the addition to paragraph 2 proposed by the United Nations.

51. The Soviet amendment constituted an important addition to paragraph 2, because it covered cases where there was a possibility of a conflict of views.

52. In the view of his delegation, article 27 should be examined in conjunction with the definition of "rules of the organization" in article 2, subparagraph 1 (*j*).

53. Mr. RASOOL (Pakistan) supported the International Law Commission's draft. The United Nations amendment would, in his view, misplace the reference to Article 103 of the Charter of the United Nations, whose proper place was in article 30. Similarly, the

appropriate place for the text proposed in the Soviet amendment was in the safeguard clause in article 46.

54. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that the Commission's wording of article 27 took account of the need for parallelism, but the formulation was nevertheless unsatisfactory because it did not establish a clear distinction between States, the primary subjects of international law, and international organizations, the secondary subjects. As a result, the difference between the internal law of a State and the rules of an international organization was blurred. A State, being sovereign, created its own internal law and could unilaterally amend the provisions of that law. That was why the corresponding article in the 1969 Vienna Convention had been universally accepted. The constituent instrument of an international organization, on the other hand, its highest law, could not be amended by the international organization itself; the instrument was an international agreement concluded between the organization's member States. Accordingly, an international organization could not enter into treaties conflicting with its obligations under that instrument. The Soviet amendment did not change the text of article 27, paragraph 2; it merely added an essential element to it.

55. Mr. MOSTAFAVI (Islamic Republic of Iran) endorsed the Netherlands representative's remarks concerning Article 103 of the Charter of the United Nations. He had no objection to the Soviet amendment if it found sufficient support, but he preferred the existing text of the draft article.

56. Mr. HARDY (European Economic Community) said that article 27 was an important provision which should be considered in conjunction with article 46. There was no reason why States and international organizations should be accorded different treatment. Indeed, uncertainty and insecurity would be caused if parallel treatment were not accorded to international organizations. The text proposed by the International Law Commission should therefore be adopted in its present form.

57. Mrs. OLIVEROS (Argentina) considered it undesirable to refer to articles of one treaty in another; cross-references of that nature were always dangerous where the practical implementation of the treaties was involved. She agreed with the comments of the Netherlands representative concerning Article 103 of the Charter of the United Nations: article 30, paragraph 6, was a more appropriate place for a reference to that Article, or it might be mentioned in some general article. She supported the International Law Commission's text of article 27.

58. Mrs. THAKORE (India), said that her delegation approved the text of article 27 proposed by the Commission, which dealt with an extremely sensitive issue.

59. As to amendments submitted to that article, she stated that no one doubted the pre-eminent status of the United Nations in terms of Article 103 of its Charter, from which neither States nor international organizations could derogate. However, her delegation had doubts concerning the placing in article 27 of the amendment proposed by the United Nations, and it fully agreed with the comments made by the representative of the Netherlands in that regard. In her view, the substance of the Soviet amendment was covered by article 46.

60. Mr. HERRON (Australia) said that the Soviet amendment ran counter to the provisions of article 27, paragraph 2, as proposed by the International Law Commission, and should therefore not be added to that paragraph. It dealt with the question of invalidity, and should therefore be incorporated elsewhere in the convention. His delegation had some difficulty with the United Nations amendment which, it seemed, would be of benefit only to the United Nations itself, Article 103 of the latter's Charter being part of the Organization's rules. In his view, paragraph 2 was intended, in parallel with paragraph 1, to refer to all international organizations. Furthermore, he did not see how even the United Nations could invoke Article 103 as a safeguard clause in the context of article 27 of the draft articles, which dealt with the question of conflict between the internal law of States or the rules of international organizations and treaty obligations. Article 103 of the Charter dealt specifically with the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, and provided that their obligations under the former should prevail in case of any conflict.

61. Mr. DUFEK (Czechoslovakia) said that paragraph 2 dealt not with the question of the validity of a treaty but with the implementation of a treaty in force, a treaty concluded by duly authorized representatives of organizations and approved by the organization in accordance with its rules.

62. In examining the rule in article 27, paragraph 2, one must bear in mind that the relation of a State to its internal law is not the same as that of an international organization to its rules.

63. The rules of the organization, as defined in article 2, meant the constituent instruments, relevant decisions and resolutions and established practice—in other words, on one hand, rules of procedure—and, on the other, standards and rules of international law and constituent documents representing international agreements and international law as such. The rules of an organization therefore should not be compared with the internal law of a State. Furthermore, international organizations should not enjoy a more favourable position than States.

64. Article 27 developed the principle of *pacta sunt servanda* established in article 26. His delegation therefore could support the International Law Commission's text of paragraph 2.

65. The amendment proposed by the Soviet Union pointed out an important problem and might usefully be combined with the amendment of the United Nations, since they were very similar in content.

66. Mr. DALTON (United States of America) said that his delegation had no objection to a reference to Article 103 of the Charter of the United Nations in an appropriate place in the convention. However, it believed that article 27 was not the appropriate place, for

the reasons given by the representative of the Netherlands and other speakers.

67. The proposal of the Soviet Union involved enunciation of a new rule which the sponsor had indicated was a corollary to the rule of *pacta sunt servanda*. In his delegation's view, the proposed wording set forth an exception which did not belong in a section of the draft dealing with the observance of treaties. The United States supported the view expressed by a number of delegations that the Commission's text should be approved as it stood.

68. Mr. EIRIKSSON (Iceland) said that his delegation approved the text of article 27 as drafted by the International Law Commission.

69. Mr. BIN DAAER (United Arab Emirates) said that it was his delegation's understanding that Article 103 of the Charter of the United Nations, in referring to the obligations of the Members of the United Nations, concerned only States and not international organizations. Any reference to that Article in a paragraph dealing with international organizations was therefore inappropriate. For that reason his delegation could not accept either the United Nations amendment or that of the Soviet Union, and preferred the Commission's draft as it stood.

70. Mr. VAN TONDER (Lesotho) said that his delegation found it difficult to support the amendments proposed by the United Nations and the Soviet Union for the reasons given by previous speakers, particularly the representatives of the Netherlands, Pakistan and Greece. His delegation preferred the Commission's draft of article 27.

71. Mr. SANG HOON CHO (Republic of Korea) said that his delegation did not favour a broad escape clause which would allow an international organization to excuse itself for its failure to perform a treaty. However, the problem was basically one of interpretation, and the Commission's draft, which left the matter to be solved in accordance with articles 31 and 33, provided the best solution.

72. Mr. ABDEL RAHMAN (Sudan) expressed support for the Commission's draft of article 27. While his delegation appreciated the concern of their sponsors, it could not support the proposed amendments, since they would be inappropriate in article 27.

73. Mr. SKIBSTED (Denmark) said that he favoured retention of the International Law Commission's text in its present form for the reasons given by the representative of the Netherlands. The amendments to article 27 which had been submitted were not acceptable to his delegation.

74. Mr. WOKALEK (Federal Republic of Germany) expressed support for the Commission's text of the article. Like the representative of the Netherlands, his delegation had no objection to including the United Nations amendment as a proviso elsewhere in the Convention, either as a preambular paragraph or in a new article. The amendment submitted by the Soviet Union created problems, particularly in relation to paragraph 3 of article 46, and it would give undue advantage and privilege to international organizations.

75. The CHAIRMAN, summing up, said that while at the beginning of the discussion he had noted a certain hesitation on the part of speakers to take issue with the representatives of the United Nations and the Soviet Union, the more recent speakers had all given full support to the International Law Commission's draft. As had been pointed out in respect of the United Nations amendment, there was some danger in cross-referencing, and in any event a reference to Article 103 of the Charter of the United Nations already appeared in article 30. A number of speakers had expressed the view that article 46 would be the correct place for the amendment proposed by the Soviet Union. He invited the sponsors of the two amendments to comment on the discussion.

76. Mr. TALALAEV (Union of Soviet Socialist Republics) said that his delegation's intentions must have been misunderstood. Its amendment did not deal with the validity or invalidity but with the application of a treaty.

77. Mr. GOLITSYN (United Nations) said that he could not share the views expressed by the representative of the Netherlands and other speakers. Article 103 of the Charter of the United Nations was a reference to that Organization's generally recognized pre-eminent status. Treaties concluded not only by States but also by the Organization could not ignore it. That had been the reason for the proposal to include a reference to that Article at the beginning of paragraph 2. However, since such inclusion raised the question whether Article 103 of the Charter overrode all the draft articles, it might be advisable to postpone a decision on the United Nations amendment at least until article 30 was considered.

78. Mr. TALALAEV (Union of Soviet Socialist Republics) said that article 46 was in part V, section 2, of the draft articles, which dealt with the invalidity of treaties, whereas his delegation's amendment dealt with the question of application of treaties and the obligations involved. It might therefore be advisable to postpone further discussion of the amendment until article 46 was considered, and to consider in the mean time what other place might be appropriate for the Soviet amendment.

79. The CHAIRMAN said that in the light of those statements the Committee would postpone all further discussion of the United Nations amendment until it considered article 30, and would also postpone its decision on the amendment by the Soviet Union for the time being. Article 27 could not therefore be referred to the Drafting Committee, even though the majority of speakers appeared to be in favour of the International Law Commission's draft.

Proposals for a new article

80. The CHAIRMAN said that the proposals for a new article (A/CONF.129/C.1/L.19/Rev.1, L.27 and L.42) which had been submitted were concerned with the relationship between the 1969 Vienna Convention and the draft articles before the Conference. He did not propose to open the discussion of those texts at the present stage, because negotiations were in progress with a view to producing a single text and because there

were links between the question they dealt with and various existing provisions of the draft articles. The sponsors might, however, wish to introduce their proposals.

81. Ms. WILMSHURST (United Kingdom) said that since consultations were still in progress between the United Kingdom and Italian delegations, it would be preferable not to introduce the United Kingdom proposal (A/CONF.129/C.1/L.27) until those consultations had reached a satisfactory conclusion.

82. Mr. GAJA (Italy) said that his delegation would also prefer to postpone the presentation of its amendment (A/CONF.129/C.1/L.42), in the hope that a joint text would be elaborated.

The meeting rose at 5.55 p.m.

15th meeting

Monday, 3 March 1986, at 11.10 a.m.

Chairman: Mr. SHASH (Egypt)

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

Tribute to the memory of Mr. Olof Palme, Prime Minister of Sweden

1. The CHAIRMAN asked the Committee to observe a minute of silence in tribute to the memory of Mr. Olof Palme, Prime Minister of Sweden, who had been assassinated on Friday, 28 February 1986. Olof Palme had been a very distinguished statesman and had been entrusted with very important responsibilities by the United Nations in the course of his exceptional career.

2. He requested the representative of Sweden to convey the heartfelt condolences of the Conference to the family of Olof Palme and to the Swedish Government and people.

The members of the Committee observed a minute of silence in tribute to the memory of Mr. Olof Palme.

3. Mr. KRONHOLM (Sweden) expressed his sincere gratitude for the message of sympathy, which he would convey to the family of Olof Palme and to the Government and people of his country.

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 30 (Application of successive treaties relating to the same subject-matter)

Paragraph 6

4. The CHAIRMAN invited the Committee to consider paragraph 6 of article 30 and the amendments to it by Argentina and by Australia and Canada, together with the United Nations amendment to article 27 (A/CONF.129/C.1/L.37), which its sponsor had suggested should be discussed in connection with that paragraph.

5. Mrs. OLIVEROS (Argentina), introducing her delegation's amendment (A/CONF.129/C.1/L.44), said that treaty interpretation was one of the most important and difficult tasks of Ministries for Foreign Affairs. Their sole guide must be the actual text of the treaty, for attempts to interpret it according to the intention of the parties or the object and purpose of the treaty usually led to unnecessary controversy. Her delegation believed that in the interests of clarity, the text of a treaty should not contain cross-references to another instrument. Where it was desirable to refer to a provision of another text, that provision should be reproduced in full.

6. The International Law Commission's draft of article 30, paragraph 6, mentioned Article 103 of the Charter of the United Nations, which read: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." The term "Members of the United Nations" meant, in accordance with Article 4 of the Charter, the States which accepted the obligations which the Charter contained. The reference to Article 103 of the Charter was thus exclusively to States, and not to international organizations, which were not Members of the United Nations.

7. Accordingly, if article 30, paragraph 6, was left as it stood, the important rule which it laid down would apply only to the States and not to the organizations which ratified the future convention. Her delegation's amendment sought to remedy that defect by replacing the present text of paragraph 6 by language which reproduced in full the rule embodied in Article 103 of the Charter of the United Nations, thus making it clear that the rule applied both to States and to international organizations.

8. Mr. HERRON (Australia), introducing the amendment in document A/CONF.129/C.1/L.45 on behalf of his own delegation and that of Canada, said that only paragraph 6 of article 30 was before the Committee. However, given the connection between the proposal to delete that paragraph and the suggested addition to paragraph 1 of the article, he trusted that the Committee would be willing to consider the amendment as a whole.