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

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2nd meeting of the Committee of the Whole

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accepted, and still was, as denoting an act emanating from the highest organs of a State, and there were no corresponding organs in international organizations. His delegation therefore approved the use of the words "act of formal confirmation" as corresponding in the case of international organizations to the procedure adopted by States.

12. Mr. HARDY (European Economic Community) said that his organization would state its views on the term in detail when the matters touched on in article 2 came up in the relevant substantive articles. For the time being, he would simply say that the term "ratification" was currently used by international organizations, including his own, in connection with multilateral agreements.

13. Mr. SANG HOON CHO (Republic of Korea) said that his delegation endorsed the view expressed by Japan and the observations made by the United Nations in its written comments (A/CONF.129/5, p. 105). It would be preferable to use the single term "acceptance" with respect to international organizations.

14. Mr. JESUS (Cape Verde) said that the term "act of formal confirmation" was an innovation and should be discussed in some detail. In dealing with definitions, the content was the important question. The International Law Commission had proposed the term in order to establish a difference of treatment between international organizations and States; its recommendation should be followed, particularly since there was a precedent for the use of the term in a major international legal instrument, namely, the United Nations Convention on the Law of the Sea. With regard to the point made by the representative of the European Economic Community, it should be remembered that paragraph 2 of the article stated that the provisions regarding the use of terms were without prejudice to the meaning which might be given to them in the rules of any international organization.

15. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that it was unnecessary to draw an explicit parallel between acceptance of a treaty by an international organization and ratification of a treaty by a State. The phrase "corresponding to that of ratification by a State" in subparagraph 1 (*b bis*) should therefore be deleted.

16. Mr. NASCIMENTO e SILVA (Brazil) said that the substance of ratification would be dealt with under article 11 and should not be discussed at the present stage.

17. Mr. BERNAL (Mexico) said that his delegation would support the formulation recommended by the International Law Commission. The term "act of formal confirmation" was not an invention but an expression well known in the usage of States and in international law.

18. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that his delegation found the term wholly acceptable. It enabled international organizations to take a flexible approach to establishing consent to be bound by a treaty.

19. Mr. WANG Houli (China) said that, while it was appropriate that the text should use different terms to denote the obligations and rights of the representatives of States and those of the representatives of international organizations, there was no need to make a distinction between the terms "powers" and "full powers". He would revert to that point in greater detail when those terms were discussed in connection with article 7.

20. Mr. FLEISCHHAUER (United Nations) said that his organization had some misgivings about the use of the term "act of formal confirmation" and had set them out in detail in its written comments.

21. Mr. CRUZ FABRES (Chile) said that he would comment on the substance of the question of ratification in connection with article 11. He endorsed the view that it was appropriate to draw a distinction between ratification by a State and establishment by an international organization of consent to be bound by a treaty.

The meeting rose at 6.10 p.m.

2nd meeting

Thursday, 20 February 1986, at 10.30 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 2 (Use of terms) (*continued*)

Subparagraphs 1 (b) *and* (b bis)

1. Mr. VIGNES (World Health Organization), speaking also on behalf of the International Labour Office, said that the World Health Organization considered it unnecessary to make a distinction in article 2 that was not always justified in the case of international organizations. It shared the view expressed by the United Nations representative at the previous meeting. Specifically, it considered that subparagraph 1 (*b bis*)

could be omitted from article 2. It considered that the distinction made in subparagraph 1 (*c bis*) could also be omitted if subparagraph (*c*) was amended in appropriate terms.

2. Mrs. THAKORE (India) said that it might be confusing to use the term "ratification" in the case of international organizations, in view of the fact that it could mean both ratification on the international plane and referral to constitutional processes in the case of States. That did not apply to international organizations, regardless of the procedure followed by the organization to give formal consent to be bound by a treaty. The internal procedures of international organizations differed from those of States. A more general term should be used.

3. Mr. ABDEL RAHMAN (Sudan) urged acceptance of subparagraph 1 (*b bis*) as drafted and observed that the commentary of the International Law Commission (see A/CONF.129/4) made it abundantly clear why the distinction had been thought necessary. At the previous meeting, Mr. Fleischhauer had explained the United Nations' concern in not retaining the provision. Although the United Nations was the leader of international organizations, his Government thought it was wrong for it to advocate deletion. Subparagraph 1 (*b bis*) formed part of the basic proposal, and the convention as a whole would be weakened if it were deleted and international organizations were equated with States.

4. Mr. TUERK (Austria) said that ratification was nothing less than an act of formal confirmation by a State to be bound by a treaty, and he saw no contradiction between the two. In State practice, an act of formal confirmation very often did not take the form of ratification but merely of an exchange of notes, for instance. Consequently, rather than making a formal distinction between ratification and an act of formal confirmation in a new convention, he would favour a flexible approach whereby it would be left to the States and international organizations concerned to decide which term to use. While he appreciated the significance of the inclusion of the term "act of formal confirmation" in the United Nations Convention on the Law of the Sea, he did not think that such an act should be treated as something quite distinct from ratification. Possibly, the matter would be simplified if subparagraphs 1 (*b*), (*b bis*) and (*b ter*) were merged and amended to read:

> " 'ratification' or 'act of formal confirmation', 'acceptance', 'approval' and 'accession' mean in each case the international act so named whereby a State or an international organization establishes on the international plane its consent to be bound by a treaty".

Mr. Shash (Egypt) took the chair.

5. Mr. RASOOL (Pakistan) noted that the term "act of formal confirmation", had been proposed by the International Law Commission after lengthy debate and used in the United Nations Convention on the Law of the Sea. As that Convention had been signed by 159 States, the term in question could be said to enjoy virtually universal acceptance.

6. He noted also that the term "ratification" had been hallowed by time, and denoted the internal processes of a State such as acts of parliament or of a head of State. Such high-level acts could not be bracketed with the decisions of an international organization. For that reason, he favoured the retention of the term "act of formal confirmation".

7. Mr. ROCHE (Food and Agriculture Organization of the United Nations) agreed with the World Health Organization representative. In his view, the distinction introduced into the terminology was artificial and could not be supported simply because it had been used in the Convention on the Law of the Sea. Furthermore, whereas the Vienna Convention on the Law of Treaties[1] codified the secular practice of States, the draft articles sought to develop international law on the basis of a practice of international organizations, which was far shorter than that of States. If an intergovernmental organization could signify its consent to be bound in the form of acceptance, approval or accession, just like a State, it seemed somewhat illogical that, in another case by which it so signified its consent, a different term had to be used.

8. Mr. ABDEL RAHMAN (Sudan) said that logic dictated that the term "act of formal confirmation" should be retained. The term was not really new, and a real difference was involved.

9. Mr. PASCHKE (Federal Republic of Germany) said that his delegation supported the Austrian proposal, which avoided the problem of subjective appreciation of the definition in the article.

10. Mr. SHIHATA (World Bank) said that, as an organization that concluded more agreements annually than any other international organization and more than most States, the World Bank had a clear interest in the outcome of the Committee's deliberations and was anxious that sufficient flexibility was guaranteed to meet the varied requirements of the different international organizations. It strongly favoured the Austrian proposal to combine all the terms used in one provision.

11. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that the terminology before the Committee had been arrived at following a lengthy and detailed examination by the International Law Commission. That terminology was, moreover, logical in historical terms, inasmuch as "ratification" involved an act by the highest body of a State and could not be applied to international organizations. He had misgivings about the Austrian suggestion. There was a logical distinction between subparagraph 1 (*b*), which provided for ratification by the highest authority in a State, and subparagraph 1 (*b bis*), which provided for an act of formal confirmation by the highest administrative authority in an international organization. The functions of a State could not be transferred to an international organization. Subparagraph 1 (*b ter*), for its part, pertained to acts performed by both States and international organizations. In the circumstances, he would urge the Com-

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

mittee to abide by the formula evolved by the Commission.

12. Mr. CANÇADO TRINDADE (Brazil) said that when the Brazilian delegation had considered the expressions "ratification" and "act of formal confirmation" in the Sixth Committee of the General Assembly in the mid-1970s in its review of the work of the International Law Commission, it had indicated, on the one hand, the then innovation of the expression "act of formal confirmation", and, on the other hand, the difficulties of an extension of the term "ratification" to international organizations which would arise from the fact that it might be taken to mean that texts could not be adopted prior to a two-stage approval by a complex consultative mechanism involving organs of distinct ranks. He thought that the Austrian representative's suggestion might provide a flexible solution.

13. Mr. LEHMANN (Denmark) said that he understood the international organizations' concern that there should be flexibility in the terms of the convention. Such flexibility would leave open the possibility of developing international law in that sphere. His delegation welcomed the Austrian representative's proposal.

14. The CHAIRMAN noted that subparagraph 1 (*b*) would be fully discussed in connection with the relevant articles.

Subparagraphs 1 (c) *and* (c bis)

15. Mr. EHLERMANN (European Economic Community) said that the use of the terms "full powers" for States and "powers" for international organizations suggested a distinction which was not in keeping with the practice of the EEC in the making of treaties. His delegation would have further comments to make on that subject when the Committee considered the relevant articles, especially article 7.

16. Mr. HAYASHI (Japan) said his delegation had doubts regarding the necessity or usefulness of distinguishing between "powers" and "full powers". He saw no practical merit in distinguishing between the two terms, and felt that the Convention should follow as closely as possible the 1969 Vienna Convention. The introduction of artificial distinctions would make an already complex text more complicated. He would prefer to apply the term "full powers" to States and international organizations alike.

17. Mr. CASTROVIEJO (Spain) said that distinctions of terminology should be limited as far as possible. It was not logical in that case to reserve the terms "full powers" for States alone, since the "full" referred not to the capacity of the subject (whether organization or State) but to the capacity of the person carrying out the act related to the treaty to represent the subject. In both cases the powers of the representative must be full.

18. Mr. UNAL (Turkey) said that the capacity of an international organization to conclude treaties was not as full as that of States, since the former could conclude treaties only within its competence. However, where the international organization did have that competence its representative had the same "full powers" as a State. His delegation therefore saw no need to distinguish between "full powers" and "powers".

19. Mr. JESUS (Cape Verde) said that the rationale for distinguishing between "full powers" and "powers" was that it had been the intention during consideration of the matter in the Sixth Committee of the General Assembly that a distinction should be made between States and international organizations. That had been taken into consideration by the International Law Commission when it made the distinction between "full powers" and "powers". If the history of the concept of "full powers" were taken into account, it could be better understood why the term was not applied to international organizations, and why the Commission wished to introduce a new concept applicable to international organizations.

20. Mr. SHIHATA (World Bank) said that subparagraphs 1 (*c*) and 1 (*c bis*) did not relate to the question of capacity to conclude treaties, but defined the documents which established the status of a representative of the State or international organization. To imply that the powers of a representative of an international organization were less than full could not be accurate. Such was not the practice of international organizations, particularly the World Bank. His delegation supported the use of a single term which was simple, accurate and defensible.

21. Mr. RAMADAN (Egypt) said that his delegation supported the use of a single term. The document emanating from an international organization designating a person or persons to represent the organization for the purposes set out in subparagraph 1 (*c bis*) was similar to the corresponding document emanating from a State. Recognizing that the capability of international organizations was not as complete as that of States, the documents concerned did not refer to the competence of the organization but to that of its employees and its other representatives. It was thus better to use one term only.

22. Mr. ABDEL RAHMAN (Sudan) said that he was in favour of retaining subparagraphs 1 (*c*) and 1 (*c bis*) as well as subparagraphs 1 (*b*) and 1 (*b bis*) for reasons which he would explain in detail when the relevant articles were discussed subsequently.

23. Mr. DALTON (United States of America) said that his country's experience as a depositary showed that in practical terms there was never a problem over the distinction between "full powers" and "powers".

24. Mr. FLEISCHHAUER (United Nations) said his delegation was not convinced of the need to distinguish between "full powers" and "powers". The question at issue was not the capacity of international organizations but the powers of officers and agents of international organizations acting as negotiators.

25. Mr. BARRETO (Portugal) reiterated his delegation's view that article 2 should be discussed in depth at the end of the meeting. If the flexible approach to subparagraphs 1 (*b*), (*b bis*), (*b ter*) suggested by the Austrian representative were developed, a similar approach should be taken in subparagraphs 1 (*c*) and (*c bis*). His delegation was in favour of having one term applying to both States and international organizations.

26. Mr. WOKALEK (Federal Republic of Germany) said that a flexible approach was required. He pointed

out that the terms "full powers" and "powers" could not be distinguished in German.

27. Mr. SATELER (Chile) said that the two terms "full powers" and "powers" should be retained for the reasons set out in paragraph (10) of the International Law Commission's commentary to article 2. Although there was no problem in practice, it was important that the differences between States and international organizations should be reflected in the terminology.

28. Mr. PISK (Czechoslovakia) said that his delegation fully supported the views in paragraph (10) of the Commission's commentary to article 2. He believed that further discussion of the matter should be reserved until consideration of article 7.

29. Mr. AL-KHASAWNEH (Jordan) said that he agreed with the Spanish representative that unnecessary distinctions of terminology should be avoided. The matter under consideration was not the capacity of international organizations to conclude treaties, but the powers of their representatives. He agreed with the World Bank and United Nations representatives that an attempt to distinguish between "full powers" and "powers" was likely to result in confusion. There would be no loss if the distinction between "full powers" and "powers" was abolished.

30. Mr. PAWLAK (Poland) said that the two schools of thought related not to substantive issues but to the philosophy underlying the draft convention. It was a matter of giving names or labels to documents produced by representatives empowered to sign treaties on behalf of States or international organizations. While the designation of the documents was not in itself important, different types of entity were being represented, and it was therefore better to follow the International Law Commission draft for the reasons set out in paragraph (10) of the commentary to article 2.

31. Mr. SCHRICKE (France) agreed with the Polish representative that the matter was less one of substance than of labels. The use of different terms had no bearing on the scope of the "powers" given to representatives or the capacity of those representatives to bind the international organizations or States that they represented. His delegation felt that the terms proposed by the International Law Commission should be retained.

32. Mr. KERROUAZ (Algeria) said that the establishment of a distinction between the powers of States and international organizations in their capacity to conclude treaties was fundamental. He asked whether the Austrian representative intended to put forward a formal proposal for merging subparagraphs 1 (*b*), (*b bis*) and (*b ter*) or whether his delegation would accept the current draft if the Committee generally favoured its retention.

33. Mr. TUERK (Austria) replied that his delegation would discuss its suggestion with other delegations before making a formal proposal.

34. Mr. RASOOL (Pakistan) said that he agreed with the Polish representative that there was a philosophical background to the arguments in favour or against retaining the distinction between "full powers" and "powers". In that connection, it was necessary to bear in mind the provisions of subparagraph 2 (*a*) of article 7 (Full powers and powers) specifying that Heads of State, Heads of Government and Ministers for Foreign Affairs were considered as having full powers "in virtue of their functions and without having to produce" any full powers in writing. That provision emphasized the distinction between the full powers of the representative of a State (which could be implied) and the powers of a person representing an international organization.

35. He suggested that the discussion on subparagraphs 1 (*c*) and 1 (*c bis*) should be postponed for the time being.

36. Mr. SZÉNÁSI (Hungary) said that there was general agreement on the need to draw a clear distinction between States and international organizations with regard to legal personality and to the capacity to conclude treaties. There was nothing in the development of contemporary international law to suggest that that distinction had been blurred in any way. The International Law Commission's draft articles had been based on that distinction, and the terminology used in the various articles was the logical consequence of that existing distinction. He urged that the distinction be maintained.

Subparagraph 1 (d)

There were no comments.

Subparagraph 1 (e)

There were no comments.

Subparagraph 1 (f)

There were no comments.

Subparagraph 1 (g)

There were no comments.

Subparagraph 1 (h)

There were no comments.

Subparagraph 1 (i)

37. Mr. JESUS (Cape Verde) said the use of the term "international organization" set forth in subparagraph 1 (*i*) was a well-established one. It was in fact identical with that in the corresponding provision of the 1969 Vienna Convention on the Law of Treaties. He reserved the right to revert to the matter, in particular when the Committee came to discuss draft article 5.

38. Mr. ECONOMIDES (Greece) pointed out that, for purposes of the draft convention now under discussion, it was not sufficient to define an "international organization" merely as an "intergovernmental organization". It was necessary to bring out also some of the essential features of such an organization. As he saw it, there were three such basic features. The first was that the organization's objectives were in the interests of its member States. The second was that the organization possessed international personality and the capacity to conclude international agreements. The third was that its international capacity was exercised by its own organs at the international plane.

39. Of those three elements, there was at least one which he felt must be included in the definition in subparagraph (*i*), namely, the capacity to conclude treaties. He suggested that the subparagraph be reworded on the following lines: " 'international organization' means an intergovernmental organization having the capacity to conclude treaties governed by international law within the meaning of the present articles."

40. Mr. RAMADAN (Egypt) remarked that the draft convention was intended to regulate the régime of the treaties to which one or more organizations were parties, not the status of international organizations.

41. That being said, it was his understanding that the expression used in subparagraph (*i*) covered intergovernmental organizations some of which included members that were not yet States.

42. Mr. ROMAN (Romania) said that his delegation was not entirely satisfied with the paragraph. It was not enough to say that an international organization was an intergovernmental organization; it was necessary to add that the organization had the capacity to conclude treaties. That would confine the scope of application of the draft convention to those organizations which had international legal personality and were subjects of international law.

43. The clarification he suggested was the more necessary in that an intergovernmental organization did not necessarily and automatically have the capacity to conclude treaties. It had to be empowered to do so by its constituent instrument or the other rules of the organization.

44. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that the definition in subparagraph (*i*) was unduly general. Greater precision was needed. As the draft convention under discussion was concerned with the treaties of international organizations, that definition must include the essential element of the capacity of international organizations to conclude international treaties. In any case, the problem of the definition of an international organization would have to be explored further when the Committee discussed draft articles, in particular articles 5 and 6.

45. Mr. VOGHEL (Canada) supported the Greek and Romanian representatives' suggestion that the definition should include a reference to the capacity to conclude treaties.

46. Mr. ULLRICH (German Democratic Republic) agreed with the comments of the representatives of Greece, Romania and the Ukrainian SSR. For the purposes of the draft convention under discussion, only intergovernmental organizations with the capacity to conclude treaties in accordance with their constituent instruments could be taken into account.

47. Mr. ALMODÓVAR (Cuba) said that although the definition was to be found in both the 1969 Vienna Convention on the Law of Treaties and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, he endorsed the suggestions by the representatives of Greece, Romania and the Ukrainian SSR.

48. Mr. WALDEN (Israel) said that his delegation saw no particular point in trying to amend the perfectly satisfactory definition provided by the International Law Commission. He reserved his further comments until a later stage.

49. Mr. JESUS (Cape Verde) said that the purpose of the paragraph under discussion was to define the limits of application of the draft articles and to specify which international organizations were to be taken into consideration for purposes of the draft convention under discussion. Paragraph (19) of the International Law Commission's commentary indicated that three types of organizations could fall within the scope of the draft articles. The first was that of international organizations consisting exclusively of States. The second was that of organizations which, in addition to States, counted one or more other international organizations as members. The third category was that of organizations whose membership consisted exclusively of other international organizations. The question therefore arose whether all three categories were to be covered. The Commission appeared to have worked on the assumption that only the first category—i.e., that of organizations consisting entirely of States—was covered by the articles.

50. In the circumstances, it seemed to him dangerous to try to frame a different definition of an international organization. Such an exercise would affect a great many articles of the draft. It was desirable to retain the definition formulated by the International Law Commission.

51. Mr. ROCHE (Food and Agriculture Organization of the United Nations) said that the International Law Commission's commentary appeared to indicate that the definition in subparagraph (*i*) included the three categories mentioned by the previous speaker.

52. The wording of subparagraph (*i*) was not self-explanatory for purposes of future negotiations. As regards the treaty-making capacity of international organizations, to which some representatives had referred, he reserved his organization's position until the Committee examined draft article 6.

53. Mr. TREVES (Italy) said that the wording of subparagraph (*i*), which was identical with the corresponding provision of the 1969 Vienna Convention, was intended to distinguish between intergovernmental organizations and non-governmental organizations; it did not exclude international organizations whose membership included other organizations.

54. The inclusion of a reference to the capacity to conclude treaties would introduce a controversial legal point into the definition. The question of the capacity to conclude treaties should be left to the internal law of the organization concerned and to general international law. He reserved his right to revert to the matter during the discussion of draft article 6.

55. Mr. MONNIER (Switzerland) agreed that it would serve no useful purpose to include a reference to the question of the capacity to conclude treaties. That question would be discussed in connection with later articles, in particular articles 5 and 6.

56. Mr. ZANNAD (Tunisia) supported the view that it would be unproductive to go into the substance of the question of the capacity to conclude treaties at the present stage.

57. Mr. RASOOL (Pakistan) reserved his right to revert to the question when the Committee considered article 6.

58. Mrs. THAKORE (India) asked the Greek and Canadian representatives whether an international organization whose constituent instrument was silent on the question of concluding treaties would not be regarded as an "international organization" for the purposes of the draft articles if a reference to the capacity to conclude treaties was introduced.

59. Mr. SHIHATA (World Bank) welcomed those comments. The constituent instruments of most international organizations did not contain explicit provisions on the capacity to conclude treaties. That was true of many organizations which had concluded a large number of treaties. The inclusion in the present definition of any reference to the capacity of an organization to conclude treaties would have the effect of restricting the application of the draft articles to a very small number of organizations.

60. Mr. KOECK (Holy See) doubted the wisdom of attempting a more detailed definition of an "international organization". In the first place, the draft articles were not intended to deal with international organizations as such but rather with the treaties concluded by them. There was therefore no need for an exhaustive definition of an international organization, a concept which was well known in international doctrine and practice.

61. Moreover, the insertion of the phrase "having the capacity to conclude treaties", as suggested by the representative of Greece, would in some way prejudice article 6, which dealt with the capacity of international organizations to conclude treaties and covered adequately the problem under discussion.

62. Mr. SZÉNÁSI (Hungary) agreed that the Committee was not called upon to draw up an exhaustive definition of an international organization but thought that the terms of subparagraph (*i*) should be made more precise. He associated himself with the Greek representative's suggestion.

63. Mr. ECONOMIDES (Greece), replying to the Indian representative's question, drew attention to the definition of "treaty" in subparagraph 1 (*a*) of article 2. Subparagraph 1 (*i*) had to be construed in the light of that paragraph. The reference to an intergovernmental organization was clearly intended to apply only to those organizations with the capacity to conclude treaties.

64. Mr. ABDEL RAHMAN (Sudan) believed that a restrictive definition would be undesirable. The elastic definition in the International Law Commission's text of subparagraph 1 (*i*) should be retained.

Subparagraph 1 (j)

65. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that his delegation would address itself in detail to the provision in subparagraph (*j*), which in its view required further clarification, at a later stage.

66. Mr. TUERK (Austria) said that it would certainly be undesirable to freeze practice—which obviously played an important role in the activities of international organizations, including treaty-making activities—at any point in time, for example at the moment of entry into force of the projected convention. He was not altogether convinced by the argument put forward by the International Law Commission to justify the use of the adjective "established", especially its reference to the ruling out of disputed practice. That seemed to be another issue altogether. Nor would it be easy to determine when the practice of newly created organizations could be considered "established". For those reasons, he favoured the deletion of the adjective from the draft.

67. On the other hand, and although he also had doubts as to its utility, he could agree to maintenance of the qualification "relevant" in connection with "decisions and resolutions", and would merely suggest that it be applied to "practices" as well.

68. Mr. ECONOMIDES (Greece) observed that although "relevant rules" were mentioned in several of the draft articles before the Committee, nowhere was the term "relevant" defined. With the aim of making good that deficiency and avoiding possible misconceptions, his delegation had circulated a proposal (A/CONF.129/C.1/L.1), in accordance with which subparagraph 1 (*j*) would be amended by the addition of the following sentence:

> " 'relevant rules' means those rules of the organization that are applicable within the scope of the articles containing this term".

69. Mr. ULLRICH (German Democratic Republic) said that although the draft convention tabled by the International Law Commission provided a solid foundation for negotiations, the text required some revision, particularly in so far as a clear distinction between States and the status of international organizations was to be made.

70. It was indefensible to accord international intergovernmental organizations the same status as States. While the latter, by virtue of their sovereignty, were full subjects of international law, the former were only subjects of international law derived from States, their special status being determined by their member States. His delegation considered that to be the basic or key issue facing participants in the Conference in their codification work.

71. Since the term "rules of the organization" in the subsequent articles of the draft convention was of far-reaching substantive significance, it could not be considered in separation from its definition, as set out in subparagraph (*j*). The delegation of the German Democratic Republic could not accept the definition as drafted, and had submitted a proposal for amendment, which had unfortunately not yet been circulated.[2]

72. In the view of his delegation, the definition of "rules of the organization" constituted the core of arti-

[2] Subsequently circulated as document A/CONF.129/C.1/L.2.

cle 2 and was of essential importance for the further use of the term, which, throughout the text of the convention, concerned both the legal status of the contractual relations between States and international organizations and the relationship between the contractual rights and obligations of international organizations and those of their member States.

73. It was the legal consequences of the use of the term that made it necessary to exercise a great deal of care where the definition itself was concerned. In that connection, it should be borne in mind that the draft before the Committee dealt not only with universal organizations but also with a great number of regional organizations. There could be no doubt that, as regards the latter, the consent of all States concerned was required for adopting or amending the rules of the organization. However, the proposed draft did not take due account of that.

74. In his delegation's view, it was the task of the Conference to obtain a clarification concerning the conditions under which an international organization was entitled or qualified to conclude treaties under international law. The present definition did not meet that requirement to the necessary extent. In particular, the terms "resolutions" and "practice" were employed in the draft convention separately from the constituent instruments of a given organization. It was the view of his delegation that the constituent instruments of an organization were (or legally binding acts equal to them under certain preconditions could be) the decisive criteria for judging an international organization as having capacity and competence to conclude treaties. In his delegation's opinion, the practice of an organization could be used as a criterion only in so far as that practice was in accordance with the constituent instruments.

75. Those reflections had been taken into account by the amendment submitted by his delegation. He hoped it would receive the Committee's support.

76. Mr. FLEISCHHAUER (United Nations) concurred with the Austrian representative that the adjective "established" might be deleted; its maintenance could have the effect of preventing the further development of organizations' treaty-making practice and inhibit adaptation to future needs.

77. Mr. BERNAL (Mexico) also believed that the term "rules" required further clarification, since it might appear not to encompass provisions at the highest level of the international organizations' "internal law". It might indeed be preferable to replace the term by one more appropriate, such as "norms".

78. His delegation understood the term "practice" to signify practice backed up by *opinio juris*, and not merely precedents suddenly invoked in deciding a particular case.

79. Lastly, in view of the fact that international organizations had varied structures, and in some cases incorporated organs that were virtually autonomous, he believed that the provision might indicate that, where appropriate, the rules referred to were those of the organs as well.

80. Mr. EHLERMANN (European Economic Community) said that it was important to ensure that any definition covered all the legally relevant rules. That was especially true in the case of the Community, whose rules included, *inter alia*, decisions of the European Court of Justice, which had made a major contribution to its treaty-making powers. The matter, including the use in later articles of the adjective "relevant", obviously required the most careful consideration.

81. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) observed that the term under discussion had a special bearing on the determination of the capacity of international organizations to conclude treaties (article 6), and concurred with the German Democratic Republic representative that further clarification was called for. His delegation would address itself in detail to the subject in due course.

82. Mr. JESUS (Cape Verde), invoking rule 29 of the rules of procedure, declined to comment in detail on the proposal by the Greek delegation.

83. Recapitulating the reasoning which had led the International Law Commission to draft the proposal under consideration, he described as wise the decision to derive both a precedent and an *ipsis verbis* text from the Convention on the Representation of States in their Relations with International Organizations, although that instrument was not in force. He could not agree with those speakers who had advocated the deletion of the adjective "established", which figured prominently and significantly in United Nations usage. He further believed that the concern expressed by the representative of the European Economic Community was covered by the qualification "relevant" applied to the resolutions and decisions referred to. There could be little difficulty in determining that a decision by the European Court of Justice amounted to a decision by the Community.

84. For those reasons, and in the absence of any better alternative, he favoured acceptance of the text prepared by the International Law Commission.

85. Mr. ROMAN (Romania) agreed with other speakers that the provision under consideration required further clarification and amplification. He stressed in particular that the practice referred to must itself be based on the rules or constituent instruments of the organization or arise from its decisions and resolutions.

86. Mr. ABDEL RAHMAN (Sudan) said that since form, structure, powers and functions, together with the amount, extent and significance of practice, varied greatly from organization to organization, some measure of qualification seemed desirable where the reference to the latter was concerned. He consequently favoured maintenance of the word "established". More generally, he considered that subparagraph (*j*) reflected the veracity that should be the objective of the convention.

87. Mr. MONNIER (Switzerland) noted that the International Law Commission had opted for a descriptive, enumerative approach in its definition, rather than one of synthesis or generalization. However, although the term "decisions and resolutions" might indeed correspond exactly with the technical designations of actions taken by the more important international or-

ganizations, there were other actions taken by many other organizations that could not, technically, be described as such. He consequently wondered whether in a multilateral convention of the type envisaged, it might not be wiser to seek a more comprehensive formulation, such as "precepts established by", which the International Law Commission had itself employed in its commentary; the term "decision" might also be used, provided that it was taken to signify the expression of the will of the organization in question.

88. Concerning the adjective "relevant", he said that while such a qualification was perfectly apposite in the articles dealing with specifics (articles 5 and 6, for example), it seemed to have no significance in the provision under consideration. He favoured its deletion.

89. He agreed with the Austrian and the United Nations representatives that it would be useful to delete the adjective "established". Organizations did, or did not, have practice. To seek to determine whether such practice was "established" might lead to difficulties.

90. Finally, he suggested that if the rules of an organization were to be quite comprehensively defined as its constituent instruments, decisions and practice, the qualification "in particular" would be unnecessary.

91. Mr. SCHRICKE (France) said that his remarks would be of a preliminary nature. Those who had participated in the drafting of the Convention on the Representation of States would recall that the definition reproduced therefrom had been proposed by the delegation of his country, and adopted unanimously. Obviously, therefore, he favoured the text submitted by the International Law Commission and—although he could consider further improvements—would oppose any proposals that deformed its intended scope. Thus, he could not countenance deletion of the adjective "relevant". As the Special Rapporteur had told the Commission, the adjective was indispensable for ensuring that only those decisions and resolutions would be considered which had legal consequences and as such formed part of the organization's "internal law". Nor could he accept deletion of the adjective "established" which, since practice could indeed be hesitant, confused or disputed, offered a necessary legal safeguard.

92. The CHAIRMAN said that since the present discussion was of a preliminary nature, and in the absence of any objections, he proposed to invoke the provisions of the final sentence of rule 29 of the Rules of Procedure concerning the consideration of amendments.

The meeting rose at 1.05 p.m.

3rd meeting

Thursday, 20 February 1986, at 4 p.m.

Chairman: Mr. SHASH (Egypt)

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 2 (Use of terms) (*continued*)

Subparagraph 1 (j) (continued)

1. Mr. AENA (Iraq) said that subparagraph (*j*) needed to be simpler and clearer. It should not go into unnecessary details which might cause problems concerning the legal personality of an international organization or its status as a subject of international law. The word "international" might be inserted before the word "organization" in order to make the meaning clearer, but he had doubts about any wording which appeared to put decisions and resolutions on the same footing as constituent instruments. The proposal by the Byelorussian Soviet Socialist Republic, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.2) had merits, but the phrase "legally binding instruments based on them" might unduly limit the functions and rules of procedure of international organizations. The original approach was much broader.

2. Mr. RASOOL (Pakistan) asked the Expert Consultant what the Commission had understood by the term "decision". Since it preceded the word "resolutions", which were usually adopted by the political organ of an international organization, his delegation had assumed that it too referred to an act of the political organ, but some speakers had indicated that it might include a decision by the judicial organ of an international organization. The wording proposed in the five-Power amendment might have a very limiting effect, since it did not take into account the practice of the United Nations, whose political organ had made decisions and passed rsolutions on certain international agreements.

3. He could accept the amendment proposed by Greece (A/CONF.129/C.1/L.1).

4. Mr. ALBANESE (Council of Europe) said that his organization favoured a very general provision in view of the variety of situations obtaining in international organizations. In the case of the Council of Europe, regard must be had not only to its Statute, which was not very explicit on the subject of treaty-making, but also to the decisions of the Committee of Ministers, which were not always couched in the form of resolu-