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

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6th meeting of the Committee of the Whole

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70. The article was based on existing practice. Moreover, the proposed convention should make provision for future developments. The article should be retained with an eye to the future, although some redrafting might be desirable.

71. Mr. REUTER (Expert Consultant), answering questions raised during the discussion, said that the States Parties to the 1969 Vienna Convention had included article 5 in the Convention for various reasons. One had been the fact that all the international organizations without exception, and in particular those of the United Nations family, had expressed a very strong feeling that the Convention must take into account the "relevant rules of the organization" and not depart from them.

72. There was another reason for the inclusion of article 5 in the 1969 Vienna Convention. An international organization was constituted by a treaty concluded by States. The constituent instruments of international organzations were special treaties that could not be affected by a general treaty. In that connection, he wished to draw attention to article 34 (General rule regarding third States) of the 1969 Convention, which specified that a treaty did not create either obligations or rights for a third State without its consent. It was of the essence of an international treaty that its effect was relative and that it could bind only the parties. In adopting article 5 of that Convention, the States Parties had had in mind that fundamental rule of treaty law, and had not wished to affect treaties already concluded.

73. A second question was that of the manner in which the provisions of the future convention would become applicable to international organizations. Was there in fact any means—possibly indirect means—whereby such provisions could be made to enter into the practice of international organizations? The question had been raised whether those provisions might not become applicable by some direct means, and, in that connection, the French representative had enquired whether the Conference was not attempting to draw up imperative rules. His answer was that the proposed convention would, if adopted, be a treaty like any other. As such, it would only be binding on an international organization if the organization became a party to it. The International Law Commission had not envisaged any derogation to the rule in article 34 of the 1969 Vienna Convention whereby a treaty did not create either obligations or rights for third parties.

74. Mr. JESUS (Cape Verde) suggested that the decision on article 5 should be deferred to enable him to find common ground with certain other delegations. After those consultations, he hoped it would be possible to put forward a generally acceptable suggestion for the amendment of the article and adjustment of the definition of "international organization" in article 2.

The meeting rose at 12.58 p.m.

6th meeting

Monday, 24 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)

[Item 11] (*continued*)

Article 5 (Treaties constituting international organizations and treaties adopted within an international organization) (*continued*)

1. The CHAIRMAN said that a new proposal had been submitted by Cape Verde for article 5 A/CONF.129/C.1/L.21). He suggested that the Committee should postpone a decision on the article until it had considered the proposal.

It was so decided.

Article 6 (Capacity of international organizations to conclude treaties)

2. Mr. TUERK (Asutria), introducing his amendment (A/CONF.129/C.1/L.3), said that his delegation's problem with the wording proposed by the International Law Commission was that it referred only to the capacity of international organizations to conclude treaties. It was important not to overlook cases in which States might become parties to the new convention but not to the 1969 Vienna Convention on the Law of Treaties, article 6 of which stated that "Every State possesses capacity to conclude treaties".[1] There was good reason to incorporate an identical provision in the draft convention in order to ensure the closest possible correlation between the two texts, particularly in view of the fact that other paragraphs of the draft referred separately to States and to international organizations.

[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.

3. Mr. BERNAL (Mexico), introducing his amendment (A/CONF.129/C.1/L.7), said that it was a corollary to his delegation's proposal for article 2, subparagraph 1 (*j*) (A/CONF.129/C.1/L.6). The final wording of article 6 would largely depend on the form taken by the definition of the term "rules of the organization" in that article. The amendment to article 6 was based on two premises: first, that the question of the legal personality of international organizations was not an issue for consideration at the Conference; and secondly, that while the treaty-making capacity of an international organization was a general rule of international law, its exercise was subject to the restrictions expressed in its constituent instrument. It would be seen that the amendment left aside theoretical issues such as the legal personality of international organizations, which the Commission had discussed at length. The principal objective of the amemdment was to eliminate certain ambiguities in the language.

4. His delegation was open to suggestions and changes that would clarify the difficult problem of the capacity of international organizations.

5. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that article 6 was a key element in the draft convention. In view of the primary importance of the question of the capacity of international organizations to conclude treaties, and owing to the specificity of the character of that capacity, article 6 should have been formulated more precisely. However, his delegation could accept the Commission's wording for it on the understanding that an international organization had the capacity to conclude treaties to the extent necessary for implementing the purposes and functions provided for in its constituent instrument.

6. That interpretation of the capacity of an international organization followed from article 6, which referred to the rules of the organization, among which the constituent instrument was paramount. That instrument defined the purposes and functions of the organization and outlined the framework of its competence, on the basis of which the extent and specificity of the capacity of the organization to conclude treaties could be defined.

7. An analysis of the constituent instruments of organizations such as the United Nations, the International Monetary Fund, the United Nations Industrial Development Organization, the Council for Mutual Economic Assistance and many others showed convincingly that their capacity to conclude treaties was determined by the functions and purposes set out in those instruments. The draft convention was called on to regulate the procedures governing the concluding of treaties the parties to which were both States—principal subjects of international law with a universal capacity to conclude treaties—and international organizations, with their special capacity in that regard. It would therefore be appropriate for article 6 to define the treaty capacity of both States and international organizations. That seemed to be the intention of the Austrian amendment, which his delegation could support. The Mexican amendment aimed at providing a clearer definition of the capacity of an international organization to conclude treaties, taking into account the differences between the capacity enjoyed by international organizations and that of States, but it presented certain difficulties for his delegation and could be improved.

8. Although his delegation had no major objections to the existing wording of article 6, in the light of the interpretation of subparagraph 1 (*j*) of article 2 rendered in the amendment proposed 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), it still favoured a more concrete delineation of the capacity of international organizations to conclude treaties, taking into consideration the specific character of such capacity.

9. Mr. ECONOMIDES (Greece) said that article 6 seemed incomplete: it referred to the relevant rules of the organization but did not deal with the case in which they were silent on the question of capacity to conclude treaties, as often happened in practice. Was it to be concluded that the international organization was denied that capacity? Or, if it had already concluded treaties, were those treaties invalid because the organization did not have the right under the relevant rules to conclude them?

10. In his delegation's view, when the relevant rules were silent on the capacity to conclude treaties, reference must be made to general international law; accordingly, any organization, once it had been endowed with international personality, had an automatic right to conclude traties provided those treaties conformed to the aims and functions of that organization. It was therefore regrettable that article 6 did not contain a reference to the general rules of international law.

11. His delegation could not accept the wording proposed by Mexico, which was even more restrictive than the existing text of article 6. It could agree to the Austrian amendment, but felt that its inclusion in the article was not really necessary.

12. Mr. ROMAN (Romania) said that article 6 was acceptable to his delegation but its wording was not ideal. Romania could not subscribe to the view that international law laid down the principle of an organization's capacity to conclude treaties as an ordinary law rule which could only be modified by express restrictive provisions of constituent instruments. On the contrary, an international organization's capacity to conclude treaties depended solely on the organization's rules. He agreed with the International Law Commission that every organization had its distinctive legal image, which was recognizable in an individual form of capacity. Accordingly, each organization's contractual capacity was the one conferred upon it by its member States, not by general international law.

13. The aim of the Commission's wording was to leave aside the question of the status of international organizations in international law. That approach, however, had not yielded the clarity which the provision needed. The reference to "rules" of the organization did not offer a solution to the problem without a satisfactory definition of that term in article 2. There were thus two options open to the Conference: the first was to define the term "rules of the organization" in the

manner proposed in document A/CONF.129/C.1/L.2; the second was to introduce elements of the definition into article 6 so as to explain what form of capacity was intended.

14. His delegation welcomed the Austrian amendment on the ground that it was appropriate to reiterate the rule, stated in the 1969 Vienna Convention, that every State possessed the capacity to conclude treaties. That was particularly so in view of the need to draw a distinction between the legal capacity of a State and that of an international organization.

15. Mr. PISK (Czechoslovakia) said that article 6 was one of the key articles in the present work of codification. His delegation found the Commission's wording acceptable. In deciding on it, the Commission had recognized that every organization had its own legal image, which was reflected in its individualized capacity to conclude treaties. The constituent instruments of perhaps the majority of international organizations did not have a provision covering capacity to conclude treaties, but the treaty practice of the organization, based on the tacit agreement of its member States, could be regarded as complementary to the constituent instrument. The treaties thus concluded, however, must not conflict with the constituent instruments of the organization or with the fundamental principles of international law, including those enshrined in the Charter of the United Nations.

16. While his delegation could support the Austrian amendment, it believed that the restatement of the rule expressed in article 6 of the 1969 Convention was unnecessary and that the draft article should concentrate on the case of international organizations. The Mexican proposal correctly emphasized constituent instruments but ignored the capacity of international organizations to conclude treaties with subjects of international law other than States and international organizations. Although his delegation could accept the article either as it stood or with the Austrian amendment, it believed that the wording would ultimately depend on the definition of the term "rules of the organization" in article 2.

17. Mr. ULLRICH (German Democratic Republic) said that his delegation would have no objection to the present wording of article 6 or the wording proposed by Mexico if article 2 was amended to contain an acceptable definition of the term "rules of the organization". His and four other delegations had made a proposal to that effect (A/CONF.129/C.1/L.2), and the discussion on article 6 showed that the idea underlying the proposal enjoyed considerable support.

18. The wording of subparagraph 1 (*j*) of article 2 proposed by the International Law Commission was borrowed verbatim from article 1, paragraph (34), of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.[2]

19. The capacity of an international organization to conclude treaties was related to its status under international law and was therefore to be derived from its constituent instruments. It was therefore insufficient to define "rules of the organization" by the formula used in the 1975 Convention, which related merely to relations between States and universal organizations. When the question of the status of international organizations had been discussed at the Conference which had adopted the 1975 Convention, it had been pointed out that the draft submitted by the International Law Commission contained no provision in that regard. The Conference had accepted the Commission's view that the definition of an international organization might give rise to theoretical questions concerning its personality and capacity. It had therefore confined itself to the formula used in article 1, paragraph (34) of the 1975 Convention, which was the one which appeared in article 2, paragraph 1 (*j*) of the present draft.

20. The proposal in document A/CONF.129/C.1/L.2 took up the three elements contained in article 2 but emphasized the dominant position of the constituent instruments. The other two elements, legally binding acts and practice, could only be recognized as rules of the organization if they were based on the constituent instruments. Since the term "rules of the organization" occurred throughout the draft and was therefore a corner-stone of the proposed convention, its definition must be formulated with great caution.

21. Mr. WANG Houli (China) approved the addition to article 6 proposed by Austria. His delegation could also support the Mexican proposal, since it emphasized the role of the constituent instruments of international organizations. The basic question, however, was the definition of the term "rules of the organization" offerred by article 2. He could therefore accept either of the solutions proposed by the Romanian delegation.

22. Mrs. DIAGO (Cuba) said that article 6 was of special importance. Her delegation found the Austrian proposal acceptable as a useful supplement to the International Law Commission's text. The most important point, however, was that the content of article 6 should be in keeping with the definition of the term "rules of the organization" in article 2. The decision on article 6 must therefore await agreement on the wording of that definition.

23. Mrs. VLASOVA (Byelorussian Soviet Socialist Republic) endorsed the view that the effectiveness of the Committee's work on article 6 depended on speedy agreement on the wording of article 2, subparagraph 1 (*j*). She believed that a basis for that could be found in the proposal in document A/CONF.129/C.1/L.2; it retained the principle underlying the definition of the term "rules of the organization" proposed by the International Law Commission, left unchanged the sources which together constituted those rules, and contained the reference needed for a proper correlation with international treaty-making.

24. The overriding importance of the norms of constituent instruments was a universally recognized principle of international law and should be enshrined in the proposed convention. Some representatives had objected to the expression "legally binding instruments" in the proposal; its purpose was to emphasize,

[2] See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), p. 207.

among a large number of documents, those which were of legally binding character. That was justified, since the documents which determined the rules of an organization must necessarily be legally binding on all its members and organs. The adoption of the proposal would greatly simplify the problem of determining the source of international treaty-making capacity. Because of the direct correlation between article 6 and article 2, subparagraph 1 (*j*), the Conference must harmonize its decisions on those two provisions. If the proposal in document A/CONF.129/C.1/L.2 was adopted, her delegation would be able to support the wording of article 6 proposed by the International Law Commission.

25. Mr. LI BAE HYON (Democratic People's Republic of Korea) said that, provided agreement was reached on a suitable definition of the term "rules of the organization" in article 2, the legal basis of the capacity of international organizations to conclude treaties would be well expressed by the present wording of article 6. However, he found the use of the term "relevant" confusing, and suggested that, for the sake of clarity and consistency, the expression "rules of the organization" should be used throughout the draft articles.

26. Mrs. THAKORE (India) said that article 6 was of fundamental importance. Its aim was to indicate, for the sole purposes of the legal régime governing treaties to which international organizations were parties, the rules by which treaty-making capacity was to be assessed. Since international organizations could not be subjected to a uniform rule and confined within an unduly rigid framework which might hamper their future activities, the draft article provided that such capacity should be governed by the "relevant rules" of the organization, which included, according to article 2, subparagraph 1 (*j*), the organization's constituent instruments and established practice. The addition of the adjective "relevant" made it clear that article 6 concerned only those rules which were relevant in determining the question of the treaty-making capacity of the international organization.

27. The Commission's wording was flexible and also neutral, in the sense that it did not prejudge the various doctrines concerning the basis of the capacity of international organizations to conclude treaties. It took full account of the advisory opinion of the International Court of Justice, handed down in 1949, in the matter of Reparation for injuries suffered in the service of the United Nations[3] to the effect that whereas a State possessed the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the United Nations must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.

28. The wording of article 6 was the result of a compromise between the conflicting points of view that had been expressed both in the International Law Commission and in the comments of Governments. Her delegation found it fully acceptable, since it respected the faculty of international organizations to develop a practice, a matter to which they attached great importance.

29. Her delegation had no strong views on the Austrian amendment and could accept it if it commanded general support. It could not, however, accept the Mexican proposal because of its restrictive formulation.

30. Mr. FOROUTAN (Islamic Republic of Iran) said that the International Law Commission's approach to article 6—that the capacity of an organization to conclude treaties was defined solely by the rules of that organization—was unsatisfactory. What would happen in cases where the rules of an organization did not give it that capacity? It seemed that the Commission had found it very difficult to resolve the issue and had therefore confined itself to proposing an article which avoided it. The Austrian proposal added an unnecessary paragraph which would only weaken the force of article 6. He agreed with the representative of Greece that the wording proposed by Mexico was more restrictive than the Commission's draft.

31. Mr. DALTON (United States of America) said that his delegation would not object to the Austrian amendment, although it found it unnecessary. The Mexican proposal, on the other hand, risked complicating the article, as well as the life of international organizations and those required to deal with them in the future. A decision on article 2, subparagraph 1 (*j*), would affect article 6, but the matter should be settled in the light of several articles, not of article 6 alone, at the end of the consideration of the draft articles.

32. Mr. BARRETO (Portugal), referring to the Austrian amendment, said that the draft convention was not a mere protocol to the 1969 Vienna Convention, and therefore the capacity of States to conclude treaties should be defined in the new instrument as well. In the future a State might be a party to the convention under discussion but not to the earlier one, and might then seek in the former a provision governing the capacity of States to conclude treaties. The Austrian amendment should therefore be adopted. His delegation felt considerable sympathy for the Mexican proposal, in so far as it sought to provide precise rules on the capacity of international organizations to conclude treaties. However, the wording of the proposal was closely connected with the one in document A/CONF.129/C.1/L.2 for article 2, subparagraph 1 (*j*), and therefore its effect was still uncertain. It was clear that the rules of the organization must determine the capacity of an international organization to conclude treaties, but did those rules consist only of the constituent instruments or include elements such as practice too? Because of those doubts, his delegation preferred the International Law Commission's text. But the word "relevant" might cause difficulties; either it should be removed or the notion it conveyed should be made more precise. That was probably a matter for the Drafting Committee.

33. Mr. ANGHEL (United Nations Council for Namibia) said that, if the Conference approved the addition proposed by Austria to article 6, the article would become an exhaustive list of subjects of international law whose capacity to conclude international treaties

[3] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p. 174.

was recognized, but one which omitted the United Nations Council for Namibia. He therefore proposed that, in order to make the Council's position clear, the article should also contain, after the paragraph proposed by Austria, a paragraph stating that the United Nations Council for Namibia possessed the capacity to conclude treaties in accordance with the relevant resolutions and decisions of the General Assembly.

34. Mr. WOKALEK (Federal Republic of Germany) observed that article 6 merely reflected international practice. The point about the competence of an international organization being derived from its purposes and functions was already covered under the expression "rules of that organization" and therefore need not be specified. However, he agreed that article 6 must be read in conjunction with article 2, subparagraph 1 (*j*). When the problem of drafting the latter had been solved, the problem of article 6 would be solved also. But a further question might arise in connection with the settlement of disputes, namely, who could define whether an act of an organization was within the scope of its rules or not? Such a matter could not be easily determined from outside the organization.

35. His delegation regarded the Mexican proposal as imposing an unnecessary limitation on the capacity of an international organization. As far as the addition proposed by Austria was concerned, paragraph (7) of the Commission's commentary to the article (see A/CONF.129/4) seemed to make it unnecessary, but his delegation was flexible on the matter.

36. Mr. CRUZ FABRES (Chile) said that there was a difference in legal status between States and organizations. He therefore supported the Austrian proposal, which would make the matter plain by spelling out the difference in separate paragraphs. It was important also that the draft should make it clear that the term "relevant rules" referred to the constituent instrument rather than the practice of international organizations. The practice of an international organization could not exceed the terms of its constituent instrument, and that instrument could never be modified by practice.

37. Mr. GÜNEY (Turkey) also supported the Austrian amendment, which was useful as a reminder. If it was accepted, the title of article 6 should be altered to read: "Capacity of States and international organizations to conclude treaties". He did not think that the Mexican proposal would be an improvement on the existing text.

38. Mr. HARDY (European Economic Community) said that at present the conclusion of treaties by international organizations was an established fact. The Commission had wisely not considered it necessary to determine either the foundation of their capacity to conclude treaties or the limits of that capacity. It had left the question to be decided in accordance with the meaning of the words "rules of that organization". The word "governed" was the key word in its draft of article 6. Those rules should be defined in article 2, subparagraph 1 (*j*), in a wide and flexible way. The need for that could be illustrated from the practice of the European Community. The European Coal and Steel and Atomic Energy Communities had general treaty-making powers in their constituent instruments. The European Economic Community had treaty-making powers in specific articles of its constituent instrument. The Court of Justice of the European Communities had adopted a series of decisions on the subject; the principle underlying them was that the competence of the Communities exercised internally brought about an external competence. Those principles were based on deductions made from the constituent instruments, as well as on provisions which those instruments contained.

39. The Commission's text of article 6 was satisfactory. The wording proposed by Mexico was too restrictive, and its use of the expression "other rules" was not clear.

40. Mr. JESUS (Cape Verde) observed that the right of sovereign States to enter into treaties was an essential attribute of their sovereignty, whether it was stated in a legal instrument or not. Article 6 of the Vienna Convention on the Law of Treaties merely recorded a rule of customary international law. Accordingly, the Commission, in drafting the corresponding article 6, had omitted to mention the capacity of States. The Austrian amendment proposed to repair that omission in order to retain the parallelism between the draft articles and the 1969 Convention. It was unnecessary, but his delegation could accept it. He assumed that the intention of the term "relevant rules" was to echo the definition in article 2, subparagraph 1 (*j*). If so, the word "relevant" should be deleted so that article 6 correctly reflected that definition.

41. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that the Commission's formulation of article 6 was an accurate reflection of the characteristics of an international organization's treaty-making capacity. Only an intergovernmental organization had the right to conclude treaties, and that right derived from its rules. The attitude of many Governments towards article 6 would be determined by the formulation adopted for article 2, subparagraph 1 (*j*). The proposal for that subparagraph in document A/CONF.129/C.1/L.2 was clearer than the Commission's definition, since it referred to legally binding instruments and practice based on the organization's constituent instruments. If that proposal was adopted, article 6 could be approved as formulated by the Commission, provided that the word "relevant" was deleted from it in order to bring it into line with the new definition.

42. His delegation had no objection to the Austrian amendment. He asked himself what the consequences would be if an international organization concluded a treaty in violation of its constituent instrument. There was no provision about such a contingency in the draft articles, but the Conference should consider the possibility of inserting one and the place it might occupy among the articles.

43. Mr. MONNIER (Switzerland) referred to the statement in paragraph (2) of the Commission's commentary that article 6 indicated by what rules the capacity of international organizations to conclude treaties should be assessed. In the event of the rules of an international organization providing no clear indi-

cation in that respect, their silence or lack of clarity should not be interpreted as depriving the organization of that capacity. In such cases, when treaty-making was appropriate for the implementation of the purposes for which the international organization had been set up, its capacity to conclude treaties would derive from the powers which international organizations implicitly possessed under international law to discharge their functions. Considerable practice bore witness to the truth of that proposition. His delegation could not accept the Mexican proposal and would support the existing text of article 6.

44. Mr. RAMADAN (Egypt) said that the treaty-making capacity of international organizations flowed from international law and from the purposes for which they had been established. That capacity need not be expressly mentioned in the constituent instrument, but States could withhold it from an organization of which they were members or could determine it on a case by case basis. His delegation approved the existing wording of article 6.

45. Mrs. OLIVEROS (Argentina) said that the Commission's text of article 6 was clear, but depended on the definition to be given in article 2, subparagraph 1 (*j*). The word "relevant" should be deleted. Her delegation could support the Austrian amendment; it was not redundant to devote a paragraph to the treaty-making capacity of States, since the draft articles were not an appendage to the Vienna Convention on the Law of Treaties and a State might be a party to one convention and not the other. If the Austrian amendment was adopted, the title of article 6 should be amended to read: "Capacity of the parties to conclude treaties". The term "party" was defined in article 2, subparagraph 1 (*g*).

46. Mr. CASTROVIEJO (Spain) said that, in settling the discussion between those who thought that the capacity of international organizations to conclude treaties derived from general international law and those who thought that it derived solely from the will of States as expressed in the constituent instruments, the Commission's draft article constituted a judgement of Solomon. Although it did not completely satisfy his delegation, it was perhaps the best wording to adopt and had the merit of being short and clear. He understood the word "relevant" to refer to the contents of article 2, subparagraph 1 (*j*). Any other explanation would raise the question whether practice was a source of the rules from which capacity to conclude treaties flowed.

47. He did not consider that the Austrian amendment simplified or clarified the text. The Mexican proposal sought to draft the article in more restrictive terms, thus imposing a measure of inflexibility on its interpretation which would hamper the development of international practice and tend to confuse the distinction between States and international organizations in the matter of treaty-making.

48. Mr. RODRÍGUEZ CEDEÑO (Venezuela) said that international organizations had treaty-making capacity both as subjects of international law and by virtue of their rules, which constituted an expression of the will of the States establishing them. That did not preclude recognition of an implicit competence exercised in pursuance of the purposes of the international organization as set out in its constituent instrument.

49. The Commission's draft of article 6 was incomplete, and the Mexican proposal sought to remedy that defect by basing it on the general rules on treaty-making capacity laid down in the 1969 Vienna Convention. However, the wording proposed by Mexico would expressly deny the capacity of international organizations to conclude treaties with subjects of international law other than States or international organizations and limit their competence to what was in their rules and to the powers implicitly conferred on them by international law. If the Mexican proposal was amended to cover those points, his delegation would find it acceptable.

50. Mr. KERROUAZ (Algeria) said that the Commission's proposal for article 6 was acceptable but must be read in conjunction with article 2, subparagraph 1 (*j*). The Drafting Committee should ensure that the definition of the term "rules of the organization" in article 2 was intelligible. The Austrian amendment was redundant, since the capacity of States to conclude treaties was an attribute of State sovereignty and consequently had not been mentioned in the draft article. However, he had no objection to the Austrian proposal being referred to the Drafting Committee, which should consider it in conjunction with the oral amendment submitted by the United Nations Council for Namibia.

51. Mr. SKIBSTED (Denmark) said that the International Law Commission's draft struck a satisfactory balance between different schools of thought and should be approved as it stood.

52. Mr. SIEV (Ireland) observed that the Commission's text of article 6 was a compromise, as paragraph (2) of its commentary explained. He agreed with the representative of the European Economic Community that the key word in the text was "governed". The wording proposed by Mexico was more restrictive than the existing text through its reference to "constituent instruments". His delegation did not support the addition proposed by Austria, which according to paragraph (7) of the commentary was unnecessary. The Commission's text of article 6 was balanced, and his delegation was in favour of its adoption.

53. Mr. SANG HOON CHO (Republic of Korea) said that his delegation believed that the rule embodied in article 6 was the cornerstone of the draft articles, since it dealt with the source of the capacity of international organizations to conclude treaties. In principle the Republic of Korea was in favour of the Commission's text, which represented a compromise between the two different schools of thought which existed on that subject. The Mexican proposal was too restrictive in scope, but Austria's amendment was acceptable because, as some speakers had indicated, the subject-matter of the 1969 Vienna Convention was different from that of the draft convention.

54. Mr. VIGNES (World Health Organization) said that the draft article raised two issues: the capacity of international organizations to conclude treaties and the

limits of that capacity. As far as the first was concerned, the Committee needed to take a realistic approach to the matter and consider whether it could reasonably be claimed that such capacity had to be provided for in an organization's rules in order to exist; after all, organizations had been concluding treaties for many years, and it could not now be held that they had no right to do so if their constituent instruments did not so provide. The rules of the World Health Organization (WHO) were silent on the matter, yet the organization did conclude treaties, like many other universal international organizations, and its capacity to do so had never been challenged. Quite recently the International Court of Justice had interpreted an agreement concluded between WHO and Egypt, and in doing so had never questioned the capacity of WHO to conclude it. That capacity therefore flowed from the implied powers of the organization, which were necessary to enable it to attain its purposes and objectives.

55. With regard to the limits of an organization's treaty-making capacity, one must also take a realistic approach. An organization, in concluding treaties, did so having regard to certain provisions of international law and to the rules of the organization, where such rules existed. His organization considered that the Commission's text achieved the necessary balance and flexibility, without too much detail, and that it reflected the present state of international law with regard to international organizations. It had the full support of WHO and, he was authorized to say, of the International Labour Organisation. They could accept the Austrian amendment, but considered Mexico's proposal to be too restrictive.

56. Mr. ROCHE (Food and Agriculture Organization of the United Nations) placed particular emphasis on the need for article 6 to be realistic. Organizations had to be in a position to conclude treaties of some kind; it was inconceivable that an intergovernmental organization should not be able to conclude some form of treaty where it needed to do so in order to discharge its constitutional mandate. The treaty which most organizations needed to conclude was a headquarters agreement with the host State, and therefore it was virtually implicit in the constituent instrument of all intergovernmental organizations, if not expressly stated, that it had the capacity to conclude a treaty. The constituent instrument, the rules of the organization and its practice determined the extent of the treaty-making capacity, since no organization would claim to have the same treaty-making power as a State. The formulation adopted by the International Law Commission for article 6 was therefore reasonable and, if interpreted pragmatically, was acceptable to his organization.

57. Mr. HERRON (Australia) expressed support for the Commission's draft of article 6. It was a judicious compromise which did not purport to be comprehensive or exhaustive. It was not necessary to add Austria's amendment to the article, although given its substance, his delegation could not oppose it. However, to place Austria's statement on the capacity of States alongside the Commission's text on the capacity of international organizations would invite comparisons about the respective scopes of the two statements that were not necessarily wholly valid. Mexico's proposal was somewhat vague and was therefore unacceptable to his delegation.

58. Mr. GOHO-BAH (Côte d'Ivoire) said that his delegation had no difficulties with Austria's amendment to the Commission's text and would support it if it proved acceptable to the Committee. It considered that subparagraph 1 (*j*) of article 2 had a decisive influence on article 6; consequently, a precise definition in that subparagraph should provide a solution to the problem posed by article 6 with regard to the capacity of international organizations to conclude treaties.

59. Mr. NEUMANN (United Nations Industrial Development Organization), speaking also on behalf of the United Nations Educational, Scientific and Cultural Organization (UNESCO), said that as he understood it, the Austrian amendment, if adopted, would mean that it would be added to the Commission's draft merely to express a generally accepted rule of international public law. Both UNESCO and the United Nations Industrial Development Organization preferred the Commission's text to that of Mexico, since the notion of the rules of the organization appeared in several articles of the draft and would be defined precisely in article 2. Also, Mexico's proposal would have the effect of restricting the treaty-making capacity of international organizations to the conclusion of treaties with States or with other international organizations, whereas international agreements were often concluded between international organizations and other entities. That effect was undoubtedly unintended and the Drafting Committee should be able to eliminate it by co-ordinating the formulation of article 6 with that of article 3 and article 1 (*b*).

60. Mr. SZÉNÁSI (Hungary) said that his delegation could support the Commission's draft provided that the wording of article 2, subparagraph 1 (*j*), was amended in accordance with the proposal in document A/CONF.129/C.1/L.2 and that the word "relevant" was deleted from article 6.

61. It had no major difficulty in accepting the Austrian proposal.

62. Mr. ALBANESE (Council of Europe) said that his organization's view of the article was identical to that of Greece and Switzerland. It believed that the capacity of an international organization to conclude treaties proceeded from international law, and that the internal rules of an organization merely set the limits and conditions for its exercise. In determining those limits and conditions all the rules of an organization were important: not merely the constituent instrument but the purposes of the organization, the acts of its decision-making organs and its practice. Consequently, his organization believed that article 6 was not indispensable, but if an article on the capacity of international organizations was necessary, the Council of Europe would support the reasonable compromise represented by the International Law Commission's text of the article.

63. Mr. CAMINOS (Organization of American States) said that the Commission's text reflected existing international law with regard to the capacity of

international organizations to conclude treaties. The limits of that capacity, as the representative of the World Health Organization had implied, were determined by article 2, subparagraph 1 (*j*), and the definition which it gave was acceptable. Any wording that tended to restrict existing law which in the past had caused no inconvenience to the work of international organizations in their relations with States or other international organizations might give rise to difficulties for the future functioning of those organizations.

64. Mr. NAWAZ (International Fund for Agricultural Development) said that article 6, as it stood, was flexible enough to accommodate the various types of situation which might arise. However, the definition of the term "rules of the organization" in article 2, subparagraph 1 (*j*), and Mexico's proposal would create problems for his organization and for other international financial institutions involved in development work. If they had to determine their treaty-making capacity on the basis of an express provision in their charters, they would find it difficult. In the past they had interpreted provisions in their constitutions giving them international legal capacity as giving them authority to enter into treaties. It might therefore be necessary to define the rules to which article 6 referred in such a way that the draft articles did not create difficulties for those institutions.

65. Mr. POURCELET (International Civil Aviation Organization) endorsed the views expressed by the representatives of other organizations, in particular the Food and Agriculture Organization of the United Nations and the World Health Organization, with regard to the scope and content of article 6 and the capacity of international organizations to conclude treaties. His own organization's constitution made no specific mention of its capacity to conclude treaties. However, it had been doing so for over 40 years, and it considered the Commission's text to be acceptable as it stood.

66. Mr. BERNAL (Mexico) said that the discussion had shown that his delegation's proposal would not result in a clearer text, and he therefore withdrew it. His delegation would support the Commission's text.

67. Mr. TUERK (Austria) sais that his delegation realized that a considerable number of delegations found its amendment unnecessary and preferred to accept the reasoning of the International Law Commission. It therefore withdrew its amendment and hoped that in so doing it would contribute to a consensus on article 6.

68. Mr. ANGHEL (United Nations Council for Namibia) said that the withdrawal of the Austrian amendment removed all justification for his own proposal, which he therefore withdrew as well.

69. The CHAIRMAN said that the Committee seemed prepared to accept the text of article 6 submitted by the International Law Commission on the understanding that if it decided to give article 2, subparagraph 1 (*j*), a different wording from that proposed by the Commission it would have to make consequential changes in article 6 and other articles. Those changes might be made by the Drafting Committee. Unless he heard any objection, he would take it that the Committee referred article 6 to the Drafting Committee on that understanding.

It was so decided.

The meeting rose at 6 p.m.

7th meeting

Tuesday, 25 February 1986, at 10.10 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 7 (Full powers and powers)

1. The CHAIRMAN invited the Expert Consultant to explain how the International Law Commission came to the conclusion embodied in article 7.

2. Mr. REUTER (Expert Consultant) said that the article was a compromise between two tendencies or attitudes, both legitimate. The many amendments submitted showed that the two tendencies were strongly represented in the Conference.

3. Beginning in the title, the terminology used in regard to States and international organizations was different. The term "full powers" was applied to the credentials of representatives of States and the term "powers" to the credentials of representatives of international organizations.

4. From a strictly legal point of view, the terms "full powers" and "powers" had exactly the same content, as was the case with the terms "ratification" and "act of formal confirmation". The terms were both used in State practice, but not in the same manner by all States. The differences arose largely because the terms were taken from internal law. It was of course important to remember that the adjective "full" did not relate to the extent of the powers or of the mandate of the