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and International Organizations or between International Organizations**

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Report of the Committee of the Whole

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C. REPORT OF THE COMMITTEE OF THE WHOLE

Document A/CONF.129/13*

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* The present document reproduces the draft report of the Committee of the Whole circulated under the symbol A/CONF.129/C.1/L.74 and Add. 1-9.

** In accordance with General Assembly resolution 40/76, the Conference decided, at its 3rd plenary meeting, that the Committee of the Whole would consider the articles referred to in annex II of that resolution.

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CHAPTER I

INTRODUCTION

A. Opening of the Conference and election of Officers

1. At its 1st plenary meeting, held on 18 February 1986, the Conference *inter alia* established a Committee of the Whole.
2. At its 2nd plenary meeting, held on 19 February 1986, the Conference elected by acclamation Mr. Mohamed El-Taher Shash (Egypt) as Chairman of the Committee of the Whole.
3. At its 3rd plenary meeting, held on the same day, the Conference decided, in relation to item 11 of its agenda, entitled "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", to refer to the Committee of the Whole the draft articles of the basic proposal¹ requiring substantive consideration, namely, articles 2; 3; 5; 6; 7; 9, paragraph 2; 11, paragraph 2; 19; 20; 27; 30, paragraph 6; 36 *bis*; 38; 45; 46, paragraphs 2, 3 and 4; 56; 61; 62; 65, paragraph 3; 66; 73; 75; 77; as well as the annex, entitled "Arbitration and conciliation procedures established in application of article 66"; and to refer directly to the Drafting Committee all other draft articles of the basic proposal. In addition, the Conference decided, at its 4th plenary meeting, held on 13 March 1986, to entrust the preparation of the preamble and of the final clauses to the Committee of the Whole. As for the results of the work of the Drafting Committee, both on the articles referred directly to it and on the articles and other texts referred by the Committee of the Whole, it was agreed, also at the 4th plenary meeting, that they should be reported on directly to the Conference by the Drafting Committee.²
4. At its 1st meeting, held on 19 February 1986, the Committee of the Whole elected by acclamation Mr. Geraldo Eulálio do Nascimento e Silva (Brazil) and Mr. Zdenek Pisk (Czechoslovakia) as Vice-Chairmen, and Mrs. Kuljit Thakore (India) as Rapporteur.
5. The Secretariat of the Committee of the Whole was composed as follows: Secretary: Miss Jacqueline Dauchy; Assistant Secretaries: Mr. Igor Fominov and Mr. Mpazi Sinjela.

B. Basic proposal

6. In accordance with rule 27 of the rules of procedure (A/CONF.129/7) adopted by the Conference at its 1st plenary meeting on 18 February 1986, the Committee of the

¹ Namely, the final draft articles on the law of treaties between States and international organizations or between international organizations, adopted by the International Law Commission at its thirty-fourth session (A/CONF.129/4, sect. D).

² The report of the Drafting Committee to the Conference took the form of the texts recommended for adoption. In most cases, however, the Chairman of the Drafting Committee explained the main considerations which had resulted in the recommendations concerned. These statements by the Chairman of the Drafting Committee are to be found in the summary records of the Conference.

Whole had before it as the basic proposal for discussion by the Conference the final draft articles on the law of treaties between States and international organizations or between international organizations, adopted by the International Law Commission at its thirty-fourth session.

7. The Committee of the Whole, in addition to the relevant records of the International Law Commission and of the General Assembly, had available to it the following background documentation:

(a) An analytical compilation of comments and observations by States and principal international intergovernmental organizations on the final draft articles on the law of treaties between States and international organizations or between international organizations (A/CONF.129/5 and Add.1) prepared by the Codification Division, Office of Legal Affairs of the United Nations Secretariat;

(b) A guide for the draft articles on the law of treaties between States and international organizations or between international organizations (ST/LEG/16), prepared by the Codification Division, Office of Legal Affairs of the United Nations Secretariat;

(c) A selected bibliography on the law of treaties between States and international organizations or between international organizations (ST/LIB/SER.B/36).

8. The Committee of the Whole held 30 meetings between 19 February and 19 March 1986.

C. Organization of work

9. The Committee of the Whole, in accordance with the methods of work and procedures suggested by the Secretary-General (A/CONF.129/3) which were approved by the Conference at its 3rd plenary meeting on 19 February 1986, with certain clarifications made by the President, proceeded by way of an article-by-article discussion of the draft articles before it and related amendments. It followed various procedures in relation to the articles or proposals before it.

10. In most cases, after considering the text of the International Law Commission for the article and the amendments thereto, the Committee adopted the text of the Commission in an amended or unamended form and referred it to the Drafting Committee, sometimes with drafting amendments. In two cases it adopted the idea underlying various texts before it and entrusted the Drafting Committee with the task of elaborating a formulation on the basis of the texts in question. In one case it established a Working Group under the chairmanship of one of the Vice-Chairmen and instructed it to prepare, on the basis of the amendments before it, a consolidated text, which it subsequently adopted and referred to the Drafting Committee.

11. In a number of cases the Committee of the Whole, after carrying out an initial discussion of an article, amendment or proposal, suspended its discussion of the said article, amendment or proposal and took action thereon at

later stage, in the light of the outcome of consultations which were held under the chairmanship of the President of the Conference.

D. Structure of the report

12. The present report is organized as follows: in addition to chapter I, the "Introduction", it comprises two other chapters. Chapter II, entitled "Consideration by the Committee of the Whole of the draft articles on the law of treaties between States and international organizations or between international organizations," describes the proceed-

ings of the Committee of the Whole on the various articles referred to it and on the proposals for inclusion of a new article. Each section of chapter II is organized as follows: the text of the International Law Commission or the text of a proposed new article is first set out; next comes the text of the amendments, if any; the proceedings of the Committee of the Whole are then described. Chapter III of the report deals with the proposals submitted for the preamble and the final clauses.

13. This report is designed to be read in conjunction with the summary records of the Committee of the Whole.

CHAPTER II

CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS

ARTICLE 2

A. International Law Commission text

14. The International Law Commission text provided as follows:

Article 2. Use of terms

1. For the purposes of the present articles:

(a) "treaty" means an international agreement governed by international law and concluded in written form:

- (i) between one or more States and one or more international organizations; or
- (ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "ratification" means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(b bis) "act of formal confirmation" means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its consent to be bound by a treaty;

(b ter) "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;

(c) "full powers" means a document emanating from the competent authority of a State and designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty or for accomplishing any other act with respect to a treaty;

(c bis) "powers" means a document emanating from the competent organ of an international organization and designating a person or persons to represent the organization for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the organization to be bound by a treaty or for accomplishing any other act with respect to a treaty;

(d) "reservation" means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization;

(e) "negotiating State" and "negotiating organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

which took part in the drawing-up and adoption of the text of the treaty;

(f) "contracting State" and "contracting organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

which has consented to be bound by a treaty, whether or not the treaty has entered into force;

(g) "party" means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force;

(h) "third State" and "third organization" mean respectively:

- (i) a State, or
 - (ii) an international organization,
- not a party to the treaty;

(i) "international organization" means an intergovernmental organization;

(j) "rules of the organization" means, in particular, the constituent instruments, relevant decisions and resolutions, and established practice of the organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meaning which may be given to them in the internal law of any State or in the rules of any international organization."

B. Amendments

15. Amendments were submitted to article 2 by Greece, the Byelorussian Soviet Socialist Republic, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, Mexico and China.

16. Those amendments were to the following effect:

(a) *Greece* (A/CONF.129/C.1/L.1)

Add the following at the end of subparagraph (j) of paragraph 1:

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

(b) *Byelorussian Soviet Socialist Republic, German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.2)

Replace subparagraph (j) of paragraph 1 by the following:

(j) 'rules of the organization' means the constituent instruments, as well as the legally binding instruments based on them, and established practice of the organization.

(c) *Mexico* (A/CONF.129/C.1/L.6):

Replace the text of subparagraph (j) of paragraph 1 by the following:

(j) constituent and other rules of the organization means, in particular, those of its constituent instruments, relevant regulations, resolutions, decisions, and established practices, both of the organization itself and of its organs.

(d) *China* (A/CONF.129/C.1/L.15)

Replace present subparagraph (j) of paragraph 1 by the following:

(j) rules of the organization means the constituent instruments of the organization and its relevant acts and established practice based on the constituent instruments.

C. Proceedings of the Committee of the Whole

17. The Committee of the Whole considered the article and the amendments thereto at its 1st to 4th and 27th meetings, on 19, 20 and 21 February and 12 March 1986.

18. At its 27th meeting, the Committee of the Whole considered a text for article 2 worked out in the framework

of consultations held under the chairmanship of the President of the Conference (A/CONF.129/C.1/L.70), which read as follows:

Use of terms

For the purposes of the present articles:

(a) "treaty" means an international agreement governed by international law and concluded in written form:

- (i) between one or more States and one or more international organizations; or
- (ii) between international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "ratification" means the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(b bis) "act of formal confirmation" means an international act corresponding to that of ratification by a State, whereby an international organization establishes on the international plane its consent to be bound by a treaty;

(b ter) "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;

(c) "full powers" means a document emanating from the competent authority of a State or from the competent organ of an international organization and designating a person or persons to represent the State or the organization for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State or of the organization to be bound by a treaty or for accomplishing any other act with respect to a treaty;

(d) "reservation" means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization;

(e) "negotiating State" and "negotiating organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

which took part in the drawing-up and adoption of the text of the treaty;

(f) "contracting State" and "contracting organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

which has consented to be bound by a treaty, whether or not the treaty has entered into force;

(g) "party" means a State or an international organization which has consented to be bound by the treaty and for which the treaty is in force;

(h) "third State" and "third organization" mean respectively:

- (i) a State, or
- (ii) an international organization,

not a party to the treaty;

(i) "international organization" means an intergovernmental organization;

(j) "rules of the organization" means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meaning which may be given to them in the internal law of any State or in the rules of any international organization.

19. Also at its 27th meeting, the Committee of the Whole adopted the above text for article 2 and referred it to the Drafting Committee.

20. With reference to the amendment submitted by Greece (A/CONF.129/C.1/L.1), the Committee of the Whole agreed in principle to delete the word "relevant" before "rules of the organization" wherever it appeared, it being understood that if the Drafting Committee felt it necessary to restore the adjective "relevant" in any specific case it would make a recommendation to that effect.

ARTICLE 3

A. International Law Commission text

21. The International Law Commission text provided as follows:

Article 3. International agreements not within the scope of the present articles

The fact that the present articles do not apply:

- (i) to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or organizations are parties; or
- (ii) to international agreements to which one or more international organizations and one or more subjects of international law other than States or organizations are parties; or
- (iii) to international agreements not in written form between one or more States and one or more international organizations, or between international organizations;

shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present articles to which they would be subject under international law independently of the present articles;
- (c) the application of the present articles to the relations between States and international organizations or to the relations of organizations as between themselves, when those relations are governed by international agreements to which other subjects of international law are also parties.

B. Amendments

22. Amendments were submitted to the article by Cape Verde, Japan and France.

23. Those amendments were to the following effect:

(a) *Cape Verde* (A/CONF.129/C.1/L.5 and Corr.1)

Insert the following subparagraph:

to international agreements between subjects of international law other than States and international organizations;

(b) *Japan* (A/CONF.129/C.1/L.9)

Replace the article by the following:

The fact that the present articles do not apply to certain international agreements shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present articles to which they would be subject under international law independently of the present articles;
- (c) the application of the present articles to the relations between States and international organizations or to the relations of organizations as between themselves, when those relations are governed by such agreements.

(c) *France* (A/CONF.129/C.1/L.11)

Delete the article.

C. Proceedings of the Committee of the Whole

24. The Committee considered the article and the amendments thereto at its 4th, 5th and 29th meetings on 21 and 24 February and 17 March 1986.

25. At the 4th meeting of the Committee, the amendment by France was withdrawn.

26. At the 29th meeting, the Committee considered a text for article 3 worked out in the framework of consultations held under the chairmanship of the President of the Conference (A/CONF.129/C.1/L.75).

27. That text read as follows:

Article 3. International agreements not within the scope of the present articles

The fact that the present articles do not apply:

- (i) to international agreements to which one or more States, one or more international organizations and one or more subjects of international law other than States or organizations are parties; or
- (ii) to international agreements to which one or more international organizations and one or more subjects of international law other than States or organizations are parties; or
- (iii) to international agreements not in written form between one or more States and one or more international organizations, or between international organizations;
- (iv) to international agreements between subjects of international law other than States or international organizations;

shall not affect:

- (a) the legal force of such agreements;
- (b) the application to them of any of the rules set forth in the present articles to which they would be subject under international law independently of the present articles;
- (c) the application of the present articles to the relations between States and international organizations or to the relations of organizations as between themselves, when those relations are governed by international agreements to which other subjects of international law are also parties.

28. At the same meeting, the Committee adopted the above text for article 3 and referred it to the Drafting Committee.

ARTICLE 5

A. International Law Commission text

29. The International Law Commission text provided as follows:

Article 5. Treaties constituting international organizations and treaties adopted within an international organization

The present articles apply to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

B. Amendments

30. Amendments were submitted to the article by *Cape Verde*.

31. The first of these amendments (A/CONF.129/C.1/L.10) sought to delete the article. The second (A/CONF.129/C.1/L.21) was to the following effect:

1. Reformulate article 5 as follows:

The present Convention applies to any treaty which is the constituent instrument of an international organization of which States and international intergovernmental organizations are members and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

2. Reformulate article 2, subparagraph 1(i) as follows:

“international organization” means an international organization the members of which are States or States and international intergovernmental organizations.

C. Proceedings of the Committee of the Whole

32. The Committee considered the article and the amendments thereto at its 5th, 6th and 27th meetings, on 24 February and 12 March 1986.

33. At its 27th meeting, the Committee considered a text for article 5 worked out in the framework of consultations held under the chairmanship of the President of the Conference (A/CONF.129/C.1/L.70). That text read as follows:

Treaties constituting international organizations and treaties adopted within an international organization

The present articles apply to any treaty which is the constituent instrument of an international organization and to which States and international organizations are parties, and to any treaty adopted within an international organization, without prejudice to any rules of the organization.

34. At the same meeting, the Committee adopted the above text and referred it to the Drafting Committee.

ARTICLE 6

A. International Law Commission text

35. The text of the International Law Commission provided as follows:

Article 6. Capacity of international organizations to conclude treaties

The capacity of an international organization to conclude treaties is governed by the relevant rules of that organization.

B. Amendments

36. Amendments were submitted to the article by Austria, Mexico and the United Nations Council for Namibia.

37. Those amendments were to the following effect:

- (a) *Austria* (A/CONF.129/C.1/L.3)

1. Insert the following new paragraph 1:

“1. Every State possesses capacity to conclude treaties.”

2. Renumber the original draft paragraph as paragraph 2.

- (b) *Mexico* (A/CONF.129/C.1/L.7)

Replace the text of the article by the following:

International organizations shall have the capacity to conclude treaties with States or with other international organizations only as determined by their constituent instruments and other rules.

- (c) *United Nations Council for Namibia* (A/CONF.129/C.1/L.24)

Add a paragraph 2 to read as follows:

2. The United Nations Council for Namibia possesses the capacity to conclude treaties in accordance with the relevant resolutions and decisions of the General Assembly.

C. Proceedings of the Committee of the Whole

38. The Committee considered the article and the amendments thereto at its 6th meeting, on 24 February 1986.

39. At that meeting, the three amendments were withdrawn.

40. At the same meeting, the Committee adopted the text of the International Law Commission for article 6 and referred it to the Drafting Committee, on the understanding that the wording of the article might have to be reviewed in the light of the decision which would be taken on the wording of subparagraph 1(j) of article 2.

ARTICLE 7

A. International Law Commission text

41. The International Law Commission text provided as follows:

Article 7. Full powers and powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by such a treaty if:

(a) he produces appropriate full powers; or
(b) it appears from practice or from other circumstances that that person is considered as representing the State for such purposes without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:

(a) Heads of State, Heads of Government and Ministers of Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty between one or more States and one or more international organizations;

(b) heads of delegations of States to an international conference of States in which international organizations participate, for the purpose of adopting the text of a treaty between States and international organizations;

(c) heads of delegations of States to an organ of an international organization, for the purpose of adopting the text of a treaty within that organization;

(d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between the accrediting States and that organization;

(e) heads of permanent missions to an international organization, for the purpose of signing, or signing *ad referendum*, a treaty between the accrediting States and that organization, if it appears from practice or from other circumstances that those heads of permanent missions are considered as representing their States for such purposes without having to produce full powers.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty if:

(a) he produces appropriate powers; or
(b) it appears from practice or from other circumstances that that person is considered as representing the organization for such purposes without having to produce powers.

4. A person is considered as representing an international organization for the purpose of expressing the consent of that organization to be bound by a treaty if:

(a) he produces appropriate powers; or
(b) it appears from the practice of the competent organs of the organization or from other circumstances that that person is considered as representing the organization for such purpose without having to produce powers.

B. Amendments

42. Amendments were submitted to the article by Austria, Mexico, Tunisia, China, France, Cuba, Japan and the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and, orally, by Egypt.

43. Those amendments were to the following effect:

(a) *Austria* (A/CONF.129/C.1/L.4)

1. In paragraph 2(b), replace the words "heads of delegations of States" by the words "representatives accredited by States".

2. In paragraph 2(c), replace the words "heads of delegations of States" by the words "representatives accredited by States", and replace the words "to an organ of an international organization" by the words "to an international organization or one of its organs", and the words "within that organization" by the words "in that organization or organ".

(b) *Mexico* (A/CONF.129/C.1/L.8)

Delete subparagraph 4(b).

(c) *Tunisia* (A/CONF.129/C.1/L.13)

Delete subparagraph 4(b).

(d) *China* (A/CONF.129/C.1/L.16)

1. Delete the words "and powers" in the title.

2. Replace the word "powers" in subparagraphs (a) and (b) of paragraph 3 and subparagraphs (a) and (b) of paragraph 4 by "full powers".

(e) *France* (A/CONF.129/C.1/L.20)

Delete subparagraph 2(e).

(f) *Cuba* (A/CONF.129/C.1/L.25)

1. Replace subparagraph (b) of paragraph 1 by the following:

it appears from the practice of the State concerned or from other circumstances that it was the intention of that State to consider that person as its representative for such purposes and to dispense with the production of full powers.

2. Replace subparagraph (e) of paragraph 2 by the following:

heads of permanent missions to an international organization, for the purpose of signing, or signing *ad referendum*, a treaty between the accrediting States and that organization, if it appears from the practice of the State concerned or from other circumstances that it was the intention of that State to consider its head of permanent mission as its representative for such purposes and to dispense with the production of full powers

3. Replace subparagraph (b) of paragraph 3 by the following:

it appears from the practice of the organization concerned or from other circumstances that it was the intention of that organization to consider that person as its representative for such purposes and to dispense with the production of powers.

4. Delete subparagraph 4(b).

(g) *Japan and the United Kingdom of Great Britain and Northern Ireland* (A/CONF.129/C.1/L.26)

1. In subparagraph 1(b), delete the words "that that person is considered" and replace by the following:

that it was the intention of the States and international organizations concerned to consider that person.

2. Combine paragraphs 3 and 4 to read as follows:

A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty, or expressing the consent of that organization to be bound by a treaty, if:

(a) that person produces appropriate full powers; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned or, as the case may be, of the international organizations concerned, to consider that person as representing the organization for such purposes without having to produce full powers.

(h) *Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.29)

1. Delete subparagraphs 2(e) and 4(b).

2. In subparagraphs 1(b) and 3(b), replace the word "considered" by the words "intended to be considered".

(i) *Egypt* (oral amendment):

1. Replace paragraph 4 by the following:

The chief administrative officer of an international organization is considered as representing that organization for the purpose of expressing the consent of that organization to be bound by a treaty without having to produce powers.

2. Add a new paragraph 5 as follows:

A person is considered as representing an international organization for the purpose of expressing the consent of that organization to be bound by a treaty if he produces appropriate powers.

C. Proceedings of the Committee of the Whole

44. The Committee considered the article and the amendments thereto at its 7th, 8th, 10th and 14th meetings, on 25, 26 and 28 February 1986.

45. At the 10th meeting, it was agreed to establish a working group on article 7 composed of sponsors of amendments to the article and of specially interested delegations, and chaired by Mr. Pisk (Czechoslovakia), Vice-Chairman of the Committee of the Whole.

46. At the 14th meeting, the Chairman of the Working Group introduced on behalf of the Group a consolidated text for article 7 (A/CONF.129/C.1/L.43), which, as orally corrected, reads as follows:

Article 7. Full powers and powers

1. A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by such a treaty if:

- (a) he produces appropriate full powers; or
 - (b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State for such purposes without having to produce full powers.
2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
- (a) Heads of State, Heads of Government and Ministers of Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty between one or more States and one or more international organizations;
 - (b) representatives accredited by States to an international conference of States in which international organizations participate, for the purpose of adopting the text of a treaty between States and international organizations;
 - (c) representatives accredited by States to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that organization or organ;
 - (d) heads of permanent missions to an international organization, for the purpose of adopting the text of a treaty between the accrediting States and that organization.

3. A person is considered as representing an international organization for the purpose of adopting or authenticating the text of a treaty, or expressing the consent of that organization to be bound by a treaty if:

- (a) that person produces appropriate powers; or
- (b) it appears from the circumstances that it was the intention of the States and international organizations concerned or, as the case may be, of the international organizations concerned to consider that person as representing the organization for such purposes, in accordance with the rules of the organization without having to produce powers.

47. In introducing this text, the Chairman of the Working Group indicated that it was subject to the decision which might be taken at a later stage in relation to subparagraphs 1(c) and (c bis) of article 2.

48. Also at its 14th meeting, the Committee of the Whole approved this text and referred it to the Drafting Committee.

ARTICLE 9 (PARAGRAPH 2)

A. International Law Commission text

49. The International Law Commission text provided as follows:

Article 9. Adoption of the text

2. The adoption of the text of a treaty between States and international organizations at an international conference of States in which organizations participate takes place by the vote of two-thirds of the States and

organizations present and voting, unless by the same majority they shall decide to apply a different rule.

B. Amendments

50. Amendments were submitted to paragraph 2 of article 9³ by China; the Council of Europe, Food and Agriculture Organization of the United Nations, International Atomic Energy Agency, International Civil Aviation Organization, Organization of American States, United Nations, United Nations Industrial Development Organization and World Health Organization; France; Union of Soviet Socialist Republics and Egypt.

51. Those amendments were to the following effect:

(a) *China* (A/CONF.129/C.1/L.17)

1. Add a paragraph 3 reading as follows:

3. The preceding paragraphs are without prejudice to the adoption by an international conference of a different procedure for the adoption of the text of a treaty.

2. In paragraph 1, replace "paragraph 2" by "paragraphs 2 and 3".

(b) *Council of Europe, Food and Agriculture Organization of the United Nations, International Atomic Energy Agency, International Civil Aviation Organization, Organization of American States, United Nations, United Nations Industrial Development Organization and World Health Organization* (A/CONF.129/C.1/L.22)

1. Delete, in paragraph 2, the words "of States in which organizations participate".

2. Add, in paragraph 2 after "international organizations", the words ", or between international organizations".

3. Replace, after "two-thirds of the States", the word "and" with "and/or".

(c) *France* (A/CONF.129/C.1/L.28)

Replace the existing text of article 9, paragraph 2, by the following:

2. The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the participants present and voting, unless by the same majority they shall decide to apply a different rule.

(d) *Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.30)

Replace paragraph 2 of article 9, by the following:

2. The adoption of the text of a treaty between States and international organizations at an international conference takes place in accordance with a procedure agreed by the participants in that conference.

(e) *Egypt* (A/CONF.129/C.1/L.31)

In paragraph 2, delete the words "and organizations".

C. Proceedings of the Committee of the Whole

52. The Committee considered the article and the amendments thereto at its 8th, 9th, 10th and 28th meetings, on 25 and 26 February and on 13 March 1986.

53. At its 28th meeting, the Committee considered a text for paragraph 2 of article 9 worked out in the framework of consultations held under the chairmanship of the President

³ An amendment to paragraph 1 of article 9 (A/CONF.129/C.1/L.23) was submitted by the World Bank. The amendment sought to add the following at the end of paragraph 1:

"or in the rules of the organization concerning the preparation of draft conventions in the field of its competence for transmittal to member States."

The Committee of the Whole agreed that delegations would be free to refer to this amendment in their comments on paragraph 2 of article 9 and that it would be for the sponsor to determine whether it wished to maintain its amendment in the light of the outcome of the discussion on article 5.

of the Conference (A/CONF.129/C.1/L.73), which read as follows:

Article 9. Adoption of the text

2. The adoption of the text of a treaty at an international conference takes place in accordance with the procedure agreed upon by the participants in that conference, but if no agreement be reached, they shall adopt the text by the vote of two-thirds of the participants present and voting unless by the same majority they shall decide to apply a different rule.

54. Also at its 28th meeting, the Committee adopted the above text for paragraph 2 of article 9 and referred it to the Drafting Committee.

ARTICLE 11 (PARAGRAPH 2)

A. International Law Commission text

55. The International Law Commission text provided as follows:

Article 11. Means of expressing consent to be bound by a treaty

2. The consent of an international organization to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, act of formal confirmation, acceptance, approval or accession, or by any other means if so agreed.

B. Amendments

56. An amendment was submitted to the article by the German Democratic Republic (A/CONF.129/C.1/L.12).

57. This amendment was to the following effect:

Add the following sentence at the end of paragraph 2:

"The consent of an international organization to be bound by a treaty presupposes such consent being expressed in accordance with the rules of that organization."

C. Proceedings of the Committee of the Whole

58. The Committee considered article 11, paragraph 2, and the amendment thereto at its 10th, 11th and 27th meetings, on 26 and 27 February and 12 March 1986.

59. At its 11th meeting, the Committee agreed to defer further consideration of article 11, paragraph 2, and the amendment thereto until it took up articles 27 and 46.

60. At its 27th meeting, the Committee, in the light of the outcome of consultations held under the chairmanship of the President of the Conference, adopted the text of the International Law Commission for paragraph 2 of article 11 and referred it to the Drafting Committee, it being understood that the idea contained in the amendment submitted by the German Democratic Republic (A/CONF.129/C.1/L.12) would be reflected in another part of the future Convention.

ARTICLE 19

A. International Law Commission text

61. The International Law Commission text provided as follows:

Article 19. Formulation of reservations

1. A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty or it is otherwise established that the negotiating States and negotiating organizations were agreed that the reservation is prohibited;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

2. An international organization may, when signing, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty or it is otherwise established that the negotiating States and negotiating organizations or, as the case may be, the negotiating organizations were agreed that the reservation is prohibited;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

B. Amendments

62. Amendments were submitted to the article by Tunisia; Cape Verde; Austria, Italy, Japan and Tunisia; the Union of Soviet Socialist Republics and the German Democratic Republic.

63. These amendments were to the following effect:

(a) *Tunisia* (A/CONF.129/C.1/L.14)

1. In subparagraph 1(a), delete the words: or it is otherwise established that the negotiating States and negotiating organizations were agreed that the reservation is prohibited.

2. In subparagraph 2(a), delete the words: the negotiating States and negotiating organizations or, as the case may be, .

(b) *Cape Verde* (A/CONF.129/C.1/L.34, as orally revised)

1. Reformulate subparagraph (a) of paragraphs 1 and 2 as follows:

(a) the reservation is prohibited by the treaty;

2. Insert the following subparagraph in paragraph 2:

(d) the provision, object of the reservation, does not apply to such an international organization.

(c) *Austria, Italy, Japan and Tunisia* (A/CONF.129/C.1/L.36)

In subparagraph (a) of paragraphs 1 and 2, put a semicolon after the word "treaty" and delete the rest of the sentence. The text of that subparagraph of paragraphs 1 and 2 would then read:

(a) the reservation is prohibited by the treaty;

(d) *Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.38)

Insert the following subparagraph into paragraph 2:

(d) The reservation is incompatible with the constituent instrument of the international organization.

(e) *German Democratic Republic* (A/CONF.129/C.1/L.40)

Paragraph 2 should be reworded to read as follows:

2. An international organization may, when signing, formally confirming, accepting, approving or acceding to a treaty, formulate reservations concerning such treaty provisions as, pursuant to the rules of that organization, affect its competence unless:

(a) . . .

C. Proceeding of the Committee of the Whole

64. The Committee considered the article and the amendments thereto at its 11th, 12th and 27th meetings, on 27 February and 12 March 1986.

65. At the 11th meeting, the representative of Tunisia indicated that, having become a sponsor of the amendment contained in document A/CONF.129/C.1/L.36, he wished

to withdraw the amendment contained in document A/CONF.129/C.1/L.14.

66. At its 12th meeting, the Committee adopted point 1 of the amendment by Cape Verde (A/CONF.129/C.1/L.34 as orally amended) and the amendment by Austria, Italy, Japan and Tunisia (A/CONF.129/C.1/L.36) and referred them to the Drafting Committee without prejudice to the possibility of including at a later stage suitable language in paragraph 2, taking into account the amendments submitted by Cape Verde (A/CONF.129/C.1/L.34) (point 2), the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.38) and the German Democratic Republic (A/CONF.129/C.1/L.40).

67. At its 27th meeting, the Committee, in the light of the outcome of the consultations held under the chairmanship of the President of the Conference, agreed that the ideas contained in point 2 of the amendment by Cape Verde, as orally amended, and in the amendments submitted by the Union of Soviet Socialist Republics and the German Democratic Republic would be reflected in another part of the future convention.

ARTICLE 20

A. International Law Commission text

68. The International Law Commission text provided as follows:

Article 20. Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the contracting States and contracting organizations or, as the case may be, by the contracting organizations unless the treaty so provides.

2. When it appears from the object and the purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance of a reservation by a contracting State or by a contracting organization constitutes the reserving State or international organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force for the author of the reservation and for the State or organization which has accepted it;

(b) an objection by a contracting State or by a contracting organization to a reservation does not preclude the entry into force of the treaty as between the objecting State or international organization and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act expressing the consent of a State or of an international organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State or one contracting organization or, as the case may be, one other contracting organization or one contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

B. Amendments

69. Amendments were submitted to the article by China, Australia, Austria, Cape Verde and the German Democratic Republic.

70. Those amendments were to the following effect:

(a) *China* (A/CONF.129/C.1/L.18)

Reword paragraph 5 as follows:

5. For purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it has raised no objection to the reservation by the end of a period of eighteen months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

(b) *Australia* (A/CONF.129/C.1/L.32, as orally revised)

Delete paragraph 5 of the draft article and substitute:

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted:

(a) by a State, if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is the later;

(b) by an international organization, if it shall have raised no objection to the reservation by:

- (i) the end of a period of twelve months after it was notified of the reservation,
- (ii) the end of a period of one month after the next meeting of its competent organ after it was notified of the reservation, or
- (iii) the date on which it expressed its consent to be bound by the treaty,

whichever is the later.

(c) *Austria* (A/CONF.129/C.1/L.33)

1. In paragraph 2, insert the words "the limited number of negotiating States and negotiating organizations or of negotiating organizations, as the case may be, and" between the words "it appears from" and the words "the object".

2. In paragraph 5, insert the words "or an international organization" between the words "by a State" and "if it shall".

(d) *Cape Verde* (A/CONF.129/C.1/L.35)

In paragraph 5, following the words "accepted by a State", insert the following: "or an international organization".

(e) *German Democratic Republic* (A/CONF.129/C.1/L.41)

1. Reword paragraph 2 as follows:

2. When it appears from the object and the purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all States and by all international organizations whose competence, pursuant to the rules of those organizations, is affected by the reservation.

2. Reword paragraph 4, subparagraph (b) as follows:

(b) an objection by a contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting State and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State;

(b bis) an objection by an international organization to a reservation which, pursuant to the rules of that organization, affects its competence does not preclude the entry into force of the treaty as between the objecting organization and the reserving State or organization unless a contrary intention is definitely expressed by the objecting organization;

C. Proceedings of the Committee of the Whole

71. The Committee considered article 20 and the amendments thereto at its 12th, 13th, 14th and 27th meetings, on 27 and 28 February and 12 March 1986.

72. At the 14th meeting, Australia withdrew its amendment. At the same meeting, the Committee, after deciding to insert the words "or an international organization" after the words "by a State" in paragraph 5 as proposed by Austria, referred article 20, as amended, to the Drafting Committee with the request that the Drafting Committee examine whether the insertion of the phrase proposed for inclusion in paragraph 2 by Austria would improve the drafting. The Committee furthermore agreed to keep in abeyance the question of the inclusion in the article of a reference to the rules of the organizations, as proposed in the amendment by the German Democratic Republic.

73. At its 27th meeting, the Committee, in the light of the outcome of the consultations held under the chairmanship of the President, agreed that the idea contained in the amendment of the German Democratic Republic would be reflected in another part of the future convention.

ARTICLE 27

A. International Law Commission text

74. The International Law Commission text provided as follows:

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

1. A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.
2. An international organization party to a treaty may not invoke the rules of the organization as justification for its failure to perform the treaty.
3. The rules contained in the preceding paragraphs are without prejudice to article 46.

B. Amendments

75. Amendments were submitted to the article by the United Nations and by the Union of Soviet Socialist Republics.

76. Those amendments were to the following effect:

(a) *United Nations* (A/CONF.129/C.1/L.37)

1. Insert at the beginning of paragraph 2 the words: "Without prejudice to Article 103 of the Charter of the United Nations".

(b) *Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.39)

Add the following to paragraph 2:

In the event of a conflict between the obligations under the treaty concluded by an international organization and its obligations under the constituent instrument of the organization the obligations under that instrument shall prevail.

C. Proceedings of the Committee of the Whole

77. The Committee of the Whole considered the article and the amendments thereto at its 14th and 27th meetings on 28 February and 12 March 1986.

78. At its 14th meeting, the Committee agreed to postpone decisions on paragraph 2 of article 27 and the amendments thereto until it took up article 30.

79. At the 27th meeting, it was announced that the amendment of the United Nations was not insisted upon. At the same meeting, the Committee, in the light of the outcome of the consultations held under the chairmanship of the President of the Conference, adopted the text of the International Law Commission for paragraph 2 of article 27 and referred it to the Drafting Committee, it being under-

stood that the idea contained in the amendment submitted by the Union of Soviet Socialist Republics would be reflected in another part of the future convention.

ARTICLE 30, PARAGRAPH 6

A. International Law Commission text

80. The International Law Commission text provided as follows:

Article 30. Application of successive treaties relating to the same subject-matter

6. The preceding paragraphs are without prejudice to Article 103 of the Charter of the United Nations.

B. Amendments

81. Amendments were submitted to article 30, paragraph 6, by Argentina and by Australia and Canada.

82. Those amendments were to the following effect:

(a) *Argentina* (A/CONF.129/C.1/L.44, as orally revised)

Replace the existing text of paragraph 6 by the following:

6. The preceding paragraphs are without prejudice to the fact that, in the event of conflict between the obligations of a treaty and those of the Charter of the United Nations, those of the latter shall prevail.

(b) *Australia and Canada* (A/CONF.129/C.1/L.45)

1. Delete paragraph 6.

2. At the beginning of paragraph 1 add the words: Subject to Article 103 of the Charter of the United Nations,.

C. Proceedings of the Committee of the Whole

83. The Committee considered paragraph 6 of article 30 and the amendments thereto at its 15th meeting, on 3 March 1986.

84. At that meeting, the Committee approved the idea underlying the text of the International Law Commission and the amendments thereto. It referred to the Drafting Committee the text of the Commission as well as the amendment by Argentina, as orally revised, and the amendment by Australia and Canada, with the request that the Drafting Committee examine the formulation and the placement of the idea underlying those three texts.

ARTICLE 36 BIS

A. International Law Commission text

85. The International Law Commission text provided as follows:

Article 36 bis. Obligations and rights arising for States members of an international organization from a treaty to which it is a party

Obligations and rights arise for States members of an international organization from the provisions of a treaty to which that organization is a party when the parties to the treaty intend those provisions to be the means of establishing such obligations and according such rights and have defined their conditions and effects in the treaty or have otherwise agreed thereon, and if:

(a) the States members of the organization, by virtue of the constituent instrument of that organization or otherwise, have unanimously agreed to be bound by the said provisions of the treaty; and

(b) the assent of the States members of the organization to be bound by the relevant provisions of the treaty has been duly brought to the knowledge of the negotiating States and negotiating organizations.

B. Amendments

86. Amendments were submitted to the article by Austria and Brazil, the Netherlands, Switzerland, the International Labour Organisation, International Monetary Fund and United Nations and the Union of Soviet Socialist Republics.

87. Those amendments were to the following effect:

(a) *Austria and Brazil* (A/CONF.129/C.1/L.49)

Delete article 36 *bis*.

(b) *Netherlands* (A/CONF.129/C.1/L.50)

Replace present paragraph (a) by:

(a) the States members of the organization, by virtue of the constituent instrument or in accordance with other rules of the organization, have agreed to be bound by the said provisions of the treaty; and

(c) *Switzerland* (A/CONF.129/C.1/L.51)

Make present article 36 *bis* into a paragraph 1.

Add a new paragraph 2 worded as follows:

The provisions of paragraph 1 shall apply subject to the rules of the organization of which the States referred to in paragraph 1 are members.

(d) *International Labour Organisation, International Monetary Fund and United Nations* (A/CONF.129/C.1/L.56 and L.65)

Replace the present text of article 36 *bis* by the following:

The extent to which and the manner in which obligations and rights may arise for States members of an international organization from a treaty to which that organization is a party, and which is intended to create obligations and rights for these States, shall be determined by the rules of the organization.

If article 36 *bis* is deleted, add a new paragraph 3 to article 73 as follows:

3. The provisions of the present article shall not prejudice any question that may arise regarding the obligations and rights arising for States members of an international organization from a treaty to which it is a party.

(e) *Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.62)

Replace subparagraph (a) by the following:

(a) the States members of the organization have expressed *ad hoc*, and in a definite manner, their agreement to be bound by the said provisions of the treaty.

C. Proceedings of the Committee of the Whole

88. The Committee considered the article and the amendments thereto at its 19th, 20th, 25th and 28th meetings, on 5, 10 and 13 March 1986.

89. At its 28th meeting, the Committee, in the light of the outcome of the consultations held under the chairmanship of the President of the Conference, agreed to delete article 36 *bis* and to insert in article 73 a paragraph 3 based on the text proposed by the International Labour Organisation, the International Monetary Fund and the United Nations (A/CONF.129/C.1/L.65) (see para. 139(b) below). It furthermore agreed to refer the text in question to the Drafting Committee for inclusion in article 73, with the request that the Drafting Committee improve its drafting and review the title of the article in the light of its content.

ARTICLE 38

A. International Law Commission text

90. The International Law Commission text provided as follows:

Article 38. Rules in a treaty becoming binding on third States or third organizations through international custom

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State or a third organization as a customary rule of international law, recognized as such.

B. Amendments

91. No amendment was submitted to the article.

C. Proceedings of the Committee of the Whole

92. The Committee considered the article at its 15th meeting, on 3 March 1986.

93. At that meeting, the Committee adopted the text of the International Law Commission for article 38 and referred it to the Drafting Committee.

ARTICLE 45

A. International Law Commission text

94. The International Law Commission text provided as follows:

Article 45. Loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty

1. A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

2. An international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of the conduct of the competent organ be considered as having renounced the right to invoke that ground.

B. Amendments

95. Amendments were submitted to article 45 by China and Mexico.

96. Those amendments were to the following effect:

(a) *China* (A/CONF.129/C.1/L.46)

Combine the two paragraphs. The amended article would read as follows:

A State or an international organization may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of the conduct of the State or that of the competent organ of the organization, be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be.

(b) *Mexico* (A/CONF.129/C.1/L.47)

Replace the existing text of subparagraph 2(b) by the following:

it must by reason of its conduct be considered as having renounced the right to invoke that ground.

C. Proceedings of the Committee of the Whole

97. The Committee considered the article and the amendments thereto at its 17th meeting, on 4 March 1986.

98. At that meeting, the Committee decided to refer the text of the International Law Commission for article 45 to the Drafting Committee together with the amendments by China and Mexico.

ARTICLE 46 (PARAGRAPHS 2, 3 AND 4)

A. International Law Commission text

99. The International Law Commission text provided as follows:

Article 46. Provisions of internal law of a State and rules of an international organization regarding competence to conclude treaties

2. In the case of paragraph 1, a violation is manifest if it would be objectively evident to any State or any international organization referring in good faith to normal practice of States in the matter.

3. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

4. In the case of paragraph 3, a violation is manifest if it is or ought to be within the knowledge of any contracting State or any contracting organization.

B. Amendments

100. Amendments were submitted to paragraphs 2, 3 and 4 of article 46 by Austria and Japan, Egypt, Tunisia, and the International Atomic Energy Agency, International Maritime Organization, International Monetary Fund and United Nations.

101. Those amendments were to the following effect:

(a) *Austria and Japan (A/CONF.129/C.1/L.48/Rev.1)*⁴

1. In paragraph 2, replace the words "referring in good faith to normal practice of States in the matter" by the words "conducting itself in the matter in accordance with normal practice and in good faith".

2. In paragraph 4, replace the words "if it is or ought to be within the knowledge of any contracting State or any contracting organization" by the words "if it would be objectively evident to any State or any international organization conducting itself in the matter in accordance with normal practice and in good faith".

(b) *Egypt (A/CONF.129/C.1/L.52)*

Replace paragraph 4 by the following:

4. In the case of paragraph 3, a violation is manifest if it would be objectively evident to any State or any international organization conducting itself in the matter in good faith.

(c) *Tunisia (A/CONF.129/C.1/L.54)*

Replace paragraph 4 by the following paragraph:

4. In the case of paragraph 3, a violation is manifest if it was or should normally have been within the knowledge of any contracting State or any contracting organization.

(d) *International Atomic Energy Agency, International Maritime Organization, International Monetary Fund, and United Nations (A/CONF.129/C.1/L.55)*

Insert at the end of paragraph 3 the words "including the constituent instruments of the organization".

⁴ The original version of this amendment was submitted by Austria only.

C. Proceedings of the Committee of the Whole

102. The Committee considered the article and the amendments thereto at its 17th and 18th meetings, on 4 March 1986.

103. At its 18th meeting, the representative of Tunisia indicated that he did not insist on his amendment.

104. At the same meeting, the Committee decided to refer the text of the International Law Commission for article 46 to the Drafting Committee, together with the amendments submitted by Austria and Japan and by Egypt. The Committee further agreed to leave in abeyance the amendment by the International Atomic Energy Agency, International Maritime Organization, International Monetary Fund and the United Nations pending further discussion of subparagraph 1(j) of article 2. In the light of the agreement subsequently reached on subparagraph 1(j) (see paras. 18 and 19 above), this amendment was not insisted upon.

ARTICLE 56

A. International Law Commission text

105. The text of the International Law Commission provided as follows:

Article 56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal

1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

B. Amendments

106. An amendment was submitted to the article by *Egypt (A/CONF.129/C.1/L.53)*.

107. That amendment was to the following effect:

Delete subparagraph (b) from paragraph 1.

C. Proceedings of the Committee of the Whole

108. The Committee considered the article and the amendment thereto at its 18th meeting, on 4 March 1986.

109. At that meeting the amendment by Egypt was withdrawn, and the Committee referred the text of the International Law Commission for article 56 to the Drafting Committee.

ARTICLE 61

A. International Law Commission text

110. The International Law Commission text provided as follows:

Article 61. Supervening impossibility of performance

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of

a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

B. Amendments

111. No amendment was submitted to the article.

C. Proceedings of the Committee of the Whole

112. The Committee considered the article at its 20th meeting, on 5 March 1986.

113. At that meeting, the Committee adopted the text of the International Law Commission for article 61 and referred it to the Drafting Committee.

ARTICLE 62

A. International Law Commission text

114. The International Law Commission text provided as follows:

Article 62. Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between two or more States and one or more international organizations, if the treaty establishes a boundary.

3. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

4. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

B. Amendments

115. Amendments were submitted to the article by Argentina and the Union of Soviet Socialist Republics.

116. Those amendments were to the following effect:

(a) *Argentina* (A/CONF.129/C.1/L.57, as orally corrected)

Replace the existing text of paragraphs 2 and 3 of article 62 by the following:

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty between one or more States and one or more international organizations:

- (a) if the treaty establishes a boundary of a State; or
- (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

(b) *Union of Soviet Socialist Republics* (A/CONF.129/C.1/L.59)

At the end of paragraph 2 of article 62, replace the words "if the treaty establishes a boundary" by the words "if the States parties to the treaty have established a boundary by this treaty".

C. Proceedings of the Committee of the Whole

117. The Committee considered the article and the amendments thereto at its 21st and 22nd meetings, on 6 March 1986.

118. At the 22nd meeting, the representative of Argentina orally revised her amendment to read:

"At the end of paragraph 2, add the words 'of a State'."

119. At the same meeting, the Committee adopted the text of the International Law Commission for article 62 and referred it to the Drafting Committee together with the amendments by Argentina and the Union of Soviet Socialist Republics as drafting amendments.

ARTICLE 65 (PARAGRAPH 3)

A. International Law Commission text

120. The International Law Commission text provided as follows:

Article 65. Procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty

3. When an objection is raised by an other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

B. Amendments

121. An amendment was submitted to paragraph 3 of article 65 by Austria and Egypt. (A/CONF.129/C.1/L.58/Rev.1)⁵

122. This amendment was to the following effect:

Replace the words "When an objection is raised" by the words "If, however, objection has been raised".

C. Proceedings of the Committee of the Whole

123. The Committee considered article 65, paragraph 3, at its 22nd meeting, on 6 March 1986.

124. At that meeting, the Committee adopted the amendment submitted by Austria and Egypt. It then adopted the text of the International Law Commission, as amended, and referred it to the Drafting Committee.

ARTICLE 66 AND ANNEX

A. International Law Commission text

125. The International Law Commission text of article 66 provided as follows:

Article 66. Procedures for arbitration and conciliation

If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the application or the interpretation of article 53 or article 64 may, by written notification to the other party or parties to the dispute, submit it to arbitration in accordance with the provisions of the annex to the present articles, unless the parties by common consent agree to submit the dispute to another arbitration procedure;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the other articles in part V of the present articles may set in motion the conciliation procedure specified in the annex to the present articles by submitting a request to that effect to the Secretary-

⁵ The original version of this amendment (A/CONF.129/C.1/L.58) was submitted by Austria only.

General of the United Nations, unless the parties by common consent agree to submit the dispute to another conciliation procedure.

126. The International Law Commission text of the annex provided as follows:

ANNEX

Arbitration and conciliation procedures established in application of article 66

I. ESTABLISHMENT OF THE ARBITRAL TRIBUNAL OR CONCILIATION COMMISSION

1. A list consisting of qualified jurists, from which the parties to a dispute may choose the persons who are to constitute an arbitral tribunal or, as the case may be, a conciliation commission, shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a State party to the present articles and any international organization to which the present articles have become applicable shall be invited to nominate two persons, and the names of the persons so nominated shall constitute the list, a copy of which shall be transmitted to the President of the International Court of Justice. The term of a person on the list, including that of any person nominated to fill a casual vacancy, shall be five years and may be renewed. A person whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraphs.

2. When notification has been made under article 66, paragraph (a), the dispute shall be brought before an arbitral tribunal. When a request has been made to the Secretary-General under article 66, paragraph (b), the Secretary-General shall bring the dispute before a conciliation commission. Both the arbitral tribunal and the conciliation commission shall be constituted as follows:

The States and international organizations which constitute one of the parties to the dispute shall appoint by common consent:

(a) one arbitrator or, as the case may be, one conciliator, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one arbitrator or, as the case may be, one conciliator, who shall be chosen from among those included in the list and shall not be of the nationality of any of the States or nominated by any of the organizations which constitute that party to the dispute.

The States and international organizations which constitute the other party to the dispute shall appoint two arbitrators or, as the case may be, two conciliators, in the same way. The four persons chosen by the parties shall be appointed within 60 days following the date on which the other party to the dispute receives notification under article 66, paragraph (a), or on which the Secretary-General receives the request for conciliation.

The four persons so chosen shall, within 60 days following the date of the last of their own appointments, appoint from the list a fifth arbitrator or, as the case may be, conciliator, who shall be chairman.

If the appointment of the chairman, or of any of the arbitrators or, as the case may be, conciliators, has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General of the United Nations within 60 days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute. If the United Nations is a party or is included in one of the parties to the dispute, the Secretary-General shall transmit the above-mentioned request to the President of the International Court of Justice, who shall perform the functions conferred upon the Secretary-General under this subparagraph.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

The appointment of arbitrators or conciliators by an international organization provided for in paragraphs 1 and 2 shall be governed by the relevant rules of that organization.

II. FUNCTIONING OF THE ARBITRAL TRIBUNAL

3. Unless the parties to the dispute otherwise agree, the Arbitral Tribunal shall decide its own procedure, assuring to each party to the dispute a full opportunity to be heard and to present its case.

4. The Arbitral Tribunal, with the consent of the parties to the dispute, may invite any interested State or international organization to submit to it its views orally or in writing.

5. Decisions of the Arbitral Tribunal shall be adopted by a majority vote of the members. In the event of an equality of votes, the Chairman shall have a casting vote.

6. When one of the parties to the dispute does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and to make its award. Before making its award, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

7. The award of the Arbitral Tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. Any member of the Tribunal may attach a separate or dissenting opinion to the award.

8. The award shall be final and without appeal. It shall be complied with by all parties to the dispute.

9. The Secretary-General shall provide the Tribunal with such assistance and facilities as it may require. The expenses of the Tribunal shall be borne by the United Nations.

III. FUNCTIONING OF THE CONCILIATION COMMISSION

10. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

11. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

12. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

13. The Commission shall report within 12 months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

14. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

B. Amendments

127. Amendments were submitted to article 66 and the annex by the Union of Soviet Socialist Republics, the European Economic Community, the United Nations, the Netherlands, by Algeria, China and Tunisia and by Austria, Colombia, Ireland, Japan, Mexico, Netherlands, Nigeria and Switzerland.

128. Those amendments were to the following effect:

(a) *Union of Soviet Socialist Republics (A/CONF.129/C.1/L.60 and A/CONF.129/C.1/L.61)*

The first of these amendments sought to delete subparagraph (a).

The second was as follows:

1. Add to section I, subparagraph 2(b), the words: in such a way as to ensure that a dispute between an international organization and any State is not considered by citizens solely of that State or that a dispute between two international organizations is not considered by citizens of one and the same State.

2. Delete section II of the annex.

(b) *European Economic Community (A/CONF.129/C.1/L.64)*

In paragraph 2 of the annex:

1. Reword the phrase "The States and international organizations which constitute one of the parties to the dispute" to read:

The States, the international organizations or the States and international organizations which constitute, according to the case, one of the parties to the dispute.

2. Make a similar change in the parallel phrase in the second paragraph of subparagraph (b).

(c) *United Nations* (A/CONF.129/C.1/L.66)

1. In subparagraph (a) of article 66, add the italicized words, whether or not the words shown in brackets are deleted:

(a) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or article 64 may take appropriate steps to seek an advisory opinion on any legal question involved from the International Court of Justice [; if it does not prove possible to secure such an opinion, any one of the parties may, by written notification to the other party or parties to the dispute, submit it to arbitration in accordance with the provisions of the annex to the present articles], unless the parties by common consent have agreed to submit the dispute to [another] arbitration [procedure];

2. Add a subparagraph (c), to read as follows:

(c) The parties to a dispute (will/may) consider an advisory opinion obtained in accordance with subparagraph (a) of the present article as binding.

(d) *Netherlands* (A/CONF.129/C.1/L.67)

In section III of the annex, add a new paragraph reading as follows:

A disagreement as to whether the Commission acting under this section has competence shall be decided by the Commission

(e) *Algeria, China and Tunisia* (A/CONF.129/C.1/L.68)

Reformulate subparagraphs (a) and (b) of article 66 as follows:

(a) Any one of the parties to a dispute concerning the application or the interpretation of article 53 or article 64 may, with the express consent of the party or parties to the dispute, submit it to arbitration in accordance with the provisions of the annex to the present articles, unless the parties by common consent agree to submit the dispute to another arbitration procedure;

(b) any one of the parties to a dispute concerning the application or the interpretation of any of the articles in part V of the present articles may set in motion the conciliation procedure specified in the annex to the present articles by submitting a request to that effect to the Secretary-General of the United Nations, unless the parties by common consent agree to submit the dispute to another conciliation procedure.

(f) *Austria, Colombia, Ireland, Japan, Mexico, Netherlands, Nigeria and Switzerland* (A/CONF.129/C.1/L.69/Rev.1)⁶

Replace the present text of article 66 by the following:

1. If, under paragraph 3 of article 65, no solution has been reached within a period of twelve months following the date on which the objection was raised, the procedures specified in the following paragraphs shall be followed.

2. With respect to a dispute concerning the application or the interpretation of article 53 or 64:

(a) if a State is a party to the dispute with one or more States, it may, by a written application, submit the dispute to the International Court of Justice for a decision;

(b) if a State is a party to the dispute to which one or more international organizations are parties, the State may, through a Member State of the United Nations if necessary, ask the General Assembly or the Security Council to request an advisory opinion of the Court in accordance with paragraph 1 of Article 96 of the Charter of the United Nations;

(c) if the United Nations or an international organization that is authorized in accordance with Article 96 of the Charter of the United Nations is a party to the dispute, it may request an advisory opinion of the

⁶ The first revision of the amendment is identical to the original text, except that Nigeria was added to the list of sponsors. A second revised version was subsequently submitted by the same sponsors (see para. 134).

Court in accordance with Article 65 of the Statute of the International Court of Justice;

(d) if an international organization other than those referred to in subparagraph (c) is a party to the dispute, it may, through a Member State of the United Nations, follow the procedure specified in subparagraph (b);

(e) the advisory opinion given pursuant to subparagraph (b), (c) or (d) shall be accepted as decisive by all the parties to the dispute concerned;

(f) if the request under subparagraph (b), (c) or (d) for an advisory opinion of the Court is not granted, any one of the parties to the dispute may, by written notification to the other party or parties, submit it to arbitration in accordance with the provisions of the annex to the present articles.

3. The provisions of paragraph 2 apply unless all the parties to a dispute referred to in that paragraph by common consent agree to submit the dispute to an arbitration procedure, including the one specified in the annex to the present articles.

4. With respect to a dispute concerning the application or the interpretation of any of the articles in part V, other than article 53 and 64, of the present articles, any one of the parties to the dispute may set in motion the conciliation procedure specified in the annex to the present articles by submitting a request to that effect to the Secretary-General of the United Nations.

C. Proceedings of the Committee of the Whole

129. The Committee considered article 66 and the annex, as well as the amendments thereto, at its 24th and 26th to 30th meetings, on 10, 12, 13, 17 and 19 March 1986.

130. At its 29th meeting, the Committee took an indicative roll-call vote on the amendments to article 66 submitted by the Union of Soviet Socialist Republics, Algeria, China and Tunisia, and Austria, Colombia, Ireland, Japan, Mexico, Netherlands, Nigeria and Switzerland.

131. The indicative vote on the amendment by the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.60) was as follows:

In favour: Algeria, Angola, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Democratic People's Republic of Korea, German Democratic Republic, Hungary, Indonesia, Iran (Islamic Republic of), Mozambique, Nicaragua, Peru, Poland, Romania, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Viet Nam.

Against: Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Cyprus, Denmark, Finland, Germany, Federal Republic of, Greece, Holy See, Ireland, Italy, Japan, Jordan, Lesotho, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Norway, Portugal, Senegal, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

Abstaining: Bahrain, Bangladesh, Barbados, Burkina Faso, Cameroon, Congo, Côte d'Ivoire, Egypt, France, Gabon, Guatemala, India, Iraq, Israel, Kenya, Kuwait, Lebanon, Madagascar, Morocco, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Thailand, Tunisia, United Arab Emirates, Zaire, Zambia.

132. The indicative vote on the amendment by Algeria, China and Tunisia (A/CONF.129/C.1/L.68) was as follows:

In favour: Algeria, Angola, Argentina, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, China, Congo, Cuba, Czechoslovakia, Democratic People's Republic of Korea, German Democratic Republic, Hungary, Indonesia, Iran (Islamic Republic of), Mozambique, Nicaragua, Peru, Poland, Romania, Tunisia, Turkey, Ukrainian Soviet Social-

ist Republic, Union of Soviet Socialist Republics, Venezuela, Viet Nam, Zaire.

Against: Australia, Austria, Belgium, Canada, Chile, Colombia, Cyprus, Denmark, Finland, Germany, Federal Republic of, Greece, Holy See, Ireland, Italy, Japan, Kenya, Lesotho, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Norway, Portugal, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Bahrain, Barbados, Brazil, Cameroon, Côte d'Ivoire, Egypt, France, Gabon, Guatemala, India, Iraq, Israel, Kuwait, Lebanon, Madagascar, Morocco, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Thailand, United Arab Emirates, Yugoslavia, Zambia.

133. The indicative vote on the amendment by Austria, Colombia, Ireland, Japan, Mexico, Netherlands, Nigeria and Switzerland (A/CONF.129/C.1/L.69/Rev.1) was as follows:

In favour: Australia, Austria, Barbados, Belgium, Canada, Chile, Colombia, Côte d'Ivoire, Cyprus, Denmark, Finland, Germany, Federal Republic of, Greece, Holy See, India, Ireland, Italy, Japan, Kenya, Kuwait, Lesotho, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, Republic of Korea, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Zambia.

Against: Algeria, Angola, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, China, Congo, Cuba, Czechoslovakia, Democratic Peoples's Republic of Korea, German Democratic Republic, Hungary, Indonesia, Iran (Islamic Republic of), Mozambique, Nicaragua, Peru, Poland, Romania, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Viet Nam.

Abstaining: Argentina, Bahrain, Brazil, Cameroon, Egypt, France, Gabon, Guatemala, Iraq, Israel, Jordan, Lebanon, Madagascar, Morocco, Oman, Philippines, Qatar, Saudi Arabia, Senegal, Thailand, United Arab Emirates, Zaire.

134. At the 30th meeting of the Committee, the representative of the Netherlands introduced on behalf of the sponsors a second revised version (A/CONF.129/C.1/L.69/Rev.2) of the amendment contained in document A/CONF.129/C.1/L.69/Rev.1. The second revised version differed from the first revised version in that the words "or, where appropriate, the competent organ of the organization concerned" appeared in subparagraph 2(b) after the words "Security Council".

135. At the same meeting, the Committee took the following decisions in relation to article 66, the annex and the amendments thereto:

(i) It rejected the amendment of the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.60) by a recorded vote of 36 votes to 17, with 31 abstentions. The results of the vote were as follows:

In favour: Algeria, Angola, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, German Democratic Republic, Hungary, Iran (Islamic Republic of), Mozambique, Peru, Poland, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yemen.

Against: Australia, Austria, Barbados, Belgium, Brazil, Canada, Chile, China,⁷ Colombia, Cyprus, Denmark, Finland, Gabon, Germany, Federal Republic of, Greece, Holy See, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

Abstaining: Argentina, Bahrain, Burkina Faso, Cameroon, Congo, Côte d'Ivoire, Egypt, France, Guatemala, India, Indonesia, Iraq, Israel, Kenya, Kuwait, Madagascar, Malta, Morocco, Oman, Panama, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Thailand, Tunisia, United Arab Emirates, Viet Nam, Zaire, Zambia.

(ii) It adopted the eight-State amendment (A/CONF.129/C.1/L.69/Rev.2) by a roll-call vote of 40 votes to 24, with 24 abstentions. The results of the vote were as follows:

In favour: Australia, Austria, Barbados, Belgium, Canada, Chile, Colombia, Cyprus, Denmark, Finland, Germany, Federal Republic of, Greece, Holy See, Iceland, India, Ireland, Italy, Jordan, Kenya, Kuwait, Lebanon, Liechtenstein, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, Republic of Korea, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Zambia.

Against: Algeria, Angola, Argentina, Bulgaria, Burkina Faso, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, German Democratic Republic, Hungary, Indonesia, Iran (Islamic Republic of), Mozambique, Peru, Poland, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Viet Nam.

Abstaining: Bahrain, Brazil, Cameroon, Congo, Côte d'Ivoire, Ecuador, France, Gabon, Guatemala, Iraq, Israel, Madagascar, Malta, Morocco, Oman, Panama, Philippines, Qatar, Saudi Arabia, Senegal, Thailand, United Arab Emirates, Yemen, Zaire.

136. At the same meeting, the Committee referred the above text for article 66 to the Drafting Committee. It furthermore adopted the International Law Commission text for the annex and referred it to the Drafting Committee, together with point 1 of the amendment proposed by the Soviet Union (A/CONF.129/C.1/L.61) and the amendment by the Netherlands (A/CONF.129/C.1/L.67) as drafting amendments.

ARTICLE 73

A. International Law Commission text

137. The International Law Commission text provided as follows:

Article 73. Cases of succession of States, responsibility of a State or of an international organization, outbreak of hostilities, termination of the existence of an organization and termination of participation by a State in the membership of an organization

1. The provisions of the present articles shall not prejudice any question that may arise in regard to a treaty between one or more States and one or more international organizations from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States parties to that treaty.

2. The provisions of the present articles shall not prejudice any question that may arise in regard to a treaty from the international

⁷ Subsequently the representative of China indicated that he had intended to vote in favour of this amendment.

responsibility of an international organization, from the termination of the existence of the organization or from the termination of participation by a State in the membership of the organization.

B. Amendments

138. Amendments relating to the article were submitted by Austria and by the International Labour Organisation, the International Monetary Fund and the United Nations.

139. Those amendments were to the following effect:

(a) *Austria* (A/CONF.129/C.1/L.63)

Put a full stop after the words "between States" in the sixth line of paragraph 1 and delete the rest of the sentence.

(b) *International Labour Organisation, International Monetary Fund and United Nations* (A/CONF.129/C.1/L.65)

If article 36 *bis* is deleted, add a new paragraph 3 to article 73 as follows:

3. The provisions of the present articles shall not prejudice any question that may arise regarding the obligations and rights arising for States members of an international organization from a treaty to which it is a party.

C. Proceedings of the Committee of the Whole

140. The Committee considered the article and the amendments thereto at its 23rd and 28th meetings, on 7 and 13 March 1986.

141. At its 23rd meeting, the Committee decided to refer the International Law Commission text, as amended by Austria (A/CONF.129/C.1/L.63) to the Drafting Committee. The Committee further agreed to defer further consideration of the amendment by the International Labour Organisation, the International Monetary Fund and the United Nations until it resumed consideration of article 36 *bis*. (For the relevant decision concerning article 73 taken at a subsequent stage, see paragraph 89 above.)

ARTICLE 75

A. International Law Commission text

142. The International Law Commission text provided as follows:

Article 75. Case of an aggressor State

The provisions of the present articles are without prejudice to any obligations in relation to a treaty between one or more States and one or more international organizations which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression.

B. Amendments

143. No amendment was submitted.

C. Proceedings of the Committee of the Whole

144. The Committee considered the article at its 23rd meeting, on 7 March 1986.

145. At that meeting, the Committee adopted the text of the International Law Commission for article 75 and referred it to the Drafting Committee.

ARTICLE 77

A. International Law Commission text

146. The International Law Commission text provided as follows:

Article 77. Functions of depositaries

1. The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations or, as the case may be, by the contracting organizations, comprise in particular:

(a) keeping custody of the original text of the treaty, of any full powers and powers delivered to the depositary;

(b) preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the States and international organizations or, as the case may be, to the organizations entitled to become parties to the treaty;

(c) receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;

(d) examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State or international organization in question;

(e) informing the parties and the States and international organizations or, as the case may be, the organizations entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;

(f) informing the States and international organizations or, as the case may be, the organizations entitled to become parties to the treaty when the number of signatures or of instruments of ratification, instruments relating to an act of formal confirmation, or instruments of acceptance, approval or accession required for the entry into force of the treaty has been received or deposited;

(g) registering the treaty with the Secretariat of the United Nations;

(h) performing the functions specified in other provisions of the present articles.

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

(a) the signatory States and organizations and the contracting States and contracting organizations; or

(b) where appropriate, the competent organ of the organization concerned.

B. Amendments

147. No amendment was submitted.

C. Proceedings of the Committee of the Whole

148. The Committee considered the article at its 23rd meeting, on 7 March 1986.

149. At that meeting, the Committee adopted the text of the International Law Commission for article 77 and referred it to the Drafting Committee.

PROPOSALS FOR INSERTION OF A NEW ARTICLE ON THE RELATIONSHIP BETWEEN THE VIENNA CONVENTION ON THE LAW OF TREATIES AND THE CONVENTION UNDER ELABORATION

150. Proposals for a new article on the relationship between the Vienna Convention on the Law of Treaties and the Convention under elaboration were made by Cape Verde, the United Kingdom of Great Britain and Northern Ireland and Italy.

A. Texts of the proposals

151. Those proposals read as follows:

(a) *Cape Verde* (A/CONF.129/C.1/L.19/Rev.1)⁸

Relation to Vienna Convention on the Law of Treaties

Relations of States parties to a treaty to which one or more international organizations are also parties shall be governed, as between such States, by the Vienna Convention on the Law of Treaties if such States are parties to the said Convention.

(b) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.129/C.1/L.27)

Relationship to the Vienna Convention on the Law of Treaties

The present Convention shall not affect the application to a treaty of the Vienna Convention on the Law of Treaties of 1969 in the relations as between themselves of two or more States parties to that Convention.

⁸ In its original version (A/CONF.129/C.1/L.19), the amendment by Cape Verde read as follows:

Relation to Vienna Convention on the Law of Treaties

1. Relations of States parties to a treaty to which one or more international organizations are also parties shall be governed, as between such States, by the Vienna Convention on the Law of Treaties if such States are all parties to the said Convention.

2. The present Convention shall not prevail, as between States parties, over the Vienna Convention on the Law of Treaties, if such States are also parties to the latter Convention.

(c) *Italy* (A/CONF.129/C.1/L.42)

Relations of States as between themselves

The relations of States as between themselves shall not be affected by the present Convention.

B. Proceedings of the Committee of the Whole

152. The Committee considered proposals for a new article on the relationship between the Vienna Convention on the Law of Treaties and the Convention under elaboration at its 14th, 16th and 28th meetings, on 28 February and 3 and 13 March 1986.

153. At the 28th meeting, it was indicated that the proposal submitted by Italy (A/CONF.129/C.1/L.42) was not insisted upon.

154. At the same meeting, the Committee, in the light of the outcome of the consultations held under the chairmanship of the President of the Conference, approved the idea reflected in the proposals submitted by Cape Verde (A/CONF.129/C.1/L.19/Rev.1) and the United Kingdom (A/CONF.129/C.1/L.27), on the understanding that this idea should be formulated by the Drafting Committee in a consolidated text based on the two proposals in question.

CHAPTER III

PREAMBLE AND FINAL CLAUSES

A. Preamble

155. As indicated in paragraph 3 above, the Conference, at its 4th plenary meeting, held on 13 March 1986, decided to entrust the preparation of the preamble to the Committee of the Whole.

156. Proposals for the preamble were submitted by Brazil and India and by Czechoslovakia, the German Democratic Republic and the Ukrainian Soviet Socialist Republic. Those proposals read as follows:

(a) *Brazil and India (A/CONF.129/C.1/L.71)*

The Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law,

Affirming the importance of enhancing the process of codification and progressive development of international law at a universal level,

Noting that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

Bearing in mind the need for the codification and progressive development of the rules relating to treaties between States and international organizations or between international organizations as a means of ensuring greater judicial order in international relations, and thereby assisting in the promotion and implementation of the purposes and principles set forth in Articles 1 and 2 of the United Nations Charter,

Bearing also in mind the provisions of the Vienna Convention on the Law of Treaties of 1969,

Recognizing the relationship between the law of treaties between States and the law of treaties between States and international organizations or between international organizations,

Affirming that matters not regulated by the present Convention continue to be governed by the rules and principles of general international law,

Have agreed as follows:

(b) *Czechoslovakia, German Democratic Republic and Ukrainian Soviet Socialist Republic (A/CONF.129/C.1/L.72)*

The States Parties to the present Convention,

Considering the importance of treaties between States and international organizations or between international organizations as a useful means of developing international relations and ensuring conditions for peaceful co-operation among nations, whatever their constitutional and social systems,

Having in mind special characteristics of treaties to which international organizations are parties as derived subjects of international law,

Recognizing the usefulness for an international organization to possess capacity to conclude a treaty in order to accomplish its purposes and functions,

Recognizing that practice of international organizations shall be in full accordance with their constituent instruments and generally accepted principles of international law.

157. At its 29th meeting, on 17 March 1986, the Committee of the Whole considered a text for the preamble (A/CONF.129/C.1/L.77) which had been worked out in the framework of consultations held under the chairmanship of the President of the Conference on the basis of the above proposals and of various informal proposals. That text read as follows:

The Parties to the present Convention,

Considering the fundamental role of treaties in the history of international relations,

Recognizing the ever-increasing importance of treaties as a source of international law and their consensual nature,

Affirming the importance of enhancing the process of codification and progressive development of international law at a universal level,

Noting that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

Bearing in mind the codification and progressive development of the rules relating to treaties between States and international organizations or between international organizations as a means of ensuring greater judicial order in international relations, and thereby assisting in the promotion and implementation of the purposes and principles set forth in Articles 1 and 2 of the United Nations Charter,

Bearing also in mind the provisions of the Vienna Convention on the Law of Treaties of 1969,

Recognizing the relationship between the law of treaties between States and the law of treaties between States and international organizations or between international organizations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

Considering the importance of treaties between States and international organizations or between international organizations as a useful means of developing international relations and ensuring conditions for peaceful co-operation among nations, whatever their constitutional and social systems,

Having in mind the specific features of treaties to which international organizations are parties as subjects of international law as distinct from States,

Noting that an international organization possesses such capacity to conclude treaties which is necessary for the exercise of its functions and the fulfilment of its purposes,

Recognizing that the practice of international organizations when concluding treaties with States or among themselves should be in accordance with their constituent instruments,

Affirming that disputes concerning treaties, like other international disputes, should be settled in conformity with the Charter of the United Nations by peaceful means and in conformity with the principles of justice and international law,

Affirming that nothing in the present Convention should be interpreted as affecting such of the relations between an international organization and its members as are regulated by the rules of the organization,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Have agreed as follows:

158. At the same meeting, the Committee adopted the above text for the preamble and referred it to the Drafting Committee, on the understanding that the order of the paragraphs would have to be reviewed by the Drafting Committee, taking into account the logical link between the tenth, eleventh and twelfth paragraphs.

B. Final clauses

159. The Committee of the Whole had before it two proposals for final clauses submitted respectively by the

Union of Soviet Socialist Republics and Brazil, Cameroon, Egypt, India and Yugoslavia, as orally amended.

160. Those proposals read as follows:

(a) *Union of Soviet Socialist Republics (A/CONF.129/C.1/L.76 and Corr.1)*

Article 81. Signature

The present Convention shall be open for signature until . . . (date, month, year) at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until . . . (date, month, year), at the United Nations Headquarters, New York by:

- (a) all States;
- (b) Namibia, represented by the United Nations Council for Namibia.

Article 82. Ratification

The present Convention is subject to ratification by States and by Namibia, represented by the United Nations Council for Namibia. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 83. Accession

1. The present Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by any international organization which has the capacity to conclude treaties.

2. An instrument of accession of an international organization shall contain a declaration that it has the capacity to conclude treaties.

3. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-fifth instrument of ratification or accession by States or by Namibia, represented by the United Nations Council for Namibia.

2. For each State or for Namibia, represented by the United Nations Council for Namibia, ratifying or acceding to the Convention after the condition specified in paragraph 1 has been fulfilled, the Convention shall enter into force on the thirtieth day after deposit by such State or by Namibia of its instrument of ratification or accession.

3. For each international organization depositing an instrument of accession, the Convention shall enter into force on the thirtieth day after such deposit, provided that it shall not so enter into force before the Convention enters into force pursuant to paragraph 1.

Article 85. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, and duly authorized representatives of the United Nations Council for Namibia, have signed the present Convention.

DONE AT VIENNA this . . . day of . . . one thousand nine hundred and eighty-six.

(b) *Brazil, Cameroon, Egypt, India and Yugoslavia (A/CONF.129/C.1/L.79, as orally amended)*

Article 81. Signature

The present Convention shall be open for signature until . . . (date, month, year) at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until . . . (date, month, year), at the United Nations Headquarters, New York by:

- (a) all States;
- (b) Namibia, represented by the United Nations Council for Namibia;
- (c) international organizations invited to participate in the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations.

Article 82. Ratification or act of formal confirmation

The present Convention is subject to ratification by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by international organizations. The instruments of ratification and those relating to acts of formal confirmation shall be deposited with the Secretary-General of the United Nations.

Article 83. Accession

1. The present Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by any international organization which has the capacity to conclude treaties.

2. An instrument of accession of an international organization shall contain a declaration that it has the capacity to conclude treaties.

3. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 84. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-fifth instrument of ratification or accession by States or by Namibia, represented by the United Nations Council for Namibia.

2. For each State or for Namibia, represented by the United Nations Council for Namibia, ratifying or acceding to the Convention after the condition specified in paragraph 1 has been fulfilled, the Convention shall enter into force on the thirtieth day after deposit by such State or by Namibia of its instrument of ratification or accession.

3. For each international organization depositing an instrument relating to an act of formal confirmation or an instrument of accession, the Convention shall enter into force on the thirtieth day after such deposit, provided that it shall not so enter into force before the Convention enters into force pursuant to paragraph 1.

Article 85. Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized by their respective Governments, and duly authorized representatives of the United Nations Council for Namibia and of international organizations have signed the present Convention.

DONE AT VIENNA this . . . day of . . . one thousand nine hundred and eighty-six.

161. An amendment to the five-State proposal for final clauses (A/CONF.129/C.1/L.79, as orally amended) was submitted by the Netherlands and the United Kingdom of Great Britain and Northern Ireland (A/CONF.129/C.1/L.80). That amendment was to the following effect:

In paragraph 1 of article 84,

(a) substitute the words "thirty-fifth" for "twenty-fifth" before "instrument";

(b) add at the end of the paragraph "and the fifth instrument relating to acts of formal confirmation or accession by international organizations".

162. The Committee considered the above proposals at its 30th meeting, on 19 March 1986.

163. The Committee voted on the two proposals before it in the order of submission and proceeded in relation to articles 81, 82 and 83 on an article-by-article basis, as follows:

(i) It rejected article 81 in the proposal by the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.76 and Corr.1) by a roll-call vote of 40 votes to 12, with 36 abstentions. The results of the vote were as follows:

In favour: Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, German Democratic Republic, Hungary, Poland,

Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Viet Nam.

Against: Australia, Austria, Barbados, Belgium, Brazil, Cameroon, Canada, Chile, Colombia, Denmark, Egypt, Finland, France, Gabon, Germany, Federal Republic of, Greece, Guatemala, Holy See, Indonesia, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Zambia.

Abstentions: Algeria, Angola, Argentina, Bahrain, Burkina Faso, China, Congo, Côte d'Ivoire, Cyprus, Ecuador, India, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Morocco, Mozambique, Oman, Panama, Peru, Philippines, Qatar, Republic of Korea, Saudi Arabia, Senegal, Thailand, Tunisia, Turkey, United Arab Emirates, Venezuela, Yemen, Zaire.

(ii) The Committee adopted without a vote article 81 as contained in the five-State proposal (A/CONF.129/C.1/L.79, as orally corrected).

(iii) The Committee rejected the text proposed by the Soviet Union for article 82 (A/CONF.129/C.1/L.76 and Corr.1) by a roll-call vote of 41 votes to 12, with 34 abstentions. The results of the vote were as follows:

In favour: Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Democratic People's Republic of Korea, German Democratic Republic, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Viet Nam.

Against: Australia, Austria, Belgium, Brazil, Cameroon, Canada, Chile, Colombia, Denmark, Egypt, Finland, France, Gabon, Germany, Federal Republic of, Greece, Guatemala, Holy See, Indonesia, Ireland, Italy, Japan, Kenya, Liechtenstein, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, Senegal, Spain, Sudan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Zambia.

Abstentions: Algeria, Angola, Argentina, Bahrain, Barbados, Burkina Faso, China, Congo, Côte d'Ivoire, Cyprus, India, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kuwait, Lebanon, Madagascar, Morocco, Mozambique, Oman, Panama, Peru, Philippines, Qatar, Republic of Korea, Saudi Arabia, Thailand, Tunisia, Turkey, United Arab Emirates, Venezuela, Yemen, Zaire.

(iv) The Committee adopted without a vote article 82 as contained in the five-State proposal (A/CONF.129/C.1/L.79, as orally corrected).

(v) The Committee then adopted without a vote article 83, which was identical in both proposals before it.

164. With reference to article 84, the amendment by the Netherlands and the United Kingdom (A/CONF.129/C.1/L.80) was withdrawn and the five-State proposal was revised by replacing "twenty-fifth instrument" by "thirty-fifth instrument".

165. The Committee of the Whole then adopted without a vote the five-State proposal for articles 84 and 85 and referred to the Drafting Committee articles 81 to 85.