

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

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1st meeting of the Committee of the Whole

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

SUMMARY RECORDS OF THE MEETINGS OF THE COMMITTEE OF THE WHOLE

1st meeting

Wednesday, 19 February 1986, at 5.25 p.m.

Chairman: Mr. SHASH (Egypt)

Election of Vice-Chairmen

1. The CHAIRMAN said that, for the reason given by the President of the Conference at its 2nd plenary meeting, the Committee of the Whole should elect two Vice-Chairmen. He understood there was general agreement to elect Mr. Geraldo Eulalio do Nascimento e Silva (Brazil) and Mr. Zdeněk Pisk (Czechoslovakia) as Vice-Chairmen.

Mr. Geraldo Eulalio do Nascimento e Silva (Brazil) and Mr. Zdeněk Pisk (Czechoslovakia) were elected Vice-Chairmen of the Committee of the Whole by acclamation.

Election of the Rapporteur

2. The CHAIRMAN said that he understood there was general agreement that Mrs. Kuljit Thakore (India), who had acted as Rapporteur at several previous codification conferences, should be elected to the office of Rapporteur of the Committee. If there was no objection, he would take it that the Committee wished to elect Mrs. Thakore to that post.

Mrs. Kuljit Thakore (India) was elected Rapporteur of the Committee of the Whole by acclamation.

Organization of work

3. The CHAIRMAN said that at its 3rd plenary meeting the Conference had referred to the Committee for substantive consideration the draft articles listed in the attachment to the Secretary-General's note (A/CONF.129/8), 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 and the annex entitled "Arbitration and conciliation procedures established in application of article 66".

4. The first of those provisions was article 2, "Use of terms". It had been the practice at previous codification conferences not to decide on definitions until the corresponding substantive articles had been discussed. He therefore suggested the Committee should discuss draft article 2 briefly, so as to identify points of agreement or disagreement on its various elements, but defer a decision on the article as a whole until it had dealt with the other articles which the Conference had referred to it.

5. Mr. JESUS (Cape Verde) asked whether the Committee intended to discuss the draft articles in the order in which they appeared in the attachment to document A/CONF.129/8. If not, it should draw up a weekly programme of work indicating which draft articles would come up for consideration in a given week.

6. The Committee should arrive at a consensus on the use of terms; agreement on article 5, for example, was entirely dependent on prior agreement on the terms used in article 2. If article 2 was agreed, it would be possible to adopt other draft articles without leaving them subject to the proviso of agreement on article 2.

7. Mr. SCHRICKE (France) said that it would be possible to discuss article 2 with a view to ascertaining those points on which there was general agreement. Any terms which gave rise to reservations could then be discussed in connection with the other draft articles.

8. The CHAIRMAN said that if he heard no objection he would assume that the Committee wished to consider article 2 on a preliminary basis in order to determine which terms in it were generally acceptable.

It was so decided.

Consideration of the question of the law of treaties between States and international organizations or between international organizations, in accordance with General Assembly resolutions 37/112 of 16 December 1982, 38/139 of 19 December 1983, 39/86 of 13 December 1984 and 40/76 of 11 December 1985 (A/CONF.190/4)

[Agenda item 11]

Article 2 (Use of terms)

9. The CHAIRMAN invited the Committee to consider, as succinctly as possible, the title of draft article 2 and the terms "treaty", "ratification" and "act of formal confirmation".

10. Mr. HAYASHI (Japan) said that his delegation doubted the necessity of introducing new terminology such as the expression "act of formal confirmation". The term "ratification" was well established. He would raise the matter again during the consideration of later articles.

11. Mr. RAMADAN (Egypt) said that the term "ratification" should be reserved for States. It had long been

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

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

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

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

15. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that it was unnecessary to draw an explicit parallel between acceptance of a treaty by an

international organization and ratification of a treaty by a State. The phrase "corresponding to that of ratification by a State" in subparagraph 1 (*b bis*) should therefore be deleted.

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

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

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

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

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

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

The meeting rose at 6.10 p.m.

2nd meeting

Thursday, 20 February 1986, at 10.30 a.m.

Chairman: Mr. SHASH (Egypt)

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

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

[Agenda item 11] (*continued*)

Article 2 (Use of terms) (continued)

Subparagraphs 1 (b) and (b bis)

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