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

Vienna, Austria
18 February – 21 March 1986

Document:-
A/CONF.129/C.1/SR.5

5th 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)*

Cape Verde would not give his delegation any difficulties.

45. Mr. REUTER (Expert Consultant) said that in drafting the article the Commission had been guided by the principle of strict adherence to the 1969 Vienna Convention, but its members would be quite content to see the existing text improved, streamlined or even deleted, if that was the wish of the Conference.

46. Several speakers had drawn attention to the last subparagraph of article 3. One problem which the Commission had not addressed was that article 3 of the 1969 Vienna Convention, by safeguarding the application of the rules of that instrument to relations between States parties to a treaty to which other subjects of international law were also parties, implied that there were two sets of rules on treaty law: general ones and the rules of the Vienna Convention. Draft article 3 introduced a third series of rules, those of the draft convention itself. Some representatives believed that problems might arise from that situation because of uncertainty as to the rules applying to relations between States when States and other entities were involved in treaties covered by the Convention. In such a case, States parties to the Vienna Convention would be bound by the provisions of that Convention. The draft convention would therefore need a provision stating clearly that for States parties to the 1969 Convention the provisions of that Convention would apply to the relations between them arising out of treaties falling within the scope of the draft convention. The problem, though unlikely to occur frequently, would arise in one specific circumstance, namely if in the draft under discussion it was decided to introduce procedures for the settlement of disputes which were different from those in the Vienna Convention. Although the Commission had been aware of the issue, which was very complex, it had felt it best not to tackle it because of the risk of the draft articles being incompatible with the Vienna Convention. It was for the Conference to seek a solution to the problem.

47. The CHAIRMAN summarized the discussion on article 3 and asked the French delegation if, in the light of that discussion, it wished to uphold its request for deletion of the article.

48. Mr. SCHRICKE (France) said that, although his delegation held to its view that it would be best to delete article 3, it did not wish to obstruct the work of the Committee by insisting on its proposal. He hoped that his delegation's concerns would be duly taken into account by the Drafting Committee.

49. Mr. JESUS (Cape Verde) said that the Japanese amendment introduced questions which were not simply matters of drafting. Regarding his own amendment, it would be useful if a decision could be postponed until he had consulted with other delegations on the issue.

50. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to postpone a decision on article 3.

It was so decided.

The meeting rose at 5.55 p.m.

5th meeting

Monday, 24 February 1986, at 10.20 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 3 (International agreements not within the scope of the present articles) (*continued*)

1. Mr. WANG Houli (China) commended the Japanese delegation's concern to simplify article 3, but noted that its amendment (A/CONF.129/C.1/L.9) had not met with general approval and that, as a matter of principle, precision should have precedence over brevity. He believed that the Japanese proposal, as well as others made during the discussion, were in fact insufficiently precise. He could not accept deletions which had also been proposed, and considered that the best course would be to invite the Drafting Committee to look into the possibility of simplifying the article.

2. Mr. ECONOMIDES (Greece) observed that, notwithstanding the Cape Verde amendment (A/CONF.129/C.1/L.5 and Corr.1), subparagraphs (i) to (iii) of article 3, which were already complex, did not take account of all eventualities. He referred in that connection to agreements between States, which were to be the subject of a special provision at the end of the projected convention establishing the relationship to the 1969 Vienna Convention on the Law of Treaties[1] and agreements between States and subjects of international law other than States or international organizations.

3. He wondered whether the Japanese proposal could not be amended to cover agreements not covered by the present text, such as agreements concluded by subjects of international law other than States or international

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

organizations, as well as verbal agreements between States and international organizations or between international organizations. It might for example be specified that the phrase "certain international agreements" in that proposal included agreements concluded by subjects of international law or other international entities, either among themselves or with States or international organizations.

4. The CHAIRMAN, having ascertained from the representatives of Cape Verde that his consultations with the Group of 77 about the article were expected to be completed before the afternoon meeting, pointed out that several proposals were still before the Committee of the Whole. In the quest for general agreement, it might prove procedurally necessary to refer the matter to the President of the Conference for his deliberation.

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

5. Mr. REUTER (Expert Consultant) recalled that in its first reading the International Law Commission had considered that there was no need for a provision paralleling article 5 of the Vienna Convention on the Law of Treaties, but on reviewing the question had decided that such a provision might be useful.

6. Symmetry between article 5 of the Vienna Convention and article 5 of the projected convention would require that the constituent instrument referred to in the latter should be that of an international organization to which another international organization was also a party. The Commission had initially considered that such instances were so rare as to be safely left out of account, but on second reading had favoured a broader view taking account of the virtually countless economic organizations set up by the developing countries and related by agreement with each other, with banks and with aid-providing agencies.

7. As regarded treaties adopted within an international organization, further reflection had convinced the Commission that besides the case of international organizations with one or more international organizations as members there was the case of international organizations composed entirely of States, which adopted texts that were open to adhesion by international organizations. The decision to take that possibility into account had been made for substantive rather than "architectural" reasons of symmetry with the 1969 Vienna Convention.

8. It might be useful to recall that the Commission had been of the view that even if an international organization included as fully participating members one or two development planning organizations composed, for example, of States and international banks, that organization would still be fundamentally intergovernmental in nature, firstly, as a subject under international law, and secondly, because an international organization was in the last analysis merely a "technical device" designed to enable governments to act together.

9. Mr. JESUS (Cape Verde), introducing his amendment (A/CONF.129/C.1/L.10) proposing the deletion of article 5, said the article expanded article 1, which defined the scope of the projected convention in a manner analogous to the corresponding article of the Vienna Convention. He believed that the article could have been left out of that Convention without giving rise to difficulties of interpretation or application and considered that it should be deleted from the present draft for reasons both of logic and expediency. There could be no doubt that the treaties referred to in article 1 comprised all treaties, irrespective of their category, content or manner and place of adoption, between States and international organizations or between international organizations.

10. In the light of the definition of "international organization" in article 2, subparagraph 1 (*i*), and the comments of the Expert Consultant, it was clear that the constituent instruments of such organizations fell totally within the purview of article 5 of the Vienna Convention. They were to be considered as treaties between States. On the other hand, if the Conference considered, as his delegation did, that the legal régime to be established in the projected convention should apply to organizations of mixed membership (which is acknowledged as a current trend in the commentary of the International Law Commission) as well as to purely intergovernmental organizations, the maintenance of article 5 must be made subject to two conditions. The definition of "international organization" in article 2 would have to be amended to include an international organization essentially but not exclusively composed of States, and the first part of article 5 would have to be reworded to show that the convention applied also to treaties that were constituent instruments of international organizations of which States and international organizations were members. He would not oppose changes on those lines, but the deletion of article 5 seemed a far more straightforward solution.

11. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) favoured the deletion of article 5, which did not reflect current practice in international organizations and had no place in the present draft. The International Law Commission's arguments were unconvincing. There was no reason to transfer provisions quasi-automatically from the Vienna Convention to the new draft. Nor were there grounds for believing that the instances alluded to as a reason for including the article could be other than very exceptional. In his delegation's view, they certainly did not justify the Commission's proposal for an article 5 which could only further complicate matters that were already complex.

12. Mr. RAMADAN (Egypt) said that the justification for the inclusion of article 5 in the 1969 Convention was presumably that that Convention was the first of its kind, and under article 1 applied only to treaties between States. Under article 3, treaties to which international organizations were party were indeed excluded. In the circumstances, it was natural that the 1968-1969 United Nations Conference on the Law of Treaties should have agreed to specify that the constituent instrument of an international organization and all treaties adopted within international organizations should not be subject to the Convention. In the case of the present draft, those considerations did not apply. It

would be helpful if the Expert Consultant could provide further clarification regarding the reasons for the inclusion of such an article.

13. Article 5 covered two types of treaty: the constituent instrument of an international organization and any treaty adopted within an international organization. There were in turn three types of constituent instrument, the first being a constituent instrument the parties to which were States and which, as a convention adopted by States, would be governed by the 1969 Convention, not the draft convention. The second type was a constituent instrument of an international organization that would bind member States and an international organization which under article 1 (*a*)would be subject to the draft convention. The third type of instrument was a constituent instrument adopted and endorsed by international organizations alone, which under article 1 (*b*) would be subject to the draft convention, without any need to have recourse to article 5. His delegation saw no reason for repeating what was provided for under article 1, particularly since the justification for the inclusion of the article in the 1969 Convention no longer applied.

14. Mr. ALBANESE (Council of Europe) said that his delegation considered the second part of draft article 5 absolutely essential. Many treaties among member States were concluded within the Council of Europe, and the application of special rules in that respect had been ensured under article 5 of the 1969 Vienna Convention. Certain of those treaties explicitly provided for the European Economic Community (EEC) to become a party. With others, concluded initially among States only, that result ws achieved by means of an additional protocol to the treaty. There had been about 10 treaties providing for accession by the EEC already, and their number was expected to increase.

15. If article 5 were deleted, a somewhat paradoxical situation would arise. If a convention was not open for accession by the EEC, the internal rules of the Council of Europe would apply under article 5 of the 1969 Vienna Convention on the Law of Treaties. If, however, the new convention was open for accession by the EEC, those rules would no longer apply. The omission of article 5 could thus give rise to an *a contrario* argument based on the existence of article 5 of the 1969 Convention and the absence of a similar provision in the present convention.

16. In his delegation's view, article 5, as drafted, was indispensable if difficulties and misunderstandings were to be avoided.

17. Mr. WOKALEK (Federal Republic of Germany) favoured the retention of the article and considered that parallelism with the 1969 Convention was sometimes relevant, if only to avoid arguments of the *a contrario* type. The Commission's draft, to which much thought had been given, should be followed so far as possible. It was important also that the proposed convention should be flexible enough to take account of future developments.

18. Mrs. THAKORE (India) believed that the article should be retained, and was not persuaded by the argument that it should be deleted or limited to treaties adopted within an international organization. The future convention should be as complete as possible and should even cover special, albeit rare, cases. The Expert Consultant's explanation and the arguments of the representative of the Council of Europe had further convinced her delegation of the need for a provision along the lines of the draft article.

19. Mr. KOECK (Holy See) observed that since international practice and doctrine made it abundantly clear that international organizations could be members of international organizations, his delegation believed that article 5 should be retained. He had the impression from the discussion that some of the support for the Cape Verde amendment was intended to limit the term and even the notion of "international organizations" to mere communities of States. That was completely unacceptable to his delegation, which would be unable to support the Cape Verde proposal.

20. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that, despite the Expert Consultant's explanation, many aspects of the article were still unclear. Article 5 reproduced the text of article 5 of the 1969 Vienna Convention, whose inclusion had been fully justified by the need to cover two types of instrument: the constituent instruments of international organizations and treaties between States resulting from an agreement within an international organization. Such treaties could be regarded as *sui generis*. The proposed convention, however, differed from the 1969 Convention in that it was designed to govern treaties concluded exclusively between international organizations. Thus there might be situations in which the constituent instrument of an international organization was created exclusively by international organizations.

21. Although the Commission had not foreseen the possibility of an international organization all of whose members were international organizations, the establishment of such an international organization was theoretically possible. Such a possibility arose from the provisions of article 5, which opened the way to the establishment by international organizations of supra-international structures not under the control of States. Modern general international law lacked norms to provide for such a possibility. It was no accident that the constituent instruments of modern international organizations did not provide for the powers to establish any such organizations, States retaining for themselves the exclusive prerogative of establishing international organizations.

22. Having examined other draft articles in the light of article 5, his delegation had concluded that laying down in article 5 a concept of international organization different from that set out in article 2 would necessitate a major change in the definition of international organization and consequently was fraught with serious complications. For all those reasons, it would be preferable to omit article 5.

23. Mr. HARDY (European Economic Community) said that the reasons which had persuaded the Commission to include article 5 had lost none of their force since 1982 and would not do so in the future. The EEC was party to the constituent instrument of various inter-

national organizations, particularly in the matter of commodities and fishing arrangements, and also to international treaties adopted within other international organizations, including, but not limited to, the case of the Council of Europe. Since the practice did in fact exist, there seemed to be no reason to exclude the provision, and his delegation favoured its retention. If it were omitted, greater confusion would arise as to the status of international organizations and their participation in the treaties in question. If the article was retained, the definition of international organization would possibly require re-examination, although the EEC had no specific change to propose.

24. With regard to the term "relevant rules" the EEC interpreted it to mean that each organization could determine what those rules were in the given case. Since the term "relevant rules" also appeared in a number of other articles, including articles 6, 35, 36, 37, 39 and 65, his remark applied in each of those cases.

25. Mr. LUKASIK (Poland) said that his delegation saw merit in the Cape Verde proposal, since the article raised a number of questions, one of which concerned the term "relevant rules".

26. In his delegation's view, the main reason for including the article had been that it existed in the 1969 Vienna Convention. Although it was intended to apply to two specific cases, other cases should perhaps also be taken into account. As had been mentioned earlier, two or more international organizations might create a supra-international organization that would not be controlled by States parties to the international organizations. It was perhaps necessary to consider that possibility. It might, however, be better to omit the question from the draft convention until it could be considered in terms of codification rather than of the creation of rules that did not correspond to the reality of international practice.

27. He agreed with most of what the representatives of Cape Verde, the Byelorussian SSR and the Ukrainian SSR had said, particularly in regard to the need to amend the definition of "international organization" if the article were retained. He considered that the constituent instrument of an international organization was *sui generis* and governed by a somewhat different legal régime from the law of treaties.

28. For all those reasons, he favoured the deletion of the article.

29. Mr. KANDIE (Kenya) considered that the proposed convention should solve, not create problems and accordingly supported the proposal to delete the article. His delegation was particularly concerned that the article seemed to conflict with the succinct and lucid definition of the term "international organization" in article 2, 1 (*i*). If article 5 was retained, changes would have to be introduced into the definition, and that might be neither desirable nor helpful.

30. Although it appeared from the International Law Commission's commentary that the article was intended to cover unusual situations, his delegation was concerned at the possible ramifications. It was necessary to strike a balance between the need for a convention that reflected the state of development of the law of treaties and the need to provide for rare situations. Any innovation should be tempered by recognition that it should be reasonable and not out of place in the general régime of the convention.

31. Mr. MBAYE (Senegal) said that the first part of the article was unnecessary and should be deleted or reworded. He agreed with the Commission's view that there was no reason not to provide for the case of a treaty that was a constituent instrument of an international organization to which another international organization was also party. The possibility was however covered by article 1 (*a*).

32. The second part of article 5 might be relevant in that, in maintaining a treaty adopted within an international organization in the field of application of the draft convention under discussion, it did not exclude the possibility of that organization applying other provisions to that treaty. However, that second part could be reformulated.

33. Mr. SCHRICKE (France) thought there was a misunderstanding about the real purpose of the article, perhaps because of the ambiguity of its text, which reproduced that of article 5 of the 1969 Vienna Convention.

34. It had been argued that the article simply elucidated the scope of the proposed convention as stated in article 1 and the definitions in article 2. However, in his delegation's opinion, which was based on the *travaux préparatoires* of the 1969 Convention, the nub of article 5 was the last phrase, which provided that the proposed convention would apply "without prejudice to any relevant rules of the [international] organization", thus subordinating the convention to the particular rules of the organization.

35. To understand the purpose of this provision, the first question to consider was whether there were, or could be, international organizations whose membership included other international organizations. Such indeed was the case. It was then necessary to ask what the effect of deleting article 5 would be in cases where the rules of an international organization were inconsistent with the provisions of the draft convention. If the convention were non-mandatory, there would be nothing to prevent parties to a treaty applying different rules, in which case the article was superfluous. If on the other hand the convention were prescriptive, the article would have to be retained to preserve the ability to apply any relevant rules of an international organization.

36. He wished to ask the Expert Consultant whether the draft articles were intended to be prescriptive or to allow exceptions, particularly where the relevant rules of an international organization were inconsistent with certain provisions of the proposed convention.

37. Mr. JESUS (Cape Verde), commenting on the remarks of the representative of the Holy See, said that he did not contend that the membership of international organizations covered by the proposed convention must be exclusively intergovernmental. The definition in article 2 and the first part of article 5 could be amended to cover international organizations whose membership was essentially intergovernmental but also

included international organizations as well as purely intergovernmental organizations. The deletion of the article would broaden the scope of the convention, not restrict it. The scope of the convention was laid down in article 1, and since article 5 qualified article 1, it constituted a restriction on the scope of the convention, not, as some delegations appeared to feel, the reverse.

38. Mr. SIEV (Ireland) was convinced that the article should be retained. Any problems and disadvantages arising from its retention would not be greater than those caused by its deletion. In his delegation's view, the article would be useful now and even more useful in the future.

39. Mr. GÜNEY (Turkey) agreed with the Expert Consultant that an international organization was a technical device to enable States to act together. He also agreed with the Council of Europe representative's arguments, and accordingly opposed the deletion of the article.

40. Sir John FREELAND (United Kingdom) said that there was no clear case for automatic parallelism with the 1969 Vienna Convention. The International Law Commission had considered the issue carefully in the light of the realities of contemporary international life. Examples had been given of international organizations where other international organizations were party to the constituent instruments, particularly in matters of economic development. There were also many treaties adopted within international organizations to which international organizations were parties. His delegation thought that it was sensible for the present draft articles to contain provisions along the lines of those in article 5. Without such provisions, difficulties might arise in practice from the fact that the articles would differ from the 1969 Vienna Convention.

41. He did not accept the view that the article should be deleted to avoid difficulties over the definition in article 2. The definitions in article 2 were ancillary to the substantive provisions. There was no need to change the definition of international organizations in article 2.

42. Mr. ECONOMIDES (Greece) said that article 5 clearly applied only to the constituent instruments of an international organization or a treaty adopted within an international organization. The interest of the article lay in the last phrase, "without prejudice to any relevant rules of the organization", since that constituted an exception and a safeguard for international organizations.

43. His delegation opposed deletion of the article for three reasons. First, it would be illogical to have a general provision in the 1969 Vienna Convention but not in the present one. Secondly, it would be an unacceptable discrimination to permit international organizations to prevent the application of the 1969 Convention by invoking article 5 of that Convention but not to prevent the application of the present draft convention. Thirdly, deletion of the article would create a distinction between the 1969 Convention and the draft convention before the Conference making the first residual and the second prescriptive.

44. Mr. BARRETO (Portugal) believed the article should be retained in the interests of consistency with the 1969 Vienna Convention and because it allowed for the development of international law. The Drafting Committee might be requested to improve the text along the lines suggested by the Senegalese representative. He personally had doubts about the use of the word "relevant".

45. Mr. NEUMANN (United Nations Industrial Development Organization) remarked that UNIDO had been unable to submit comments on the draft articles, as it had only recently become a specialized agency.

46. The reference in article 5 to the rules of the organization was related to the definition in article 2, 1 (*j*). UNIDO's Constitution provided in its article 26, 2 that the rules of UNIDO as a United Nations organ would continue to apply to UNIDO as a specialized agency. Among these rules were those referred to in article 2, 1 (*j*), and therefore UNIDO wished to confirm generally the United Nations comments on the draft articles. He was in favour of retaining the article for the reasons set out in the commentary.

47. Mr. PISK (Czechoslovakia) said that his delegation was impressed by the arguments in favour of deleting the article. He had serious misgivings about the phrase "without prejudice to any relevant rules of the organization", which would permit exclusion of the provisions of the draft articles. Either the article should be deleted, or its first part amended.

48. Ms. LUHULIMA (Indonesia) said her delegation was in favour of retaining the article, which reflected general practice where international organizations were members of other international organizations or treaties were adopted within international organizations. If the article was retained, the definition of international organizations in article 2 should be amended.

49. Mr. FOROUTAN (Islamic Republic of Iran) said that having heard the arguments for and against the inclusion of the article, he favoured its deletion. Article 1 sufficiently defined the proposed convention's scope, and article 5 might cause confusion.

50. Mr. MONNIER (Switzerland) said that the article should be considered in the light of its usefulness. Fears that the deletion of article 5 might give rise to arguments *a contrario* would be justified if its omission left a void and legal uncertainty, but that would not in fact be the case, since the situations covered by the article were already provided for in article 1. His delegation believed that two apparently conflicting principles were relevant to the drafting of the convention. One was the need to apply common sense, and not to attempt to deal with every hypothetical and rare occurrence. The other was the need to retain provisions that left the way open to future development of the law. He supported the retention of the article, despite the fact that its practical application might for the time being be limited.

51. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that the EEC representative's comments had not convinced him that there were any important examples of international organizations which were parties to the constituent instruments of other inter-

national organizations. Rules of general international law could not be based on only a very few precedents.

52. It should be noted that article 5 conflicted with the wording of article 1 and the relevant definition in article 2. That was an additional reason for deleting the article, whose practical significance was minimal.

53. Mr. ROSENSTOCK (United States of America) noted that the Expert Consultant's explanation had shown that the International Law Commission had taken into account a number of treaties within the ambit of article 5 when it had adopted the article, on second reading. Since that time, further treaties had been adopted within international organizations to which other international organizations had become parties. One was the Convention for the Protection and Development of the Wider Caribbean Region, which was open to accession by certain regional organizations.

54. The draft article embodied a rule which would last well into the future, and its deletion would leave a gap in the proposed convention.

55. He agreed that consideration should be given to amendment of the definition of "international organization" in article 2.

56. Mr. PASZKOWSKI (United Nations Educational, Scientific and Cultural Organization) said that UNESCO believed that the article should be retained, perhaps with some drafting changes. The central issue was whether an international organization could be a member of another international organization. The answer to that question was in the affirmative. UNESCO, for example, was a member of another international organization, the Intergovernmental Bureau for Informatics, which was itself an intergovernmental organization.

57. In UNESCO and other organizations, special rules applied to treaties constituting international organizations and to treaties adopted within international organizations. The purpose of the article was to make it clear that the relevant rules of the international organization would continue to apply and that the proposed convention would be without prejudice to them.

58. If the article was deleted, it would be difficult, if not impossible, for international organizations to accede to the proposed convention.

59. Mr. TEPAVICHAROV (Bulgaria) stressed that article 5 of the 1969 Vienna Convention was a useful provision. The scope of the concluding proviso, "without prejudice to any relevant rules of the organization", was clear and created no difficulties of interpretation in the context of that Convention.

60. The position was altogether different with regard to draft article 5. The article dealt with hypothetical cases and did not constitute codification of international law, but rather progressive development based on a projection of future trends. In the context of the draft articles, the concluding proviso would lead to confusion and misunderstanding, bearing in mind in particular that the concept of "relevant rules of the organization" had not yet been defined. In the circumstances, his delegation supported the Cape Verde proposal to delete the article, and was not convinced by the argument in the International Law Commission's commentary. The deletion of article 5 would not exclude the possibility of a constituent instrument of an international organization being open for signature by other international organizations.

61. Mr. ULLRICH (German Democratic Republic) sympathized with the proposal to delete the article. Article 5 had been appropriately included in the 1969 Convention, but the text had no place in the present draft articles. Although the text was taken word for word from the 1969 Convention, the content of the present article was new and unacceptable to his delegation.

62. Article 1 of the draft articles satisfactorily defined the scope of the proposed convention. He therefore favoured deleting draft article 5.

63. Mr. KOECK (Holy See) said that he wished to clarify a passage in his earlier statement which had obviously been misconstrued.

64. He had not said that the Cape Verde amendment was intended to limit the scope of the draft articles. He had said that some of the support the Cape Verde amendment had so far received from other delegations was actually intended to restrict unduly the notion of international organizations. He had not implied that that was the intention of the Cape Verde amendment, but that it was lending itself to undesirable interpretation.

65. Mr. LEHMANN (Denmark) remarked that codification conferences were infrequent, and that advantage should be taken of the present conference to cover as much as possible of the subject matter.

66. It was apparent from statements during the discussion that many international organizations had concluded treaties falling under the terms of article 5, and that a practice existed, in particular with regard to the treaties dealt with in the second part of the article. It was also apparent that practice in the matter would develop further in the future.

67. It had been suggested that retention of the article might require rewording of the definition of "international organization" in article 2. In that connection, he stressed that it was the substantive provisions which governed the definitions and not the definitions which governed the substantive provisions. The problem of the definition of "international organization" should be dealt with after a decision on article 5.

68. Mr. SANG HOON CHO (Republic of Korea) believed the article should be retained. Its deletion would create legal confusion, particularly in regard to the situation of international organizations which were members of other international organizations. He agreed that the definition of "international organization" might have to be amended.

69. Mr. ABDEL RAHMAN (Sudan) said that advocates of the deletion of the article appeared to have lost sight of the purpose of the draft under discussion. The article was concerned with a very rare situation, but it should be remembered that the draft was intended to regulate the régime of treaties to which one or more international organizations were parties.

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

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

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

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

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

The meeting rose at 12.58 p.m.

6th meeting

Monday, 24 February 1986, at 3.25 p.m.

Chairman: Mr. SHASH (Egypt)

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

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

[Item 11] (*continued*)

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

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

It was so decided.

Article 6 (Capacity of international organizations to conclude treaties)

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

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