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

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9th 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)*

9th meeting

Wednesday, 26 February 1986, at 10.15 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 9 (Adoption of the text) (*continued*)

Paragraph 2 (continued)

1. Mr. POEGGEL (German Democratic Republic) had serious doubts about paragraph 2 of article 9. It was his understanding that the Conference had no mandate to dictate to future conferences in which international organizations were particpants how they should adopt treaties. Of the interesting proposals submitted, he preferred the Soviet Union amendment (A/CONF.129/C.1/L.30), under which the procedure for the adoption of a treaty would be agreed by the participants in the conference concerned. The Chinese amendment (A/CONF.129/C.1/L.17) had the disadvantage of paragraph 2 unchanged.

2. Mr. LUKASIK (Poland) said that his delegation believed that paragraph 2 should be flexible. While all the amendments submitted appeared to have the same general purpose, his delegation greatly preferred the Soviet Union amendment, since it best served the objective of flexibility.

3. Mr. FOROUTAN (Islamic Republic of Iran) said that his delegation had difficulty in accepting the idea that international organizations could participate in international conferences on an equal footing with States. International organizations could participate in consultations and deliberations, but decision-making was the prerogative of States. He could not support the French amendment (A/CONF.129/C.1/L.28), because it did not specify the type of treaty involved. Nor did it deal with the main point, that international conferences were composed of States and that the participation of international organizations was secondary. In the amendment submitted by eight international organizations (A/CONF.129/C.1/L.22) he could not support the deletion proposed in point (*a*) for the reasons he had already stated. He had no objection to point (*b*), and in regard to point (*c*), he preferred the original text. He had no objection to the new paragraph 3 proposed by China, which would permit an international conference to adopt an alternative procedure if it wished. He supported the Soviet Union amendment for the same reason. He also supported the Egyptian amendment (A/CONF.129/C.1/L.31), which fully reflected his delegation's thinking.

4. Mr. ROMAN (Romania) said that his delegation endorsed the International Law Commission's commentary to the article (see A/CONF.129/4) and could therefore accept paragraph 2. He was unable to support the French amendment and the eight-organization amendment, which would basically change the content of the article.

5. His delegation was attracted by the amendments proposed by the Soviet Union, China and Egypt. The Chinese and Soviet Union amendments were both concerned with the freedom of States to establish a different procedure for the adoption of the text of a treaty. The Egyptian amendment went further, and deserved special attention. He believed that the Egyptian amendment could furnish an amended paragraph 2 and that the Chinese and Soviet Union amendments could be combined in a new paragraph 3, thus providing a comprehensive and balanced solution.

6. Mr. DUFEK (Czechoslovakia) considered that the type and character of the treaty contemplated in paragraph 2 should be specified. A treaty might be between States, or between States and international organizations or even between international organizations only, and might be general or regional in character. The type of international conference contemplated was also important. In that connection, he agreed with the assumption in paragraph (1) of the International Law Commission's commentary and believed that the international conference envisaged would be a relatively open and general conference between States in which one or more international organizations participated for the purposes of adopting the text of a treaty between States and international organizations. His delegation was sympathetic to the Egyptian amendment, which recognized the role of governments while not ruling out the adoption of other rules for the adoption of treaties between States and international organizations.

7. He noted that the French amendment and the amendment by eight international organizations both provided that where international organizations participated, a two-thirds majority of the States and international organizations would be required for the adoption of the text of a treaty or of a different rule. The adoption of the text of a treaty between international organizations alone raised other difficulties. Paragraph 1 would presumably apply. A solution offering the needed flexibility was provided by the Soviet Union amendment, which should satisfy everyone. The Chinese amendment would be acceptable for similar reasons.

8. Mr. AL-JUMARAD (Iraq) said that his delegation considered that international organizations should not

automatically have the right to vote in the matter of the adoption of treaties and could not therefore support the French amendment. He could accept the Chinese and Soviet Union amendments, because they were broadly based and would enable each conference to decide whether international organizations should vote or not.

9. Commenting on the Egyptian amendment, he pointed out that by voting in a conference in which States were participants, international organizations might take positions in conflict with those of some States members of their own organization. That amendment did not give international organizations an established right to vote, but allowed for the possibility that they might vote if two-thirds of the States present and voting so decided. His delegation favoured flexibility and accordingly supported the amendment.

10. Mr. RASOOL (Pakistan) said that his delegation had no difficulty with the draft article but welcomed any attempt to improve it. He noted that, although all the amendments were directed towards increased flexibility, some of them might result in over-rigidity. In the light of the sponsor's introductory statement, the Soviet Union amendment might have that effect. The Egyptian amendment also appeared to introduce some rigidity.

11. His delegation's preference was for the Chinese amendment, which increased flexibility without disturbing the Commission's text. The French amendment also attempted to increase flexibility. His delegation was not opposed to the eight-organization amendment, which was designed to fill a gap in the text.

12. Mr. HORVATH (Hungary) agreed with the International Law Commission's view that paragraph 2 should not be interpreted as impairing the autonomy of international conferences to adopt their own rules of procedure. The Commission's text was not fully appropriate where States and international organizations participated in an international conference convened to adopt a treaty. The procedure proposed in the Soviet Union amendment took into account a variety of possibilities and offered a flexible solution. He supported the amendment.

13. Mr. ECONOMIDES (Greece) took issue with the contention that States as creators of international organizations could not be treated in the same manner as the international organizations they created. His delegation agreed that States created international organizations. International organizations were created by the will of States, and had only the special and limited rights needed to fulfil their functions. The fact remained that when a State agreed to conclude a treaty with an international organization in an international conference, States and international organizations must be on a strictly equal footing. That was a general principle of the international law of treaties.

14. He could not accept the Egyptian amendment because it did not recognize the right of international organizations to participate in negotiating a treaty, despite the definition in article 2, subparagraph 1 (*e*). It was also inconsistent with article 9, paragraph 1, under which the adoption of the text of a treaty required the consent of all the States and international organizations participating in its elaboration.

15. He could not accept the Soviet Union amendment, because it was vague and incomplete. The proposal that the procedure should be agreed by the participants by consensus would in effect give a right of veto to all participants.

16. The Chinese amendment was unclear and unnecessary. An international conference could always adopt a different procedure by unanimity or consensus, and paragraph 2 already provided for a different procedure to be adopted by a two-thirds majority.

17. Despite its ambiguities, he could accept the French amendment if the words "between States and international organizations or between international organizations" were inserted after "international conference".

18. He favoured the amendment submitted by eight international organizations, because it was comprehensive and in conformity with the provisions of the draft articles. If it was not acceptable to a majority of delegations, his delegation would support the Commission's draft.

19. Mr. KOECK (Holy See) said that the discussion centred on two issues. The first was whether international organizations should be permitted to participate at all in international conferences for the elaboration of treaties on an equal footing with States. The amendments submitted showed how reluctant some States still were to recognize the international legal personality of international organizations when it came to the consequences of that legal personality. There was a mistaken idea, which was dying hard, that States, and only States, could legitimately be the subjects of international law. He would have thought that that narrow concept of international legal personality had finally died with the advisory opinion of the International Court of Justice in the case concerning reparation for injuries suffered in the service of the United Nations,[1] nearly 40 years ago. The Court had ruled that the subjects of international law were not necessarily identical in their nature and that the extent of their legal personality, in other words their international rights and duties, depended on the need of the international community.

20. His delegation believed it only logical that an international organization destined to become a party to an international treaty on an equal footing with States should have the same say as States in the negotiations leading to the elaboration of the text and in its formal adoption. His delegation supported the present text of article 9.

21. The second issue was whether a general rule should be laid down as to the majority needed for the adoption of a treaty by an international conference. His delegation had no great preference, but as the two-thirds majority seemed to have become a standing practice and was included in the 1969 Vienna Convention on

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

the Law of Treaties, he saw no point in departing from that already codified practice.

22. The wording of the article could still be improved, and his delegation would be willing to support the Chinese amendment.

23. Mr. TUERK (Austria) said his delegation was in principle quite satisfied with the Commission's text. There was, however, an omission in paragraph 2, which did not cover the case of a treaty between international organizations elaborated and concluded in a conference consisting only of international organizations. There was no reason to make such treaties subject to the unanimity rule in paragraph 1 of the article. That gap could be filled by adopting the amendment proposed by eight international organizations.

24. He saw merit in the French amendment, particularly in so far as it specified a two-thirds majority of the participants "present and voting".

25. The question had been raised why an international organization should be given the right to vote under article 9, in connection with the adoption of the text of a treaty. The example of the present Conference, at which only States could vote, had been cited. The comparison was not valid, because the present Conference was a law-making conference and States were the only law-makers under international law. Paragraph 2 of article 9 dealt with a different situation. The paragraph related to the elaboration of a treaty between States and international organizations. In that situation, international organizations should be given decision-making powers with regard to the negotiation and adoption of the text. If they were not, they would simply not attend the conference.

26. His delegation was attracted by the Chinese amendment, which would make for flexibility in the future and would therefore be helpful.

27. The existing two-thirds majority rule had been questioned by some speakers, who wished to replace it by the rule of consensus. His delegation welcomed the development of consensus and would like to see it adopted wherever possible. The fact remained that in order to work by consensus it was necessary to have consensus in the first place.

28. Mr. JESUS (Cape Verde) said that his own feeling was that article 9 should be dropped, because it created conflicts with well established practice. To begin with, the unanimity rule set forth in paragraph 1 was not followed in practice. In that connection, he drew attention to the concluding proviso of article 5, "without prejudice to any relevant rules of the organization". That proviso expressed the existing practice. When the General Assembly drew up a treaty, it applied its own rules of procedure, not article 9 of the 1969 Vienna Convention.

29. If paragraph 1 were retained, it should be regarded as containing an indicative, not a compulsory, rule. If five States held a conference among themselves to draw up a treaty and agreed that decisions would be taken by a four-fifths majority, there could be no question of imposing upon them the unanimity rule in paragraph 1 of article 9. As sovereign States, they were free to adopt their own rules for purposes of the adoption of the text of a treaty.

30. Paragraph 2 was also at variance with existing practice. There was already a well-established practice for conferences of States. It was to be found in the rules of procedure of United Nations conferences like the present Conference.

31. His delegation preferred the Soviet Union amendment, which would introduce the greatest measure of flexibility by enabling international conferences to adopt the procedure they preferred. The Egyptian amendment would not allow international organizations to vote on the adoption of the text of a treaty. That approach was correct only in certain cases. Everything depended on the subject-matter of the treaty concerned. It would not be proper for international organizations to vote on the adoption of the text of a treaty which laid down general rules of international law. In other cases the participants in a conference might well agree that certain international organizations should have the right to vote on the adoption of the text, and the draft articles should not preclude that possibility. The matter should be decided in the rules of procedure of the conference, as the Soviet Union suggested.

32. His delegation would be prepared to accept the article with the Soviet Union amendment, and suggested, as a sub-amendment, that the concluding words, "in accordance with a procedure agreed by the participants in that conference", should read: "in accordance with the rules of procedure of that conference".

33. Mr. WOKALEK (Federal Republic of Germany) said the discussion raised the sensitive issue of how a treaty was agreed upon and who had a say in the matter. As he saw it, the parties in the negotiation of a treaty must all have equal standing in the negotiations. If that equality was not respected, it would not be a negotiation between a State and an international organization but rather a diktat on the part of the State. The present Conference was concerned with working out rules for the conclusion of treaties to which international organizations were parties. It would be unthinkable to exclude international organizations from the process.

34. Efforts should be made to avoid the ordeal which had preceded the present Conference, when three preparatory sessions in New York had been needed to prepare the rules of procedure. The question of the participation of organizations should be settled once and for all. The article under discussion covered all the necessary points, and paragraph 2 was very similar to the corresponding provision of the 1969 Vienna Convention, subject to the insertion of the reference to "international organizations".

35. His delegation supported the eight-organization amendment, in the interests of clarity. The Chinese amendment, he thought, would introduce an element of ambiguity, and the French amendment seemed somewhat too open. The Soviet Union amendment had the major drawback of requiring a consensus before a conference could start. Lastly, with regard to the Egyptian amendment, he concurred in the Greek representa-

tive's criticism that it would deprive international organizations of treaty-making power.

36. Mr. HARDY (European Economic Community) stressed that conferences held for the adoption of treaties were of many and varied kinds, ranging from general law-making conferences like the present one to highly technical ones. Their scale varied from three participants to a hundred or more. In some, only States participated, although that could scarcely be the case dealt with in article 9, paragraph 2. In others, international organizations took part on an equal footing with States or participated in some other way in the Conference.

37. The European Community, for its part, could participate in conferences on the same basis as States in cases where it had received exclusive competence in the area in question. In other instances, the Community could take part in conferences together with its member States in cases which concerned the competence of the Community as well as that of its member States. The Community would therefore prefer to retain the International Law Commission's text of paragraph 2, though it had some difficulty with the wording. The phrase "at an international conference of States in which organizations participate" gave an unbalanced presentation of the principle of the equality of the treaty participants.

38. He could not support the Egyptian amendment, which would drastically limit decision-making at conferences so as to exclude international organizations in the case of a treaty which, *ex hypothesi*, was to be a treaty between States and international organizations, or even between international organizations alone. The fundamental principle was that of the equality of the parties to a treaty, which was to be found in paragraph 1 of the article.

39. In conclusion, his preference would be for the Commission's text, but he could accept the eight-organization and French amendments. Consideration might also be given to the oral amendment suggested by Greece (see para. 17 above) and supported by Austria. The Egyptian amendment was unduly rigid, and therefore unacceptable.

40. Mr. BARRETO (Portugal) said that in dealing with paragraph 2 there were two philosophical approaches. One maintained that States and international organizations could not be placed on the same footing. The other accorded international organizations the same rights as States. His delegation favoured the second approach and could not therefore accept the Egyptian amendment.

41. The Soviet Union amendment appeared to offer a good basis of discussion, but had a drawback. How could the procedure for the conference be unanimously agreed? That drawback detracted from the flexibility which that amendment, like the Chinese amendment, was intended to provide.

42. His delegation was prepared to accept the article as it stood, and could accept the French amendment. His delegation would have no difficulty in approving the eight-organization amendment for the reasons stated at the previous meeting by the United Nations representative.

43. Mr. KHVOSTOV (Byelorussian Soviet Socialist Republic) said that the present draft of paragraph 2 was unacceptable. His delegation believed as a matter of principle that international organizations could not enjoy equal rights with States where the adoption of the text of a treaty by means of a vote was concerned. Moreover, the draft ignored established practice, whereby it was for the States participating in an international conference to establish its rules of procedure, including those governing the adoption of the text of any treaty. It laid down a hard and fast rule which unnecessarily restricted the independence of future international conferences in determining whatever procedure they deemed suitable.

44. His delegation supported the Soviet Union amendment, which both took account of past practice and allowed for a flexible approach in the future. It could not agree with the eight-organization amendment or with the French amendment, which in essence duplicated the provisions he had objected to in the present draft.

45. Mr. SANG HOON CHO (Republic of Korea) said that the basic issue seemed to be how much flexibility should be allowed in the adoption of the text of a treaty between States and international organizations at an international conference. All the amendments were designed to meet the need for flexibility. At the same time, it was necesary to comply with the framework that had been largely stabilized through the 1969 Vienna Convention. Any substantive departure from the latter's provisions might result in virtually two sets of procedures for the adoption of treaties at international conferences, a state of affairs that would be prejudicial to the binding force of the instruments in question. His delegation believed that the basic position established in the Commission's draft, which simultaneously respected the provisions of the 1969 Vienna Convention and made them more flexible, should be adhered to as far as possible.

46. Some drafting changes might be envisaged. The possibility might, for instance, be explored of allowing for exceptional cases where participants other than international organizations constituted most or all of the two-thirds majority, or vice versa. At all events, a sharp division of interests between participating States and international organizations should not be permitted. If separate criteria could be established for calculating the two-thirds majority for States and international organizations, the paragraph could be applied on a more rational basis without prejudice to the intention of the 1969 Convention.

47. Mr. AL-JARMAN (United Arab Emirates) said that his delegation respected the principle of nominal equality between States and international organizations but believed that some distinction must be made between them, for example, in the adoption of treaties. It would be difficult to lay down hard and fast rules. Every international conference had its specific nature and characteristics, and each should be allowed to determine the manner of adoption in accordance with its own rules.

48. If a two-thirds majority rule was accepted, it was not inconceivable, given the proliferation of interna-

tional organizations, that the latter might impose their will on States by an overwhelming majority.

49. Turning to the various proposals for amendment, he said that his delegation found it difficult to accept the French amendment, but was sympathetically inclined towards the Chinese proposal, which had the virtue of being more pragmatic. It could not accept the Egyptian proposal, which would deny international organizations the right to participate in the adoption of a text, thus overturning the principle of nominal equality to which he had referred.

50. Mr. TARCICI (Yemen) said that representatives who had spoken since he had placed his name on the list of speakers had set out the views he would have expressed. He would therefore refrain from making the statement he had prepared.

51. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that the Cape Verde representative had convincingly demonstrated the practice of international organizations and shown the need for an amendment that would remove the two-thirds majority provision from the centre of attention.

52. He considered the allusion by an earlier speaker to diktats to have been both ill-chosen and inapposite, suggesting as it did confrontational situations between States and international organizations. Such situations were surely inconceivable. It would certainly not be in the interests of the State concerned to seek to impose its will on international organizations in any way.

53. The Portuguese representative had argued that the requirement of unanimous agreement would make it difficult to decide on the procedure to be followed at an international conference of States in which international organizations participated. That was not the case if the interests of all the participants coincided.

54. The Austrian representative had alluded to various categories of international conferences and the different procedures adopted. The list might include law-making conferences such as the present one (at which procedure was determined and decision-taking rights were exercised by States, although international organizations might participate and enjoy certain other rights); international conferences of a universal character or international conferences convened by States (where again the practice was that decisions were taken by States); conferences with the participation of States and international organizations with coincident and equal interests (the representative of the European Economic Community had spoken of such conferences, which were conceivable on a larger scale, devoted to a specific subject, such as copyright); and the admittedly hypothetical category of conferences with only international organizations as participants. The Soviet Union amendment could be applied to all the categories and took account of all the interests that might be involved. The participants in any conference would have the sovereign right to decide on the procedure they deemed appropriate, including the procedure for adoption of the text of a treaty. It seemed obvious that they would do so in the mutual interest of all concerned.

55. Mr. MONNIER (Switzerland) said that, although the hypothesis was at the moment of an exceptional nature, it might be wise to make provision for conferences where all the participants were international organizations and where the provisions of article 9, paragraph 1, did not apply. The amendment submitted by eight international organizations was pertinent in that connection.

56. Much had been said about the need for flexibility in any rules that might be decided upon concerning the adoption of texts. Certainly a flexible rule was necessary, but there must at least be a rule. Mere reference to a conference's rules of procedure did not constitute a rule. The text proposed by the International Law Commission in article 9, paragraph 2, had the merit of providing for the rule of a two-thirds majority for the adoption of the text of a treaty. That rule corresponded to practice. In that realm, the present Conference could not benefit from precedence, for it was a codification conference elaborating a treaty on treaties. The object of article 9, paragraph 2, was different; it envisaged a conference at which States and international organizations participated on an equal footing in order to adopt the text of a treaty. Consequently, the Commission's text as amended by the eight-organization proposal was acceptable.

57. The Swiss delegation could also entertain the Chinese proposal for an additional paragraph, which would introduce flexibility and take account of the views of States which did not want the text to prejudice the rules of procedure of such conferences.

58. Mr. KRISAFI (Albania) considered that article 9 allowed for the necessary flexibility. As was pointed out in paragraph (4) of the Commission's commentary, there was no intention of "impairing the autonomy of international conferences in the adoption of their own rules of procedure, which might prescribe a different rule for the adoption of the text of a treaty, or in filling any gaps in their rules of procedure on the subject".

59. His delegation took the view that States and international organizations were not equal subjects of international law. It therefore favoured the Egyptian amendment, which retained the Commission's provision for participation by organizations but reasonably restricted voting rights.

60. Mr. GÜNEY (Turkey) said that those who were reluctant to admit the principle of strict equality between contracting parties for the purposes of paragraph 2 should at least admit equitable treatment as a compromise. In other words, organizations participating in an international conference of States and international organizations should enjoy certain rights at the time of adoption of the text of a treaty. On the basis of that consideration, his delegation supported the Chinese amendment as well as the eight-organization amendment. It would have difficulty in accepting the French and Soviet Union proposals, and could not support the Egyptian amendment, which ran counter to that principle and recognized no right on the part of the organizations concerned.

61. Mr. ROSENSTOCK (United States of America) said that the great advantage of paragraph 2 as it stood

was its inclusion of a residual rule, in the absence of which every international conference attended by States and international organizations might be characterized by lengthy reaffirmations of States' positions on the matter. Because the Soviet Union amendment abandoned that residual rule it was unacceptable to his delegation. The other amendments might result in slight improvements to the original text, but his delegation was inclined to favour the latter.

62. Mr. ABDEL RAHMAN (Sudan) suggested that the basic issue was the choice between rigidity, in other words possible restrictions on future action, and flexibility. Setting his assessment of the various proposals against that background, he could not agree to the Egyptian amendment, which would have the restrictive effect of virtually excluding international organizations from participating in the process of treaty adoption. He found that the French proposal and the eight-organization amendment accorded a status to international organizations which he could not accept. He was inclined to favour the Chinese and Soviet Union amendments, which aimed at the desired flexibility. If they could be merged in a single text, he would support it.

63. Mr. BERNAL (Mexico) said he considered that the Chinese proposal offered the best basis for an acceptable solution. He also favoured the eight-organization amendment, which rightly called attention to the eventuality of conferences composed solely of international organizations.

64. Mr. TEPAVICHAROV (Bulgaria) said that the spate of amendments to paragraph 2 of article 9 was an indication of dissatisfaction with the existing draft.

65. There should be no parallel between draft article 9 and article 9 of the 1969 Vienna Convention. Although the problem was the same, the solution to it should not be, for the draft convention was designed to cover conferences at which international organizations participated both in the adoption and the drafting of the treaty. Furthermore, since paragraph 2 could apply to an international conference at which there were very few participants and where an international organization and a State were on an equal footing, he would like to know whether the two-thirds majority vote provided for would apply cumulatively and jointly to States and international organizations. In his view, it should not do so, and to that extent the article was defective. The Chinese and Soviet Union amendments deserved close attention in that connection, with a view to reproducing the established rule whereby each conference was master of its own procedure.

66. As to the desirability of conferring upon international organizations the right to vote and to adopt the text of a treaty, he considered that it would be premature to take a position on the issue at that stage.

67. He agreed with the Cape Verde representative and considered that paragraph 1 might be unnecessary if the Soviet Union amendment were adopted. That amendment would also cover the case of a conference in which only international organizations participated. In that connection, the Soviet representative might wish to take account of the eight-organization proposal to add the words "or between international organizations" after "international organizations" in paragraph 2.

68. Mr. ABADA (Algeria) said that his delegation was unable to support the French proposal, as it took no account of the fact that the desire for greater flexibility should not cloud the need for more precision in the wording of the draft articles. The Egyptian amendment was unduly restrictive, since it might not even allow international organizations to express their consent. His delegation would, however, have no difficulty in accepting the Chinese amendment and had no objection to the Soviet Union amendment, which was along similar lines but clearer. The two proposals might, he thought, be merged.

69. Mr. ROCHE (Food and Agriculture Organization of the United Nations) said that, for the reasons stated by the United Nations and other representatives, his delegation considered that the Commission's draft was too restrictive so far as the role of international organizations at international conferences was concerned, and therefore preferred the text put forward in the eight-organization amendment. The Food and Agriculture Organization of the United Nations could, however, live with any text that provided suitable flexibility. Conferences were very likely to vary considerably in their composition, purposes and procedures in the future, and the rules and principles laid down in the draft convention would apply for many years to come. The aim, therefore, should be to adopt provisions that would not inhibit the development of international law.

70. It had been said that conferences in which only international organizations took part could take place only in accordance with the principles laid down in article 9, paragraph 1. In his view, such conferences would certainly fall under paragraph 2. Indeed, if he had understood correctly, the Soviet representative had envisaged that possibility when he had enumerated the various hypothetical types of conferences that could be held in the future.

71. Ms. LUHULIMA (Indonesia) said her delegation considered that in certain cases international organizations should be regarded as treaty partners on an equal footing with States. It could not therefore accept the Egyptian amendment, which closed the door to participation by international organizations in decision-making. It favoured a measure of flexibility whereby international conferences would be enabled to decide on the rules of procedure to be followed for the adoption of treaties between States and international organizations and between international organizations.

72. The amendments put forward by China, eight organizations, France and the Soviet Union were concerned with flexibility, but her delegation would prefer the Commission's draft if it was modified to cover international conferences between international organizations.

73. Associating her delegation with the Austrian representative's remarks regarding a two-thirds majority, she noted that there was a general trend towards the taking of decisions by consensus. That point could, however, be taken care of by the last clause of paragraph 2.

74. Mr. LI JONG PIL (Democratic People's Republic of Korea) said that he was in favour of greater flexibility in paragraph 2. A flexible approach in the matter of international conferences would cope with all eventualities in future treaty-making. On that basis, the Chinese and Soviet Union amendments were acceptable to his delegation, since they had a common denominator and provided ample opportunity for a decision to be taken regarding the procedures of international conferences in the light of developments.

75. Mr. VASSILENKO (Ukrainian Soviet Socialist Republic) said that, as formulated, paragraph 2 was unsatisfactory and equated States with international organizations for the purpose of adopting the texts of treaties. Other situations, quite apart from the one envisaged in paragraph 2, could, however, be visualized. He had in mind, for instance, the case of a treaty concluded between many States with the participation of one or more international organizations, or of a treaty concluded between an equal number of States and international organizations, or again of a treaty concluded at an international conference where the majority of participants were international organizations and there were only one or two States. There was also the case where a treaty was concluded and adopted between international organizations alone. It was not possible to find a solution for each one of the manifold combinations of those four basic variants under the present, or indeed any other, draft convention. Paragraph 2 should therefore be modified to provide for the maximum flexibility. His delegation believed that the Soviet Union proposal provided an appropriate solution, and would consider it appropriate if a third paragraph were added to the article to cover the case of the text of treaties drawn up at international conferences in which only international organizations took part.

76. Mr. SKIBSTED (Denmark) said his delegation supported the article as drafted, since it served the objective of ensuring that international organizations should be placed on the same footing as States when treaties between States and international organizations were being drawn up. It also laid down a flexible rule that would help to prevent international conferences from failing because of procedural disagreements. There was some risk of that happening with the Soviet Union proposal, and the amendment was therefore unacceptable to his delegation. The eight-organization amendment would add a positive element to the Commission's draft, and his delegation would have no difficulty in supporting it.

77. Mr. RIPHAGEN (Netherlands) said that, according to his reading of the Commission's draft, its purpose was not to confer the right to participate in a given conference on any State or international organization. Indeed, there was no general rule that established such a right. Further, as he understood them, the words "participating in its drawing up" in paragraph 1 signified that an international organization had the right to put proposals to the conference and to vote on proposals, while paragraph 2, read in the light of paragraph 1, merely provided that, if a State or international organization participated in that way, it should also take part in deciding how the text was to be adopted, in other words, in adopting the rules of procedure. That seemed to be only logical. On that basis, therefore, the Commission's draft was acceptable to his delegation.

78. Referring to the proposed amendments, he said that his delegation was willing to support the eight-organization amendment, which was mainly concerned with a point of drafting. It did, however, provide for the possibility of a conference composed of international organizations alone, such as, for instance, one convened with a view to conferring a uniform status on international civil servants. The Commission's draft did not exclude such a possibility, but the amendment would make the position absolutely clear.

79. The French amendment was also concerned with a point of drafting and did not say anything different from the Commission's draft. In that connection, he considered that the Conference should not try to introduce more into article 9 than the Commission intended. The question of the composition of international conferences, for instance, was best left to international practice.

The meeting rose at 12.55 p.m.

10th meeting

Wednesday, 26 February 1986, at 3.20 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)

[Agenda item 11] (*continued*)

Article 7 (Powers and full powers) (*continued*)*

1. The CHAIRMAN suggested that the Committee should establish a working group on article 7, composed of the sponsors of the amendments and of specially interested delegations, and chaired by Mr. Pisk (Czechoslovakia). A similar procedure might be adopted with other articles to be considered by the

* Resumed from the 8th meeting.