

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

Vienna, Austria
18 February – 21 March 1986

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A/CONF.129/SR.5

5th plenary meeting

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)*

3. The PRESIDENT invited those delegations who wished to have specific points or ideas reflected in the preamble to submit their proposals in writing to the Committee of the Whole. Two such proposals had already been submitted and were reproduced in documents A/CONF.129/C.1/L.71 and L.72.

4. He wished to consult the Conference on the manner in which the Drafting Committee should report on the results of its work. The Chairman of the Committee of the Whole and the Chairman of the Drafting Commit-

tee agreed with him that the Drafting Committee should report directly to the Conference, both on the provisions which had been referred to the Drafting Committee directly and on those referred to it by the Committee of the Whole. That would make for an orderly procedure. In the absence of any objection, he would take it that the Conference agreed to that arrangement.

It was so decided.

The meeting rose at 3.25 p.m.

5th plenary meeting

Tuesday, 18 March 1986, at 3.50 p.m.

President: Mr. ZEMANEK (Austria)

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*)*

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference
[Agenda item 12]

TEXTS PROPOSED BY THE DRAFTING COMMITTEE

1. The PRESIDENT recalled that the articles proposed by the International Law Commission (A/CONF.129/4) for the new convention fell into two categories: first, those articles which the Conference had referred directly to the Drafting Committee, and secondly, the articles which it had referred to the Committee of the Whole for consideration and which that Committee had referred to the Drafting Committee after considering them. He further recalled that the Conference, in order to expedite its work, had decided that the Drafting Committee should report directly to the plenary of the Conference (4th plenary meeting, para. 4).

2. The Conference had before it the initial report of the Drafting Committee (A/CONF.129/11), setting out the titles of parts I to VII and sections thereof and the titles and texts of articles 1, 2, 4 to 34, 38, 40 to 44, 46 to 61, 63, 64, 67 to 72 and 74 to 81, which had been adopted by the Drafting Committee. He pointed out that draft article 66, the draft annex and the draft final provisions were still under consideration in the Committee of the Whole.

3. In the absence of objection, he would take it that the Conference agreed that after the Chairman of the Drafting Committee had completed his presentation of each article—or group of articles, where articles could

conveniently be grouped together—the Conference should proceed to consider and adopt the article or group of articles in question, it being understood that delegations would be entitled to make statements in connection with each article.

It was so decided.

4. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, introduced document A/CONF.129/11, which contained the titles and texts of the articles so far adopted by the Drafting Committee. He drew attention to the fact that the finalized texts of the preamble and a number of further articles were not yet submitted to the Conference, either because they had not yet been referred to the Drafting Committee or because they were still under consideration in that Committee. Should any decisions be taken by the Conference which affected the numbering of the articles, the Drafting Committee would make an appropriate recommendation in that regard.

5. At its previous meeting, the Conference had decided that the Drafting Committee should report on the results of its work directly to the Conference. He would accordingly report on the results of the Drafting Committee's work on those articles which had been referred directly to it as well as on those which had been referred to the Drafting Committee by the Committee of the Whole.

6. He wished to make at the outset a few general remarks. As was well known, the convention being elaborated at the present Conference contained many provisions parallel to those contained in the 1969 Vienna Convention on the Law of Treaties.¹ In the Drafting Committee's work on the articles referred to it, some of its members had felt that certain terminological inconsistencies existed between the texts of the 1969 Convention in the various languages, or they had found some inaccuracies in the text in particular languages. The Drafting Committee had agreed, how-

* Resumed from the 3rd plenary meeting.

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

ever, that as a general rule, texts of the 1969 Convention which had been transposed to the draft convention at present under consideration should not be tampered with. While it might perhaps be felt that certain provisions of the 1969 Convention in certain languages did not represent the most elegant use of the language in question, or that a reader comparing the texts in the different languages might believe that the use of other terms would achieve greater equivalence of meaning between the texts in the five languages, the Drafting Committee had nevertheless deemed it more prudent not to incorporate in one language version only any changes or departures from the language of the 1969 Convention. That had been done in order to maintain the stability of existing treaty relations between the parties to the 1969 Vienna Convention, all of which had agreed on the provisions of the instrument and had also agreed that the texts in the various languages were equally authentic (article 85 of the Convention) and had the same meaning in each authentic text (article 33, paragraph 3). If the signatory States and contracting States of the 1969 Convention agreed that the text contained errors, the procedure provided for in article 79 could be set in motion.

7. Following the example of the International Law Commission, which had achieved some simplification of its draft text between its first reading and its adoption of the final draft, the Drafting Committee had recommended simpler formulas in some draft articles, as well as the combining of paragraphs in certain draft articles. The Committee believed that simplification could be achieved in certain cases without loss of clarity and meaning, whereas in other cases it had felt it necessary to maintain the precision of the Commission's basic proposal, even if the drafting was somewhat cumbersome. When introducing the relevant draft articles, he would indicate where such simplifications were recommended.

8. He also wished to make a few general drafting points. Throughout the text of the draft articles referred to the Drafting Committee, the Committee had replaced the expression "present articles" by "present Convention" or simply "Convention", following the model of the 1969 Vienna Convention. He would refrain from pointing out that change when introducing the various draft articles separately.

9. The Drafting Committee had also examined the question of the use of "he" or "his" in the draft English text. While it might have been desirable to avoid that unfortunate reference to only one gender, the Drafting Committee had finally decided not to change the text, as that would have meant a departure from the 1969 Vienna Convention. It was clear that when the draft text referred to "he" or "his" it referred to a person, whether masculine or feminine.

10. Lastly, an attempt had been made to maintain the consistency established in the basic proposal with regard to the use of defined terms, such as "contracting organizations" and "negotiating organizations", as well as with regard to cases where the word "organization" should be qualified by "international".

11. Mr. BERMAN (United Kingdom) said that his delegation wished to make two general observations

before the formal adoption by the Conference of the draft convention.

12. The first concerned the rule of general agreement written into the rules of procedure of the Conference. He did not wish to enter into a debate about the applicability of such a rule elsewhere than in the present Conference; that would be a matter for discussion and analysis later, when scholars and practising diplomats looked back at the results of the Conference. As far as the Conference itself was concerned, the rule of general agreement had been an experiment and, he would venture to say, an experiment which had worked very well. Ensuring that result had nevertheless imposed a strain on the President, the Chairman of the Committees, the Secretariat and all the participating delegations. He wished to pay a tribute to all those concerned for the manner in which they had sought to fulfil the expectations of the General Assembly. He hoped that the same spirit would prevail until the end of the Conference.

13. His second point concerned those draft provisions the substance of which had been taken from corresponding provisions of the 1969 Vienna Convention in respect of which, at the United Nations Conference on the Law of Treaties, the United Kingdom delegation had stated its understanding, with the object of clarifying their meaning or interpretation. He did not propose to repeat those statements as the Conference considered the draft articles submitted or to be submitted to it by the Drafting Committee. He therefore wished it to be recorded that, in so far as such statements made by the United Kingdom delegation at the United Nations Conference on the Law of Treaties were relevant to the present draft articles, they should be taken as applying equally to them.

14. The PRESIDENT said that he fully shared the views of the United Kingdom representative regarding the admirable spirit of co-operation that had prevailed in the Conference and his hope that that spirit would continue.

15. He invited the Chairman of the Drafting Committee to introduce the draft texts proposed for adoption in document A/CONF.129/11 and the Conference to consider them.

Article 1 (Scope of the present Convention)

16. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that article 1 had been referred directly to the Drafting Committee. Except for two changes affecting the Arabic text only, the article had been adopted as drafted by the International Law Commission.

17. The changes affecting the Arabic text concerned not only article 1 but also other articles throughout the Convention. The first concerned the Arabic rendering of the word "applies"; the Arabic term originally used had been replaced by a more adequate one for stylistic reasons and in order to ensure consistency as between the various articles. The second change was the deletion from the Arabic text of a group of words meaning "which are concluded"; those words in the Arabic text were not only superfluous but could lead to misinterpretation. He would refrain from referring again to

those two changes when introducing subsequent draft articles in which they had also been made in the Arabic text.

Article 1 was adopted without a vote.

Article 2 (Use of terms)

18. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that the text referred to the Drafting Committee by the Committee of the Whole (A/CONF.129/DC/17) was a text worked out in the framework of consultations held under the chairmanship of the President of the Conference.

19. Typographical errors in the text in certain languages had been corrected, and in the English text of paragraph 1 (c) the word "and" appearing between the words "international organization" and "designating" had been deleted, since the inclusion of that word constituted an unnecessary departure from the 1969 Vienna Convention. That change affected the English text only.

20. The designations for subparagraphs (*b bis*) and (*b ter*) had been maintained. The Drafting Committee had considered whether or not to reletter those paragraphs in alphabetical order and had also considered combining subparagraphs (*b*), (*b bis*) and (*b ter*). It had finally decided to maintain the distinction between the terms in question by defining them in separate subparagraphs. In that way the parallel between the 1969 Vienna Convention and the present convention was maintained with respect to the seven subparagraphs which followed.

21. Lastly, in the Arabic text of the final part of paragraph 1, the word used to render the English term "instruments"—which was one commonly used in commercial and property law—had been replaced by one more appropriate to international law. That change had also been made in other draft articles; he would refrain from drawing attention to it in connection with the various articles in question.

Article 2 was adopted without a vote.

Article 4 (Non-retroactivity of the present Convention)

22. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that article 4 had been referred directly to the Drafting Committee. In order to align the text of the basic proposal with that of the 1969 Convention in the Spanish version, the words "*que se celebren*" had been replaced by "*que sean celebrados*". No other changes had been made in the text.

23. Mr. ALMODÓVAR (Cuba) said that as the present convention reproduced, with the same number, text and content, article 4 of the 1969 Vienna Convention on the Law of Treaties, and as no circumstance had arisen to justify any other course, his delegation now wishes to reiterate the position it had taken at the 30th plenary meeting of the United Nations Conference on the Law of Treaties,² held on 19 May 1969, in the vote on article 77 of that Convention, which was later renu-

bered 4 by the Drafting Committee, the numbers of the articles cited being altered as appropriate.

24. In amplification of that point, he wished it to be recorded that the Cuban delegation interpreted the exception in article 4 to the non-retroactivity of the present convention, referring to the application of any rules set forth therein "to which treaties between one or more States and one or more international organizations or between international organizations would be subject under international law independently of the Convention", as covering rules of international law established as being applicable to a treaty, as well as situations arising or existing when that treaty entered into force, if that took place after the entry into force of the present convention, even if the date on which the treaty was concluded or the situation originated was earlier.

25. The Cuban delegation wished to reaffirm that the peremptory rules codified in the present convention fully applied to all treaties in force, whatever the date of their entry into force, not only on purely logical grounds based on the principle of the hierarchy of rules, but also for reasons of substances directly related to the notion of what was just at a given moment for the international community, particularly with respect to the rules in articles 48 to 53, 62 and 64. Any treaty conflicting with those peremptory rules was both illegal and inadmissible; it was not permissible to question whether those peremptory norms were or were not part of international law before the entry into force of the convention, from which they derived indisputable authority.

Article 4 was adopted without a vote.

Article 5 (Treaties constituting international organizations and treaties adopted without an international organization)

26. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said the text of article 5 referred to the Drafting Committee by the Committee of the Whole was one which had been worked out in the framework of consultations held under the chairmanship of the President of the Conference (A/CONF.129/C.1/L.70).

27. The text now submitted to the Conference contained certain drafting adjustments. The original text had referred to "any treaty which is the constituent instrument of an international organization and to which States and international organizations are parties". In order to clarify that passage and make it more precise, it had been reworked to read "any treaty between one or more States and one or more international organizations which is the constituent instrument of an international organization".

28. It would be recalled that the Committee of the Whole (27th meeting) had agreed to delete the word "relevant" before "rules of the organization" in article 5, as well as in other articles. It had, however, been understood that if the Drafting Committee felt an imperative need to reintroduce the word "relevant" it could make a recommendation to that effect. The Committee in fact now made that recommendation with regard to article 5. As had been explained by the Expert Consultant, if the word "relevant" were to be left out, it

² *Ibid.* (United Nations publication, Sales No. E.70.V.6), 30th plenary meeting, paras. 9 to 16.

might be argued that virtually any rule of an organization could be invoked to allege the inapplicability of the present convention to the treaties which were the subject of article 5. In the context of article 5, the term "relevant" served the useful purpose of stressing that the rules involved must be those which were related to treaty-making or to the conclusion of the treaties in question. Moreover, the 1969 Vienna Convention had explicitly included in its article 5 a reference to "any relevant rules of the organization".

Article 5 was adopted without a vote.

Article 6 (Capacity of international organizations to conclude treaties)

29. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that in adopting the International Law Commission's text of the article for referral to the Drafting Committee, the Committee of the Whole had agreed to delete the word "relevant" (*ibid.*).

30. Some members of the Drafting Committee had felt that insertion of that word would be preferable; the Committee had, however, decided that to do so was not imperative, and thus did not recommend such inclusion. Consequently, with the exception of the deletion agreed by the Committee of the Whole, the text remained identical with the basic proposal.

Article 6 was adopted without a vote.

Article 7 (Full powers)

31. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, recalled that the Committee of the Whole had adopted the consolidated text of article 7 as proposed by that Committee's Working Group on article 7 (A/CONF.129/C.1/L.43), as orally revised. The text had been referred to the Drafting Committee before the question of the use of the term "powers" in the convention had been resolved. As a consequence of the later adoption by the Committee of the Whole of a text for article 2 which did not contain a definition of that term, the Drafting Committee had replaced in subparagraphs 3 (a) and 3 (b) of article 7 the term "powers" by the term "full powers".

32. In the English and Spanish versions of the article, subparagraph 1 (a) followed the terminology of the 1969 Vienna Convention, while subparagraph 3 (a) used the phrase "that person produces". In the French version, both subparagraphs contained the words "*si elle produit*", which referred back to the opening words of paragraph 3. In resolving those discrepancies, the Drafting Committee, desiring to avoid the unfortunate implications of the use of the strictly masculine "he" in English and at the same time to give greater precision to the texts in most of the other languages, had decided to use the words "that person" in both subparagraphs 1 (a) and 3 (a). In the French version, the words "*si elle produit*" had been replaced by "*si cette personne*". In the Spanish version, there was no need to insert "*la persona*" as the construction of the introductory part of the paragraph made it absolutely clear that the subject was "*una persona*".

33. In line with the new formulation of subparagraphs 1 (b) and 2 (b), which differed from that in

the 1969 Vienna Convention, minor language alignments had been made in those paragraphs, "concerned" having been rendered in the French version as "*concernés*" and in the Spanish version as "*de que se trate*".

34. In subparagraph 2 (b), the expression "of States in which international organizations participate", found in the original text, had been omitted in the light of the text of paragraph 2 of article 9 referred to the Drafting Committee.

35. It had been decided that the text of subparagraph 3 (b) might be lightened with no loss of clarity or meaning by the deletion of the phrase "or, as the case may be, of the international organizations concerned".

36. Finally, minor drafting adjustments had been made, as well as grammatical corrections to certain language versions.

Article 7 was adopted without a vote.

Article 8 (Subsequent confirmation of an act performed without authorization)

37. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that the article, referred directly to the Committee by the Conference, had undergone changes only in the Arabic version, where the word "authorization" had been rendered more precisely and a necessary deletion had been made.

Article 8 was adopted without a vote.

Article 9 (Adoption of the text)

38. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that paragraph 1 of the article had been referred to the Drafting Committee directly by the Conference. No changes had been made in that paragraph.

39. Paragraph 2, on the other hand, had been referred to the Committee of the Whole for substantive consideration. Adopted by that body in a form worked out in the framework of informal consultations held under the chairmanship of the President of the Conference, it had then been referred to the Drafting Committee.

40. The text of the paragraph had subsequently undergone slight adjustments to bring out more clearly the intended meaning. It had been divided into two sentences, the second of which began "If, however, no agreement is reached on any such procedure, the adoption of the text shall take place . . .". No other changes had been made in paragraph 2.

Article 9 was adopted without a vote.

Article 10 (Authentication of the text)

41. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that the article had been referred directly to the Drafting Committee by the Conference. No change had been made in the article except for minor grammatical corrections made to the English version in order to align it with the other versions and with the 1969 Vienna Convention on the Law of Treaties.

Article 10 was adopted without a vote.

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

42. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that paragraph 1 of the article had been referred directly to the Drafting Committee by the Conference. Paragraph 2 had been referred to the Committee of the Whole for substantive consideration, after which it had been referred to the Drafting Committee in the form in which it had appeared in the basic proposal.

43. The Drafting Committee had made no changes in either paragraph.

Article 11 was adopted without a vote.

Article 12 (Consent to be bound by a treaty expressed by signature)

Article 13 (Consent to be bound by a treaty expressed by an exchange of instruments constituting a treaty)

Article 14 (Consent to be bound by a treaty expressed by ratification, act of formal confirmation, acceptance or approval)

Article 15 (Consent to be bound by a treaty expressed by accession)

Article 16 (Exchange or deposit of instruments of ratification, formal confirmation, acceptance, approval or accession)

Article 17 (Consent to be bound by part of a treaty and choice of differing provisions)

Article 18 (Obligation not to defeat the object and purpose of a treaty prior to its entry into force)

44. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that draft articles 12 to 18 had been referred directly to the Drafting Committee by the Conference and had not been the subject of substantive consideration by the Committee of the Whole.

45. Article 12 had been simplified by the combination of paragraphs 1 and 2 in a single paragraph, as a result of the deletion of the term "powers" by the Committee of the Whole. Since "full powers" now applied to both representatives of States and representatives of international organizations, the same rule would have been stated in former paragraphs 1 and 2. It was thus only logical to combine the two paragraphs into one by simply referring to "the consent of a State or of an international organization", "that State or that organization", and "the State or organization". Finally, since the new combined paragraph referred to both categories of treaties, it was considered appropriate to use for subparagraph (b) the version appearing in the former subparagraph 2 (b), thus covering all possibilities.

46. In the text of subparagraph 2 (a) the words "of the treaty" had been inserted following "signature" in all language versions, in order to align the text with that of the 1969 Vienna Convention. A linguistic alignment had been made in the final part of subparagraph 2 (b) in the Spanish version, and some stylistic improvements had been made in the Arabic version.

47. Article 13 had remained basically unchanged, with the exception of the opening phrase, which had been lightened and now read "The consent of States or of international organizations . . .".

48. Article 14 had been changed in only one place: subparagraph 1 (d) now referred to "full powers". Grammatical and stylistic improvements had been made in the Arabic text.

49. Articles 15 and 16 had been maintained without change.

50. Article 17, as now submitted, reflected an attempt by the Drafting Committee to simplify the text, with no loss of substantive meaning, by combining paragraphs which contained the same rule and by adjusting the rather cumbersome formula which had been used in the original version of paragraph 1. The new version of the article comprised a combination in its paragraph 1 of former paragraphs 1 and 2, and in its paragraph 2, of former paragraphs 3 and 4. Paragraphs 1 and 2 now applied to both categories of treaties. In addition, the formula "the other contracting States and the contracting organizations or, as the case may be, the other contracting organizations and the contracting States" originally found in paragraph 1 of the International Law Commission's draft had been found not only burdensome but not altogether accurate, in view of the many possible combinations and permutations of treaty partners. In certain cases there might be no other contracting States or no other contracting organizations. In order to avoid those complexities and to make the text clearer, the Drafting Committee had agreed to refer simply to "the contracting States and contracting organizations or, as the case may be, the contracting organizations".

51. Finally, article 18 remained as drafted in the basic proposal.

Articles 12 to 18 were adopted without a vote.

Article 19 (Formulation of reservations)

52. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, recalled that the Committee of the Whole had adopted the text of the basic proposal for the article in an amended form and had referred to the Drafting Committee.

53. As referred, article 19 had comprised two paragraphs which provided for the same rule to apply when a State or international organization formulated a reservation on expressing its consent to be bound by a treaty.

54. In view of that fact, and in an effort to lighten the text, the Drafting Committee had agreed to combine the two paragraphs, so that the opening words now referred to "A State or an international organization" and "formally confirming" had been inserted following "ratifying". That change also aligned article 19 with other provisions of the draft convention which referred to the various means whereby a State or an organization expressed its consent to be bound.

55. Following remarks by Mr. KADIRI (Morocco) and Mr. RADY (Egypt), he said that the figure "1" should be deleted from the French and Arabic versions,

where the introductory paragraph had been inadvertently so numbered.

56. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that in the opinion of his delegation an international organization had no right to formulate a reservation, not only in cases where the reservation was incompatible with the object and purpose of the treaty to which it was a party but also in those cases where the reservation was incompatible with the constituent instrument of the organization or with other existing and legally binding instruments.

Article 19 was adopted without a vote.

Article 20 (Acceptance of and objection to reservations)

57. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that the article had been referred to the Drafting Committee as amended by the Committee of the Whole. In addition, the Drafting Committee had been requested to examine whether the inclusion in paragraph 2 of the words “the limited number of negotiating States and negotiating organizations or of negotiating organizations, as the case may be, and”, which had been proposed in an amendment submitted in the Committee of the Whole (see A/CONF.129/C.1/L.33, para. 1), would improve the drafting. The Drafting Committee had felt that the insertion would indeed improve the text, bringing it closer into line with that of the 1969 Vienna Convention. Those words had consequently been inserted, duly adjusted to match similar expressions found in the aforementioned Convention and expressions found throughout the draft.

58. For reasons similar to those he had mentioned earlier, subparagraph 4 (c) had been slightly adjusted. The phrase “one other contracting State or one contracting organization or, as the case may be, one other contracting organization or one contracting State” had been replaced by the simple formula “one contracting State or one contracting organization”.

59. Finally, it had been decided that some adjustments were needed in the English and Russian versions of subparagraph 4 (a), the end of which had consequently been changed in both languages to read “for the reserving State or organization and for the accepting State or organization”.

60. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that, in the opinion of his delegation, paragraph 3 of article 30 unjustifiably limited the sovereign right of States to formulate reservations. Such reservations, moreover, could not be made subject to acceptance by any organ of an international organization. Furthermore, paragraph 4 unjustifiably extended the right of international organizations to object to reservations formulated by States. An international organization could object to a reservation only if to do so lay within its competence.

Article 20 was adopted without a vote.

Article 21 (Legal effects of reservations and of objections to reservations)

Article 22 (Withdrawal of reservations and of objections to reservations)

Article 23 (Procedure regarding reservations)

Article 24 (Entry into force)

Article 25 (Provisional application)

Article 26 (Pacta sunt servanda)

61. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that article 21 remained unchanged, with the exception of the replacement of the words “author of the reservation” in paragraph 3 of the English and Russian versions by the words “the reserving State or organization”.

62. Subparagraph 3 (a) of article 22 had been changed slightly, for the reasons he had indicated earlier. Thus, the phrase “another contracting State or a contracting organization or, as the case may be, another contracting organization or a contracting State” had been changed to read simply “a contracting State or a contracting organization”.

63. Article 23 remained unchanged, except for a correction in the English version of paragraph 2, where at the end of the first sentence, the words “by a treaty” had been replaced by “by the treaty”.

64. No changes had been made in article 24, with the exception of a correction in the French version of the introductory words of paragraph 3, where the word “*autre*”, erroneously inserted before “*organisation internationale*” in the basic proposal, had been removed.

65. The text of paragraph 1 of article 25 remained unchanged. Paragraph 2, however, had been adjusted for the reasons he had indicated previously. The introduction in the basic proposal of the complexities required by the attempt to cover all “other” treaty partner permutations had led to a heavy text which had not, in fact, covered all possible situations. As the text referred to treaty partners being notified, the clear and obvious meaning was that it referred to notifying “other” treaty partners. Thus, the original phrase in paragraph 2, “the other States and the organizations or, as the case may be, the other organizations and the States between which” had been changed to read simply “the States and organizations with regard to which”.

66. Article 26 introduced part III of the convention and concerned *pacta sunt servanda*. No changes had been made in that all-important article.

67. Mr. CANÇADO TRINDADE (Brazil) said that, for the record and for the purpose of interpretation, his delegation wished to state that articles 24 and 25, as well as article 12, of both the 1969 Vienna Convention on the Law of Treaties and the present draft articles adopted by the Drafting Committee, as contained in document A/CONF.129/11, should in its view be considered, in respect of States, against the background of the general principle of parliamentary approval of treaties and of the practice ensuing therefrom; but that his delegation also recognized the residuary nature of those provisions of both the 1969 Convention and the present draft articles as adopted by the Drafting Committee.

Articles 21 to 26 were adopted without a vote.

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

68. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that article 27 of the basic proposal had been considered substantively by the Committee of the Whole, adopted by it and referred to the Drafting Committee. The latter had made no changes in the text.

Article 27 was adopted without a vote.

Article 28 (Non-retroactivity of treaties)

Article 29 (Territorial scope of treaties)

69. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, recalled that articles 28 and 29 had been referred directly to the Drafting Committee by the Conference. No changes had been introduced in those articles.

70. Mr. ALMODÓVAR (Cuba) said that as the present convention reproduced, with the same number, text and content, article 28 of the 1969 Vienna Convention on the Law of Treaties, and as no circumstance had arisen to justify any other course, his delegation now wished to reiterate the position it had taken at the 13th plenary meeting of the United Nations Conference on the Law of Treaties on Tuesday, 6 May 1969,³ in the vote on article 24 of that Convention, which was subsequently renumbered 28 by the Drafting Committee (the numbers of the articles cited being altered as appropriate).

71. In amplification of that point, he wished it to be recorded that it was the understanding of the delegation of Cuba that the rule contained in article 28 could be interpreted only in the sense that if an act or fact or situation which took place or arose prior to the entry into force of a treaty, including the present convention, continued to occur or exist after the entry into force of the treaty, it would be subject to its provisions. Therefore, the principle of non-retroactivity was never violated by the application of a treaty, including the present convention, to situations arising or existing when the treaty entered into force and subsequent to the entry into force of the treaty, including the present convention, even if they first began at an earlier date.

72. The delegation of Cuba interpreted the legal effect of article 28 as having the meaning and scope inferred from paragraph (3) of the International Law Commission's commentary to article 24—later 28—of the 1969 Vienna Convention,⁴ which, in the present Convention, had the same number, text and content.

Articles 28 and 29 were adopted without a vote.

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

73. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, recalled that paragraphs 1 to 5 of article 30 had been referred directly to the Drafting Committee by the Conference. Paragraph 6, however, had

been substantively considered by the Committee of the Whole.

74. Concerning paragraph 6, the Committee of the Whole had approved the idea underlying the International Law Commission's draft and two amendments thereto (A/CONF.129/C.1/L.44 and L.45). All three texts had been referred to the Drafting Committee with the request that it examine the formulation and placement of the ideas contained therein.

75. The Drafting Committee had decided, in line with one of the amendments referred to it, that it was preferable to spell out the meaning of the reference in the Commission's text to Article 103 of the Charter of the United Nations. It had also been agreed that it would not be appropriate to include both a cross-reference to Article 103 and a paraphrase of its contents. Rather, its significance should be clearly set out, without cross-reference. The text now before the Conference had been drafted along the lines of one of the amendments referred to the Committee, but adjusted for purposes of clarity and precision. He pointed out that the use in most language versions of the words "the fact that" was in no way intended to lessen the solemn nature of the legal rule laid down in Article 103 of the Charter of the United Nations. Rather, it was intended to signify the existence of a legal rule, a legal obligation.

76. As to the placement of the provision, it had been thought that it would unduly overburden the text of paragraph 1 if added there. The Committee had therefore retained the provision as paragraph 6, it being clearly understood that its placement there could not be interpreted as detracting from the overriding importance of the provision.

77. In the case of the other five paragraphs of the article no changes had been made, with the exception of a lightening of the phrase at the end of paragraph 5, for reasons which he had already explained. The words "towards another State or an organization or, as the case may be, towards another organization or a State" had been replaced by "towards a State or an organization". In addition, the words "not party to that treaty" which also appeared at the end of paragraph 5 of the basic proposal but which did not appear in the 1969 Vienna Convention, had been deleted as constituting an unnecessary departure from that Convention.

78. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that, in the opinion of his delegation, article 30 did not reflect the full complexity of the situation that might arise in the application of successive treaties. With regard to paragraph 3, his delegation considered that if the operation of the earlier treaty was not terminated as a consequence of the conclusion of a new treaty on the same subject, the provisions of the earlier treaty must be applied to the extent that they created a régime no less—i.e., more—favourable than that established by the later treaty.

Article 30 was adopted without a vote.

Article 31 (General rule of interpretation)

Article 32 (Supplementary means of interpretation)

³ *Ibid.*, 13th plenary meeting, paras. 41 to 47.

⁴ *Ibid.* (United Nations publication, Sales No. E.70.V.5), p. 32.

Article 33 (Interpretation of treaties authenticated in two or more languages)

Article 34 (General rule regarding third States and third organizations)

79. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, recalled that articles 31 to 34 had been referred directly to the Drafting Committee by the Conference. No changes had been introduced in the texts.

Articles 31 to 34 were adopted without a vote.

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

80. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, recalled that article 38 had been considered substantively by the Committee of the Whole, which had adopted the International Law Commission's draft and had referred it to the Drafting Committee. The latter had made no changes in the text.

81. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that in the opinion of his delegation a customary rule of international law became binding on a State only in cases where that State recognized it as such. It was consequently not binding on a State which did not recognize it as binding.

Article 38 was adopted without a vote.

Article 40 (Amendment of multilateral treaties)

Article 41 (Agreements to modify multilateral treaties between certain of the parties only)

Article 42 (Validity and continuance in force of treaties)

Article 43 (Obligations imposed by international law independently of a treaty)

Article 44 (Separability of treaty provisions)

82. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that articles 40 to 44 had been referred directly to the Drafting Committee by the Conference.

83. In article 40, the long phrase in paragraph 2 of the original proposal which read "to all the contracting States and contracting organizations or, as the case may be, to all the contracting organizations" had not been deemed necessary. It had been replaced by the simpler formula "to all the contracting States and all the contracting organizations". In paragraph 4, for the sake of clarity, the words "any party" at the beginning of that paragraph of the basic proposal had been replaced by the 1969 Vienna Convention wording "any State or international organization already a party".

84. The only change made in article 41 was the addition of commas in the appropriate places in certain language versions to bring those versions into line with the 1969 Vienna Convention.

85. Two members of the Drafting Committee had expressed reservations with regard to article 42 and

article 44, paragraph 5, because of their doubts concerning the concept of *jus cogens* in articles 53 and 64. One member had also voiced doubt concerning the use of the word "*terminación*" in the Spanish version of those articles and various other articles.

86. Mr. DELON (France), reiterating his delegation's reservation with regard to article 44 and particularly paragraph 5 thereof, said that if that paragraph were put to the vote his delegation would vote against it. It would not, however, oppose the adoption of article 44 by consensus, but would be unable to join in that consensus.

Articles 40 to 44 were adopted without a vote.

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

87. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that article 46 had received substantive consideration in the Committee of the Whole, which had adopted the International Law Commission's text and had referred it to the Drafting Committee together with two amendments (A/CONF.129/C.1/L.48/Rev.1 and L.52).

88. One issue raised by those amendments was whether to revert to the wording of article 46, paragraph 2, of the 1969 Vienna Convention in drafting paragraphs 2 and 4 of article 46 of the basic proposal, thus introducing the concept of conduct in accordance with normal practice and in good faith, which did not appear in the International Law Commission's draft, although several speakers had expressed doubt whether there could be said to exist a "normal practice of international organizations" in the matter. It had been recognized, however, that such a practice might well develop in the future and that such developments should not be precluded. A text had therefore been drafted which referred to "the normal practice of States and, where appropriate, of international organizations". It had then been decided to combine paragraphs 2 and 4 in one paragraph covering both States and international organizations, while redrafting them along the lines suggested in the amendments and also to take account of the reference to "normal practice" to which he had referred. Certain language versions had been brought even more closely into line with the wording of the 1969 Vienna Convention, and former paragraph 3 had been renumbered paragraph 2.

Article 46 was adopted without a vote.

Article 47 (Specific restrictions on authority to express the consent of a State or an international organization)

Article 48 (Error)

Article 49 (Fraud)

Article 50 (Corruption of a representative of a State or of an international organization)

Article 51 (Coercion of a representative of a State or of an international organization)

Article 52 (Coercion of a State or of an international organization by the threat or use of force)

Article 53 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*))

Article 54 (Termination of or withdrawal from a treaty under its provisions or by consent of the parties)

Article 55 (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force)

89. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that articles 47 to 55 had been referred directly to the Drafting Committee by the Conference, and certain changes had been made with a view to simplifying the text, in keeping with previous articles. Thus, the phrase at the end of article 47 reading: "to the other negotiating States and negotiating organizations or, as the case may be, to the other negotiating organizations and negotiating States", had been replaced by "to the negotiating States and negotiating organizations". Similarly, in article 54, paragraph (b), the phrase "with the other contracting States and the other contracting organizations or, as the case may be, with the other contracting organizations" had been replaced by "with the contracting States and contracting organizations".

90. Certain grammatical corrections had been made in some of the articles, such as article 48, where, in the Spanish text, the word "dieran" had been replaced by "diera".

91. The title of article 52 had been brought into line with the articles immediately preceding by the addition of the words "of a State or of an international organization", after "Coercion".

92. One member of the Drafting Committee had expressed reservations in respect of the contents of articles 48 to 51, while two members had expressed reservations with respect to the underlying concept of article 53 relating to *jus cogens*.

93. Mr. DELON (France) said that his delegation wished to reiterate the reservation it had expressed in the Drafting Committee with respect to article 53, which it opposed because it did not agree with the recognition that article gave to *jus cogens*. His delegation would not oppose a consensus on the article, but would not join in that consensus.

94. Mr. GÜNEY (Turkey), referring to article 53, said that *jus cogens* was still a highly controversial concept which raised the fundamental question of how to recognize the scope and content of a peremptory norm of general international law. It was not enough to say that such norms were recognized by the international community as a whole.

95. At the 1969 Vienna Conference his delegation had fully shared the concern which had been expressed regarding the imprecision of the concept of *jus cogens* and the interpretations to which it could give rise, and had entered serious reservations in that regard. The stability and certainty of treaty relations dictated that

any exception to the *pacta sunt servanda* rule should be formulated with care and in unambiguous and detailed terms. There had, however, been a divergence of views since 1969 regarding the nature of norms of *jus cogens*, which it had not been possible to define. The international community and international law had not reached the stage where a clear demarcation line could be drawn between peremptory and other norms. The 1969 Vienna Convention had failed in so far as it had not established the precise content of a peremptory norm of international law, a breach of which could have extremely serious effects, such as, for instance, rendering international agreements unlawful irrespective of the will of the parties which had concluded them.

96. As drafted, article 53 could be likened to an article in a penal code that provided for punishment but did not specify which acts would constitute offences. Consequently, while his delegation would not oppose any consensus or agreement that might be reached on article 53, it wished, for the reasons he had stated, to dissociate itself from any such consensus or agreement.

97. Mr. MÜTZELBURG (Federal Republic of Germany) said that his delegation was prepared to join in a consensus on article 53 on the clear understanding that its agreement to do so was inextricably linked with the finding by the Conference of a satisfactory solution to the problem of the peaceful settlement of disputes. If his delegation was incorrect in its assumption that such a solution could be found, the basis on which its acceptance had been founded would no longer exist and it would have to draw the necessary conclusions.

Articles 47 to 55 were adopted without a vote.

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

98. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that article 56 had been considered substantively by the Committee of the Whole. The basic proposal for the article had been adopted and had been referred to the Drafting Committee (A/CONF.129/DC/10). The only change introduced by the Drafting Committee was the replacement of "puede" by "pueda" in paragraph 1 (b) of the Spanish text to bring the wording into line with that of the 1969 Vienna Convention.

99. Mr. RAMADAN (Egypt) said that his delegation wished to enter a reservation with respect to paragraph 1 (b) of the article.

100. Mr. NETCHAEV (Union of Soviet Socialist Republics) said that in the opinion of his delegation, denunciation could take place only when the right of denunciation was stipulated in the treaty and only when recourse was had to it in accordance with the terms and conditions of the treaty. There was in fact no such thing as implicit denunciation.

Article 56 was adopted without a vote.

Article 57 (Suspension of the operation of a treaty under its provisions or by consent of the parties)

Article 58 (Suspension of the operation of a multilateral treaty by agreement between certain of the parties only)

Article 59 (Termination or suspension of the operation of a treaty implied by conclusion of a later treaty)

Article 60 (Termination or suspension of the operation of a treaty as a consequence of its breach)

101. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that articles 57 to 60 had been referred directly to the Drafting Committee by the Conference.

102. Article 57 had been lightened without loss of meaning by the replacement of the phrase in subpara-

graph (b) of the basic proposal reading "with the other contracting States and the other contracting organizations or, as the case may be, with the other contracting organizations" by "with the contracting States and contracting organizations".

103. In the Spanish version of the three subparagraphs of paragraph 2 of article 60, the word "autor" following "el estado" had been deleted and the word "autora", following "organización internacional" had been replaced by "autor", in line with the text of article 20, subparagraphs 4 (a) and (b).

Articles 57 to 60 were adopted without a vote.

The meeting rose at 5.10 p.m.

6th plenary meeting

Wednesday, 19 March 1986, at 4.25 p.m.

President: Mr. ZEMANEK (Austria)

Consideration of the question of the law of treaties between States and international organizations or between international organizations, in accordance with General Assembly resolutions 37/122 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*)

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference
[Agenda item 12] (*continued*)

TEXTS PROPOSED BY THE DRAFTING COMMITTEE
(*continued*)

1. The PRESIDENT invited the Chairman of the Drafting Committee to continue his presentation of that Committee's report (A/CONF.129/11 and Add.1) and the Conference to consider it.

Article 61 (Supervening impossibility of performance)

2. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, referring to document A/CONF.129/11, said that the Committee of the Whole had considered article 61 substantively. It had adopted the text proposed by the International Law Commission (A/CONF.129/4) and had referred it to the Drafting Committee. The latter had made no change in the draft article.

Article 61 was adopted without a vote.

Article 63 (Severance of diplomatic or consular relations)

Article 64 (Emergence of a new peremptory norm of general international law (*jus cogens*))

3. Mr. AL-KHASAWNEH, Chairman of the Drafting Committee, said that articles 63 and 64 had been referred directly by the Conference to the Drafting Committee, which had recommended no changes in those draft articles. However, reservations previously made in connection with the concept of *jus cogens* had been reiterated with regard to article 64 by two members of the Drafting Committee.

4. Mr. DELON (France) said that his delegation wished to reiterate the reservation it had expressed in respect of article 53 in connection with the concept of *jus cogens* (5th plenary meeting). Although his delegation would not oppose the adoption of article 64 by consensus, it did not wish to be associated with that consensus.

5. Mr. GÜNEY (Turkey) said that his delegation wished to reiterate in respect of article 64 the reservation it had expressed previously in respect of article 53 in connection with the concept of *jus cogens* (*ibid.*), as the reservation applied to both articles. While his delegation would not oppose agreement in the Conference to adopt article 64 without a vote, it disassociated itself from such agreement.

Articles 63 and 64 were adopted without a vote.

Article 67 (Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty)

Article 68 (Revocation of notifications and instruments provided for in articles 65 and 67)

Article 69 (Consequences of the invalidity of a treaty)

Article 70 (Consequences of the termination of a treaty)