

United Nations Conference on Succession of States in Respect of Treaties

Vienna, Austria
First session
4 April – 6 May 1977

Document:-
A/CONF.80/SR.1

1st plenary meeting

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

SUMMARY RECORDS OF THE PLENARY MEETINGS

1st PLENARY MEETING

Monday, 4 April 1977, at 3.15 p.m.

Acting President: Mr. SUY
(Legal Counsel of the United Nations,
representing the Secretary-General)

President: Mr. ZEMANEK (Austria)

Opening of the Conference by the representative of the Secretary-General

[Item 1 of the provisional agenda]

1. The ACTING PRESIDENT, speaking on behalf of the Secretary-General and the participants in the Conference, welcomed the Federal President of the Republic of Austria, whose work for, and continuing interest in, the development and codification of international law were known to all. The presence of the Federal President at the Conference would serve to stimulate the search for ways and means of furthering the process of development and codification in order to promote understanding among States.

2. On behalf of the Secretary-General, he declared open the United Nations Conference on Succession of States in Respect of Treaties and invited the Conference to observe a minute's silence for prayer or meditation.

The Conference observed a minute's silence.

3. The ACTING PRESIDENT, speaking as the representative of the Secretary-General, observed that the Conference was the eighth in a series called by the General Assembly for the purpose of drawing up, on the basis of articles drafted by the International Law Commission, international conventions embodying the efforts of the world community to comply with the task laid down in the Charter of the United Nations of "encouraging the progressive development of international law and its codification". The previous codification Conferences had done much to strengthen the legal bases of international co-operation and had been of particular importance for the consolidation and full realization of friendly relations and co-operation among States. The convention which the present Conference was called upon to formulate would codify the general rules applicable to succession of States in respect of treaties, that was to say, the rules governing the effects on previous treaty relations of the replacement of one State by

another in the responsibility for the international relations of a territory.

4. The draft articles prepared by the International Law Commission for the Conference, which took fully into account the principle of self-determination enshrined in the Charter of the United Nations, contained a series of provisions dealing with succession resulting either from the attainment of independence by former dependent territories, in its various historical types, or from a change in the territorial composition of a State. Following, basically, the "clean slate" metaphor, those provisions respected the newly independent State's freedom to determine its own treaty relations, but at the same time provided means of achieving the maximum continuity in those relations for the benefit of the newly independent States themselves and of other States parties to their predecessor's treaties and, ultimately, of the international community as a whole. All those provisions were, therefore, particularly important for the States which had achieved independence since the Second World War as a consequence of the efforts of their peoples, of Member States and of the United Nations, to put an end to colonization.

5. But the International Law Commission's draft articles were also of considerable practical importance for all States, whether new or old, because they dealt, in a way which again balanced individual and general interests, with succession resulting from recurrent phenomena of international life, such as partial transfers of territory from one State to another and unions and separations of States. For reasons of interdependence, nations were moving to develop new forms of association or integration, and provisions such as those regulating unions of States could therefore become of particular practical value in the future.

6. The practical interest of the draft was further highlighted by the subject-matter of the succession dealt with, namely treaties. Within the international community, there was a steady increase in the number of treaties concluded each year, and international relations were now carried on more and more within the framework of treaties rather than that of customary international law. Treaties were the primary source of international law. That was so not only because contemporary conditions required more precise and clearly defined legal rules in areas traditionally regulated by international law, but also because political, economic, social, scientific and technological developments necessitated the legal regulation of

new areas, which could be achieved only by the adoption of multilateral treaties. Many of those treaties, which were often concluded under the auspices of the United Nations, were of great interest for the entire international community. The advantages and disadvantages of continuity in treaty relations on the occurrence of a succession of States would undoubtedly hold a central position in the debates of the Conference.

7. The basic proposal before the Conference was the result of several years of deep study by the International Law Commission, with the valuable assistance of its Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat, and its provisions had been commented on at the Sixth Committee of the General Assembly, as well as in written form by governments. The Conference was also privileged to have Sir Francis Vallat as its expert consultant. He was convinced that, with such excellent preparation and assistance, the Conference would fulfil the mandate entrusted to it by the General Assembly and would be able to embody the results of its work in a multilateral convention on succession of States in respect of treaties which would have immense significance for the whole future of international law.

8. He wished the Conference every success in its extremely important task and assured it that the Secretariat would give all possible assistance.

9. He then invited the Federal President of the Republic of Austria to address the Conference.

Address by the Federal President of the Republic of Austria

10. H.E. Dr. Rudolph KIRSCHSCHLAEGER, Federal President of the Republic of Austria, expressed his pleasure at being able once again to welcome a United Nations codification conference in Vienna, which had become a regular venue for such meetings. He hoped that participants in the Conference would find every technical facility they needed, and that both the city of Vienna and the country of Austria would once again prove successful meeting places.

11. It was not by chance that Article 13 of the Charter of the United Nations spoke, in the same subparagraph, of the need to promote international co-operation in the political field and to encourage the progressive development of international law and its codification; for the links between politics and law were indissoluble, and to disregard them could lead to threats to, and even breaches of, international peace. Thus the importance of the process of codification in ensuring the rule of law in international relations could not be overestimated.

12. The importance of the subject of the present Conference had rightly been emphasized by the Gen-

eral Assembly, when, by its resolution 31/18, it had decided to convene the Conference. The General Assembly had also stated that the articles prepared by the International Law Commission constituted a good basis for the work of the Conference, and he hoped that they would indeed serve to facilitate its deliberations.

13. The success of the Conference would be a success for all States and for the United Nations; he was sure that all representatives would join with him in wishing for such an outcome, since the world needed the United Nations. To his greetings to the participants in the Conference, to the peoples and governments they represented, and to the members of the Secretariat, he added the wish that there would be lasting peace for all nations.

The meeting was suspended at 3.40 p.m. and resumed at 4.50 p.m.

Election of the President [Item 2 of the provisional agenda]

14. Mr. SETTE CAMARA (Brazil) nominated Mr. Karl Zemanek (Austria), a learned jurist known throughout the world for his writings on international law and, in particular, on State succession. Mr. Zemanek's impressive achievements as a professor of international law and international relations, as legal consultant to the Austrian Ministry of Foreign Affairs, as a judge on the European Nuclear Energy Tribunal, and as representative of Austria to the United Nations made him eminently qualified for the duties of President.

15. Mr. CASTRO RIAL (Spain) seconded the nomination.

16. Mr. YANGO (Philippines), Mr. IYANDA (Nigeria), Mrs. BOKOR-SZEGŐ (Hungary), Msgr. SQUICCIARINI (Holy See) and Mr. MARESCA (Italy) supported the nomination.

Mr. Zemanek (Austria) was elected President by acclamation and took the Chair.

17. The PRESIDENT thanked the delegations for electing him President of the Conference. He interpreted his election as an honour to his country, which had a long tradition as host to United Nations codification conferences.

18. The Conference faced a delicate task, because the subject of succession of States in respect of treaties had never been an easy matter either in theory or in practice. Moreover, it had taken on a new dimension as a result of the process of decolonization which had begun after the Second World War, when, within roughly a decade, the international community of States had more than doubled in number. It might be asked whether it was not rather late to codify the law of State succession in respect of treaties

and whether it should not have been codified before the dawn of decolonization. To raise that question was, however, to misunderstand the function of codification, as distinct from the creation of new law in a hitherto unregulated field; for codification, though to some extent always combined with the progressive development of the rules of law, was dependent on previous State practice, from which it took its material and abstracted its rules. And it was only relatively recently that the material on States' succession after decolonization had become available and the effort of codification had thus been made possible.

19. Unfortunately, however, the material was complex and involved contradictory concepts, such as universal succession and the *pacta sunt servanda* rule, on the one hand, and the "clean slate" principle, on the other. It also reflected conflicting interests: for instance, in the case of general multilateral treaties of a law-making character, the interest of the international community in maintaining as wide an application as possible of its general rules encountered the interest of the newly independent State in having the same opportunity as the former metropolitan Power and all other States to shape its own treaty profile.

20. The International Law Commission had endeavoured to harmonize those contradictory concepts and conflicting interests with the assistance of its Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat, who would also assist the Conference with his expertise. It would, however, be unrealistic to suppose that those fundamental problems would not arise again during the Conference and that the parties concerned would not plead their cause with a view to obtaining a text more advantageous to their particular positions or interests. If the Conference was to succeed in producing a generally accepted and lasting convention, it must not lose sight of the interests of the international community as a whole and must co-operate constructively and in a spirit of compromise. He assured the delegations that, in discharging his duties, he would endeavour to serve and assist them to the best of his ability.

Adoption of the agenda

[Item 3 of the provisional agenda]

The provisional agenda (A/CONF.80/1¹) was adopted.

Adoption of the rules of procedure

[Agenda item 4]

The provisional rules of procedure (A/CONF.80/2²) were adopted.

The meeting rose at 5.25 p.m.

¹ The agenda as adopted by the Conference was circulated as document A/CONF.80/7.

² The rules of procedure as adopted by the Conference were circulated as document A/CONF.80/8.

2nd PLENARY MEETING

Tuesday, 5 April 1977, at 10.45 a.m.

President: Mr. Zemanek (Austria)

Election of Vice-Presidents

[Agenda item 5]

1. The PRESIDENT said that, in conformity with rule 6 of the rules of procedure and the customary practice, the regional groups had met and had proposed the nomination of the representatives of the following 22 countries as Vice-Presidents: Argentina, Barbados, Bulgaria, Cuba, Ethiopia, France, India, Indonesia, Ireland, Italy, Ivory Coast, Malaysia, Mexico, Morocco, Pakistan, Romania, Sudan, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire. He proposed that the Conference should elect as Vice-Presidents the representatives of those 22 countries.

That proposal was adopted.

Election of the Chairman of the Committee of the Whole

[Agenda item 6]

2. Mr. WAITITU (Kenya) nominated Mr. Riad (Egypt) as Chairman of the Committee of the Whole.

3. Mr. IYANDA (Nigeria) supported the nomination.

Mr. Riad (Egypt) was elected Chairman of the Committee of the Whole by acclamation.

4. Mr. NATHAN (Israel) said that if the proposal by the representative of Kenya had been put to the vote, he would have abstained.

Election of the Chairman of the Drafting Committee

[Agenda item 7]

5. Mr. ASHTAL (Democratic Yemen) nominated Mr. Yasseen (United Arab Emirates) as Chairman of the Drafting Committee.

6. Mr. SETTE-CÂMARA (Brazil), Mrs. THAKORE (India) and Mr. MARESCA (Italy) supported the nomination.

7. Mr. NATHAN (Israel) said that if the proposal was put to the vote, he would abstain.

Mr. Yasseen (United Arab Emirates) was elected Chairman of the Drafting Committee by acclamation.