

United Nations Conference on Succession of States in Respect of Treaties

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2nd plenary meeting

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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.

Appointment of the Credentials Committee
[Agenda item 8]

8. The PRESIDENT said that, following consultations, the regional groups recommended that the Conference should appoint the representatives of the following nine countries as members of the Credentials Committee: Brazil, Chile, Germany (Federal Republic of), Nigeria, Philippines, Qatar, Sudan, Sweden and Union of Soviet Socialist Republics.

9. If there was no objection, he would take it that the Conference appointed the representatives of the countries he had mentioned as members of the Credentials Committee.

It was so decided.

The meeting was suspended at 11.10 a.m. and resumed at 12.40 p.m.

**Appointment of other members
of the Drafting Committee**
[Agenda item 9]

10. The PRESIDENT said that, in accordance with rule 47 of the rules of procedure (A/CONF.80/6), adopted by the Conference at its first meeting, the General Committee had met and had recommended that the Conference should appoint the representatives of the following 14 countries as members of the Drafting Committee: Australia, Cuba, Democratic Yemen, France, Guyana, Ivory Coast, Japan, Kenya, Spain, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. If there was no objection, he would take it that the Conference appointed the representatives of the countries he had mentioned as members of the Drafting Committee.

It was so decided.

Organization of work
[Agenda item 10]

11. The PRESIDENT said that the General Committee had also recommended that the Conference should adopt the proposals contained in the memorandum by the Secretary-General entitled "Methods of work and procedures" (A/CONF.80/3), which was based on experience gained in earlier codification conferences. He drew the attention of the Conference to two changes in the document, namely, the deletion of the words "or the Economic and Social Council" in paragraph 3 and the replacement of the words "at all events" by the word "preferably" in paragraph 8.

12. If there was no objection, he would take it that the Conference adopted the suggestions contained in

the Secretary-General's memorandum on methods of work and procedures, subject to the changes he had mentioned.

It was so decided.¹

The meeting rose at 12.50 p.m.

¹ The document on "Methods of work and procedures" as adopted by the Conference was circulated as document A/CONF.80/9.

3rd PLENARY MEETING

Thursday, 14 April 1977, at 12.50 p.m.

President: Mr. ZEMANEK (Austria)

**Question of adding a supplementary item
to the agenda of the Conference**

1. The PRESIDENT said that there was a matter pending before the Conference which was not included in its agenda (A/CONF.80/7). Although the rules of procedure (A/CONF.80/8) did not contain a provision concerning the supplementing of the agenda, such a step was not excluded. If there was no objection, he would take it that the Conference agreed to add to its agenda an item entitled "Consideration of the request of the United Nations Council for Namibia for active participation in the United Nations Conference on Succession of States in respect of Treaties (General Assembly resolution 31/149)".

It was so decided.

**Consideration of the request of the United Nations
Council for Namibia for active participation in the
United Nations Conference on the Succession of
States in respect of Treaties (General Assembly
resolution 31/149)**

[Supplementary agenda item]

2. The PRESIDENT recalled that, on 20 December 1976, the General Assembly, by 120 votes to none, with 7 abstentions, had adopted resolution 31/149, entitled "Action by intergovernmental and non-governmental organizations with respect to Namibia". In paragraph 3 of that resolution, the General Assembly had requested all "conferences within the United Nations system to consider granting full membership to the United Nations Council for Namibia so that it may participate in that capacity as the Administering Authority for Namibia in the work of those [...] conferences".

3. In a letter of 6 April 1977 addressed to him and in an oral communication the following day, the delegation of the United Nations Council for Nam-