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4th 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)*

ibia had referred to that resolution and had requested the Conference to make the following arrangements in order to ensure its active participation therein: the delegation concerned should be seated with the delegations of States, albeit after them; it should have the right to make statements at meetings of the Committee of the Whole and of the Conference; and such statements should appear in the summary records and should be reflected, where necessary and appropriate, in the report of the Committee of the Whole to the Conference.

4. He had consulted the Chairmen of the regional groups on that matter and they, in turn, had consulted their groups. The regional Chairmen had now informed him that many delegations actively supported the request concerned and that in none of the groups was there any basic objection to it. Such being the case, he would take it that the Conference agreed to the request of the United Nations Council for Namibia.

*It was so decided.*¹

5. The PRESIDENT said that the secretariat would see to it that, as from the following meeting, the delegation of the United Nations Council for Namibia was seated in accordance with the decision of the Conference.

The meeting rose at 1 p.m.

¹ See also the 4th plenary meeting, para. 1, the 7th plenary meeting, paras. 23-48, and the 8th plenary meeting, paras. 1-5.

4th PLENARY MEETING

Wednesday, 27 April 1977, 5.50 p.m.

Chairman: Mr. ZEMANEK (Austria)

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)

[Supplementary agenda item](concluded)

1. The PRESIDENT recalled that under the agenda item under consideration and upon the request of the delegation of the United Nations Council for Namibia referring to General Assembly resolution 31/149, the Conference had taken a decision concerning that delegation's participation in the Conference. In the context of the implementation of that decision, the delegation of the United Nations Council for Namibia had requested that the Conference should state

explicitly that it had the right to submit proposals and amendments. If there was no objection, he would take it that the Conference recognized that the delegation of the United Nations Council for Namibia had the right to submit proposals and amendments.

It was so decided.

2. Mr. STEEL (United Kingdom) said that if the draft decision which the Conference had just adopted had been put to the vote, his delegation would have been obliged to abstain. His delegation did not consider it appropriate to grant such a right to a subsidiary body of the General Assembly such as the United Nations Council for Namibia; it was a right which was appropriate only for the government of a State, particularly since the Conference was in fact preparing an instrument which concerned the succession of States. He wished to make it clear that his delegation's position was without prejudice to the attitude of the United Kingdom Government with regard to the United Nations Council for Namibia and the territory of Namibia itself.

3. Mr. HOFSTEE (Netherlands) said that if the Conference had voted on the draft decision, his delegation would have abstained for the same reasons as those which had prompted it to abstain in the General Assembly during the vote on resolution 31/149. However, that position in no way affected his Government's sympathetic attitude towards the United Nations Council for Namibia.

4. Mr. MUSEUX (France) informed the Conference that his delegation, too, would have abstained if a vote had been taken on the draft decision. His Government's position with regard to the United Nations Council for Namibia was well known, and his delegation shared the view expressed by the United Kingdom delegation that participation in a diplomatic conference should be reserved for the governments of States.

5. Mr. TREVIRANUS (Federal Republic of Germany) said that his delegation would also have had to abstain if the draft decision had been put to the vote for the reasons already mentioned by the representatives of the United Kingdom, the Netherlands and France. However, the Federal Government fully recognized the political mandate which had been given to the United Nations Council for Namibia and the role which it should play in the interests of the Namibian people. It was none the less true that the United Nations Council for Namibia had been invited to participate in the Conference as an observer in accordance with the provisions of paragraph 2(d) of General Assembly resolution 31/18 on the Conference, whereby the General Assembly requested the Secretary-General to invite the "specialized agencies, the International Atomic Energy Agency, as well as interested organs of the United Nations and interested regional intergovernmental organizations, to be represented at the Conference by observers". He

recalled, however, that as a non-permanent member of the Security Council, the delegation of the Federal Republic of Germany had associated itself with the appeals made to the South African Government to allow the Namibian people to exercise its right to self-determination.

6. Mr. RITTER (Switzerland) said that his delegation would have abstained if the Conference had voted on the draft decision, since, as Switzerland was not a Member of the United Nations, his delegation was not entitled to take a position on the question of the implementation of General Assembly resolution 31/149.

7. Mr. KATEKA (United Republic of Tanzania) said that he did not regret the delay caused to the work of the Conference because it was normal to resolve the question of the status of a participant at the Conference, before continuing its consideration of the draft. It went without saying that his delegation fully supported the request of the delegation of the United Nations Council for Namibia, whose full and active participation in the work of the Conference was in accordance with the General Assembly resolution 31/149.

8. Referring to the argument adduced by some delegations which had said that they would have abstained in the event of a vote because the Council was a body of the General Assembly and as such was not entitled to participate in the deliberations of the Conference and in particular to submit amendments, he stressed that the United Nations Council for Namibia was the authority entrusted with the administration of Namibia on behalf of the United Nations, which was itself mandated by the international community. He was therefore surprised to see the international community call into question a body which it had requested to perform certain functions on its behalf, particularly since the United Nations Council for Namibia had already participated in the work of other United Nations conferences as well as in the deliberations of the Security Council, without the right to vote, in the same way as any United Nations Member which was not a member of the Security Council.

9. Consequently, if such a problem had arisen at the Conference, it was because of the fascist South African régime which illegally occupied Namibia with the support and connivance of certain western Powers, in particular some members of the North Atlantic Treaty Organization. Not satisfied with helping South Africa to build military bases, those Powers had made investments in Namibia, in violation of the resolutions of the General Assembly and the Security Council and of the advisory opinion of the International Court of Justice. In conclusion, he said that the Namibian people would continue its struggle until it achieved liberation.

10. Mr. FONDER (Belgium) said that his delegation would have abstained if the draft decision had been put to the vote for the reasons given by the representatives of the United Kingdom, the Netherlands and France.

11. Mr. ROSENSTOCK (United States of America) said that his delegation had not objected to the decision to permit the delegation of the United Nations Council for Namibia to make known its views on the draft and even to submit amendments. Indeed, the Conference could authorize any person or group of persons to express a point of view without, however, affecting its status as a conference of plenipotentiaries consisting of representatives of governments entrusted with the task of elaborating a convention binding States which became parties thereto. Similarly, the Security Council could hear any person or group of persons that had information of special value. His delegation had taken a position on the question of the status of the delegation of the United Nations Council for Namibia in the Conference without prejudice to the status of the Council or to the views which it had expressed on the occasion of its abstention in the vote on General Assembly resolution 31/149.

12. Mr. YIMER (Ethiopia) said that he welcomed the decision taken by the Conference, which constituted a great victory for the liberation struggle waged in that part of the African continent, but deplored the fact that, because of its faithful allies, South Africa had succeeded in making the Conference lose time.

13. Mr. YACOUBA (Niger) said that he failed to understand the attitude of the delegations which had said that they would have abstained if the Conference had taken a vote. In his delegation's opinion, the solution to the so-called problem created by the participation in the Conference of the delegation of the United Nations Council for Namibia was very simple and did not require such a waste of energy. The United Nations Council for Namibia enjoyed certain rights conceded to it by the General Assembly, a principal organ of the United Nations whose authority could not be called into question. Moreover, by acceding to the wish of the delegation of the United Nations Council for Namibia, the Conference was not setting a precedent, since that delegation had already participated in international conferences, in particular the United Nations Water Conference. His delegation also welcomed the decision taken by the Conference and regarded it as a victory in the struggle waged for many years by the oppressed people of Namibia. It hoped that that measure would mark the beginning of the effective recognition of all the rights of the United Nations Council for Namibia.

14. Mr. BRECKENRIDGE (Sri Lanka), speaking on behalf of his delegation and as Chairman of the

Group of Non-Aligned Countries, expressed satisfaction with the decision taken by the Conference and hoped that in future it would no longer be necessary to hold such lengthy consultations on the status of the United Nations Council for Namibia.

15. Mr. SCOTLAND (Guyana) welcomed the results of the consultations, but expressed surprise at the reaction of several delegations which had stated that they would have abstained in the event of a vote. Without contesting the right of those delegations to express such a point of view, his delegation would have welcomed a more positive attitude to the question of Namibia. It regretted that such lengthy deliberations had been necessary to resolve a purely formal matter, since, if the delegation of the United Nations Council for Namibia had been entitled to submit oral amendments by virtue of its right to take the floor, there was no reason why it should not have been able to submit written amendments as well.

16. Mr. EL ZOEBY (United Nations Council for Namibia) said that his delegation had not intended to delay the work of the Conference; but the situation had been such that it had been obliged to request the Conference to clarify its position on the important issue of the participation and representation of the delegation of the United Nations Council for Namibia in conferences within the United Nations system, on behalf of the territory of Namibia.

17. When the Council had been invited to participate in the Conference, it had decided to accept that invitation and to send a delegation entrusted with the task of participating fully in the work, in accordance with General Assembly resolutions 3111 (XXVIII), 3295 (XXIX) and 31/149. The Council had also decided to give the delegation a mandate which included ensuring that the Conference took decisions in accordance with the interests of the Namibian people, by reserving its right to sign the convention. The decision taken by the Conference at its third meeting on 14 April 1977 was therefore entirely in accordance with paragraph 3 of General Assembly resolution 31/149, as the President had confirmed earlier.

18. Subsequently, however, the delegation of the United Nations Council for Namibia had been informed that it was not authorized to submit formal amendments but merely to make statements. It was impossible for it, in those circumstances, to fulfil its mandate, a mandate unanimously approved by the 25 member countries of the Council.

19. The delegation of the United Nations Council for Namibia thanked all the delegations which had supported the Council's right to benefit from the provisions laid down by the General Assembly in paragraph 3 of its resolution 31/149, but also noted that some delegations which would have abstained in the case of a vote had nevertheless demonstrated a sym-

pathetic attitude towards the Council and recognized its political mandate.

20. He wished, lastly, to point out to the representative of the Federal Republic of Germany that the delegation of the United Nations Council for Namibia had not been invited to participate in the work of the Conference as an observer but in pursuance of General Assembly resolution 31/149, under paragraph 3 of which the Council was to be granted "full membership[...] so that it may participate in that capacity as the Administering Authority for Namibia in the work of those [...] conferences".

21. Mr. HASSAN (Egypt), speaking on behalf of his delegation and of the other member countries of the Arab Group, said that the Conference's decision was a wise one and would have been supported by virtually all members if it had been put to the vote. It was certainly a victory for the liberation movements which, it was to be hoped, would lead to other victories. It was nevertheless regrettable that the work of the Conference had been delayed by a question on which the Conference had already taken a decision.

22. Mr. KAPETANOVIĆ (Yugoslavia) welcomed the decision which the Conference had just taken. He was convinced that the presence of the delegation of the United Nations Council for Namibia and its full participation in the work would enable the Conference to adopt a draft convention in keeping with the interests of all new States, in particular Namibia.

23. Mr. MUDHO (Kenya) said that the Conference had been witness to the shameful scorn with which certain countries treated United Nations resolutions, while claiming to adhere to the principle of sovereignty. In the view of those countries, the Conference was a conference of plenipotentiaries entrusted with the task of examining the question of the succession of States in respect of treaties, and the United Nations Council for Namibia was precisely not a State. But those countries also claimed that all countries were equal. They therefore flouted United Nations resolutions whenever the latter did not suit them. As certain delegations had already observed, such a reaction was what one might have expected.

24. Kenya's policy with respect to South Africa was well known and if the question had been put to the vote, his delegation would have expressed its support for the United Nations Council for Namibia. It was to be hoped, as other delegations had said, that no more time would be lost and that the work of the Conference would not be further delayed.

25. Mr. MIRCEA (Romania) said that his delegation was satisfied with the decision taken by the Conference. Indeed, the full participation of the delegation of the United Nations Council for Namibia in the work of the Council was entirely warranted, not only by the mission assigned to the Council as Adminis-

tering Authority of the territory and by General Assembly resolution 31/149, but also by the very purpose of the Conference.

26. Mr. KALANDA (Zaire) welcomed the fact that the delegation of the United Nations Council for Namibia was actively participating in the work of the Conference and could submit amendments in the same way as all the other delegations.

27. Mr. ALMODOVAR SALAS (Cuba) said his delegation would remember that the Conference had been delayed because of the non-recognition by certain delegations of the right of a people to participate in the work of the Conference. The Cuban delegation welcomed the decision which the Conference had just taken and which was in conformity with the mandate entrusted to the United Nations Council for Namibia by the international community, through the resolutions of the General Assembly. The Cuban delegation was therefore entirely in favour of the participation of the Council in the work of the Conference.

28. Mr. SIMMONDS (Ghana) said that the Conference, faced with the delaying tactics of the allies of the fascist régime of South Africa, had taken a wise decision by granting the United Nations Council for Namibia, within the context of General Assembly resolution 31/149, a status identical with that of States, with the same rights and obligations. Any decision that infringed those rights would have harmed the work of the Conference. If the question had been put to the vote, his delegation would have requested a roll-call vote.

29. Mrs. OLOWO (Uganda) said her delegation had been truly shocked by the fact that the proposal concerning the United Nations Council for Namibia had not been approved unanimously. The Council could certainly make a useful contribution to the work of the Conference and her delegation welcomed the decision which had just been taken.

30. Mr. KATEKA (United Republic of Tanzania) said that one delegation had impudently said that the Conference had lost time in irrelevant polemics. But it was precisely that delegation which had delayed the consultations of one of the regional groups. Coming from that country, the comment was therefore misplaced.

31. The PRESIDENT thanked all delegations which had helped to resolve the question of the participation of the United Nations Council for Namibia in the work of the Conference.

The meeting rose at 6.40 p.m.

5th PLENARY MEETING

Thursday, 5 May 1977, at 11.05 a.m.

President: Mr. ZEMANEK (Austria)

Organization of work [Agenda item 10]

1. In reply to the representative of the Philippines, the PRESIDENT said that the General Committee had recommended that the Conference should adopt the articles approved by the Committee of the Whole at the current session, on the understanding that any changes which had to be made to them as a result of the adoption of other articles at the next session of the Conference, would not be considered as being equivalent to a reconsideration of the articles already adopted and hence would not require a decision taken by a two-thirds majority.

2. Mr. TABIBI (Afghanistan) said that, while he was not opposed to the recommendation of the General Committee, he would prefer the Conference to leave governments time to reflect on the articles approved by the Committee of the Whole and not to adopt them finally until its next session, thus following the example of the United Nations Conference on the Law of Treaties. In his view, such a period of reflection would be very useful for newly independent States.

3. Mr. OSMAN (Somalia) supported the proposal of the representative of Afghanistan. He would, however, accept the decision of the majority.

4. Mr. SATTAR (Pakistan) said that he approved of the recommendation of the General Committee as presented by the President.

5. The PRESIDENT invited the Conference to vote on the recommendation of the General Committee.

The recommendation of the General Committee was adopted by 77 votes to none, with 2 abstentions.

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976 [Agenda item 11]

ARTICLES 1, 3 TO 5, 8 TO 11 AND 13 TO 15 APPROVED BY THE COMMITTEE OF THE WHOLE¹ (A/CONF.80/10)

6. The PRESIDENT invited the Conference to adopt articles 1, 3 to 5, 8 to 11 and 13 to 15 as ap-

¹ For the consideration of these articles by the Committee of the Whole see the summary records of the following meetings: article 1: 2nd and 31st meetings; article 3: 4th and 31st meetings; article 4: 4th and 31st meetings; article 5: 4th to 6th, 8th and 31st