

United Nations Conference on Succession of States in Respect of Treaties

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5th 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)*

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

proved by the Committee of the Whole at its 31st meeting (arts. 1, 3 to 5 and 8 to 10), 33rd meeting (art. 11), and 34th meeting (arts. 13 to 15) on 28 and 29 April and 2 May 1977, which appeared in document A/CONF.80/10.

Articles 1, 3, 4 and 5

Articles 1, 3, 4 and 5 were adopted without a vote.

Article 8

7. Sir Ian SINCLAIR (United Kingdom) said that he had no difficulty in supporting article 8 as approved by the Committee of the Whole. He wished to remind delegations, however, that at the 13th meeting of the Committee of the Whole, his delegation had submitted an amendment to the article (A/CONF.80/C.1/L.11) which provided that the article was intended to apply "without prejudice to any relevant rules of international law concerning rights or obligations arising for a third State from a treaty". That amendment, which reflected the point of view expressed by the International Law Commission in paragraph (22) of its commentary to article 8,² had been rejected, but many delegations had considered that the idea it had contained should be reflected in the preamble to the convention. His delegation agreed with that suggestion and was willing to take part, at the appropriate time, in formulating a general provision for incorporation in the preamble.

Article 8 was adopted without a vote.

Article 9

8. Sir Ian SINCLAIR (United Kingdom) said that he was in no way opposed to the text of article 9 as approved by the Committee of the Whole, but wished to point out that at the 15th meeting of the Committee of the Whole his delegation had submitted an amendment to that article (A/CONF.80/C.1/L.12), the purpose of which had been to make clear, as in the case of article 8, that the provisions of article 9 should not be interpreted as precluding the application of the general rules of international law governing the type of transaction to which the draft article referred, quite apart from any question of succession of States. His delegation had not pressed its amendment, since the debate on article 8 had shown that the Committee of the Whole did not consider it necessary to include an express provision to that effect in the body of the draft articles and preferred to deal with the matter in a general provision to be incorporated in the preamble. His delegation wished to emphasize, however, that it shared the point of view

meetings; article 8: 13th, 14th and 31st meetings; article 9: 15th and 31st meetings; article 10: 16th and 31st meetings; article 11: 17th to 19th and 33rd meetings; article 13: 22nd and 34th meetings; article 14: 22nd, 23rd, and 34th meetings; article 15: 23rd and 34th meetings.

² *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10, chap. II, sect. D.* (A reprint of chapter II of the Report of the International Law Commission on the work of its twenty-sixth session was circulated to the Conference as document A/CONF.80/4).

expressed by the International Law Commission in paragraph (17) of its commentary to article 9 and that it was in that sense that it would interpret the article adopted by the Conference.³

Article 9 was adopted without a vote.

Article 10

Article 10 was adopted without a vote.

Article 11

9. Mr. YANGO (Philippines) formally proposed that the Conference postpone its decision on article 11 until the next session. The article was incomplete, because its title had not yet been approved by the Committee of the Whole, and it was closely linked with article 12, the examination of which was to be completed at the next session. Governments should be allowed time for further reflection on those two articles, which were highly important, before taking a final position on them.

10. Mr. YIMER (Ethiopia) said he thought article 11 was a separate article, unrelated to article 12; consequently, he saw no need to postpone its adoption. He therefore opposed the proposal of the Philippines representative and requested that the Conference adopt article 11 forthwith.

11. Mr. MUSEUX (France) also opposed the proposal of the Philippines representative. He understood the reasons advanced by the latter and agreed that article 11 was very important. There was a connexion between article 11 and article 12, but he did not see that as a reason for deferring the adoption of article 11: for whatever the content of article 12 might be, article 11 should appear in the convention as it stood. Consequently, in view of the recommendation of the General Committee, which the Conference had formally adopted by a vote, he thought there was no reason to postpone the decision on article 11.

12. Mr. OSMAN (Somalia) supported the proposal of the Philippines representative because of the close connexion between articles 11 and 12. The two articles set out complex principles which ought to be studied more thoroughly before being incorporated in the draft convention.

13. Mr. WAITITU (Kenya) said he was opposed to the Philippines representative's proposal, although he appreciated the importance of articles 11 and 12. He did not agree that governments had not had time to study the International Law Commission's draft or to take a final position on articles 11 and 12; nor did he believe that the question of the title of article 11 presented any insurmountable difficulties which would prevent the Conference from adopting the text of the article.

³ *Ibid.*

14. Mr. HASSAN (Egypt) was also opposed to the Philippines representative's proposal. Although he recognized that articles 11 and 12 were connected, he thought article 11 had been thoroughly examined by the Committee, so that it would be pointless to defer a decision on it.

15. Mr. EUSTATHIADES (Greece) associated himself with the representatives who had opposed the proposal not to take a decision on article 11 at that stage of the Conference's work. It seemed odd to him that a codification conference should defer the adoption of an article confirming a well-established rule of international law on the pretext that governments had not had sufficient time to study it.

16. Mr. TABIBI (Afghanistan) said that, although he understood the concern of the Philippines representative, he was not categorically opposed to the adoption of article 11. The article dealt with validly established boundaries, and Afghanistan, being a small country, would always be opposed to any violation of legitimate boundaries. Nevertheless, it was customary to adopt the provisions drafted by the International Law Commission on the basis of its commentaries, and since, in the present case, the commentary dealt with both articles 11 and 12 and no specific title had been proposed for article 11 by the Committee it might not be advisable to proceed hastily with the adoption of that article. In the light of article 13, which the Conference would shortly be called upon to adopt, he was not opposed to adopting article 11, but he thought it would be more logical for the Conference to postpone its decision. He asked the Philippines delegation not to press for a vote on its proposal.

17. Mr. SATTAR (Pakistan) reminded the Conference of the statement made by his delegation on article 11 at the 17th meeting of the Committee of the Whole.⁴

18. The PRESIDENT invited the Conference to vote on the proposal of the Philippines representative to postpone taking a decision on article 11 until a subsequent session of the Conference.

The Philippines proposal was rejected by 59 votes to 8, with 9 abstentions.

19. Mr. MUSEUX (France), supported by Mr. MARESCA (Italy), said he would welcome the adoption of article 11 by the Conference, especially as the text before it was more satisfactory than the original version submitted by the International Law Commission. Subparagraph (b) remained ambiguous, however, since a succession of States in fact entailed a certain number of consequences affecting the rights and obligations established by a treaty and relating to a boundary régime, in that the subjects of those rights and obligations were no longer the same. The

French delegation therefore considered that the phrase "does not as such affect . . . obligations and rights established by a treaty" should be interpreted as referring to the actual content of those rights and obligations.

20. Mr. OSMAN (Somalia) reminded the Conference that when articles 11 and 12 were being examined by the Committee of the Whole, his delegation had raised serious objections to their inclusions in the draft convention,⁵ and that its concern had been supported by a number of other delegations. In the first place, the provisions of article 11 were really not justified either by doctrine, or by the principles of international law, or by State practice; the examples cited by the International Law Commission in its commentary were not pertinent and could not be regarded as reflecting the progressive development of international law. Secondly, the idea of the inviolability of frontiers expressed in the article was contrary to the fundamental principle of self-determination embodied in the Charter of the United Nations. Thirdly, the provisions of article 11 unreservedly confirmed the principle of the inviolability of frontiers, which was part of classical international law. His delegation maintained that the progressive development of international law could not be based on the recognition of boundary treaties concluded by the colonial Powers in their own interests and contrary to the rights and interests of the peoples concerned. Article 11 was thus not only contrary to international morality, but could even hinder negotiations for the peaceful settlement of territorial disputes. Fourthly, the rule stated in the article was too arbitrary, since it was not based on any legal doctrine or principle, and too artificial in that it made a distinction between the boundary established by the treaty and the treaty itself. Fifthly, the rule might raise a serious problem if the principle of the inviolability of boundaries established by invalid colonial treaties was confirmed. Sixthly, the provisions of article 11 did not further the development of international law, and instead of promoting peace and stability might, under certain conditions, lead to conflicts. His delegation would therefore vote against article 11, on which it wished to enter formal reservations.

21. Mr. YIMER (Ethiopia) drew attention to the comments made by his delegation at the 19th meeting of the Committee of the Whole.⁶

22. Mr. TABIBI (Afghanistan) said that in considering article 11, it was necessary to take account of article 6, which confirmed a principle of international law to which there should be no objection, and of article 13, which did not confer validity on illegal colonial treaties. His delegation would therefore vote in favour of article 11, which related only to lawfully established boundaries.

⁴ See 17th meeting, paras. 45-49.

⁵ See 17th meeting, paras. 23-27.

⁶ See 19th meeting, paras. 41-44.

23. Mr. YANGO (Philippines) said he would abstain from voting on article 11 for the reasons he had given when making his procedural proposal.

At the request of the French representative, a vote on article 11 was taken by roll-call.

India, having been drawn by lot by the President, was called upon to vote first.

In favour: Algeria, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guyana, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Kuwait, Liberia, Luxembourg, Malaysia, Mexico, Mongolia, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Papua, New Guinea, Peru, Poland, Portugal, Qatar, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Spain, Sudan, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Yugoslavia and Zaire.

Against: Somalia.

Abstaining: Afghanistan, Democratic Yemen, Holy See, Morocco, Philippines, Socialist People's Libyan Arab Jamahiriya, Swaziland, and Venezuela.

Article 11 was adopted without a title by 71 votes to 1, with 8 abstentions.

24. Mr. YAÑEZ-BARNUEVO (Spain) said that his delegation had voted in favour of article 11 because the various articles of the draft should be read in the light of the other articles, and in the present case, it was understood that the articles which would be adopted at the next session of the Conference must be taken into account.

Article 13

Article 13 was adopted without a vote.

25. The PRESIDENT, replying to a question by Mr. EUSTATHIADES (Greece), said that the titles of the various parts of the draft would be adopted after the articles themselves.

Articles 14 and 15

Articles 14 and 15 were adopted without a vote.

ARTICLES 16 TO 29 APPROVED BY THE COMMITTEE OF THE WHOLE⁷ (A/CONF.80/11)

26. The PRESIDENT invited the Conference to adopt articles 16 to 29, which the Committee of the

Whole had approved at its 35th meeting on 4 May 1977, and which appeared in document A/CONF.80/11.

Articles 16 and 17

Articles 16 and 17 were adopted without a vote.

Article 18

27. Mr. HELLNERS (Sweden), speaking on behalf of the delegation of Swaziland as well as his own delegation, said that the arguments advanced by the two delegations to demonstrate the superfluity of article 18 had been discussed at length in the Committee of the Whole. The discussion had strengthened the conviction of the delegations of Swaziland and Sweden that the article under consideration was of no practical advantage to anyone. Of course, the provision could in theory fill a gap, but the future convention should not be based on theoretical assumptions. Furthermore, the wording of paragraph 1, particularly the reference to the intention of the predecessor State, was unsatisfactory. It was usually impossible to determine the intention of the predecessor State and it frequently had no intention.

28. He therefore requested that article 18 be put to the vote.

Article 18 was adopted by 50 votes to 15, with 10 abstentions.

Article 19

29. Mr. HERNDL (Austria) said that his delegation accepted the text of article 19, although its proposed amendment thereto (A/CONF.80/C.1/L.25) had not been adopted by the Committee of the Whole.⁸ He believed, however, that the presumption in paragraph 1 made paragraphs 2 and 3 unnecessary. Even if the International Law Commission had opted for the opposite presumption, the two paragraphs would still be superfluous.

30. Furthermore, the Austrian delegation had reservations about the consequences which article 19 might have for the depositary of a multilateral treaty. The obligations which the final clauses of a multilateral treaty imposed on the depositary would prevail over those arising for it from article 19. Hence some time might elapse between the entry into force of a multilateral treaty for a newly independent State under article 19, and its entry into force under the final clauses of that treaty.

Article 19 was adopted without a vote.

article 16: 23rd and 27th and 35th meetings; article 17: 27th and 35th meetings; article 18: 27th and 35th meetings; article 19: 27th, 28th and 35th meetings; article 20: 28th and 35th meetings; article 21: 28th and 35th meetings; article 22: 29th and 35th meetings; article 23: 29th and 35th meetings; article 24: 29th and 35th meetings; article 25: 30th and 35th meetings; article 26: 30th, 32nd and 35th meetings; article 27: 30th, 32nd and 35th meetings; article 28: 30th, 32nd and 35th meetings; article 29: 32nd to 35th meetings.

⁸ See 28th meeting paras. 26-31 and 40.

⁷ For the consideration of these articles by the Committee of the Whole see the summary records of the following meetings: ar-

Articles 20 to 23

Articles 20 to 23 were adopted without a vote.

Article 24

31. Mr. MUSEUX (France) said that his delegation had voted against article 24 in the Committee of the Whole because it found the article unnecessary, though it did not dispute the substance. Article 24 settled a non-existent problem, whereas the real problems raised by the relations between the predecessor State and third States were left unsolved.

32. Mr. HELLNERS (Sweden) said he was not opposed to article 24, but he, too, thought it unnecessary. Besides, it was somewhat ambiguous.

33. Mr. KRISHNADASAN (Swaziland) said that his delegation was still opposed to the article.

Article 24 was adopted without a vote.

Articles 25 to 27

Articles 25 to 27 were adopted without a vote.

Article 28

34. Mr. MUSEUX (France) requested that the word "reasonable", qualifying the word "notice" in paragraphs 1(b), 2 and 3, should be voted on separately. His delegation would vote against retaining that adjective, because it was unnecessary and could cause confusion. The notice required for terminating the provisional application of a treaty was duly defined in paragraph 3: it was 12 months from the date on which the notice was received by the other State or States provisionally applying the treaty. There were three possible cases. A shorter period might be provided for in the treaty, as was mentioned in the first clause of paragraph 3; the States concerned might agree on another solution, as provided in the second clause; otherwise, 12 months' notice would be required. Hence there was no point in qualifying the notice as "reasonable", since that adjective implied a certain flexibility which was out of place.

35. The PRESIDENT said that if there was no objection, he would take it that the Conference agreed that the word "reasonable" appearing in paragraphs 1(b), 2 and 3 of article 28 should be voted on only once.

It was decided, by 47 votes to 11, with 17 abstentions, to retain the word "reasonable".

36. Mr. KRISHNADASAN (Swaziland) requested that paragraph 1(b) be voted on separately.

Paragraph 1(b) was adopted by 68 votes to 3, with 7 abstentions.

37. Mr. MUSEUX (France) said that his delegation had voted against retaining that provision because the text adopted by the Committee of the Whole at the 35th meeting—which was the direct opposite of

that proposed by the United Kingdom and supported by the French delegation—was wrong in substance and too inflexible. There was no justification for maintaining a limited treaty provisionally in force for a newly independent State if one of the States parties to the treaty did not wish it.

38. Mr. USHAKOV (Union of Soviet Socialist Republics) said he voted in favour of retaining paragraph 1(b) because that provision was necessary. In the Committee of the Whole, however, he had voted against including the words "all of" before the words "the parties" and "the contracting States", since in view of the definition of reasonable notice appearing in paragraph 3, those words would complicate the application of article 28. The definition did not refer to "all of" the other States provisionally applying the treaty.

Article 28 as a whole was adopted by 70 votes to none, with 7 abstentions.

The meeting rose at 1.05 p.m.

6th PLENARY MEETING

Thursday, 5 May 1977, at 5.10 p.m.

President: Mr. ZEMANEK (Austria)

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] (concluded)

ARTICLES 16 TO 29 ADOPTED BY THE COMMITTEE OF THE WHOLE (A/CONF.80/11)¹ (concluded)

Article 29

1. Mr. KRISHNADASAN (Swaziland) said that he would not ask for a separate vote on paragraph 3 of article 29, but he wished to associate himself with the statement, made by the Swedish representative on article 18.²

Article 29 was adopted without a vote.

2. The PRESIDENT said that the Conference had concluded its consideration of the articles adopted by the Committee of the Whole.

Report of the Committee of the Whole (A/CONF.80/C.1/L.48, A/CONF.80/C.1/L.48/-Add. 1-3, A/CONF. 80/C.1/L.48/Add. 4 and Add. 4/Corr. 1)

The Conference took note of the report of the Committee of the Whole.

¹ See above 5th plenary meeting, foot-note 7.

² See above, 5th plenary meeting, para. 27.