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12th Plenary Meeting

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true peace founded on justice, human dignity and brotherly love. Peace was in his view a dynamic process for which man required education. His messages for the day of peace were supplemented by unprecedented journeys round the world, including a visit to United Nations Headquarters in New York. He had deemed it both his privilege and his duty as a spiritual authority to appeal to the individual, and not merely to deplore the shortcomings of others but to ask himself what he personally was doing for the cause of peace and social justice.

On the proposal of the President, members of the Conference observed one minute's silence in tribute to the memory of His Holiness, the late Pope Paul VI.

2. Monsignor CAGNA (Holy See) said he wished to thank the President and participants in the Conference for their tribute to Pope Paul VI, who throughout the 15 years of his difficult pontificate had worked untiringly and prayed for peace and understanding among all the nations of the world and for their integral development and welfare.

The meeting rose at 3.55 p.m.

12th PLENARY MEETING

Thursday, 17 August 1978, at 3.30 p.m.

President: Mr. ZEMANEK (Austria)

Credentials of representatives to the resumed session of the Conference: Report of the Credentials Committee (A/CONF.80/18/Rev.1)

1. Mr. SETTE CÂMARA (Brazil), Chairman of the Credentials Committee, introduced the report of the Credentials Committee (A/CONF.80/18/Rev.1). The nine members of the Committee, which had been established by the Conference at its 2nd plenary meeting,¹ on 29 April 1977, in accordance with rule 4 of the rules of procedure (A/CONF.80/8), had met again on 16 August 1978 to examine the credentials of the representatives at the resumed session of the Conference. The Committee had had before it a memorandum by the Executive Secretary of the Conference dated 15 August 1978, concerning the status of the credentials of the representatives of the 94 States participating in the resumed session.

2. Paragraph 3 (a) of the report listed 74 States which had communicated formal credentials to the Executive

Secretary, in accordance with rule 3 of the rules of procedure; those credentials had been issued either by the head of State or Government or by the Minister for Foreign Affairs. Paragraph 3 (b) listed six States the designation of whose representatives had been communicated to the Executive Secretary of the Conference by a cable from the Foreign Minister concerned. Paragraph 3 (c) listed 10 States the designation of whose representatives had been communicated to the Executive Secretary of the Conference by note verbale or letter from the Embassy or Permanent Mission of the State concerned. Paragraph 3 (d) listed four States from which no communications had been received, but whose representatives had assured the Executive Secretary of the Conference that communications would be forthcoming.

3. Since the preparation of the report, Switzerland, which was one of the States listed in paragraph 3 (d), and Saudi Arabia, which was one of the States listed in paragraph 3 (c), had submitted credentials to the Executive Secretary.

4. The Credentials Committee had decided to accept the credentials of the representatives referred to in paragraph 3 (a). On the proposal of its Chairman, it had decided, in the light of past practice and as an exceptional measure, to accept the communications received or to be received with regard to the delegations referred to in paragraph 3 (b), (c) and (d) in lieu of formal credentials, it being understood that such credentials would be submitted as soon as possible.

5. The representatives of three States participating in the work of the Credentials Committee had made statements which were recorded in paragraphs 5 and 6 of its report.

6. Mr. NATHAN (Israel) said that the Credentials Committee had accepted his delegation's credentials after confirming that they were formal credentials in accordance with rule 3 of the rules of procedure. His delegation therefore objected to the reservations made by the representative of Qatar, as recorded in paragraph 5 of the report under consideration. Such reservations were inadmissible; they were irrelevant and were designed solely to introduce politics into the work of the Conference.

7. Under rule 4 of the rules of procedure, the Credentials Committee had to examine the credentials of representatives and report to the Conference. That examination consisted of verifying that the credentials in question met the procedural requirements set forth in rule 3 of the rules of procedure. Reservations of a political nature, such as those which appeared in paragraph 5 of the report under consideration, were therefore altogether extraneous to the terms of reference of the Credentials Committee and had no place in its report.

8. His delegation was fully entitled to participate in the Conference by virtue of the invitation extended to the State of Israel by the Secretary-General of the United Nations in accordance with General Assembly resolution 31/18, in which the Secretary-General had been requested

¹ *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 4, 2nd plenary meeting, paras. 8-9.

to invite all States to participate in the Conference. His delegation's right to participate in the work of the Conference could not therefore be questioned.

9. With regard to the details of the reservations made by the representative of Qatar, his delegation did not claim to represent "Palestine". It represented the State of Israel and the inhabitants of that State, whether Jews, Arabs or others. His delegation also rejected all the other allegations made in the reservations expressed in the Credentials Committee. The Government of Israel had already stated its views on those questions in the General Assembly, the Security Council and other bodies. In any case, the Conference was not competent to discuss those matters.

10. His delegation would not ask for paragraph 5 of the report under consideration to be put to the vote, but it categorically rejected the reservations recorded in it.

11. Mr. ZAKI (Sudan) said he endorsed the reservations made by the representative of Qatar in the Credentials Committee. His delegation's views concerning the credentials of the Israeli delegation had been recorded in the Committee's previous report (A/CONF.80/12, para. 5). The participation of Israel in the Conference should not be considered as implying recognition on the part of the Sudan.

12. Mr. DOGAN (Turkey) said that the leader of the Turkish community in Cyprus had sent a letter to the President of the Conference dealing with certain aspects of the question of the representation of Cyprus. It would be desirable for copies of that letter to be made available to interested delegations.

13. Mr. ROVINE (United States of America) said that his delegation deeply regretted that political considerations concerning Israel and Cyprus had been introduced into the debate. As his delegation had already stated, the Credentials Committee should confine itself to ascertaining whether the credentials which it examined were in order; it was not empowered to discuss questions such as those dealt with in paragraph 5 of the report. It was to be hoped that in the future, such questions would not be raised in credentials committees.

14. Mr. AL-ROUME (Saudi Arabia) said he shared the views expressed by the representative of Qatar in the Credentials Committee. Israel could not represent the Arab population of the occupied territories.

15. The PRESIDENT said that, if there was no objection, he would take it that the Conference agreed to adopt the report of the Credentials Committee (A/CONF.80/18/Rev.1).

It was so decided.

Consideration of the question of the 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] (*continued*)²

DRAFT RESOLUTION A/CONF.80/L.1

16. The PRESIDENT said that, since the issue of document A/CONF.80/L.1, a number of States had joined the sponsors of the draft resolution which it contained.

17. Mr. SIDDIQUI (United Nations Council for Namibia), introducing draft resolution A/CONF.80/L.1 on behalf of the sponsors, noted that at the 1977 session of the Conference, the delegation of the United Nations Council for Namibia had expressed doubts about certain articles and had submitted a proposal (A/CONF.80/DC.13) for the inclusion in the preamble to the convention of a paragraph stating that the Conference took into account General Assembly resolution 2145 (XXI), by which the Assembly had terminated the Mandate of South Africa over Namibia and had assumed direct responsibility for the Territory until its independence.

18. At the 38th meeting of the Committee of the Whole, on 1 August 1978, the delegation of the United Nations Council for Namibia had pressed its proposal; it had referred to recent events related to Namibia and had adduced further reasons why the Conference, together with other organs of the international community, should help to protect the legitimate interests of the international Territory of Namibia and of its people.³

19. A number of delegations had subsequently assured the delegation of the United Nations Council for Namibia of their full support, but had suggested that a resolution having the same objectives as the Council's proposal would better serve the interests of Namibia and of the Conference. It had also been pointed out that if Namibia became an independent State in the near future, the preamble to the convention would be anachronistic. After consulting several other delegations from various regional groups, the Council's delegation had realized that they shared that view and had therefore decided to withdraw its proposal concerning the preamble to the convention (A/CONF.80/DC.13) and to replace it by draft resolution A/CONF.80/L.1.

20. In the preamble to that draft resolution, reference was made to resolutions of the General Assembly and the Security Council concerning the question of Namibia and to the advisory opinion of the International Court of Justice, in order to stress the illegal nature of the occupation of the territory of Namibia by the racist régime

² For the discussion of agenda item 11 by the Conference at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I (*op. cit.*), pp. 8-12, 5th plenary meeting, paras. 6-38 and 6th plenary meeting, paras. 1-2.

³ See 38th meeting, paras. 62-70.

of South Africa, its universal rejection and its consequences. The draft resolution made no attempt to introduce any new elements, but merely reaffirmed the will of the international community, as expressed in various General Assembly and Security Council resolutions. That reaffirmation was particularly necessary at the present time, in order to show that the entire international community supported the people of Namibia and was in sympathy with its struggle against the maintenance of the illegal occupation of its territory by South Africa.

21. It would be seen from the operative part of the draft resolution that, in view of the illegal character of the occupation of the Territory of Namibia by South Africa, South Africa was not the predecessor State of the future independent State of Namibia in respect of the treaty obligations assumed by South Africa after 27 October 1966 and that all the relevant articles of the future convention must be interpreted in conformity with United Nations resolutions on the question of Namibia.

22. That point of view had also been upheld by the world's supreme judicial organ, the International Court of Justice, which had stated categorically in its advisory opinion of 21 June 1971⁴ that member States were under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purported to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involved active intergovernmental co-operation. Member States were under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa did not imply any recognition of its authority with regard to Namibia. Finally, member States were under obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which might entrench its authority over the Territory.

23. It followed from those statements of the International Court of Justice that the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia were opposable to all States in the sense of barring *erga omnes* the legality of a situation which was maintained in violation of international law. Not only were all member States under obligation to abstain from all treaty relations with South Africa concerning the territory of Namibia, but no treaty or provision of that kind could have force of law or could be invoked or applied by any party. That was precisely the aim of the proposal of the United Nations Council for Namibia that the Con-

ference should declare South Africa not to be the predecessor State in the case of Namibia. The draft resolution therefore confirmed the position taken by the States Members of the United Nations, as supported by its supreme judicial organ.

24. Mr. OSMAN (Somalia) emphasized the importance of the draft resolution, not only to his own delegation, but to all the delegations of non-aligned and other freedom-loving countries. The draft was intended to assist the people of Namibia in its legitimate struggle against the racist régime of South Africa by reaffirming the territorial integrity and unity of Namibia in accordance with the relevant United Nations resolutions.

25. His delegation shared the concern of the United Nations Council for Namibia with regard to the exceptions to the application of the "clean slate" principle, in view of the difficulties that such exceptions would entail for the people of that Territory, who were victims of dismemberment and illegal colonial occupation. His delegation wished to express its continued sense of solidarity with the Namibian people.

26. The draft resolution constituted a reaffirmation of various resolutions and decisions whereby the General Assembly had demanded the total and unconditional withdrawal of South Africa from the Territory of Namibia and had declared that Walvis Bay formed an integral part of Namibia. The draft resolution should enable the future independent State of Namibia to benefit from the "clean slate" principle and preclude exceptions to that principle which might be prejudicial to Namibia in view of the current controversy about Walvis Bay, an area which historically and legally formed an integral part of Namibia and must continue to do so. Once Namibia became independent, it could not succeed to obligations arising out of territorial arrangements made by a colonial régime and designed to serve and safeguard the interests of South Africa to the detriment of those of the people of Namibia.

27. Sir Ian SINCLAIR (United Kingdom) pointed out that, under General Assembly resolution 3496 (XXX), the task of the Conference was to "consider the draft articles on succession of States in respect of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate". It was important to bear in mind the terms of reference of the Conference at a time when its work was coming to an end and when it had before it draft resolution A/CONF.80/L.1.

28. His delegation was aware that the future of Namibia was a matter of concern to all delegations, especially those of African countries. In the Security Council, the United Kingdom had joined with other States in trying to find a solution to that problem, which was one of the most difficult currently facing the international community. The Security Council had recently adopted two resolutions which held out hope of a rapid and internationally acceptable solution to the problem. In that connexion, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs had expressed before the Security

⁴ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.

Council his gratification at the fact that his Government, together with those of Canada, France, the Federal Republic of Germany and the United States of America, had succeeded in helping Africa to solve one of its most difficult problems; it had been due to the goodwill of all the parties and to the wisdom of the front-line States that a peaceful and internationally acceptable solution had been found. The Security Council was still considering the question of Namibia.

29. In those circumstances, his delegation considered that the resolution under consideration fell outside the terms of reference of the Conference, whose task was to prepare a convention on succession of States in respect of treaties, not to adopt resolutions on individual cases of succession. His delegation's objection was therefore one of principle: it did not contest the right of the Conference to examine such a draft resolution, but its right to adopt it. That was why the United Kingdom delegation could not and would not participate in a vote or in any other procedure for the adoption of resolution A/CONF.80/L.1. Moreover, even if it had considered that the Conference was competent to adopt the draft resolution, the wording of that text, especially of the first operative paragraph and, even more so, of the second operative paragraph, would have caused it some difficulty.

30. Like the African delegations, the United Kingdom delegation hoped that Namibia, on attaining independence, would be allowed to benefit from the application of the "clean slate" principle. As a newly independent State, Namibia would doubtless have to resolve problems of succession in respect of treaty obligations, but it did not seem right to prejudge the position of the independent state of Namibia on that subject.

31. Mr. ROVINE (United States of America) said that the United States Government had been endeavouring for some time to facilitate Namibia's accession to independence. Thus, together with Canada, France, the Federal Republic of Germany and the United Kingdom, the United States was negotiating with South Africa on the question of Namibia. His delegation naturally understood the underlying motives for the draft resolution under discussion and, indeed, only the last sentence of that text presented it with any difficulty. As he saw it, the terms of reference of the Conference were to consider the draft articles prepared by the International Law Commission and to adopt a convention on succession of States in respect of treaties. It had surely not been the intention of the General Assembly, in convening the Conference, to authorize it to take decisions on individual cases. The fact that Namibia was a special case did not mean that the Conference could exceed its terms of reference. Moreover, the adoption of the draft resolution might be prejudicial to the efforts of the Security Council, which was considering the question. His delegation therefore regretted that it could not take part in a vote or any other decision on the draft resolution.

32. Mr. TREVIRANUS (Federal Republic of Germany) said it was self-evident that all delegations without exception were anxious to see a sovereign and independent

Namibia entering the international arena in the near future. His country was contributing to the efforts being made to that end by the Security Council, of which it was currently a member. He did not believe, however, that a codification conference to which the General Assembly had entrusted a specific task was the appropriate forum in which to consider a question with which several United Nations organs were already dealing. The Conference should not take decisions on questions which did not fall within its competence or seek solutions to specific problems, however serious they might be. His delegation did not question the right of the majority to make a declaration on the subject of Namibia or to adopt the draft resolution in question, but for its part it was unfortunately unable to participate in the vote on the text or in its adoption by any other means.

33. Mr. DOGAN (Turkey) said he was in favour of draft resolution A/CONF.80/L.1.

34. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he unreservedly supported the text under consideration. The Conference was competent to examine and adopt the draft before it. There could be no doubt that the presence of South Africa in Namibia was illegal. That illegal occupation must therefore be brought to an end and respect for the territorial integrity of Namibia must be ensured. His delegation would vote for the draft resolution if it was put to the vote.

35. Mr. DUCULESCU (Romania) said he endorsed the draft resolution, being convinced that the international community should support the struggle of the Namibian people by affording it legal, moral and political assistance. His delegation did not agree with the view taken by the delegations of the United Kingdom, the United States and the Federal Republic of Germany, since although the international community was rightly making efforts at the political level to facilitate Namibia's accession to independence, it should not neglect the legal means available. Thus, the representative of the United Nations Council for Namibia had demonstrated in his statement that certain articles of the convention could not apply to Namibia, whose situation exhibited special characteristics and called for a separate solution. There was no predecessor State in the case of Namibia; South Africa merely exercised *de facto* power over the Territory, and that against the will of the international community. South Africa's attempts to seize Walvis Bay threatened the territorial integrity of Namibia. That was why the sponsors of the draft resolution were proposing that South Africa should not be recognized as the predecessor State of the future independent State of Namibia. His delegation considered that the draft resolution was well-founded, in view of the legal characteristics of the case and would therefore vote for the draft, which contributed to the development of international law and to the solution of the particular problems of Namibia.

36. Mr. KOROMA (Sierra Leone) said that, in the opinion of his delegation, which was one of the sponsors of draft resolution A/CONF.80/L.1, the Conference should work together with other United Nations organs and the

international community to protect and maintain the legitimate interests of the international Territory of Namibia and of the Namibian people. In the draft resolution, the sponsors cited important resolutions of the General Assembly, namely resolutions 2145 (XXI) and 2248 (S-V), as well as the advisory opinion handed down in 1971 by the International Court of Justice, which showed that Member States should put an end to the illegal situation obtaining in Namibia. Moreover, in its resolution 276 (1970), the Security Council had reaffirmed the General Assembly's decision to terminate the Mandate of South Africa over the territory of Namibia and to assume direct responsibility for the Territory until its independence. When taking that decision, the Security Council had also declared that the presence of the South African authorities in Namibia was illegal and that all acts taken by the Government of South Africa concerning Namibia were illegal and invalid. In its resolution 282 (1970), the Security Council had called upon all States to take the necessary measures. In its advisory opinion of 1971, the International Court of Justice had declared that States Members of the United Nations should recognize the illegality of the presence of South Africa in Namibia. The Court had confined itself to giving advice on those dealings with the Government of South Africa which, under the Charter of the United Nations and general international law, should be considered as inconsistent with the declaration of the Security Council. That applied in particular to treaty relations in all cases in which the Government of South Africa purported to act on behalf of or concerning Namibia.

37. The draft convention was intended to govern the transfer of rights and obligations arising from treaties in the case of the emergence of a newly independent State or of the uniting or separation of States. The necessity of giving newly independent States the option of choosing from among the treaties of the predecessor State those which they would maintain in force lay at the root of the draft convention, since no country could be expected to accept commitments entered into by another State without first being able to express its own will. As the representative of Brazil had stated at the 1977 session, a newly independent State should be born free, should be able to benefit from the "clean slate" principle and should not be bound by unjust agreements.⁵ That held true of Namibia, which could not be deprived of its only port, Walvis Bay, an integral part of its territory.

38. In the light of these considerations, it was only natural, for legal reasons and in a spirit of justice, to provide that in the case of Namibia the relevant articles of the convention should be interpreted in conformity with the relevant United Nations resolutions, under which South Africa could not be regarded as the predecessor State of Namibia after 1966.

39. Mr. MUSEUX (France) said that he fully shared the views expressed by the representatives of the United

Kingdom, the United States of America and the Federal Republic of Germany, which seemed eminently sensible. His Government, too, was participating in the negotiations on the question of Namibia with a view to reaching a speedy solution so that Namibia could achieve independence as soon as possible. However, his delegation felt that it would be unfair to prejudge decisions of a future Namibian Government, and that the Conference should not take a decision on the draft resolution. In order to ensure the proper functioning of the Conference and respect for the credentials given by Governments to their representatives, it was important that those representatives should not exceed their terms of reference and encroach on the work of the political bodies that were dealing with the question, in particular the Security Council.

40. For those reasons, his delegation would be unable to participate in the decision on the draft resolution.

41. Mr. de BLOIS (Canada) said that the draft resolution under discussion raised a number of problems: it sought to interpret a convention that the Conference had not yet adopted and the terms of reference of the Canadian delegation to the Conference did not cover consideration of the draft resolution. Furthermore, his country was playing a part in other bodies that were dealing with the question of Namibia. For those reasons, his delegation would not participate in any decision by the Conference concerning the draft resolution.

42. Mr. MAHUNDA (United Republic of Tanzania) said that his delegation fully supported the draft resolution before the Conference, being one of its sponsors. As a front-line State, his country had always regarded the Namibian people's struggle as its own struggle and it would continue to make sacrifices until Namibia had attained its independence. Since the draft resolution merely put forward the international community's view of the Namibian question, his delegation could not understand why certain delegations which, in other bodies, were endeavouring to solve the Namibian problem, should find the draft resolution difficult to accept.

43. As far as his delegation was concerned, Namibia was a United Nations Territory, because the United Nations had terminated South Africa's Mandate over that Territory. The last operative paragraph was a logical consequence of the status of Namibia and should not cause any difficulty.

44. Mr. VREEDZAAM (Suriname) said that since the Conference was competent to define what was understood by "predecessor State" and "successor State", it was also competent to declare that South Africa was not the predecessor State of the future independent State of Namibia, because it was occupying the territory of Namibia illegally. His delegation was a sponsor of the draft resolution under discussion.

45. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that South Africa's illegal occupation of the Territory of Namibia was one of the major preoccupations of the United Nations and it was therefore essential for the

⁵ *Official Records of the United Nations Conference on Succession of States in Respect of Treaties . . . (op. cit.)*, p. 32, 3rd meeting, para. 46.

Conference to give its opinion on that vital problem. He supported draft resolution A/CONF.80/L.1, which would help the Namibian people in its fight for independence.

46. Mr. PAPADOPOULOS (Cyprus) said he wished to reserve the right to reply at a later stage to the statement made by the representative of Turkey concerning the report of the Credentials Committee (A/CONF.80/18/Rev.1) which contained no reservation relating to the credentials of the delegation of Cyprus.

47. His delegation wholeheartedly supported draft resolution A/CONF.80/L.1, because it considered that South Africa should end its illegal occupation of Namibia and it attached great importance to the implementation of the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976), which had reaffirmed the territorial integrity and unity of Namibia, and 432 (1978) in which the Security Council had taken note of paragraph 7 of General Assembly resolution 32/9 D, declaring Walvis Bay to be an integral part of Namibia. His delegation hoped that the statements which had been made in support of those resolutions were not empty words, but demonstrated a sincere desire to apply the principles of international law which were involved. His delegation firmly supported those principles and would therefore vote in favour of the draft resolution on Namibia.

48. Mr. JOMARD (Iraq) said he supported draft resolution A/CONF.80/L.1, for the reasons given by the representatives of Somalia and Sierra Leone.

49. Mr. STUTTERHEIM (Netherlands) said that the position of his country on Namibia was well known and there was no need for it to be repeated at the time. For the reasons given by the United Kingdom representative, his delegation would not participate in the vote on draft resolution A/CONF.80/L.1. He was sure, however, that Namibia would have the benefit of the "clean slate" principle.

50. Mr. BENDIFALLAH (Algeria) said that his country had always supported the cause of peoples struggling for self-determination and had declared itself in favour of the territorial integrity of Namibia and the freeing of its people from the racist yoke. In his opinion, the Conference was competent to deal with the Namibian problem and Namibia ought to benefit from the "clean slate" principle. He wholeheartedly supported draft resolution A/CONF.80/L.1 and appealed to members of the Conference to adopt it by an overwhelming majority.

51. Mr. de OLIVEIRA (Angola) said that his country, which was one of the front-line States, had always supported the Namibian people and would continue to give it unqualified support in face of the acts of aggression perpetrated against it by South Africa. Since the international community recognized that South Africa's presence on Namibian territory was illegal, he found it hard to understand why certain delegations could not support draft resolution A/CONF.80/L.1. He, too, appealed for the draft resolution to be adopted by a very large majority.

52. Mr. YACOUBA (Niger) said that, while the task of the Conference was to prepare an international convention on succession of States in respect of treaties, it had a duty to examine all aspects of the question. The situation of Namibia might pose a difficult problem when the Territory became independent. The sponsors of draft resolution A/CONF.80/L.1 had decided, in a spirit of conciliation, not to insist on the inclusion of an article on Namibia in the draft convention. He was surprised, therefore, that their initiative had not met with a response from certain delegations. He requested a roll-call vote on draft resolution A/CONF.80/L.1.

53. Mr. MASUD (Pakistan) said that the view that the Conference was not competent to examine or adopt draft resolution A/CONF.80/L.1 was based on a very narrow interpretation of the Conference's terms of reference. In his opinion, the draft resolution was relevant to the subject being dealt with by the Conference and was consistent with the advisory opinion of the International Court of Justice in the case of Namibia. The Conference was therefore perfectly competent to consider the draft resolution and should adopt it.

54. Mr. RITTER (Switzerland) said that his delegation would abstain in the vote on draft resolution A/CONF.80/L.1 because his country was not a Member of the United Nations and did not, therefore, feel able to pronounce on a question deriving from resolutions in the adoption of which it had not participated. That position was consistent with the position which his delegation had taken at the 1977 session concerning the request of the United Nations Council for Namibia for active participation in the Conference. That position in no way affected his country's sympathetic attitude towards the aspirations of the Namibian people.

55. Mr. ABOU-ALI (Egypt) expressed his unqualified support for the terms and content of draft resolution A/CONF.80/L.1. He believed that the Conference was competent to consider and adopt the draft resolution, since the resolution concerned the interpretation to be given to the provisions of the convention in the case of an independent Namibia, in the light of the relevant resolutions of the United Nations and the advisory opinion of the International Court of Justice. In his opinion, a Conference which had been given the task of preparing a convention on succession of States in respect of treaties was competent to express its opinion on the application of that convention in a specific case which was of great importance at the international level and more especially in the African context.

56. Mr. MAIGA (Mali) said there could be no doubt that draft resolution A/CONF.80/L.1, of which his delegation was a sponsor, fell within the terms of reference assigned to the Conference by the General Assembly. He pointed out that it was the very countries which had advocated resort to the International Court of Justice for the settlement of disputes concerning the interpretation of the convention that were now refusing to abide by the advisory opinion of the Court in the case of Namibia.

57. Mr. RANJEVA (Madagascar) expressed the view that, contrary to the assertions of certain delegations, draft resolution A/CONF.80/L.1 fell within the terms of reference of the Conference, since the Conference had to study all aspects of the problem of succession of States, of which the question of Namibia was a specific manifestation. The Conference could not, therefore, evade that problem without failing in its responsibilities. The sponsors of the draft resolution had wished to include an article on Namibia in the body of the draft convention, but, in a spirit of compromise, had agreed merely to submit a draft resolution.

58. Since, according to the text of article 6 adopted by the Committee of the Whole,⁶ the future convention applied only "to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations", he did not see how South Africa could possibly be regarded as the predecessor State of Namibia.

59. Mr. KONADU-YIADOM (Ghana) said he considered that the Conference was competent to examine and adopt draft resolution A/CONF.80/L.1.

60. Mr. FARAHAT (Qatar) said that he, too, considered the Conference to be competent to adopt a draft resolution on Namibia, since all nations should co-operate in putting an end to the illegal occupation of Namibia by South Africa. He unreservedly supported draft resolution A/CONF.80/L.1, for it seemed obvious to him that South Africa could not be the predecessor State in the case of Namibia.

61. Mr. DIENG (Senegal) thanked the representative of the United Nations Council for Namibia for his clear and comprehensive analysis of the situation. He was surprised that some delegations could still doubt the competence of the Conference to consider draft resolution A/CONF.80/L.1. In his view, the legal arguments adduced by those delegations in fact concealed certain specific interests, since the draft resolution clearly fell within the competence of the Conference, and the fact that the Security Council was dealing with the question of Namibia did not preclude the Conference from taking a decision on it. He therefore appealed to delegations to adopt the draft resolution by an overwhelming majority.

62. Mr. AHIPEAUD (Ivory Coast) said he supported draft resolution A/CONF.80/L.1, of which his delegation was a sponsor.

63. Mr. MADINGA (Swaziland) said that he, too, supported draft resolution A/CONF.80/L.1, which reaffirmed the territorial integrity of Namibia. In his opinion, the draft resolution clearly fell within the terms of reference of the Conference.

64. The PRESIDENT announced that the United Arab Emirates, Indonesia, Iraq and Tunisia had asked to be included among the sponsors of draft resolution A/CONF.80/L.1.

65. The PRESIDENT put draft resolution A/CONF.80/L.1 to the vote.

At the request of the representative of the Niger, the vote was taken by roll-call.

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

In favour: Algeria, Angola, Argentina, Australia, Austria, Brazil, Bulgaria, Burundi, Byelorussian SSR, Chile, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Egypt, Ethiopia, Finland, German Democratic Republic, Ghana, Guyana, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mauritania, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zaire.

Against: None.

Abstaining: Belgium, Ireland, Italy, Japan, Portugal, Switzerland.

Draft resolution A/CONF.80/L.1 was adopted by 73 votes to none, with 6 abstentions.

66. Mr. GIL MASSA (Mexico) said that his delegation had unfortunately been called away urgently by the Conference secretariat and had thus been momentarily absent when the draft resolution had been put to the vote. If it had been present, it would have voted in favour of the draft resolution; it asked that its statement on Mexico's position should be reflected in the summary record.

67. Mr. NAKAGAWA (Japan) said that his delegation had abstained in the vote, despite its sympathy for Namibia, because it was not convinced that it was for the Conference to take a decision on a specific case of succession of States.

68. Mr. HERNDL (Austria) said that his delegation had voted in favour of the draft resolution to mark its approval of the operative part of the text, although it had some doubts concerning the competence of the Conference to deal with the question and concerning the advisability of adopting such a resolution, which in a way prejudged the decision that Namibia would take when it became independent. Austria hoped that Namibia would become an independent and sovereign State in the very near future.

69. He wished to point out that the position taken by Austria in the General Assembly on paragraph 7 of resolution 32/9 D, cited in the last preambular paragraph of the resolution just adopted, remained unchanged.

⁶ See 53rd meeting, para. 35.

70. Mr. DE VIDTS (Belgium), noting that his country had voted in favour of General Assembly resolution 2145 (XXI) of 27 October 1966, said that the Belgian delegation had abstained in the vote on the resolution concerning Namibia because it was not convinced that the Conference should act as surrogate for the future independent State of Namibia and because it considered that that future State alone should decide whether to apply, in its own case, the existing practice in the matter of succession of States or the provisions of the Convention if it had entered into force. There had therefore been no call for the Conference to take a decision on the question. The resolution that had just been adopted in no way altered the prerogatives of the future State of Namibia, which Belgium wished every success in asserting itself in the area of international relations on the basis of respect for its new sovereignty.

71. Mr. MARESCA (Italy) said that Italy had always adopted a favourable attitude towards Namibia, whose independence would serve to enrich the international community.

72. The Italian delegation had abstained in the vote that had just been taken because it considered that the Conference, which had been convened to draw up a convention on succession of States in respect of treaties, was not competent to take a decision on the question of Namibia and that its adoption of a position constituted interference in the affairs of a future State which should be the sole master of its own fate.

73. Mr. SIDDIQUI (United Nations Council for Namibia) expressed his gratitude to the Conference for having adopted the resolution on Namibia.

Organization of work

74. The PRESIDENT, observing that the Conference would obviously be unable to complete its work on 18 August, as scheduled, suggested that the session be extended until Wednesday, 23 August 1978, inclusive, subject to any further decision that might be taken if necessary.

That suggestion was adopted.

The meeting rose at 5.50 p.m.

13th PLENARY MEETING

Monday, 21 August 1978, at 3.20 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] (*continued*)

TITLES AND TEXTS OF ARTICLES 30 TO 39 ADOPTED BY THE COMMITTEE OF THE WHOLE¹ (A/CONF.80/20)

Article 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)

Article 30 was adopted without a vote.

1. Mr. FLEISCHHAUER (Federal Republic of Germany), referring to article 30, said that he wanted to make a statement on behalf of his own delegation and of the other delegations representing States members of the European Communities at the Conference. He wanted to state that the provisions of the draft articles on succession of States in respect of treaties did not apply to the participation of States in the European Communities. That view had also been taken by the International Law Commission, as was clear from its 1974 report (see A/CONF.80/4, pp. 12-13, chap. II, Introduction, paras. 65-69, and p. 93, para. 4 of the commentary to articles 30-32). The States members of the European Communities wished that statement to be reproduced in the records of the Conference.

Article 31 (Effects of a uniting of States in respect of treaties not in force at the date of the succession of States)

Article 31 was adopted without a vote.

Article 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)

Article 32 was adopted without a vote.

Article 33 (Succession of States in cases of separation of parts of a State)

2. Mr. RITTER (Switzerland) requested that in view of the lengthy debate on article 33 and its importance in the convention as a whole, the article should be put to the vote.

3. After a procedural discussion in which Sir Ian SINCLAIR (United Kingdom), Mr. MAIGA (Mali), Mr. MUDHO (Kenya), and Mr. PÉRE (France) took part, the PRESIDENT put article 33 to the vote.

Article 33 was adopted by 68 votes to 5.

4. Mr. MUDHO (Kenya) said that his delegation would have voted for article 33 if it had been able to participate in the vote.

¹ For the consideration of these articles by the Committee of the Whole, see the summary records of the following meetings: article 30: 27th, 38th, 39th and 53rd meetings; article 31: 40th and 53rd meetings; article 32: 40th and 53rd meetings; article 33: 40th, 41st, 47th, 48th, 49th and 53rd meetings; article 34: 41st, 42nd and 53rd meetings; article 35: 43rd and 53rd meetings; article 36: 43rd and 53rd meetings; article 37: 43rd and 53rd meetings; article 38: 43rd and 53rd meetings; article 39: 43rd and 53rd meetings.