

United Nations Conference on Succession of States in Respect of Treaties

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9th Plenary Meeting

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

SUMMARY RECORDS OF THE PLENARY MEETINGS

9th PLENARY MEETING¹

Monday, 31 July 1978, at 11.25 a.m.

President: Mr. ZEMANEK (Austria)

Opening of the resumed session by the President of the Conference

1. The PRESIDENT, after welcoming the participants, reminded the Conference that when it had begun its work in 1977, not all of those present had been optimistic about the outcome. The subject under consideration had given rise to too many, mostly opposing, theoretical concepts, and the apparently conflicting military, political and economic interests of States had not augured well for an expeditious and widely acceptable result. Yet the achievements told a different story: 25 of the International Law Commission's 39 draft articles had been adopted by the plenary Conference, including nearly all the articles relating to newly independent States; key provisions, such as articles 16, 17 and 23, had been approved without a vote, both in the Committee of the Whole and in the plenary Conference. Only seven articles had been voted on, in whole or in part, in the Committee of the Whole, and three in plenary meetings. Only two amendments, both largely of a clarifying nature, had been adopted, one relating to paragraph 1 of article 20 and the other to paragraph 1 (b) of article 28. Even the drafting changes which the Drafting Committee had considered necessary had been few and of minor importance.

2. Those accomplishments had been made possible by the untiring efforts and spirit of co-operation of the members of the Committee of the Whole and the Drafting Committee, with the valuable assistance of the Secretariat. But they were also proof of the exceptional quality of the International Law Commission's draft, for which credit was due, in particular, to the two Special Rapporteurs who had been successively entrusted with the topic: Sir Humphrey Waldock and Sir Francis Vallat.

3. But in spite of those impressive results, a tremendous amount of work remained to be done, especially as the General Assembly, in resolution 32/47, had expressed its

firm conviction that the Conference should conclude its work and adopt an international convention and other appropriate instruments at the present session. The Conference still had to examine 10 articles of the International Law Commission's draft, as well as proposals for three new articles. It had to conclude consideration of article 2, which had been postponed until the substantive articles had been adopted. Furthermore, it had to formulate and adopt the texts of a preamble and final clauses, whose preparation had been entrusted to the Drafting Committee. Finally, there also remained what had been left over from the 1977 session: article 22 *bis*, on which the Drafting Committee would be reporting, and articles 6, 7 and 12, which were under consideration by the Informal Consultations Group under the chairmanship of the Vice-President of the Committee of the Whole. Both the Drafting Committee and the Informal Consultations Group should resume work on those articles as soon as possible.

4. During the resumed session, the Conference would thus have to deal with 18 articles, a preamble and the final clauses. Since the Conference had adopted 25 articles during the first part of the session, it was obvious that it had no time to lose if it was to finish its work in three weeks. Fortunately, some of the articles not yet discussed, which, except for three, related to the uniting and separation of States, did not appear to be very controversial, at least if judged by the absence of amendments to them. Others, however, judged by the same criterion, were more delicate. It might perhaps be advisable to begin informal consultations as soon as possible on the best way to deal with those articles, particularly article 39 *bis*.

5. After expressing the hope that a convention would be adopted within the allotted time, he declared open the resumed session of the United Nations Conference on Succession of States in Respect of Treaties.

6. He then drew the attention of members of delegations to the list of items proposed for consideration at the opening plenary meeting of the resumed session.² Those items had to be disposed of before the Committee of the Whole could begin its work. If there was no objection, he would take it that the Conference agreed to that list.

It was so agreed.

¹ For the summary records of the 1st to 8th plenary meetings held in 1977, see *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), pp. 1-19.

² The list contained the following items: Opening of the resumed session by the President of the Conference; 2. Address by the Representative of the Secretary-General; 3. Election of one Vice-President (to fill a vacancy owing to the non-participation of a State in the resumed session); 4. Organization of the work of the Conference at its resumed session.

Address by the Representative of the Secretary-General

7. Mr. SUY (Legal Counsel of the United Nations, representing the Secretary-General), welcomed participants and said that, to stress the importance of the Conference, he would echo the words spoken the previous year by the Federal President of the Republic of Austria, H.E. Dr. Rudolph Kirchschlaeger: “The success of the Conference will be a success for all States and for the United Nations.”³

8. As was clear from the decision taken by the General Assembly in regard to the resumed session, the Conference enjoyed the support of the community of nations. In its resolution 32/47 of 8 December 1977, which had been adopted unanimously, the General Assembly had endorsed the recommendation of the Conference that the present session should be the final one, and had expressed its firm conviction “that the Conference will thus conclude its work and adopt an international convention and other appropriate instruments as requested by the General Assembly.”

9. The participants in the resumed session might find themselves in a situation of succession, as it were, in regard to the decisions taken the previous year and also to the organizational and procedural arrangements made to ensure the efficiency and smoothness of their work. In that connexion, he drew attention to the Memorandum by the Secretary-General entitled “Methods of work and procedures adopted by the Conference as may be applicable to its resumed session” (A/CONF.80/17).

10. As to the time available to the Conference for its resumed session, it did not have at its disposal the five weeks for which its 1977 session had lasted. As specified in General Assembly resolution 32/47, the Conference was convened “for a period of three weeks, from 31 July to 18 August 1978, with a possible extension of up to one further week should this prove necessary in the view of the Conference”. In making that decision, the General Assembly had been fully aware of the stage reached in the work of the Conference, since it had taken note of the report of the Conference (A/CONF.80/15) which contained the necessary information on the matter. During the three-week resumed session, the Committee of the Whole could hold 17-18 meetings, the Drafting Committee could hold almost the same number, and an appropriate number of meetings could be arranged for the plenary Conference. In reality, an estimate of the time needed for international negotiations and treaty-making would call for more complicated calculations, but a certain time-limit would have to be set in any case. In estimating the number of meetings which various organs of the Conference might have, the Secretariat had not failed to take into account that a certain amount of time would be needed for preparing the texts of the new convention, the final act of the Conference and other instruments for signature, once they had been adopted, as well as for the official signing ceremony.

11. In a world in motion, as was the world of today, where relationships between States were governed by a

³ *Official Records of the United Nations Conference on Succession of States in Respect of Treaties...* (op. cit.), p. 2, 1st plenary meeting, para. 13.

steadily increasing number of treaties in the political, economic, cultural and other spheres, the orderly and smooth succession of States in respect of treaties was important for the maintenance of the international legal order, its stability and its dynamism and, ultimately, for the realization and consolidation of peaceful and friendly relations between States. Succession entailed an element of continuity, and continuity of treaties meant continuity of relations between States regulated by treaties, in other words, continuity of their co-operation. The primary purpose to be achieved by the conclusion of the new convention was to ensure the maximum attainable continuity in treaty relations in the event of a succession of States. As stated by the General Assembly in resolution 31/18, “the successful codification and progressive development of the rules of international law governing succession of States in respect of treaties would contribute to the development of friendly relations and co-operation among States, irrespective of their constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter”. The future convention would be one more instrument enhancing the role of treaties in the community of nations. The States parties to the Vienna Convention on the Law of Treaties,⁴ which embodied all the basic rules of international law governing treaties, had reaffirmed “the fundamental role of treaties in the history of international relations”.⁵ Recent efforts at the national level seemed also to be aimed at emphasizing the paramount importance of treaties in the furtherance of friendly relations and co-operation among States. In 1977, the General Assembly had decided to scrutinize the treaty-making process, which opened up a new prospect for improvements in that process. The future convention was thus coming into being as an integral part of an over-all development in the law of treaties, aimed at adding a new dimension to mankind’s quest for peace through the rule of law in international relations. That development had its origins in the United Nations Charter in which the peoples of the United Nations had proclaimed their determination “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. He hoped that that determination of the peoples of the United Nations would be a source of inspiration to the Conference and would guide it in its work.

Election of one Vice-President

12. The PRESIDENT explained that the need to elect a Vice-President arose from the fact that Barbados had announced that it would not be able to take part in the resumed session. The Group of Latin American States was therefore required to nominate a candidate.

⁴ See the text of the Convention in *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 288.

⁵ *Ibid.*, p. 289, Introductory paragraph to the preamble.

**Organization of the work of the Conference
at its resumed session (A/CONF.80/17)**

13. The PRESIDENT said he assumed that participants would wish to discuss the contents of the document "Methods of work and procedures adopted by the Conference as may be applicable to its resumed session" (A/CONF.80/17) in their respective regional groups. He suggested that a chairman or, at least a provisional speaker should be nominated for each group.

The meeting rose at 11.55 a.m.

10th PLENARY MEETING
Monday, 31 July 1978, at 3.25 p.m.

President: Mr. ZEMANEK (Austria)

Election of one Vice-President (continued)

1. The PRESIDENT said that, if there were no objection, he would take it that the Conference approved the proposal by the Chairman of the Group of Latin American States that the representative of Trinidad and Tobago be elected a Vice-President of the Conference in place of the representative of Barbados.

It was so agreed.

Organization of work
[Agenda item 10]

2. The PRESIDENT drew attention to the memorandum by the Secretary-General "Methods of work and procedures adopted by the Conference as may be applicable to its resumed session" (A/CONF.80/17). He had been informed by the chairmen of four regional groups that it was their hope that the utmost effort would be made to complete the work of the Conference in three weeks. He had replied that the secretariat and the Bureau certainly shared that hope, but that control over the duration of the Conference was entirely in the hands of delegations.

3. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that, in principle, his delegation approved the ideas concerning the methods of work of the Conference that were set out in the memorandum by the Secretary-General. It would indeed be the most rational course for the Drafting Committee of the Committee of the Whole to commence work forthwith on the remaining articles of the draft, particularly articles 30 to 39. His delegation strongly favoured the suggestion made by the President at the 9th plenary meeting that delegations should hold consultations in advance of official meetings on the questions that were still outstanding. He hoped that all delegations would continue to adhere to the trend of the overwhelming

majority of participants in the 1977 session to retain as far as possible the text of the draft articles prepared by the International Law Commission (see A/CONF.80/4). If that were done, the Conference should have no difficulty in completing successfully the task entrusted to it by the General Assembly. To assist in the achievement of that aim, his delegation would not insist on the amendments to the draft articles which it had proposed during the 1977 session. While it was no secret that the success of the Conference depended on the solution of certain difficult problems that were still under discussion, his delegation believed that the main lines of the future Convention had already been laid down, in particular through the adoption of the "clean slate" principle in relation to newly independent States that emerged as a result of the process of decolonization. His delegation had serious doubts as to the advisability of encumbering the International Law Commission's draft with references to matters that had more to do with the law of treaties or questions that had long been the subject of unsuccessful debate at other international conferences, than with succession of States.

4. The PRESIDENT said that, if there was no objection, he would take it that the Conference wished to take note of the memorandum submitted by the Secretary-General in document A/CONF.80/17.

It was so agreed.

The meeting rose at 3.35 p.m.

11th PLENARY MEETING
Monday, 7th August 1978, at 3.45 p.m.

President : Mr. ZEMANEK (Austria)

**Tribute to the memory of His Holiness, the late Pope
Paul VI**

1. The PRESIDENT said that delegations had come together to pay a tribute to the memory of His Holiness, the late Pope Paul VI. The outstanding feature of the papacy of Paul VI was his concern for peace and social justice in the world, in which he was following a long tradition which had culminated in his predecessor's remarkable encyclical *Pacem in terris*. The early years of his papacy had been dedicated to the conclusion of Vatican Council II and the implementation of its decisions, but as early as 1967 he had manifested his concern for the necessity of peaceful development in his encyclical *Populorum progressio*. In that year he had established the observance of the first of January as a "day of peace" for which he issued a yearly message dealing with subjects such as the promotion of human rights and reconciliation. His last message, in 1978, had been "No! to force and violence! Yes! to peace!". He had called upon all human beings of good will, regardless of their faith, to establish