United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations

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3rd plenary meeting

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3rd plenary meeting

Wednesday, 19 February 1986, at 4.35 p.m.

President: Mr. ZEMANEK (Austria)

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

1. The PRESIDENT announced that the General Committee recommended the appointment of the representatives of the following States as members of the Drafting Committee, in addition to the Chairman: Algeria, Argentina, China, France, Italy, Japan, Morocco, Nigeria, Romania, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

It was so decided.

Organization of work
[Agenda item 10]

2. The PRESIDENT, drawing attention to paragraph 31 of the Memorandum of the Secretary-General (A/CONF.129/3), said that he had been asked by the General Committee to inform the Conference that the Committee agreed that there should be no general debate either in plenary or in the Committee of the Whole. There would be ample opportunity to make statements of principle in relation to specific articles as and when they were considered. Turning to paragraph 40 of the Memorandum, he said that the weekly schedule would indicate the time available and the results expected for the week and should be a guide in deliberations and work within the individual organs of the Conference.

3. In the absence of objection he would take it that the Conference endorsed the suggestions in the Secretary-General's Memorandum, together with those two additional comments.

It was so decided.

4. Mr. JESUS (Cape Verde) observed that it might be advisable to decide on the schedule for the rest of the week so that delegates could make adequate preparation and actively participate in the deliberations.

5. Mr. KALINKIN (Executive Secretary of the Conference) said that it was the secretariat's understanding that when the Committee of the Whole and the Drafting Committee met for the first time they would start by considering the organization of work. It was for each committee to decide in which order the articles would be considered.

6. The PRESIDENT said that the secretariat could not anticipate such a decision. If the Committee of the Whole made its decision later in the day, the secretariat might be able to arrange a schedule. As the Drafting Committee would not be meeting until the following day, there might be time to draw up a provisional timetable for its consideration.

7. Mr. JESUS (Cape Verde) agreed that the programme would be better established by the individual committees than by the plenary. However, he felt that the Conference should decide at the present stage on the number of plenary meetings to be held during the current and following week and on the number of meetings to be held by the Committee of the Whole and the Drafting Committee during the same period.

8. The PRESIDENT replied that there would be no plenary meetings during that period unless a particular need arose, and both morning and afternoon sessions, between 10 a.m. and 1 p.m. and 3 p.m. and 6 p.m., would be taken up entirely by the Committee of the Whole. The Drafting Committee could meet any day between the hours of 9 a.m. and 10 a.m. and 6 p.m. and 7 p.m. if it wished to do so. Since the Drafting Committee should in principle work as speedily as possible, it would decide on its own meetings, and its progress would be assessed the following week.

9. Turning to the subject of the final clauses, he said that the General Committee proposed that the Conference should defer any decision as to how to handle the final clauses until the debate in the Committee of the Whole had started and the mood of the Conference could be interpreted. If there was no objection, he would take it that the Conference endorsed that proposal.

It was so decided.

10. The PRESIDENT, turning to the list of articles contained in the attachment to document A/CONF.129/8, said that it had been adopted by consensus in the consultations in New York and transmitted to the Conference for its consideration and action as appropriate.

11. Mr. SCHRICKE (France) said that his delegation had participated actively in the consultations which had led to the establishment of the list of draft articles of the basic proposal for which substantive consideration was deemed necessary. To distinguish between articles to be given substantive consideration and those to be referred directly to the Drafting Committee was a departure from the customary practice, which his delegation believed should be followed as a general rule, whereby all draft articles submitted to a diplomatic conference were given substantive consideration before being referred to the Drafting Committee. The distinction had resulted from a desire to maintain as close a parallel as possible between the present draft and the 1969 Vienna Convention on the Law of Treaties,[1] and had also influenced the draft articles prepared by the International Law Commission. While that approach might

[1] *Official Records of the United Nations Conference on the Law of Treaties* (United Nations publication, Sales No. E.70.V.5), p. 287.

be acceptable from the methodological point of view, it raised difficulties for his delegation. France had expressed its disagreement with some important provisions in the 1969 Convention, in particular those relating to *jus cogens*. That concept was still as nebulous as it had been in 1969, and his delegation therefore maintained the reservations and objections it had made with respect to those provisions at the 1968/1969 Conference,[2] and which had been the reason why France had not become party to that Convention. If similar provisions were to be included in the draft Convention now before the Conference, the outcome would be the same. Even if that were to be the case, the French delegation was nevertheless prepared to participate actively and constructively in the work of the Conference and, even though it might not become party to the Convention, it would not fail to take into account those provisions to which it could agree, as it and many other States had done in respect of the provisions of the 1969 Convention relating to customary international law.

12. The French delegation, in that spirit, could accept the principle underlying the preparation of the list in annex II of General Assembly resolution 40/76, and had not requested the inclusion in it of certain provisions to which it had serious objections. The direct referral of a large number of articles to the Drafting Committee could not therefore be construed as implying his delegation's approval of all the rules laid down in those articles.

13. The PRESIDENT said that the intention was that the articles in the list would be submitted for consideration to the Committee of the Whole and the other articles would be referred direct to the Drafting Committee. However, it would be up to the latter to refer any articles to the Committee of the Whole if, in the course of its work, it felt that more substantive consideration was justified.

14. In cases where only certain paragraphs of articles were referred to the Committee of the Whole and the remainder of the article was referred directly to the Drafting Committee, there would be nothing to prevent delegates from using the remaining paragraphs in making points in respect of paragraphs under consideration in the Committee of the Whole. Furthermore, the Drafting Committee would not deal with any article until the Committee of the Whole had completed its consideration of the paragraphs referred to it. If there was no objection, he would take it that the Conference approved the list of articles and the working arrangements proposed by the General Committee.

It was so decided.

Consideration of the question of the law of treaties between States and international organizations or between international organizations, in accordance with General Assembly resolutions 37/112 of 16 December 1982, 38/139 of 19 December 1983, 39/86 of 13 December 1984 and 40/76 of 11 December 1985 (A/CONF.129/4)

[Agenda item 11]

15. The PRESIDENT said that the only decision to be taken by the Conference at the present stage was to request the Committee of the Whole to consider the articles on the list on the understanding embodied in the working arrangements, and to refer the other articles to the Drafting Committee for consideration.

It was so decided.

16. The PRESIDENT said that he had received a letter from the Secretary-General drawing attention to the seriousness of the Organization's financial problems and asking for co-operation in the matter of holding down expenditure, first, by limiting the costs of meetings by restricting their number and duration to the greatest extent possible and reasonable, and second, by limiting documentation costs by restricting to the greatest extent possible and reasonable the documentation to be produced at the Conference. He was confident that everyone would co-operate fully in an effort to comply with those requests.

The meeting rose at 5.05 p.m.

[2] *Ibid.* (United Nations publication, Sales No. E.70.V.6), 19th plenary meeting, paras. 7 to 18.

4th plenary meeting

Thursday, 13 March 1986, at 3.20 p.m.

President: Mr. ZEMANEK (Austria)

Organization of work

[Agenda item 10]

1. The PRESIDENT said that when the Conference had allocated various provisions of the draft articles to the Committee of the Whole and others to the Drafting Committee, the question of the preamble and the final clauses had remained in abeyance. In the absence of any objections, he would take it that the Conference agreed to entrust the preparation of the preamble and the final clauses to the Committee of the Whole.

It was so decided.

2. The PRESIDENT said that the Conference had also to adopt a final act. In the absence of any objections, he would take it that the Conference entrusted its preparation to the Drafting Committee.

It was so decided.