

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

Vienna, Austria
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1st plenary meeting

Extract from Volume I of the *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

SUMMARY RECORDS OF THE PLENARY MEETINGS

1st plenary meeting

Tuesday, 18 February 1986, at 10.20 a.m.

Acting President: Mr. FLEISCHHAUER
(Legal Counsel of the United Nations,
representing the Secretary-General)

President: Mr. ZEMANEK (Austria)

Opening of the Conference

[Item 1 of the provisional agenda]

1. The ACTING PRESIDENT, speaking on behalf of the Secretary-General, welcomed Mr. Gerald Hinteregger, Permanent Representative of Austria to the United Nations at Vienna, representing the Federal President of the Republic of Austria, who was unable to attend because of illness. He welcomed also the Federal Minister of Justice of the Republic of Austria and the other distinguished guests.

2. On behalf of the Secretary-General, he declared the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations open and invited the participants to observe a minute's silence for prayer or meditation.

The Conference observed a minute of silence.

3. The ACTING PRESIDENT, speaking as the representative of the Secretary-General, said that all participants regretted that the Federal President had been prevented by illness from attending the meeting and wished him a speedy recovery. On behalf of all delegations, he wished to convey to the Federal President, the Government and people of Austria and the City of Vienna, deep appreciation for the hospitality and courtesy being once more extended to the United Nations.

4. The Conference was the seventh in a series of plenipotentiary legal conferences held in Vienna since 1961 in pursuit of the progressive development of international law and its codification. The area was one in which the United Nations had been particularly active and successful over the past 40 years. The process of codification of international law had been said to have started in the years 1814 and 1815 with the historic Congress of Vienna. It was, however, with the creation of the United Nations that the process had entered a new dynamic, institutional and permanent phase. Article 13, paragraph 1 (a), of the Charter conferred upon the General Assembly the specific task of contributing to the progressive development of international law and its codification. The International Law Commission had been set up in 1947 in implementation of that mandate and had become the core body in the codification

process, a function to which the United Nations had devoted continuing efforts and action.

5. Since 1947, the debate had centred on the substantive aspects of diplomatic codification rather than on the question of whether and how such codification should be conducted. The diplomatic character of the development and codification of international law through the United Nations had always to be borne in mind. It gave the measure both of the possibilities and of the limitations of the process. In the first place, the United Nations was not a super State, and the power to legislate in the field of international law remained ultimately vested in States. The role of the United Nations was to encourage, assist, harmonize and provide the necessary fora.

6. It was equally important to remember that the United Nations was not a centre for research into international law and for the advancement of legal science. The progressive development of international law through the United Nations was aimed at the fulfilment of the needs, political aspirations and interests of the States and of the international community as a whole.

7. Understood in that sense, the process corresponded to urgent needs. The constant modernization of international law served the maintenance of peace and international security. The constant adaptation of international law to changing conditions gave it enhanced importance in providing a structure and a basis for international relations and international co-operation. Last but by no means least, much of the change and adaptation in international law had been necessitated by the dramatic growth of the international community and the change in its character since 1945. That process had brought new actors to the international scene, with their own background, ideas, priorities, needs, principles and concepts.

8. The demand for codification and progressive development was such that United Nations activities had not been confined to the International Law Commission. Since 1966, a second core body, the United Nations Commission of International Trade Law, had been active in the harmonization of international trade law, and a number of other bodies had been entrusted by the General Assembly with law-making tasks, nota-

bly in the fields of human rights, outer space and maritime matters. The General Assembly itself had been active in the development of international law with the elaboration and adoption of the 1969 Convention on Special Missions, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the 1979 International Convention against the Taking of Hostages.¹

9. The 1969 Vienna Convention on the Law of Treaties had been one of the highlights of the development and codification of international law through the United Nations. That Convention had been followed in 1978 by the Vienna Convention on the Succession of States with respect to Treaties. The purpose of the present Conference was to establish, in the form of a third international convention governing another important aspect of the law of treaties, the rules of international law applicable to treaties to which international organizations were parties.

10. It was therefore in the light of the general principles of the law of treaties, set out authoritatively in the 1969 Convention, that the present Conference must proceed. In so doing, it would have to preserve the provisions of the 1969 Convention and, in that connection, he cautioned that any other course of action would have disastrous consequences. The General Assembly had been conscious of that important consideration, and in the draft rules of procedure which it had transmitted and recommended to the Conference (A/CONF.129/7) had sought to ensure that there would be a dual procedure for reviewing, on the one hand, the provisions of those draft articles that were completely parallel to the 1969 Convention and, on the other hand, the provisions of the draft articles referring to the particular needs of treaty-making by and with international organizations.

11. He was grateful that Mr. Paul Reuter of France, the Rapporteur of the International Law Commission for the draft articles, had agreed to serve the Conference as Expert Consultant.

12. He invited the representative of the Federal President of the Republic of Austria to address the Conference.

Address by the representative of the Federal President of the Republic of Austria

13. Mr. HINTEREGGER, Permanent Representative of Austria to the United Nations at Vienna, representing the Federal President of the Republic of Austria, said that Mr. Rudolf Kirchschlaeger regretted his inability to attend and had asked him to read to the Conference the statement he had intended to make in person.

14. As head of State of the host country, the Federal President warmly welcomed all participants in the Conference, which continued the long-standing tradition of holding United Nations Conferences devoted to the codification of international law in the Austrian capital.

In view of its geographical position, its history and its status as a permanently neutral country, Austria was predestined to serve as a bridge between peoples, and its endeavours in that respect could hardly be better expressed than by hosting a conference to which all the members of the international community were invited to participate. Having regard to its subject, it was particularly appropriate that the present Conference should take place in Vienna, because international organizations were part of the city's everyday life, in particular as Vienna had become one of the Centres of the United Nations.

15. A quarter of a century earlier, as legal adviser to the Austrian Foreign Ministry, the Federal President had been entrusted with organizing the United Nations Conference on Diplomatic Intercourse and Immunities, which had resulted in the Vienna Convention on Diplomatic Relations, and had served as head of the Austrian Delegation. In 1963 he had acted in the same capacity at the Vienna Conference on Consular Relations, and had subsequently attended several United Nations codification conferences. He had always done so in the conviction that the fulfilment by the United Nations of its Charter responsibilities for the progressive development of international law and its codification was instrumental in making the world more peaceful.

16. The problems the Conference would deal with were not particularly easy ones, and as in all international conferences, a successful conclusion would require mutual understanding and the readiness also to make fair compromises. He was certain that all participants would use their best endeavours to codify a further important segment of international law and thereby lay down legal rules for another area of international relations.

Election of the President

[Item 2 of the provisional agenda]

17. Mr. SCHRICKE (France), supported by Mr. NASCIMENTO e SILVA (Brazil), nominated Mr. Karl Zemanek (Austria) as President of the Conference.

18. It was a pleasure for his delegation to present that candidature, in view of the long-standing historical relations between Austria and France and their close cooperation, especially in the legal field.

19. The Austrian Government was once again acting as host to a conference on the codification of international law, and his delegation wished to take the opportunity to thank the Austrian authorities for their generous hospitality.

20. In Mr. Zemanek the Conference would have as its President an eminent jurist particularly qualified in the subject matter of the Conference, who also had long experience of diplomatic forums, having participated in a number of codification conferences and having presided over the 1977-1978 United Nations Conference on the Succession of States in Respect of Treaties.

21. The task of the President would be facilitated by the quality of the preparatory work that had taken place

¹ General Assembly resolutions 2530 (XXIV), 3166 (XXVIII) and 34/146, respectively.

in the International Law Commission and in the consultations held in New York. Tribute should be paid to those who had organized those consultations and contributed to their success, and this practice should be encouraged.

22. Decisions now had to be made by the Conference, and Mr. Zemanek would contribute to ensuring its success.

Mr. Karl Zemanek (Austria) was elected President by acclamation and took the Chair.

23. The PRESIDENT said that he accepted with humility the responsibility conferred on him, seeing in it primarily a tribute to the Government and people of his country. The task before the Conference was undoubtedly a most difficult one; the topic to be covered was of great complexity. To agree on a single, uniform set of articles applicable to entities that were so diverse and to ensure that the product of its labour would not be still-born would require of the Conference a sense of proportion, common sense and goodwill. Twenty-five years had passed since the United Nations Conference on Diplomatic Intercourse and Immunities had laid the foundations of an impressive "Vienna tradition" of successful codification conferences. He would do his best, gladly and with dedication, to ensure that the present Conference lived up to that tradition.

24. Mr. PASCHKE (Federal Republic of Germany) congratulated the President on his election. He paid tribute to those who had inspired and directed the informal consultations in New York which had resulted in the draft rules of procedure of the Conference, and noted with satisfaction the presence of many members of the International Law Commission; Mr. Reuter, its Special Rapporteur and sometime President, was particularly welcome in the capacity of Expert Consultant.

25. Mr. CHUTASAMIT (Thailand), speaking as Acting Chairman of the group of Asian countries, congratulated the President on his election, paying tribute to his academic and diplomatic skills and experience and pledging the full co-operation of the Asian Group in the conduct of the Conference. The Group also wished to place on record its appreciation of the hospitality accorded by the host State.

Adoption of the agenda

[Item 3 of the provisional agenda]

The provisional agenda (A/CONF.129/1) was adopted.

Adoption of the rules of procedure

[Agenda item 4]

26. The PRESIDENT drew attention to the draft rules of procedure (A/CONF.129/7). Those rules were the outcome of lengthy consultations in New York and were recommended for adoption in General Assembly resolution 40/76, paragraph 4.

The draft rules of procedure (A/CONF.129/7) were adopted.

27. Mr. BERNAL (Mexico) said that his delegation favoured the active participation of international organ-

izations in the work of the Conference, and considered that the rules of procedure largely contained the provisions for such participation. He looked forward to the constructive participation of the international organizations in the preparation and adoption of the convention.

28. Mexico had always believed that States should be encouraged to work towards general agreement on the final text of conventions. However, although a text agreed by a large majority might be thought to be more widely acceptable than one adopted by a simple majority, that was not self-evident, and, whatever the form of voting, respect for the principle of sovereign equality of States and the democratic bases of every organization had to be retained. Complicating the rules of procedure would not necessarily lead to better results. The idea of general acceptance was, moreover, closely related to the political will of States to bind themselves at the international level. Thus, in his delegation's view, the problem of the codification and progressive development of international law was one not of procedural efficiency but of effectiveness and of political will. Without political will, rule 63, which was presumably intended to strengthen the process of negotiation and approval of the final text of the future convention, would not be effective.

29. Specifically, his delegation considered that rule 63 should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of the informal consultations at which it had been prepared. The purpose of rule 63 was to ensure that efforts were made to adopt the final text of the convention by general, but not necessarily unanimous, agreement. Accordingly, the rule should not be interpreted as an obligation to arrive at unanimous agreement to adopt the convention. The so-called rule of consensus was the result of negotiation in good faith and not a form of voting, particularly since the term "general agreement" had not been defined in the rules of procedure and there was no clear understanding as to its meaning.

30. His delegation had accepted the wording of rules such as 63 and 34 in a spirit of compromise and in order not to obstruct the convening of the Conference. That did not, however, mean that the agreement reflected in rule 63 constituted a binding precedent for the adoption of resolutions and decisions of the United Nations and its organs, commissions and committees.

31. Lastly, paragraph 3 of rule 63 was not to be interpreted as a derogation of the exercise of the right to vote or to mean that the exercise of that sovereign right could be denied by the virtue of a procedure like that provided for under rule 63.

32. Subject to those observations, his delegation had approved the rules of procedure.

33. Mr. SHASH (Egypt) said that while his delegation was able to accept the rules of procedure, including rule 63, for the special purposes of the Conference, it considered that they should not be deemed to constitute a precedent for all international meetings.

34. Mr. ABDEL RAHMAN (Sudan) observed that considerable effort had been expended at the General

Assembly in arriving at the rules of procedure. He trusted that a similar spirit of conciliation would prevail at the Conference.

35. Mr. VOGHEL (Canada), speaking on behalf of the delegations of Canada, the Federal Republic of Germany, France, the United Kingdom and the United States of America, said that while those delegations had

joined in the consensus (on the rules of procedure), their acceptance of those arrangements should not be construed as a change in their position concerning the legal nature of the participation of Namibia as represented by the United Nations Council for Namibia.

The meeting rose at 11.55 a.m.

2nd plenary meeting

Wednesday, 19 February 1986, at 12.10 p.m.

President: Mr. ZEMANEK (Austria)

Election of Vice-Presidents [Agenda item 5]

1. The PRESIDENT said that, in the light of rule 6 of the rules of procedure, the regional groups had met and had nominated the representatives of the following 22 States as Vice-Presidents of the Conference: Bulgaria, Chile, Côte d'Ivoire, France, German Democratic Republic, Greece, Guatemala, India, Japan, Kuwait, Lebanon, Netherlands, Peru, Poland, Senegal, Sudan, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Zimbabwe.

2. Mr. ALMODÓVAR (Cuba) said that his delegation rejected the nomination of a representative of Chile as a Vice-President. It had not been agreed by the Latin American group of countries.

3. Mr. PALOMO (Guatemala), speaking on behalf of the Latin American group of countries, said that they had held a series of meetings at which the nominations of Vice-Presidents from among the Latin American countries had been agreed. Unfortunately, the representative of Cuba had not been present at those meetings.

4. Mr. ALMODÓVAR (Cuba) said that his delegation could not agree that the representative of Chile should occupy a post of Vice-President. That had not been agreed by the Latin American group of countries, all of whose representatives knew that Cuba would not accept the election of Chile as a Vice-President, precisely because it was not the country most representative of Latin America. He did not propose to repeat the reasons for Cuba's refusal, which were well known to everyone. His delegation regretted that it had to make the matter public. It had been in the conference room since the building had opened for the Conference that morning, and at no time had its members seen any announcement about group meetings. It therefore reiterated emphatically its refusal to agree that a representative of the Government of Chile should occupy a post of Vice-President on behalf of the Latin American group of countries.

5. The PRESIDENT said that the statement of the representative of Cuba would be recorded in full in the summary record of the meeting. As he saw no other objections, he would take it that the Conference approved the election of the 22 Vice-Presidents nominated by the regional groups.

It was so decided.

Election of the Chairman of the Committee of the Whole [Agenda item 6]

6. The PRESIDENT announced the nomination of Mr. Mohamed El-Taher Shash (Egypt) as Chairman of the Committee of the Whole.

Mr. Mohamed El-Taher Shash (Egypt) was elected Chairman of the Committee of the Whole by acclamation.

Election of the Chairman of the Drafting Committee [Agenda item 7]

7. The PRESIDENT announced the nomination of Mr. Awn Al-Khasawneh (Jordan) as Chairman of the Drafting Committee.

Mr. Awn Al-Khasawneh (Jordan) was elected Chairman of the Drafting Committee by acclamation.

Appointment of the Credentials Committee [Agenda item 8]

8. The PRESIDENT said that, in the light of rule 4 of the rules of procedure, he proposed that the representatives of the following nine States should be the members of the Credentials Committee: Brazil, Canada, China, Ecuador, Gabon, Thailand, Union of Soviet Socialist Republics, United States of America, Zambia.

That proposal was adopted.

The meeting rose at 12.25 p.m.